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EXAMINING S. 797, THE TRIBAL LAW AND ORDER ACT OF 2009

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JUNE 25, 2009

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EXAMINING S. 797, THE TRIBAL LAW AND ORDER ACT OF 2009

THURSDAY, JUNE 25, 2009

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

The Committee met, pursuant to notice, at 2:15 p.m. in room 628, 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. I am going to call the hearing to order.

This is a hearing of the Senate Indian Affairs Committee. The Committee meets today to receive views on S. 797, the Tribal Law and Order Act of 2009. Along with 17 of my colleagues, I introduced this legislation April 2 of this year, but the bill has really been developed over the past several years. The Committee cosponsors include Vice Chairman Barrasso, Senators Tester, Udall, Johnson, Cantwell, Crapo, and Murkowski. Other cosponsors are Senators Begich, Boxer, Bingaman, Baucus, Kyl, Lieberman, Merkley, Stabenow, Widen, and we expect others to join as well.

This bill originates from listening sessions that we have held all across the Country, dozens of meetings and listening sessions with tribal leaders, judges, police officers, city mayors, sheriffs, other interested parties on and off and adjacent to Indian reservations.

In the 110th Congress, this Committee held eight hearings on a variety of public safety and justice topics. These meetings and hearings revealed what many in Indian Country have known for a long, long while, and that is while many Americans take for granted the safety that they experience every day, there are many living on Indian reservations that cannot take that for granted.

Indian Country is suffering, we believe, an epidemic of sexual and domestic violence against women. We have had a good number of reports of that and studies that have been released. More than one in three Native American women will be raped or sexually assaulted during their lifetime. Two in five will suffer domestic violence.

And for a number of reasons, victims of sexual violence on Indian reservations are often unable to bring their attackers to justice. In North Dakota, to cite an example, we have 11 police officers on one of our reservations patrolling 2.3 million acres on the Standing Rock Indian Reservation. Mr. Ragsdale knows that well. We have

been together at the Standing Rock Reservation where I held a hearing and where I will hold another hearing next week.

Because of the lack of adequate law enforcement in that area, a cry for help, a call saying a crime is being committed or has just been committed, could very well result in the law enforcement officer showing up an hour, perhaps 12 hours, perhaps a day later in response to an enormous cry for help as a result of a violent crime. That is just not acceptable and has to be changed.

One BIA officer on the Standing Rock Reservation quit his job and said about his 10 years on the job as a Federal police officer, "I felt like I was standing in the middle of a river trying to hold back a flood." He went on to say that his unit was forced to triage rape cases, taking only those in which a confession was present.

More than a century ago, the Congress enacted something called the Major Crimes Act, which took authority away from tribes and placed a legal obligation on the part of the United States to provide public safety. And the fact is, we are just not meeting that obligation. I have a chart that will show, for example, declination rates for reservation violent crime between 2004 and 2007. I have met with the Justice Department and others, U.S. Attorneys, and there are always reasons that declination rates are where they are. Each case, I understand, is unique and different and separate. So I understand all that.

Yet, to see a chart that shows a rate of 72 percent declining to prosecute child sex crimes raises very serious questions; aggravated assaults, 58 percent declination; murder/manslaughter, 50 percent declination.

A U.S. Attorney summed up the problem with this current system. He said, "The performance of my office will be compared to other U.S. Attorneys. My gun cases have to compete with other U.S. Attorneys. My white collar crime cases have to compete with other U.S. Attorneys. One criteria that is never on the list in my office is Indian Country cases."

Our bill takes steps to try to ensure that Indian Country crimes get placed on a priority list. The bill adds a measure of accountability at the Federal level. At the same time, the local tribal justice system is hampered, as most of us know. Federal laws place strict limits on tribal police arrest authority, and tribal courts can incarcerate offenders for no more than one year for any single offense.

We heard from tribal court judges and prosecutors who try rape and homicide cases that were declined in Federal court, and who are limited to administer one year in jail as a penalty for serious and violent sexual crimes. Subjecting a murderer or a rapist to one year in prison does not in any way provide justice to the victims or to the community.

So let me just summarize by saying the Tribal Law and Order Act of 2009 takes initial steps to address this concern. It is not a perfect piece of legislation, but it is a result of John Harte, the Policy Director for the Committee, and Allison Binney and others, going all around the Country, and that includes myself and Members of this Committee going around the Country and consulting and visiting and meeting with all of the interested parties to try

to determine how can we fix this; what can we put together that addresses this crisis.

And with that in mind, we introduced legislation with 17 Senators, 18 including myself, that is bipartisan and I think very strong.

I want to thank the witnesses who have agreed to come today to give us the benefit of their thoughts. I am encouraged by the presence of the Justice Department's Associate Attorney General and Assistant Secretary Echo Hawk, who has great experience in this area as well. And I want to thank all of the witnesses for being here.

Let me call on my colleagues for a brief statement.

Senator Tester?

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

Senator TESTER. I want to thank you, Mr. Chairman. I want to thank the witnesses for being here today. You are the experts. We look forward to hearing your perspective on the issue of safety.

I also want to thank Chairman Dorgan for his leadership in this in putting forth this bill that I think is a good step in the right direction.

For those of us that don't have to worry about our safety, sometimes we take it for granted. But if you take a look, and I know the Chairman talked about the number of hearings that we have had over the last couple of years that dealt with safety issues in Indian Country. There have been many. There have been many articles written about it.

But if you think about if you are living in a situation where safety isn't assured and it is not respected, and the impacts it can have on quality of life, the impacts it can have on the family structure, the impacts it can have on unemployment, it is no surprise that when you look at Indian Country and see families that are broken apart, when you see issues of quality of life that are less than what we should be striving for, you see unemployment in Montana, 70 percent, 80 percent, sometimes higher.

We need to address it and we need to address it in a way that makes sense for Indian Country. In the long run, it will help everybody and in the short run it is going to help Indian Country, and they need some help.

So we appreciate the folks testifying today and I look forward to the questions.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Tester, thank you very much.

Senator Crapo?

STATEMENT OF HON. MIKE CRAPO,
U.S. SENATOR FROM IDAHO

Senator CRAPO. Thank you very much, Mr. Chairman.

I also appreciate your hard work on this issue and look forward to working with you on this important legislation.

I note that today is, if I am correct, Larry Echo Hawk's first appearance before this Committee since his confirmation. And Mr.

Secretary, I congratulate you and look forward to continuing to work with you on important issues of this nature.

I also want to recognize one of our witnesses who will be on the second panel, Mr. Chairman, our Chairman Alonzo Coby of the Fort Hall Business Council which represents the Shoshone-Bannock Tribes of Idaho. Chairman Coby and his fellow Council Members, many of whom are here today, have shown great leadership in the creation of a new Tribal Justice Center in Fort Hall and we look forward to the center's opening in coming months as it will provide great benefits to the Shoshone-Bannock Tribes and other tribes and to the surrounding communities.

I also recognize Chairman Coby's leadership in advocating for the legislation that we are here evaluating today, the Tribal Law and Order Act, and I am proud, as you indicated, Mr. Chairman, to be a cosponsor of this important legislation, as are a number of our colleagues on this Committee.

Unfortunately, I will not be able to stay here for the full hearing as I am scheduled to attend a ceremony on the House side in just a few minutes to present the congressional award of a gold medal to 15 young Idaho students. So Mr. Chairman, if I slip out it is not for lack of support or interest in the issue that we have here.

Nevertheless, I want to indicate that I look forward to reviewing all of the testimony that we receive today and to help expeditiously move this legislation forward.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Crapo, thank you very much.

I want to mention the Committee has received a number of statements on the Tribal Law and Order bill from a number of domestic and sexual violence prevention organizations. Many of those advocates, Amnesty International included—and that is one of whose reports I referred to in my opening statement—many of them are in the audience today and I want to welcome them to the hearing and thank them for their extraordinary work and let them know that your statements will be printed in their entirety in the hearing record.

And I say to others who are interested in this subject that we will keep the record open for two weeks, and if you have submissions that you wish to include in the Committee record, we will certainly do that.

And I want to mention as well that we have an Appropriations Committee markup at three o'clock. Senator Barrasso, the Vice Chair of our Committee, will be here at three o'clock while I have to go to the Interior Appropriations Committee downstairs briefly, and Senator Udall and some others will be here as well.

Mr. Perrelli, thank you very much for being here, the Honorable Tom Perrelli, Associate Attorney General of the United States. I read about you in *The Washington Post* recently and, you know, almost swallowed my Grape Nuts whole there from that box of breakfast cereal. I was so pleased with what I read. You indicated that you and I believe also David Ogden, the new Deputy down at the Department of Justice, are taking a real interest in this issue of Indian tribal justice, and that is a healthy and a very refreshing thing for myself and Senator Tester and Members of this Committee to see.

So we thank you for your being here and for your willingness to be here along with Assistant Secretary Echo Hawk and Mr. Ragsdale, who heads the appropriate area over in the BIA.

Mr. Perrelli, we will call on you. The statements of all of the witnesses will be included in their entirety in the permanent record, and we will ask that the witnesses summarize.

Welcome, Mr. Perrelli.

STATEMENT OF HON. THOMAS J. PERRELLI, ASSOCIATE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. PERRELLI. Thank you. Thank you, Mr. Chairman.

I do appreciate the opportunity to speak to the Committee on the Tribal Law and Order Act of 2009, which we believe is comprehensive and important legislation that will improve the delivery of criminal justice services in Indian Country.

I know our views letter on this is long and there are some provisions that we believe are problematic, but I don't want those comments and constructive concerns to diminish how important we think this legislation is. We very much look forward to working with you and this Committee on this issue, as well as other issues relevant to Indian Country, in the coming years, because I think we can all agree there is a great deal that needs to be done.

Following up on your comments, I do want to express a little bit about the new leadership of the Department and their commitment to Indian Country. One of Attorney General Holder's first acts when he came on was to convene a summit of State, local and tribal law enforcement to find out what we were doing well, what we were doing poorly, and what we needed to learn.

Coming out of that and recommendations from within the Department, we announced a series of sessions in Indian Country, as well as leading up to a Tribal Nations Listening Conference in the fall, which really hasn't occurred since 1994, with the Justice Department trying to bring representatives of all of the tribes together. Our goal is not simply to listen, but to have action items and plans in mind when we get to that session. The sessions in the interim will hopefully help us with that.

I think our commitment to Indian Country derives in many respects from the Attorney General's, the Deputy Attorney General's and my previous experience in the Department. The Deputy Attorney General, in fact, co-chaired the Indian Country Law Enforcement Initiative, and I know there has been a lot of discussion in prior hearings before this Committee about that. I succeeded him as the leader from the Department of Justice in that effort. I know that this Committee has heard testimony in the past from U.S. Attorneys who were discouraged for or penalized for appropriately enforcing the law in Indian Country. That will not happen under this Attorney General.

In the leadership there is a tremendous understanding and commitment to the importance of law enforcement in Indian Country, and we recognize that we are only going to succeed if everyone in the Federal family, as well as with our tribal partners and State and local governments, works together.

My written testimony lays out information about a variety of provisions that we support, that we suggest modifications to, or to

which we object. I do want to talk a little bit about what is going on at the Department now. In addition to our intention to go through a process leading up to the Tribal Nations Listening Conference, we are actively seeking to get Recovery Act funds that are urgently needed out to Indian Country, particularly $225 million that were made available for correctional facilities through the Recovery Act.

We are also working to get the Community-Oriented Policing services monies out, which are applicable to all communities, but which I know are desparately needed in tribal communities. And as you referenced, our Office of Violence Against Women is also working to get money out to Indian Country to address the long-standing problem of domestic violence in Indian Country.

But we acknowledge that more needs to be done, and we are undertaking a comprehensive review of what we are doing in Indian Country with an eye towards what would be appropriate to propose to the President in the 2011 budget.

With respect to the chart, I know that the issue of declinations has been a significant one for the Committee. As the Department has stated previously and stated again, we don't think that the declination rate provides a useful measure of the Department's commitment to law enforcement in Indian Country. We also think that in many circumstances, but not all, there is good coordination between Federal law enforcement and tribal law enforcement.

But if nothing else, those statistics and the focus of this Committee on this demonstrate that there is a real perception problem, and that the Department needs to do more to communicate what we are doing, and what we are not doing, with our tribal partners. We need to communicate that when there is an opportunity to prosecute in whatever system—State, Federal or tribal—we take advantage of doing that.

We also need to look at our data, the data that is the source of that chart and that we have often said we don't think demonstrates anything. We need to figure out how we can get more useful data, which I know you have asked us for repeatedly. We are now focused on trying to see if there is more that we can do to provide an accurate pictures, whatever that might turn out to be.

I can't make any promises today. I have met with a number of people on this and I have been told how difficult it is, but it is something we are working on now.

I appreciate the opportunity to provide this opening statement and I look forward to answering your questions.

[The prepared statement of Mr. Perrelli follows:]

PREPARED STATEMENT OF THOMAS J. PERRELLI, ASSOCIATE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Chairman Dorgan, Vice-Chair Barrasso and members of the Committee:

I appreciate this opportunity to appear before the Committee on behalf of the Department of Justice to offer the Department's perspective on law enforcement issues affecting Indian Country. In particular, I'm grateful for the chance to convey the Department's position on S.797, the Tribal Law and Order Act of 2009. This comprehensive legislation would significantly improve the delivery and administration of criminal justice services in Indian Country, but it also contains several provisions to which the Department objects and which we believe must be modified. The Department's position on this legislation is contained in a letter conveyed to the Com-

mittee in advance of today's hearing. I will reiterate today some, but not all, of the expressions of support and concern contained in that letter.

Before addressing specific parts of the legislation, however, I want to express the Department's unequivocal commitment to the mission of fostering public safety in Indian Country. As this Committee knows well, law enforcement in Indian Country is a shared responsibility. Whether a crime will be investigated and prosecuted by the Federal Government, a state government, or the tribe itself depends upon the nature of the crime, where the crime is committed, against whom, and whether the perpetrator is Indian or non-Indian. This jurisdictional patchwork can lead to inconsistent results, and often times frustration by those who perceive the Department's commitment to enforcing criminal law in Indian Country as itself being inconsistent. I want to assure you today from Attorney General Holder, Deputy Attorney General Ogden, and myself that such perceptions are wrong. Just last week, the Department announced that the Attorney General would convene a Tribal Nations Listening Conference later this year, at which we can consult with tribal leaders on how to address the growing public safety crisis in Indian Country and other important issues affecting tribal communities. Both the Deputy Attorney General and I plan to participate personally in smaller planning sessions, at which we will seek tribal representatives' input in setting the agenda for that Conference. Tribal communities have long-time supporters and friends in the Department's leadership.

Our commitment to seeking justice for Indian Country communities and victims of crime is reflected in the myriad resources we devote to investigating Indian Country crime within the FBI, ATF, and DEA. Everyday, often in concert with their tribal police counterparts, federal agents operating in Indian country are pursuing cases involving violent crime, illegal drugs, and incidents of sexual assault and domestic violence. Everyday, in one or more of the 37 U.S. Attorney's Offices that have Indian Country within their boundaries, federal prosecutors are taking the results of those investigations and obtaining convictions that remove dangerous predators from Indian communities. In fact, in a typical year, approximately 25 percent of all violent crime cases opened by U.S. Attorneys nationally occur in Indian Country. Everyday, victim specialists employed by the Department and the tribes are working with Indian victims of crime, helping them rebuild their lives.

I would like to offer a few relevant facts that demonstrate the depth of the Department's ongoing efforts to investigate and prosecute cases arising in Indian country. The FBI is the main federal law enforcement authority in Indian Country. Even with the heightened demands placed upon the FBI by its primary role in the fight against terrorism, Indian Country law enforcement remains a key priority for the FBI. The FBI's Safe Trails Task Force initiative—which focuses entirely on Indian Country crime—has grown steadily since its inception in 1994. There are now 17 Safe Trails Task Forces operating in Indian Country, and the FBI stands ready to expand that number as necessary.

The FBI's Indian Country Special Crimes Unit routinely works with the Bureau of Indian Affairs (BIA)—Indian Police Academy in Artesia, New Mexico, to sponsor and promote core training for investigators. Each fiscal year, the FBI provides more than 20 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 (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 criminal justice information. The N–DEx system provides law enforcement agencies with a powerful new investigative tool to search, link, analyze and share criminal justice information on a national basis to a degree never before possible. This information covers the criminal justice life-cycle and includes incident/case reports, incarceration data, and parole/probation data. Participating criminal justice agencies contributecopies of data from their record management systems to the N–DEx system. Agencies continue to "own" and are responsible for the data they submit, including updating the information on a regular basis. Utilizing a secure link via the internet through the Law Enforcement Online service, participating agencies access the system without continuing costs beyond the reasonable start-up cost associated with data conversion and connectivity.

The Law Enforcement N–DEx has been endorsed and is supported by the International Association of Chiefs of Police, the National Sheriffs Association, the Major City Chiefs Association, and the Major County Sheriffs Association. The Oneida Na-

tion Police Department (PD) is the first tribal law enforcement agency to participate in the N–DEx project. Currently,the Oneida Nation PD 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 law enforcement agencies, including those of the Paiute, Mashantucket Pequot, Mohegan, Eastern Band of Cherokee, and Navajo Tribes.

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. Project Safe Neighborhoods is a nationwide program aimed at reducing gun and gang crime in America by networking existing local programs that target gun and gang crime and providing these programs with additional tools necessary to be successful. This funding is being used to hire new federal and state prosecutors, support investigators, provide training, distribute gun lock safety kits, deter juvenile gun crime, and develop and promote community outreach efforts as well as to support other gun and gang violence reduction strategies In early 2009, EOUSA and ATF launched a Project Safe Neighborhoods Indian Country Pilot Project in the Eastern Navajo Nation Dlo'ayazhi community located in western New Mexico. The Navajo Nation PSN Pilot Project will allow the community, in partnership with the New Mexico U.S. Attorney's Office, ATF, BIA and FBI, to develop critical interdiction and prevention programs that will specifically address the problems experienced in that community.

In addition, ATF has entered into Memoranda 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) proactively investigates significant national and international Drug Trafficking Organizations operating in, and within proximity to Indian Country. For example, in December of 2008, DEA concluded an investigation on the Tohono O'cdham Indian Reservation which resulted in thirty-six arrests, seizure of more than six tons of marijuana, eleven pounds of methamphetamine, one kilogram of cocaine, $491,000 in U.S. currency, and thirteen weapons. The DEA brings a number of investigative techniques to its Indian country operations, including the use of Title-III wire intercepts.

While I have detailed the extensive investigative and prosecutorial work that the Department is doing in Indian Country, that is not intended to suggest that there is not more to be done or that the problems facing tribal communities are not enormous. We must do more, and the only way we will be successful is if we work in true partnership with tribal communities and the states.

The American Recovery and Reinvestment Act (Recovery Act) is one way in which we are doing so. As the Committee is aware, through the Recovery Act, the Office of Justice Programs (OJP) will provide $225 million for correctional facilities on tribal lands. These new facilities not only provide needed infrastructure for the criminal justice system on tribal lands, but provide additional benefits by offering employment opportunities, and by helping inmates' ties with family and other community members, which may have a rehabilitative effect, and may not be possible when the facilities are further away. OJP is also using Recovery Act funds to improve the quality of tribal crime data gathering and information sharing. In addition, OJP has encouraged tribes to apply for other Recovery Act funding to support tribal law enforcement agencies and court systems.

Together with the U.S. Marshals Service, which assists tribes in locating and apprehending sex offenders who fail to comply with their sex offender registration requirements, and serves as the lead agency responsible for investigating violations of 18 U.S.C. § 2250 and related offenses, OJP is also helping Tribes implement the Adam Walsh Child Protection and Safety Act. OJP provides, free of charge, access to the Tribe and Territory Sex Offender Registry System, which includes software that will allow tribes to meet all of the requirements for a public sex offender registry. OJP also worked with tribal lawyers to develop a Model Tribal Sex Offender Registration Code, which offers tribes sample language to help tribes comply with the key provisions of the Adam Walsh Act.

OJP's Bureau of Justice Assistance (BJA) awarded grants to more than 100 tribal project grantees for drug courts, tribal courts assistance and court enhancements, gang resistance programs, alcohol and substance abuse programs, Safe Neighborhoods Initiative, justice assistance grants, tribal correctional facilities planning and

renovation grants. Additionally, BJA provided $2.8 million for targeted training and technical assistance grants to support tribal projects, for more than $26.7 million.

OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides training and technical assistance through the Tribal Youth Program, the Tribal Juvenile Accountability Discretionary Grant Program, the Amber Alert Program and a National Tribal Youth Training and Technical Assistance Program. In addition, in FY 2009, OJJDP released a solicitation for the Tribal Juvenile Detention and Reentry Green Demonstration Program. This program furthers the Department's mission by enhancing opportunities for federally recognized tribes to provide comprehensive and quality programs for tribal youth who reside within or are being released from a tribal juvenile detention center. For the first time OJJDP is sponsoring an initiative that encourages funding recipients to partner with institutions and organizations to incorporate green technologies and environmentally sustainable activities as part of their educational, training, and reentry activities for youth participants. As part of this effort, OJJDP has also released a FY 2009 solicitation for Training and Technical Assistance for Tribal Juvenile Detention and Reentry Green Program. This program will provide training and technical assistance to help federally-recognized tribes reduce delinquency and recidivism among tribal juvenile detainees and will assist tribes as they develop partnerships with organizations to incorporate green technologies and environmentally sustainable activities into their reentry programs.

OJP's Office for Victims of Crime awarded 47 tribal project grants to help develop and sustain crime victim assistance programs in American Indian and Alaskan Native communities. These resources are used to provide direct services to victims of crimes such as child abuse, homicide, elder abuse, driving while intoxicated, and gang violence. Additionally, the Office for Victims of Crime provided approximately $1.3 million for targeted training and technical assistance grants to support tribal projects, totaling over $6.4 million.

Finally, OJP's Bureau of Justice Statistics awarded 3 grants with over $200,000 for assistance in improving the quality, access, and ability of tribes to share criminal records. It also helped enable tribes to identify individuals for criminal justice and non-criminal justice programs. In addition, the Bureau of Justice Statistics provided over $300,000 for targeted training and technical assistance grants to support tribal projects, totaling more than $550,000

The Department acknowledges that more needs to be done. More resources, more research, and more training will help. Some jurisdictional provisions should be reexamined, and perhaps modified to allow greater law enforcement options in Indian country. The Tribal Law and Order Act of 2009 takes meaningful steps towards enhancing public safety for Native Americans and we look forward to working with the Committee to improve this legislation and help achieve that goal. With those thoughts in mind, I would like to address several specific provisions of the bill.

Section 101(c) would allow the Secretary of Interior to authorize BIA law enforcement officers to make arrests without a warrant for offenses committed in Indian Country if "the offense is a Federal crime and [the officer] has reasonable grounds to believe that the person to be arrested has committed, or is committing, the crime." Currently, BIA officers without a warrant are not authorized to arrest persons for Indian Country offenses that are not committed in their presence, unless the offense is a felony, or among certain misdemeanors involving domestic violence, dating violence, stalking, or the violation of a protective order. The Department would support increasing the categories of misdemeanors for which a warrantless arrest may be authorized by BIA officers when the offense is committed outside their presence. In particular, we support expanding BIA's warrantless arrest authority for misdemeanor controlled substances offenses, in violation of Title 21, U.S. Code, Chapter 13; misdemeanor firearms offenses, in violation of Title 18, U.S. Code, Chapter 44; misdemeanor assaults, in violation of Title 18, U.S. Code, Chapter 7; and misdemeanor liquor trafficking offenses, in violation of Title 18 U.S. Code, Chapter 59. We do not support expanding BIA's warrantless arrest authority to encompass all "Federal crimes" committed in Indian Country, but outside the officer's presence. For minor offenses not involving a measureable risk to public safety, the Department believes an arrest warrant should be obtained.

The Department also recommends that the standard for a warrantless arrest contained in 25 U.S.C. § 2803(3) be modified to more closely track U.S. Supreme Court precedent. Currently, the statute requires that an officer possess "reasonable grounds" to believe that the person to be arrested committed the offense. We suggest that the officer should be required to possess "probable cause" to believe that the person to be arrested committed the offense. *See Atwater v. City of Lago Vista,* 532 U.S. 318 (2001).

Section 102 requires that, when a federal law enforcement agency or a U.S. Attorney decides not to pursue an investigation or prosecution of an alleged violation of federal law committed in Indian Country, the agency and/or the U.S. Attorney provide its "evidence," and "related reports" to "appropriate tribal justice officials." For U.S. Attorneys, the obligation must be complied with "sufficiently in advance of the tribal statute of limitations." The apparent intent is to allow tribal authorities to pursue the case in tribal court, should they choose to do so. It appears that the section is also intended to address the perception that U.S. Attorneys decline Indian country cases that should be prosecuted.

The Department is both mindful of and attentive to the fact that certain cases may be more appropriately pursued in tribal court; or in some cases in both federal and tribal court. To that end, federal authorities routinely coordinate and cooperate with tribal authorities to ensure that, subject to applicable rules and regulations, any other jurisdiction with prosecution authority has the information and evidence it needs to pursue its case. The Department therefore believes that section 102 is designed to fix a problem—a perceived lack of federal, state, and tribal law enforcement coordination—that is atypical.

However, to the extent there are instances in which coordination is lacking, this is not a problem that will be cured through legislative mandates. Only through the development of improved information sharing and strengthened intergovernmental relationships will we successfully address this issue. Likewise, we believe that the perception that U.S. Attorneys decline meritorious criminal cases is in general a misperception. Again, only by building improved lines of communication between federal and tribal law enforcement, as well as tribal communities, will these misperceptions be addressed.

The Department is committed to improving communication between federal and tribal law enforcement and, more generally, is actively focused on criminal justice in Indian country. In the coming months we will work closely and collaboratively with tribal law enforcement to improve the exchange of information. While Section 102 is intended to address declination issues, the Department believes that the best solutions will come through discussions and communication between the parties. We are concerned that any solution that does not involve meaningful collaboration between the parties will, in the final analysis, not really address the issue. The leadership of the Department would like the opportunity to work through this issue with tribal leadership before we endorse legislation. To that end, we oppose section 102 at this time.

Conversely, the Department is fully supportive of section 103(a), which will clarify that the categories of persons who can be appointed by the Attorney General to serve as Special Assistant U.S. Attorneys (SAUSAs) include tribal prosecutors. The Department has relied upon the assistance of SAUSAs employed by other federal agencies and state and local governments for decades in meeting its obligation to enforce federal criminal law. Clarifying that the pool should include tribal prosecutors is warranted. We know that many tribal prosecutors possess enough talent and experience to be valuable additions to the resources we can draw upon to prosecute Indian country crime. We also agree that before exercising this authority the Department should consult with tribal justice officials. While the Attorney General must retain the ultimate authority to decide who will represent the United States in court, it is inconceivable to me that a tribal prosecutor would be appointed as a SAUSA without the consent of the tribe with which he or she is otherwise employed.

Section 103(b) addresses the use of tribal liaisons by U.S. Attorney's Offices with responsibility for Indian Country. This section would codify the duties and responsibilities of tribal liaisons, but it does so in a manner that fails to acknowledge or accommodate the diversity of tribes, issues, and resources that exist across the districts that work in Indian Country.

As the Committee knows, tribal liaisons are Assistant United States Attorneys (AUSAs) who, in addition to prosecuting cases, are also responsible for coordinating Indian Country relations within a district. The Department fully recognizes the importance of tribal liaisons and currently has 44 tribal liaisons in districts with some Indian Country within their jurisdictions. Tribal liaisons have been effectively serving U.S. Attorney's Offices since we began designating them 1995.

The key to successfully using tribal liaisons, however, is to recognize that one size does not fit all. While each tribal liaison may be an expert in Indian Country issues, those issues can vary greatly from tribe to tribe, and from district to district. Some districts may deal with only one tribe; others will be responsible for many. Some tribes have fewer than 200 members; others will have more than 100,000. Some districts contain vast amounts of Indian Country, others have relatively little. In some districts Indian gaming is prolific; in others it may be insignificant. Some districts

have a multitude of AUSAs with substantial Indian Country experience; others may have few, or just one. These multiple layers of diversity make nationwide codification of the duties of tribal liaisons counterproductive, by reducing the discretion that each U.S. Attorney's Office must have to best serve the Indian community(s) in their districts. It is important to note that while the Tribal Liaisons are collectively the most experienced prosecutors of crimes in Indian Country, they are not the only AUSAs doing these prosecutions. The sheer volume of cases from Indian Country requires these prosecutions in most USAOs to be distributed among numerous AUSAs.

The Department believes that each individual district is in the best position to evaluate the challenges presented by Indian Country crime within the district, the backgrounds, talents, and experiences of its AUSAs, and how the latter should best be employed to meet the former. It is essential that U.S. Attorneys maintain this discretion in tailoring the role and scope of the tribal liaison program in their districts, and the Department is therefore opposed to section 103(b). However, we do agree with the sentiment expressed in section 103(c) that the performance of tribal liaisons should be evaluated fairly on the full scope of their assigned duties, including those duties that are not case-related. We also support section 103(d), which encourages U.S. Attorneys to rely upon SAUSAs to provide enhanced attention to minor crimes occurring in Indian Country. The Department notes, however, that focusing these efforts in districts where "declination rates" exceed the national average is not a viable measuring stick. As we have conveyed to the Committee in the past, reliable statistics about "declination rates" in the federal system are unknown and realistically unknowable. The decision-making process that can result in an Indian Country case not being accepted for federal prosecution is too complex and individualized to produce meaningful comparative statistics.

Section 104 of the Tribal Law and Order Act of 2009 is focused on reorganizing the Department's approach to managing its Indian Country responsibilities in Washington. Section 104(a) would direct the Attorney General to establish the Office of Tribal Justice (OTJ) as a "permanent division" within the Department, with specific assigned responsibilities. Section 104(b) would create the Office of Indian Country Crime within the Criminal Division of the Department.

OTJ, which has been recognized in statute (25 U.S.C. 3653(6)), has functioned for some time with staff detailed to it by other components of the Department. We understand Section 104(a) as an effort to give prominence to OTJ by making it a separate component of the Department. The Department strongly supports Section 104(a) with some modification. First, OTJ should remain an "office" within the Department, not a "division." Divisions within the Department are generally large litigating components. Instead, OTJ—like the Office of Legal Counsel or the Office of Legal Policy—should remain an "Office."

Second, because OTJ exists in statute, the Department recommends that Section 104(a) direct that the Attorney General establish OTJ as a separate component. That would have the effect of placing it on the Department's organizational chart and giving it greater prominence. This may be accomplished by amending the directive in proposed Subsection 106(a) (the provision to be inserted into the Indian and Tribal Justice Technical and Legal Assistance Act of 2000) to read: "the Attorney General shall establish the Office of Tribal Justice as a component within the Department."

Third, the Department recommends striking Subsection 106(b) (of the provision to be inserted) which addresses personnel and funding. The Department will continue the current personnel and funding arrangements until appropriations are provided.

Finally, the duties identified in Subsection 106(c) (of the provision to be inserted) reflect what are currently OTJ's core functions. Accordingly, the Department recommends that the heading of this Subsection be changed from "Additional Duties" to "Duties of the Office of Tribal Justice." In addition, the opening paragraph of proposed Subsection 104(c) should be replaced with "The Office of Tribal Justice shall—"

With the above modifications, the Department actively supports Section 104(a). 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 constant channel of communication for Indian tribal governments with the Department. The Department agrees that it is time to recognize OTJ as a critical and permanent entity within DOJ.

We oppose, however, the creation of an Office of Indian Country Crime in the Criminal Division at the Department of Justice. Transferring resources would not

make a measureable contribution to addressing the very real problems that the Committee is trying to deal with by this legislation. Those problems occur on the ground, in the districts containing Indian Country, and that, we believe, is where the focus of effort should be.

Instead, creating an Office of Indian Country Crime in Washington could have the practical effect of weakening the Department's efforts to combat violent crime in Indian Country, not strengthening them. Foremost, creation of an Office of Indian Country Crime in the Criminal Division would take valued criminal justice resources away from the field, where they are needed most. Currently, a large majority of the Department's most experienced Indian Country professionals serve in Indian Country, where their expertise has the greatest impact. Bringing some number of those persons to DOJ headquarters will produce an experience gap in the field.

Existing structures in the Department are more than sufficient to address Indian Country issues. In the fall of 2008, EOUSA created a permanent Attorney Advisor position titled Native American Issues Coordinator. The Coordinator was placed within EOUSA's Legal Initiatives Staff and serves as a principal legal advisor on all matters pertaining to Native American issues, among other law enforcement program areas; provides management support to the United States Attorneys' Offices (USAOs); and coordinates and facilitates the resolution of important legal issues. In addition, the Attorney General's Advisory Committee (AGAC), Native American Issues Subcommittee (NAIS), is a powerful voice for the U.S. Attorneys' community on all matters having to do with Indian Country, especially Indian Country crime. The NAIS is the longest-tenured subcommittee of the AGAC, and one of its most active. It consists of U.S. Attorneys whose districts include significant amounts of Indian Country, and it regularly holds meetings in Indian Country. The NAIS has historically dealt with the most pressing issues facing Indian Country, and often produces well thought out policy recommendations based upon what works in the field.

We support Title II of the Tribal Law and Order Act of 2009, but would like to work with the Committee to ensure that section 201 accomplishes its intended purpose. We understand that section 201 is intended to streamline the process by which tribes with land located in Public Law 280 states may retrocede concurrent criminal jurisdiction to the Federal Government. We support the concept, but are concerned with two aspects of section 201 as drafted.

We are concerned that section 201 may inadvertently and automatically retrocede criminal jurisdiction to the United States in all P.L. 280 states upon enactment. We believe that was not the drafter's intent, and minor changes to the wording will remove any ambiguity. We are also concerned, however, that section 201 requires that tribes consult with the Attorney General before effecting a retrocession, but does not expressly require the Attorney General's consent. To ensure an orderly and methodical transition, the Attorney General must be allowed to determine the circumstances under which concurrent jurisdiction will be accepted. This is particularly important because federal criminal law cannot be enforced adequately without dedicating resources to that effort.

Investigators, prosecutors, staff, and judicial resources are all necessary to the enforcement of federal criminal law. The Attorney General should be allowed to ensure that sufficient assets are available before having new enforcement responsibilities thrust upon the Department.

Section 202 authorizes monetary incentives for enhanced cooperation between state, local and tribal governments to improve law enforcement effectiveness and reduce crime, both in Indian Country and in nearby communities. The Department is fully supportive of this initiative, and believes it holds great promise.

Title III of the Tribal Law and Order Act of 2009 is directed at increasing a tribe's ability to respond to Indian Country crime. The Department supports those provisions of Title III that are directed at improving the quality, resources, training, and competence of tribal law enforcement professionals.

Section 303 seeks to grant qualified tribal police officers access to national criminal databases. The FBI's Criminal Justice Information Services Division (CJIS) has long recognized tribal law enforcement agencies as qualified criminal justice agencies and has consequently assigned Originating Agency Identifier (ORI) numbers to tribal law enforcement agencies upon request. The ORI enables access to the National Crime Information Center (NCIC), which includes the ability to both view data and input data.

The Department supports efforts to increase tribal access to NCIC, and believes such efforts are critical for public safety. The Department, however, requests the following modification to Section 303(b) to insure that the provision is not interpreted to impose an affirmative, mandatory duty on the Attorney General to provide each tribe seeking to access the NCIC with the technical resources the tribe would need

to do so: that Section 303(b)(1) be revised with the language used in Section 303(a), to read, "The Attorney General shall ensure that tribal law enforcement officials that meet applicable Federal or State requirements *be permitted* access to national crime information databases." Section 304 increases the authority of tribal courts to sentence offenders to up to three years in prison (the current limit is one year), and authorizes tribal courts to direct that defendants convicted in tribal court serve their sentences in federal prisons. These provisions are significant changes to the *status quo*.

The Department further notes that increasing the maximum tribal court prison sentence to three years may invite greater scrutiny if those convictions are challenged in federal court, unless indigent defendants are provided with counsel. As drafted, section 304 would prohibit tribes from denying defendants the assistance of counsel, but does not provide for such assistance if the defendant is unable to afford counsel.

Moreover, the Department opposes section 304(a) to the extent it would permit tribal courts to direct that offenders convicted by tribal courts 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 overcrowded. 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 49 percent above capacity) and medium security institutions (operating at 48 percent above capacity), where the majority of violent offenders are confined.

Moreover, based on the location of BOP institutions and Federal inmate population pressures, confining tribal offenders in BOP facilities would frequently mean that such offenders would be confined at least several hundred miles, if not more than a thousand miles from their communities. 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 tribal detention centers or correctional facilities. The Department understands that the quantity and quality of existing tribal detention and correctional facilities are inadequate. Even so, the answer is to improve those facilities, not send tribal offenders to BOP facilities that are experiencing such significant crowding. As previously noted, the Recovery Act provided $225 million for the construction and renovation of tribal correction and detention facilities. Grant applications for that money have already been received by the Office of Justice Programs and award decisions should be forthcoming. The Department believes that this money will go a long way towards rectifying existing shortfalls in tribal facilities.

The Department is generally supportive of Titles IV, V and VI of the legislation, which focus on monetary and non-monetary assistance to tribal law enforcement agencies, improving the manner in which Indian Country crime is reported and tracked, and prisoner release and reentry issues. The Department has mostly technical concerns about these provisions, which are identified in our June __, 2009 letter. However, the obligations imposed upon the BOP by section 601 with respect to sex-offender registration are both impractical and inconsistent with SORNA, the law that imposes registration obligations for offenders. Because we believe that the existing system works well, and will work well with offenders being released to tribal communities, section 601 should be amended to be consistent with SORNA.

Section 603 provides that the Director of Indian Health Services and the Director of the BIA's Office of Justice Services must approve or disapprove, in writing, any request or subpoena of their employees to provide testimony in a deposition, trial, or other similar proceeding regarding the performance of their duties. This provision, which fails to distinguish between requests or subpoenas for testimony in federal court, or in cases where the United States is a party, is too broad. It would treat these employees differently than their counterparts in other federal agencies, is likely to conflict with existing agency regulations, and could hamper the federal prosecution of sexual assault cases arising in Indian Country. We recommend that this provision be limited to subpoenas or requests for employee testimony arising in or from cases pending in tribal courts. Additionally, we note that HHS has concerns about this provision and we understand will be communicating those separately.

Conclusion

Chairman Dorgan, Vice Chair Barrasso, this concludes my statement. While the Department has a variety of significant concerns with the legislation that is pending before this Committee, we share the Committee's ultimate goal of increasing public

safety in Indian Country. We look forward to working with the Committee in order to address our concerns and achieve that goal.

I will be happy to attempt to answer any questions you may have.

The CHAIRMAN. Mr. Perrelli, thank you very much. And please thank Attorney General Holder for us as well.

Secretary Larry Echo Hawk, as I indicated when we moved your nomination to this Committee, I think your background serves you well in addressing some of these issues, especially this issue of tribal justice. We are pleased you are here, and pleased Mr. Ragsdale is here. And why don't you proceed?

STATEMENT OF LARRY ECHO HAWK, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY W. PATRICK RAGSDALE, DEPUTY DIRECTOR, OFFICE OF JUSTICE SERVICES

Mr. ECHO HAWK. Thank you, Mr. Chairman and Committee members.

Mr. Chairman, when you in your opening remarks talked about a person standing in a river facing floodwaters, that resonated with me. I have been on the job less than a month as Assistant Secretary, and I had an expectation that there would be a lot of critical business coming my way, but I think I underestimated the force of those issues.

Nevertheless, I greatly appreciate the opportunity to participate in things that really make a difference in the lives of people living in Indian Country. At my confirmation hearing, I recall that I was asked to identify my top priorities, and I spoke of education and jobs, but also placed special emphasis on public safety in Indian Country.

And besides me stating that was a high priority, on my first day on the job I was called into Secretary Salazar's office and he proceeded to outline his goals and vision of what he would like to accomplish, along with President Obama in making a difference for people living in Indian Country. Right at the top of the agenda was criminal law enforcement.

So I applaud the sponsors of the Tribal Law and Order Act. S. 797 it is a good bill and I strongly support it. I am quite aware, as Mr. Chairman pointed out, that numerous hearings have been held. A lengthy bill has been crafted, so this effort is underway, and I would simply say that I am glad to join the fight against the crime and violence that is occurring within Indian Country.

In particular, my highest priority would be safeguarding vulnerable victims, women and children. I have an extensive background in the area of criminal law enforcement. I started out being a defense lawyer in Federal court, taking court appointments to represent indigent Indian people charged with major crimes.

I served as the tribal attorney for Idaho's largest tribe for nine years. I had the experience of serving as the state prosecuting attorney in Idaho's fourth largest county, and a part of my jurisdiction included reservation communities. For the last 14 years, I have taught criminal law, criminal procedure and Federal Indian law. I have been involved in training tribal judges, prosecutors and defenders.

And so I welcome this opportunity to be a contributor in this important matter. I want to emphasize that in this breadth of experience that I have had, I learned some things. One of the things I learned in this process was the importance of intergovernmental partnerships. That applies in a lot of issue areas, but it is particularly critical for what we talk about today because this is very complex law, jurisdictional law, with various parties that have responsibilities. In order for us to succeed, it requires communication, cooperation and collaboration.

And in that statement, I wanted to particularly voice my commitment to tribal consultation. These are the people that are the major interest holders. They had promises given by the United States of America that their lands, their communities that they maintain today would be their permanent homelands, and those communities need to be protected. Tribes need to be empowered to expand their criminal law enforcement authority and to be given the resources to be able to meet that responsibility.

So I simply emphasize that when the Federal Government of the United States made the decision to become involved in criminal law enforcement back in 1885, that with that authority came the responsibility. And it is a very important responsibility and one that calls for collaboration that will assure the safety of these communities.

I welcome the opportunity to participate in marshaling the resources of the Federal Government to partner with tribes to make a difference in the lives of people.

Thank you, Chairman.

[The prepared statement of Mr. Echo Hawk follows:]

PREPARED STATEMENT OF LARRY ECHO HAWK, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Chairman Dorgan, Vice Chairman Barrasso, and members of the Committee, thank you for the invitation to provide testimony before this Committee on S.797, the Tribal Law and Order Act of 2009, which is aimed at improving and addressing law and order in Indian country. Let me begin by thanking you and this Committee for supporting my confirmation as the Assistant Secretary of Indian Affairs. I have been on the job for less than a month and I have already met with several tribal leaders. I have spoken with many more collectively through the National Congress of American Indians. And with the charge I've been given, I plan to meet with many more tribes and their leaders as we move toward addressing law and order in Indian country.

Today, in an era of change, we acknowledge and commit to honor our longstanding government-to-government relationship with the tribes in this country. It is upon this foundation that the Department and the tribes must come together, through meaningful consultation, in developing plans to fight crime in Indian country. The Department shares the Committee's desire to address and improve safety and security in Indian country through S. 797 and strongly supports this bill.

While the bill addresses important topics, the Department also believes that there is no substitute for having enough officers on the ground, and that will be the main focus of our work to improve law enforcement in Indian country, as well as the main focus of this statement. We do, however, have some specific concerns with the bill and I commit to this Committee that my staff will work with Committee staff to communicate those concerns to improve the bill.

As you recall, at my confirmation hearing I testified that public safety was one of the most important matters I intended to address if confirmed as the Assistant Secretary for Indian Affairs. I look forward to fulfilling this commitment. On my first day as Assistant Secretary the Secretary said to me, "this is a top priority.". I am glad to see this comprehensive legislation that will do much to address these issues in Indian country and I applaud the sponsors of this bill.

Earlier this year, Secretary Salazar testified before this Committee and echoed the concern he heard from tribal leaders about the serious increase in violent crimes in their homelands and stressed the seriousness of the Department's responsibility on these

issues. In his testimony, Secretary Salazar stated his intention to fight crime in Indian country by continuing to work with tribes and other Federal and State agencies. This is the directive Secretary Salazar has given me and I intend to do my best to fulfill this task. Thus, I look forward to joining the fight against crime in Indian country.

There are several components that comprise the U.S. Government's responsibilities in providing public safety and fighting crime in Indian country. These components range from putting law enforcement officers on the streets, arresting, detaining, and in certain circumstances adjudicating offenders, to the long-term incarceration of these offenders post adjudication. I know from my experience as the Attorney General (AG) for the State of Idaho that these components are necessary in meeting those responsibilities and I know this background will assist me in addressing these problems. Indian Affairs provides a wide range of law enforcement services to Indian country. These services include police services, criminal investigation, detention program management, tribal courts, and officer training by the Indian Police Academy. But first and foremost, we must commit to making this a priority. Secretary Salazar and I have made this a priority, and we ask that all our partners, other Federal and State agencies, and the tribes, make this a priority.

Law Enforcement Officers

One of the most basic needs throughout Indian country is additional officers on the street. On many reservations there is no 24-hour police coverage. Police officers often patrol alone and respond alone to both misdemeanor and felony calls. Our police officers are placed in great danger because back up is sometimes miles or hours away, if available at all.

In order to better quantify this need Indian Affairs contracted to have a gap analysis conducted, which was completed in 2006. The gap analysis measured current organizational functions and practices against a standard or benchmark, such as industry best practices, and examined organizational strategic goals. This analysis relied on quantitative and qualitative factors to help focus management's attention on the "gap" between "what is" and "what should be".

When the gap analysis was completed in 2006, only 36 percent of Indian Affairs and tribal law enforcement agencies were staffed on par with the recommended national staffing ratio. With the additional funding provided by Congress in FY 2008 and FY 2009 we have made progress in closing this gap. As of the close of FY 2008, 59 percent of Indian Affairs funded law enforcement agencies were staffed to the national average of 2.6 officers per 100,000 inhabitants in non-metropolitan communities.

We can do more. We need to be more aggressive in our recruitment. We need to look beyond our current pool of applicants. If we are losing law enforcement officers serving Indian country to outside jurisdictions, let us provide incentives that, not only keep our existing law enforcement officers, but also bring applicants who want to serve in Indian country communities. We need to be more creative and look into possibilities such as,

matching or exceeding salaries in certain jurisdictions surrounding Indian country. In cooperation with the tribes and other federal agencies, we should look into providing affordable, safe, well constructed housing for law enforcement officers who serve in Indian country. We should look into the idea of contributing to law enforcement pension plans. These are the types of incentives I think will increase and retain law enforcement officers in Indian country communities.

Corrections Program Staffing

Another critical component of an effective justice system is a well functioning Corrections program. Indian Affairs provides resources for the staffing and management of 91 detention programs that operate out of 82 detention facilities in Indian Country located on 57 reservations. Of the 91 programs, 19 are Indian Affairs operated programs and 72 are tribal programs. Some of these facilities are only holding facilities (one to two cells). Of the 82 detention facilities, 27 are used to detain juveniles. Twenty jails are operated by Indian Affairs and 62 by individual tribes. Most of these facilities were built in the 1960s and 1970s. Many of these facilities were designed to hold only 10-30 adult inmates. Some new tribal facilities have come on line, but the vast majority are 25 years old or older. One of the primary recommendations made by the Office of the Inspector General in a 2004 report was with regard to staffing shortages in detention facilities. Determining appropriate staffing levels for detention facilities requires careful analysis of facility needs, and we continue to work to staff all detention facilities to acceptable levels. The recommendations provided for increasing law enforcement officers, can also be applied here to address the need for additional correctional personnel. We need to provide incentives in order to increase and retain corrections personnel who serve in Indian country.

Detention Facilities

Before we analyze the staffing needs for the detention facilities, we need to look at where we are at, where we want to be, and how we get to where we want to be with the state of detention facilities in Indian country. In answering these questions, we must consult with the tribes. As we address the detention facilities component of public safety and security in Indian country we should not solely look at just detention facilities, but instead, we should also address the incarceration issue through a comprehensive approach to achieve effective and efficient detention, courts and law enforcement facilities construction throughout Indian country. One approach could be to provide a holding facility in most communities, regional detention facilities for incarceration pending adjudication, and longer term incarceration facilities.

Cross-Agency Communication and Cooperation

Although Indian Affairs provides basic police and corrections services in Indian country, other federal agencies such as the Federal Bureau of Investigations (FBI), the Drug Enforcement Administration (DEA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), all within the Department of Justice (DOJ) also have law enforcement

responsibilities in Indian country. One of the most pressing issues going forward will be increased coordination with our Federal, State and local partners. This coordination includes Indian Affairs working with the Department of Justice in many areas: coordination regarding funding for Law Enforcement police staffing, consultation regarding construction of detention facilities, and day-to-day coordination with the FBI and United States Attorneys' offices. Indian Affairs is working in collaboration with DOJ in implementing the Amber Alert program in Indian Country and in developing effective means of sharing criminal justice information. In addition, Indian Affairs is working with private industry to explore ways to bring new technology to assist law enforcement in Indian Country.

Various statutes and provisions of case law make jurisdictional determinations extremely difficult. The Department encourages cross-commissioning so that federal, tribal, and state authorities can make arrests for each jurisdiction and provide mutual aid. For instance, Indian Affairs offers qualified tribal and state officers Federal Special Law Enforcement Commissions 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 from the jurisdiction having prosecution authority. It is vitally important to collaborate with the Department of Justice and other agencies in fighting crime in Indian country. We have already taken steps in that direction. I talked with Associate Attorney General Thomas Perrelli, along with our respective staff by phone before today's hearing and Mr. Perrelli and I agree that collaboration between our agencies is important as we move forward to address these important issues. Finally, we must marshal all the resources of the federal government to address this top priority of fighting crime in Indian country.

Specific Concerns with the Bill

The Department is concerned with a few of the "Findings" and "Purposes" statements in the bill and believes the Department and the Committee can work together to enhance this section to clearly state the purposes of the bill relying on the findings. The Department commits to working with the Committee and its staff to address these concerns.

As this Committee is aware, legislative intent of a particular bill hinges on the terms used in that particular legislation. Therefore, the Department recommends changing some of the terms used throughout the bill. Section 3(a)(1) defines Indian country in this Act to mean Indian country as defined in section 18 USC Section 1151. Throughout this bill however, the terms "Indian country" and "Indian Lands" are used often in close proximity. If "Indian lands" is intended to mean something different from Indian country as identified in this bill, then the Department recommends that meaning be set out in the definitions section. If "Indian lands" does not mean something different than "Indian country" then we recommend that Indian lands be changed to Indian country.

The Department also proposes the addition of Indian Affairs' OJS in section 202 of S. 797, which would amend section 401(a) of Public Law 90-284 (25 U.S.C. 1321(a)). The

amendment to section 401(a) would provide incentives, through grants, technical and other assistance, for State, Tribal and Local governments who enter into cooperative agreements. The incentives would be provided through the submission of a Program Plan to the Attorney General of the United States. This new section identifies the Plan Requirements, Factors for Consideration, requires an Annual Report, and requires a Report by the Attorney General, provides for Technical Assistance and an Authorization of Appropriations. Without the Department's inclusion in this consultation requirement we will be challenged by an incentive program that incentivizes cooperation, but falls short of requiring cooperation through consultation with all the partners involved in relevant cooperative agreements.

This list of concerns with the bill is incomplete, and we look forward to working with the Committee to address these and other issues.

Conclusion

Thank you for holding this hearing on S. 797, and for allowing me to provide testimony on such an important subject for Indian country. The Department will continue to work closely with this Committee, you and your staff, tribal leaders, and our Federal and State partners to address the law enforcement, corrections and inter-agency cooperation issues in Indian country.

The CHAIRMAN. Secretary Echo Hawk, thank you very much for your testimony. We would like to inquire of you and Mr. Perrelli.

Mr. Perrelli, we will hear from a witness in the second panel, former U.S. Attorney from Colorado, Mr. Eid, a U.S. Attorney whose work I have watched over the last couple of years and admired greatly, working on these justice issues. And Mr. Eid will testify on the issue of declination, how maintaining the data we are talking about should really be part of the job.

Last year, we heard from Mr. Tom Heffelfinger, the former U.S. Attorney for Minnesota. He is someone who testified that he had a bad report from the Department of Justice because they felt he was spending too much time on Indian issues. He testified that he felt that keeping data on declinations and reports would be a common part of doing business.

I still am not quite sure why you would not fully support the provision we have in this legislation on declination.

Mr. PERRELLI. Well, I think, Senator, and I think this is actually echoed by Mr. Eid's testimony, the key question is, "what does the declination rate indicate about the commitment of Federal law enforcement to prosecution of crime in Indian Country?" There are many different reasons for a declination to occur, including a crime may not have been committed, another prosecutor may have prosecuted the case, or difficulties with the evidence.

So I think what we have been concerned about principally is that we don't believe that it measures what it is often thought to measure.

That being said, I read the last two hearings before this Committee, and I very much understand the frustration and the concern about keeping statistics as part of what we should be doing at the Justice Department. And if we have statistics that we don't

think are meaningful, maybe we should come forward with something we think is better.

We are engaged in trying to figure out if there are better ways to keep track of information that will hopefully provide a better picture of what the Department is doing in Indian Country. I think we want to work through that process over the next several months, and I think we would prefer not to have a statutory mandate on that point at this time.

The CHAIRMAN. Let me ask you about the issue of transferring prisoners from tribes, convicted in tribal courts, to the nearest Bureau of Prisons facility. I understand you have some concerns about that. You indicate that the Bureau of Prisons is for federally convicted prisoners. They are overcrowded now and the facilities are far from reservations.

But when we talk about violent criminals, rapists, murderers and so on, the most violent offenders that fall through the cracks in this system of justice on reservations, the Bureau of Indian Affairs has testified on several occasions that tribal jails simply aren't equipped to handle these kinds of serious offenders. Your response?

It seems to me that we have a requirement to do one or the other. That is, we have a trust responsibility for meeting these obligations. We either need to fund the detention facilities that can handle them, or make available the Federal facilities, the Bureau of Prisons facilities.

Mr. PERRELLI. A couple of points on that Senator, and I think the Department of Justice's preference is to fund the tribal facilities. I will explain why.

With respect to the most violent offenders who are federally prosecuted in Federal court, those offenders will end up in a Federal prison. So what I think we are talking about is those individuals who are prosecuted in tribal court and there is tribal court jurisdiction and the tribal court actually metes out the sentence.

It has been our view, and I think echoing maybe something that Senator Tester said before, that we need to address this in a way that makes sense for Indian Country. It has been our view that building capacity, building those detention facilities in Indian Country, is a better way to do it, because you will have the opportunity not only, in most circumstances, to be closer to home, but also to come up with the types of programs that will really recognize and reflect the unique nature of different tribal communities.

The CHAIRMAN. Secretary Echo Hawk, I want to use the Standing Rock Indian Reservation as a microcosm of the set of issues here. I mentioned before, I think this Indian reservation in North and South Dakota is something close, perhaps, to the State of Connecticut in size, and they have 11 full-time law enforcement officers. And it is the case that if you are way out in the remote area of the reservation and there is a violent crime occurring and you find a telephone line and you call, it may very well be the case that it is six hours before somebody gets to you, if they get to you that day.

So Mr. Ragsdale put together a plan called Dakota Peacemaker, North and South Dakota, on the reservation. Move in I think 15 or so law enforcement officers, 25, but they are now gone, and what I want to ask you about is that was helpful to do. It dramatically

reduced crime on that reservation which was, by the way, five times the rate of crime nationally. So not double or triple or quadruple the rate of violent crime nationally, but five times, a very bad situation for public safety.

So those folks came in. I appreciate that, but now they are gone. And so the question is, what next? We can pass our tribal bill here today or this month or this year, but what about on the ground, the resources necessary? How do we find those resources? And how do you make sure that you have them apportioned?

Mr. ECHO HAWK. Well, first of all, Mr. Chairman, let me just say that I think the highest priority for extending resources is those communities that have the most serious crime problems, and I think that is what led to the Operation Peacekeeper. And if necessary, you know, we need to do similar things in other critical areas, but in the long term it seems reasonable that what we need to do is to make sure that all communities are protected, and that requires one of the most important components will be law enforcement officers on the ground, ready, available, 24/7 to be able to meet their responsibilities.

And one of the things that I have been confronted with in my first month on the job is the reality that even though there may be money available, we still cannot recruit the people that will meet the standards to serve as law enforcement officers or detention officers. And this is something that we are giving immediate attention to to see if we can be creative and innovative to make sure that we are able to hire police officers and detention officers.

Of course, it is always a resource issue. We are talking about dollars that need to be appropriated to give this kind of support. But we are on task to try to do something about this.

The CHAIRMAN. Mr. Ragsdale?

Mr. RAGSDALE. Well, I would agree with my Assistant Secretary. With respect to Standing Rock, we increased the full-time authorized policing officers at Standing Rock by 12. We have bolstered their standing police department, but unfortunately we are not up to the 25 or 27 authorized positions. We have been successful in hiring several. When several of our selected persons came out to the reservation and reviewed family housing and facilities and so forth, they declined after they had actually been approved.

So in addition to what the Assistant Secretary is talking about, we are trying to bolster our recruiting. We have hired a professional contractor to help us recruit and prepare people for the regimens of the academy life. They go to the Indian Police Academy or a State academy.

We are looking at housing. We have some modest funding proposals that, depending on what our appropriations are in the future, will bolster housing selectively for police and public safety personnel. We are also trying to see whether or not we can streamline the process for bringing somebody on board as a Federal employee, which is relatively cumbersome, plus getting the security clearances done.

The CHAIRMAN. But isn't it really—my colleagues need to ask questions and I will call on Senator Barrasso next—isn't it really the case that we are chasing our tails here? I mean, you have a police academy in New Mexico. I think you take 150 people a year,

roughly; 75 wash out. You actually graduate about half of the class. And we are desperately short. And it is not so much what your intentions are. It is what you accomplish or what we accomplish in terms of on the ground on the Standing Rock Reservation. I just use that as a metaphor for all reservations.

If you are there this afternoon and someone is committing a violent crime today, the fact that we are trying hard is pretty irrelevant in terms of your ability to go find a law enforcement officer to come and help you.

And so, we have 11 people to do 24/7 on an Indian reservation the size of Connecticut, that is totally inappropriate. And you know, the fact is it hasn't changed and it is not going to change until we just decide that we are not going to observe about it or make excuses for it. One way or another, this Country either meets its obligation or it doesn't. And the fact is, now it is not. And we don't have a plan.

You know, it is your plate, of course, I mean that is the role you signed up for, but we don't have a plan at this point at the BIA or Justice to do what we should do to put those folks on the beat to provide public safety.

And I will just mention one additional thing for the record. We have approved 57 additional FBI agents in the last decade, 57 additional FBI agents designated for Indian Country to deal with criminal justice issues in Indian Country. But in the time when we have designated 57 new agents, there are only 14 new FBI agents on the beat in Indian Country. What happened to the other 43?

Mr. Perrelli, would you, along with Eric Holder and the head of the FBI give us a detailed description of where the other FBI agents are? There are 43 of them that we designated for Indian tribal justice and they are not there. And I will put this in formal writing to you. But again, let me just say your statements recently have been very welcome with this Committee because you say you are going to pay a lot of attention to this because you care a lot about it. You didn't do that in response to me. I read it in the newspaper, so I thought that is welcome news for all of us.

I appreciate all of you being here today.

Let me call on Vice Chairman Barrasso.

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

Senator BARRASSO. Well, thank you very much, Mr. Chairman.

I very much appreciate the line of your questioning and the thoughts here, and I agree, it is time for us to take action. For far too long, violent crime and drug distribution and severe understaffing have plagued Indian Country. The tribes in my home State in Wyoming, the Eastern Shoshone and the Northern Arapaho face these exact same problems that you have been talking about, Mr. Chairman.

According to the BIA's 2008 crime report, the Wind River Reservation in Wyoming had a crime rate that was three and a half times the national average. The same report indicates that an additional 22 law enforcement officers are needed to meet the community's needs. It is the same thing you talked about in your commu-

nity, and I am sure it is the same thing that others are going to talk about on this panel.

Just last month, I met with the Joint Tribal Business Council of these two tribes. Chairman Posey of the Eastern Shoshone Tribe identified BIA law enforcement staffing levels as their number one concern, their top concern. He told me the staffing shortage is taking a toll on the existing police offices who are currently working on the reservation.

I have highlighted this understaffing problem time and again in the hearings before this Committee. And while all of us have received assurances from both the Secretary and the Assistant Secretary that they would look into these problems, I have yet to see an increase in the staffing levels on the Wind River Reservation in Wyoming.

So at a hearing earlier this year, Secretary Salazar testified that he planned to address several key problems relating to law enforcement in Indian Country, including violent crime rates and staffing for detention facilities. So here we are again.

We all know that you can't have public safety in a community that lacks a sufficient law enforcement presence. In previous hearings, I pointed out that law enforcement personnel shortages is a chronic problem. This is not something that is new. I have asked the Secretary to look into this and I am asking you as well. Yet, there are still law enforcement shortages and vacancies on the reservation. Senator Dorgan's staff came with me to Wyoming. My own staff was there, the staff of the Indian Affairs Committee, both sides of the aisle represented. We all saw the same thing.

So my question to you is: What can you do today to address the law enforcement personnel shortages on the Wind River Indian Reservation?

Mr. ECHO HAWK. Senator Barrasso, as I already testified, you know, my first day on the job this was the subject that Secretary Salazar raised with me in very strong terms and gave me my marching orders. Since then, we have had meetings addressing criminal law enforcement and staffing has been, you know, at the top of that agenda.

I talked in my opening statement about the importance of collaboration with the Justice Department and that is in the works. Attorney General Holder and Secretary Salazar have spoken. We look forward to something very concrete occurring in the near future that will bring Justice and Interior together to cooperate, communicate, and collaborate to address these issues.

And certainly the message is clear here today that staffing of police officers and detention officers is a high priority.

Senator BARRASSO. I want to commend the Chairman. He and I are going to work together in a bipartisan way. I think every time you visit with us, we are going to ask about this, and we are going to continue to expect positive efforts to accomplish these goals.

Another issue I wanted to ask about was enhanced sentencing authority. The Wind River Reservation is by no means alone in having high rates of violent crime. One thing that the introduced bill would do would be to raise the minimum sentencing authority of tribes that is currently at one year to three years.

Last year, the Department expressed constitutional concerns about this aspect of the bill. Would you please both elaborate on those constitutional concerns and how Indian tribes might be able to overcome them?

Mr. PERRELLI. I am happy to speak first on that. I think our focus has been ensuring that if such a bill is enacted, the appropriate measures are in place to ensure that there is adequate due process. A concern we certainly have is that if there are insufficient funds for defense counsel, if there are procedures in place that wouldn't satisfy the Due Process Clause, there will be collateral challenges of tribal court convictions in Federal court.

So I think we have moved a little bit and want to focus on what we need to do in terms of building tribal capacity, tribal court capacity and tribal justice system capacity so that this kind of extension will be possible.

Senator BARRASSO. Mr. Echo Hawk, anything you want to add?

Mr. ECHO HAWK. Yes, thank you, Senator Barrasso. I feel very strongly, as I said in my opening comments, that we need to further empower tribal governments to address these criminal law enforcement problems. And part of that is increasing their authorities. I strongly support this provision. And yes, there are legitimate due process concerns.

Criminal defendants who cannot afford legal representation under constitutional law interpretation are entitled to court-appointed lawyers. And I support that provision that says that you cannot prosecute to imprison someone for three years if they have not had legal assistance. I think that is important and necessary.

I believe that if tribes want to enforce this kind of heavier penalty, the courts are going to require that competent, well-trained judges. In this instance, you know, it is saying in the bill, as I recall, lawyer-trained judges must be available to hear the case. And I think that meets the due process concerns.

In addition, I believe there are tribal courts that do not have presently well-developed appellate systems. I believe that the courts are going to require that that be the case. That has to be addressed to make sure that a person that is charged and convicted of one of these crimes where they are going to face possible three-year imprisonment has these due process protections.

The Indian Civil Rights Act has a very express remedy, and that is Federal court review. So if tribes are deficient in this regard, there will be Federal court examination.

Senator BARRASSO. Thank you very much, Mr. Echo Hawk.

Thank you, Mr. Perrelli.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Tester?

Senator TESTER. Thank you, Mr. Chairman.

Mr. Perrelli, the Chairman put up a chart of declination rates and you had addressed that in your comments. What is the U.S. Attorneys' declination rate outside of Indian Country? And I am not talking about as it applies to Native Americans, as it applies to folks other than natives.

Mr. PERRELLI. I actually don't have that number. I would imagine it would be different because of the differences in jurisdiction,

but it might be interesting to look at a jurisdiction with more on violent crime than many of the Federal districts have.

Senator TESTER. It occurs to me, and I appreciate your comments about your commitment to the problem, but one of the things you said in your statement was that the declination rate does not adequately reflect the Department's commitment; that there is a perception problem.

I think it is more than perception. It is reality. And this is just a little newspaper that the University of Montana put out with half a dozen stories on six of the seven reservations, story after story about how crimes are committed and there was no action brought and how the families pushed and pushed and pushed and pushed, no actions being brought. And these vary from murders to repeated beatings, the list goes on and on.

And so it brings me to the question, is punishment viewed by the Department as a deterrent to crime?

Mr. PERRELLI. Yes, it is.

Senator TESTER. So if the crimes go unpunished, how can we ever get a handle on this?

Mr. PERRELLI. In terms of talking about a perception problem, I did not mean to suggest that there is not a tremendous amount of unaddressed crime in Indian Country. The perception that I was focused on was the perception that U.S. Attorneys are refusing to work in Indian Country or choosing to let cases go that they think they can make in court, simply because they haven't been told to focus on it or there aren't sufficient resources.

And I know there has been testimony in this committee before that U.S. Attorneys have not been given the right incentives in this regard. To the extent that that perception is out there, that needs to be changed and we intend to change it.

Senator TESTER. Good. The Chairman referenced the gentleman from Minnesota, I believe, Heffelfinger, that actually was relieved because he spent too much time in Indian Country. I mean, that is not going to be happening.

Mr. PERRELLI. No.

Senator TESTER. The issue of, and this is for you, Larry, the issue of law enforcement being on the top of the Department of the Interior's, Secretary Salazar's and President Obama's, right at the top of the list, if not at the top, right at the top, is good to hear. Both the Chairman and the Ranking Member talked about law enforcement, cops on the beat.

Is there anything else that you are seeing that you can do in the near term that can have an impact, there is no need to bring up the cops on the beat. It has been brought up and beaten up on, and for good reason. But the question is, are there other things out there we can do?

Mr. ECHO HAWK. Mr. Chairman?

Senator TESTER. To curb the crime rate.

Mr. ECHO HAWK. Mr. Chairman and Senator Tester, I was just very pleased when I read this Senate bill, 797. As I went through provision by provision, this covers a very wide array of what I believe needs to be accomplished in Indian Country. I felt just gratified that the hard work has been done. Hearings have been held. This bill has been put together. As I said, I am welcoming the op-

portunity to join the fight. I want to commend the sponsors for the breadth of this bill.

We talk about having more police officers, but there are numerous sections within this bill that I think are addressing some of the very critical needs across the board.

Senator TESTER. I agree. I have the same hearing I have got to go to, so I don't mean to cut you off. The bill is a good bill.

Is there anything you can do outside this bill right now to attack the crime problem in Indian Country?

Mr. ECHO HAWK. That is a pretty big question. I am sure I will think of more things other than I am able to do right now, Senator Tester, but I have already emphasized the importance of collaboration with Justice Department, and I think that that is critical because both departments, Interior and Justice, have significant responsibilities. But it seems to me like sometimes there is failure to communicate. I have seen that already. We need to bridge that gap.

Senator TESTER. And you are probably right. And I will tell you that your answer to me isn't the important answer. What you do is what is important. If you are driving back and you said, if we did this, it is going to decrease the crime rate, do it. That is even better than answering my question. So that is okay.

I have one other question for Mr. Perrelli, then I have to go. You talked about correctional facilities in your testimony. I don't know if you are familiar or not with the Fort Belknap Tribe. There are a lot of tribes in the U.S., so if you are not, it is okay.

Mr. PERRELLI. I am generally aware, and I know your staff raised it with my staff.

Senator TESTER. Oh, good. That is good.

Mr. PERRELLI. Not that I have an answer for you today.

Senator TESTER. Well, then we will ask the question anyway. They have an application in for stimulus dollars. You said there is about $225 million, which is good news, that is going out. It is to fix a long overdue dilapidated jail and we will facilitate a visit if you want to bear that out.

Long story short, their application came in eight minutes late. It may have been their fault. It may have been your fault. It may have been my fault. But who cares? It was eight minutes late and they got denied and they are not in the mix.

All I ask is this: Just put them in the mix. If they are not up to snuff, that is fine. And I know deadlines are deadlines and they need to be lived up to, but I think this was a problem with technology more than it was a problem with them or you. I honestly do believe that. They are in a very remote area, and we are talking remote.

So if you could just take a look at it, consider it, that is all I ask.

Mr. PERRELLI. Senator, I will look at it, and we will find out what happened in more detail and get back to your staff and the tribe as well.

Senator TESTER. I appreciate that.

I would just say before I buzz out is that I fly back every weekend, and my staff member gave me this article about Northern Cheyenne, Crow, Blackfeet, Rocky Boy. They are not glamorous stories. They are not stories that were written to what I would say

make the truth any bigger than it is. They just reported on the stories.

If any one of these things would have happened in my home town, which is only 25 miles from Rocky Boy Indian Reservation, the people would have been going wild. And it is just not acceptable. It is not acceptable to have different treatment. It is just not.

And so anything you can do to fix that, we would certainly appreciate it. Thank you much for your testimony.

The CHAIRMAN. Senator Tester, thank you very much.

On the first floor of this building at 3 o'clock we yesterday had scheduled the full Interior Appropriations Committee markup, and Senator Tester and I are both members of that Appropriations Subcommittee.

And that funds your agency, Mr. Echo Hawk, and your law enforcement and tribal colleges.

And so the two of us have to go down to the first floor to be at the start of this Appropriations markup on the funding side. Senator Barrasso has agreed to begin chairing the hearing, and I am going to try to come back assuming the Appropriations Subcommittee gets done, Appropriations the full Committee, rather I should say.

And let me now call on Senator Murkowski for questions.

Senator Barrasso, thank you.

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

Senator MURKOWSKI. Thank you, Mr. Chairman.

I want to acknowledge you before you leave, Mr. Chairman. It was a pleasure to work with you on this legislation last Congress, and I am pleased to see your leadership again on it. I, too, am going to be going down to the Appropriations meeting, so my questions to you will be relatively brief.

It is just so frustrating from a jurisdictional perspective when somebody is in danger, when a family member can not get help. You call 911, and you expect somebody to be there. As Senator Tester mentioned, things happen in Indian Country that I hesitate to say we allow. Things happen there that would not happen in other parts of the Country, and that is not right. It is wrong and we must work to correct it. I think that this legislation does take a step forward in that respect.

Our situation in Alaska is quite complicated and quite difficult because of our geography, our remoteness and the isolation. When you have villages that are not connected by roads; and the only way in is to fly in; or if it is during the summer, to take a river boat in, and you are a victim of domestic violence, there is no where to go. There is no way out. It is a $400, $500 plane ticket.

Your abuser is not only known to you, but to the whole community. The VPSO, the village safety officer that may be there to provide for your safety is not armed; has got good training, but the likelihood of them being a relative to either you or to the person that has violated you is extremely high.

It is just very, very difficult. We struggle with the reality of our statistics, but I think we need to remind ourselves that these are not just statistics. Behind every number there is a person. There

is a family, and we have an obligation to figure out how we can do better by them.

I was up in the State this past weekend in our largest city, Anchorage, which is actually also our largest native village in the sense that there are more Alaska Natives in the Anchorage area than any other part of the State. Our women's crisis shelters are at or above maximum capacity. We have a 52-bed unit and we have 90 individuals in it, and we are maxed out. We are looking at how you respond.

Our reality is that there has been such an in-migration from the villages into the cities, some for services, some for education, some for healthcare, but some because of the fact that there is little to no law enforcement out there and people need a way out. It is a very difficult situation for us.

I wanted to make the point here. When we talk about putting more cops on the beat, more law enforcement, I think one of the things that we have had conversations about in the past is that it is one thing to get people trained and signed up. It is another thing to retain them. And on some of our reservations, if you don't have the housing, or it is just so remote, it is difficult to keep the people there. We certainly see that in Alaska.

So as we look to how we address the need, we can't just look at the statistics and say, okay, we need to hire. We need to train X number of people in law enforcement. We have to figure out beyond that how we deal with the retention issues. It is not just about the recruitment.

One of the questions that Senator Tester asked was what more can you do. I have posed this question to individuals who have been back visiting Washington, D.C. the past month or so that are involved in domestic violence programs and the like in the State of Alaska.

And what we keep coming back with is so long as people in the communities, so long as those in the village turn a blind eye to the domestic violence, to the sexual assault, and say, well, that is what happens here. Again, kind of a level of acceptance that you might see in certain areas, but you would never accept anywhere else.

We must within our own communities say no, it is not ever acceptable, never acceptable, and stop trying to protect those that are abusive, those that really destroy individuals and families.

The question that I will put to you is as I have had individuals in the State of Alaska looking at this legislation and have asked for their comments, there are two things that have come up. As you know, in Alaska we do not have Indian Country as it is defined in the Lower 48. And we are using various terms to describe Indian Country within the bill. It caused some jurisdictional issues. And I would just ask for your assistance as we look to make sure that there is a consistency with the language.

And then the second point that I would like to leave you with, there is some consideration being given now to perhaps, well, going beyond outlining, but putting together a demonstration project that would be administered by DOJ's Office of Tribal Justice. It would provide that you have to have an existing tribal court, a tribal code that includes courts notice, due process requirements. The tribes

would share concurrent jurisdiction, then, with the State over alcohol, drug and domestic violence.

Now, we are still in the formulation stage of all this, and I don't know if you have had an opportunity, Mr. Perrelli, to take a look at the possibility, or had any discussions, but I wanted to make sure that at a minimum you were aware that these conversations were happening and we would certainly like to include you in that.

Mr. PERRELLI. I think we would be very interested in participating. I did have a conversation with Heather Kendall Miller, with whom I have been friends for about 20 years now, and I think it is an interesting idea. I think it is very consistent with some of the other provisions of this bill that are seeking to expand the ability of tribal courts to deal with the significant problems that individual communities are facing.

Senator MURKOWSKI. Okay. Well, we would look forward to working with you on that as we advance it, if we should make that determination, but I appreciate it.

And I appreciate the work and the commitment from all of you.

Mr. Chairman, thank you.

Senator BARRASSO. [Presiding] Thank you, Senator Murkowski.

Now, Senator Udall, and at the end of your questioning, you will assume the gavel to run the meeting. Thank you.

STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO

Senator UDALL. Thank you, Senator Barrasso, very much.

I just have one question for this first panel, and I think we then need to move on to the next panel.

American Indian youth between the ages of 10 and 24 have the highest suicide rate of any racial group in the Nation. Suicide is linked to many factors directly related to crime, including alcohol and substance abuse, gang activity, isolation and child abuse.

The incidence of Native American youth suicide has continued to reach epidemic levels 10 times the national average. In certain tribal communities, especially in the Great Plains, and in fact we had a hearing earlier this year where Senator Harry Reid, our leader, came and talked about a suicide in his family, in fact his father, and it was a very moving occasion, I think, for a lot of us here, talking about how it was important to talk about this and bring it out in the open.

This bill would reauthorize two programs that would help build more youth shelters and establish youth activity programs. But my belief is more needs to be done within the justice system. The Federal court system is not equipped to deal with juveniles and tribal systems are sorely underfunded.

Do you, Mr. Echo Hawk or Mr. Perrelli, have any recommendations for improving the justice system for Native American juveniles?

Mr. PERRELLI. I am happy to talk briefly, and let Mr. Echo Hawk follow.

I do think, and I think this is highlighted in your question, that there needs to be really a comprehensive approach. That leaving it to the Federal courts or in many cases tribal courts to deal with

the set of issues when someone commits a violent act is not a particularly effective way to deal with the set of issues.

And I think what we need to do is draw in a broader range of partners, and look at prevention strategies, reentry strategies for those who may have been incarcerated in a facility or others, but also other resources that the Federal Government may be able to provide through SAMHSA and other entities because I think it is only by working in collaboration can we address the full range of problems.

Senator UDALL. Right.

Mr. ECHO HAWK. Senator Udall, problems beget problems. And I think you are well aware of the situation. If you have dysfunction in a home, that jeopardizes children that may be raised in that environment, and they deserve a healthy start.

So outside of the criminal law enforcement system, there has got to be a social system that is prepared to assist parents and children to create safe environments. I certainly commend and welcome the provisions in this bill that address the issues of youth, but I am sure that more can be done.

Mr. Ragsdale I had a follow-up comment.

Senator UDALL. Oh, sure, Mr. Ragsdale, please go ahead.

Mr. RAGSDALE. I am very sensitive to this issue. I think I heard at one hearing where it was reported that in some of our Indian communities that the suicide rate reached more than 25 times the national average. Last summer when I was at Standing Rock, we had a young lady that hung herself in the closet on a Saturday night when we were on duty.

But my sense of being on the streets of some of these communities where lawlessness has been too prevalent is that with respect to young people, they are starving for adult attention. When some of our young officers go down on the streets of some of these communities and hit their siren, kids swarm them because they are not looking for so much from a law enforcement guy who is passing out stickers and DARE badges and things of that nature. I mean, they are starving for human attention.

And that is part of the concept of community policing which just really means bringing the community together and all the providers, and in particular the community to work out these problems. No matter how many officers that we hire, and we have too few, we are not going to work ourselves out of this problem until we get the communities organized.

I am not talking about necessarily the Bureau of Indian Affairs. I am talking about a collective effort to work on this issue and give these young people hope in our society.

Senator UDALL. Well, I am glad that all of you agree that we need a broad-gauged approach to tackle this in all the areas, and as Mr. Echo Hawk has said, dealing with families and getting them involved. So I want to thank you all for those answers.

At this point, unless, Senator Barrasso, you have anything else, I would excuse this first panel. I would thank Associate Attorney General Perrelli and thank Assistant Secretary Larry Echo Hawk. Larry, it is great to see you in the saddle and have you here today, and know that you are going to be working on these issues. And also excuse you, Mr. Ragsdale.

And we would call forward the second panel at this point.

I thank you all for testimony.

Mr. PERRELLI. Thank you, Senator.

Senator UDALL. [Presiding] Thank you all for being here today. We are very much looking forward to your testimony.

Why don't we just start with Chairman Coby and we will just work down the aisle. We will have about five minutes for each of you, and then I am sure there will be a round of questions here.

Please, go ahead.

STATEMENT OF ALONZO COBY, CHAIRMAN, FORT HALL BUSINESS COUNCIL, SHOSHONE–BANNOCK TRIBES

Mr. COBY. Good afternoon, Mr. Udall. I am Alonzo Coby. I am the Chairman of the Shoshone Bannock Tribes located in Southeastern Idaho.

First of all, with me today I have the Vice Chairman Nathan Small; Sergeant-at-Arms LeeJuan Tyler; Arnold Appenay which is the Law and Order Commissioner; and past Council Member Marlon Fellows our Project Coordinator; and Will Edmo, the past prosecutor and police officer for our tribe.

Senator UDALL. Thank you, all of you, for being here.

Mr. Chairman?

Mr. COBY. I am honored to be here today to speak on behalf of the Shoshone Bannock Tribe in support of S. 797 and to discuss our law enforcement needs and challenges.

First, I just want to commend Senator Dorgan for his efforts, and all the Committee members that are working on this very important bill for Indian Country. And also thank Allison Binney and John Harte for taking a stop in Indian Country because it is very important for us as Indian people, and all the other tribal leaders that are in attendance today. I think we all have common issues on each reservation.

The bill acknowledges the United States' trust obligations for public safety. Also the bill recognizes that tribal justice systems are best at handling law and order in their own communities. We face many law enforcement challenges. Crimes committed on reservations often go unprosecuted.

For example, a tribal grandmother, mother and her infant child were brutally murdered on our reservation. Three generations were wiped out. Federal prosecutors struck a plea deal and declined to prosecute for the infant's death and did not explain their decision to us, and the victims were Marlon Fellows, who is in the audience with us today.

On another occasion, an individual eligible for adult prosecution raped a young child on the reservation. The Feds refused to prosecute because the State was handling the case in the juvenile State court under Public Law 280.

More recently, Federal prosecutors did not discuss with the tribes the decision not to prosecute suspects who killed a man on the Fort Hall Indian Reservation. This gives the impression that it is okay to kill Indian people on reservations.

Our police officers are well qualified, but they can't address all the needs on the reservation due to limited manpower. Often, our

police have only two officers at any given time covering a half million acres on our reservation.

Provisions in the bill of particular note that we would support include: increased coordination between the Federal Government and tribes; greater prosecutions of reservation crimes and accountability for decisions not to prosecute; designation of SAMHSA as the lead on tribal substance abuse programs; targeting resources for drug enforcement; tribal youth; domestic violence; and cross deputization for tribal court sentencing; and expansion of jail construction programs

Construction of law enforcement facilities is our top priority on the Shoshone Bannock Tribe's Indian reservation. Our current facilities are old and not equipped, with some of our buildings being over 100 years old. Our detention facility has been condemned for the past three decades. The conditions are terrible. For example, we have a continual problem where only one shower and two toilets work and the entire facility reeks with raw sewage.

Because of this dire situation, the Shoshone Bannock Tribe borrowed $15.9 million and put $4 million of our own money into the project, for a total of around $20 million to build the justice center. For many years, we sought funding from the Federal Government, but were unsuccessful. It will house the Police Department, Fish and Game, courts, adult and juvenile detention facilities. The center will be complete this January.

We need immediate Federal assistance to provide for the start-up operation and maintenance costs. We would like to thank Senator Crapo and the rest of the Idaho delegation for their assistance on this project.

The center will allow detainees to remain in the facility for rehabilitation and educational services connected to our culture. The center will have bed space for detainees from the other reservations. The tribe seeks the BIA to designate the center as the regional detention facility.

While some of our problems will be addressed by S. 797, many of our problems stem from Public Law 280. Public Law 280 is an old law passed in 1953 when the Federal policy was to terminate tribes. This law allowed States to take without tribal consent jurisdiction over Indian affairs. Under Public Law 280, Idaho passed a law assuming concurrent jurisdiction over seven areas: juvenile delinquency, school attendance, neglected or abused children, mental illness, public assistance, and domestic relations and traffic jurisdiction on State roads.

The State has utterly failed to provide assistance in all areas that it has jurisdiction on the reservation except in the areas of traffic jurisdiction because it is a revenue generator.

Because of Public Law 280, we face many challenges. We are struggling to address the juvenile delinquency, even with concurrent Federal and State jurisdiction. The BIA has pointed to the State for responsibility for juvenile delinquency, while the State disregards the role. As a result, the needs for our people have gone unaddressed.

As you can see, these issues create many challenges for us due to these problems. We seek retrocession for jurisdiction from the State and would appreciate assistance on this issue.

Thanks for allowing me to testify today.
[The prepared statement of Mr. Coby follows:]

PREPARED STATEMENT OF ALONZO COBY, CHAIRMAN, FORT HALL BUSINESS COUNCIL, SHOSHONE-BANNOCK TRIBES

Good afternoon Chairman Dorgan, Vice-Chairman Barrasso, Senator Crapo, and other Members of the Committee. My name is Alonzo Coby and I am the Chairman of the Fort Hall Business Council, which is the governing body of the Shoshone-Bannock Tribes located on the Fort Hall Indian Reservation in southeast Idaho. I am honored to be here today to provide our views on S. 797 and to discuss the law enforcement needs of the Shoshone-Bannock Tribes.

The Shoshone-Bannock Tribes are a federally recognized Indian tribe organized under the Indian Reorganization Act of 1934. The Shoshone and Bannock people are comprised of several related bands whose aboriginal territories include land in what are now the states of Idaho, Wyoming, Utah, Nevada, Colorado, Oregon, and parts of Montana and California. In 1867, President Andrew Johnson by Executive Order designated the Fort Hall Indian Reservation for various Shoshone and Bannock bands that occupied the area since time immemorial. On July 3, 1868, the Shoshone and Bannock Tribes concluded the Second Treaty of Fort Bridger, which was ratified by the United States Senate on February 24, 1869. Article 4 of the Fort Bridger treaty reserved the Reservation as a "permanent home" to the signatory tribes. Although the Fort Bridger Treaty called for the Reservation to be approximately 1.8 million acres, various "surveying errors" in 1873 reduced its actual size to approximately 1.2 million acres.

One of the United States' purposes in setting aside the Fort Hall Indian Reservation was to protect the Tribes' rights and to preserve for them a home where their tribal relations might be enjoyed under shelter of authority of the United States. Subsequent cession agreements with the United States reduced the Fort Hall Indian Reservation to the present day size of 544,000 acres. Of the 544,000 acres, 97 percent of the land is Tribal land or held by the United States for the benefit of the Tribes or its individual members. The Tribes' territory is the largest Reservation in Idaho and forms a large cohesive geographic area that supports a population of over 6000 people and provides an irreplaceable homeland for economic activity and cultural practices based on strong religious traditions premised on the sacredness of land. Our current Tribal membership is approximately 5,300 members.

The Fort Hall Reservation is blessed with an extensive biodiversity including rangelands, croplands, forests, streams, three major rivers (the Snake, Blackfoot, and Portneuf), reservoirs, springs, and wetland areas, an abundance of medicinal and edible plants, wildlife (elk, deer, moose, bison, big horn sheep, etc.), various species of fish, birds, and other animal life. The Reservation lands are mountainous and semi-desert, and overlay the Snake River aquifer, a large groundwater resource. The culture and continued existence of the Shoshone and Bannock peoples depend on these resources.

As you know, the United States government and its agencies have an important trust relationship with Indian tribes. The Shoshone-Bannock Tribes look to the Federal Government to fulfill this trust responsibility in areas of law enforcement, environmental protection, health, education, trust reform, land management, protection of treaty rights, and other areas of common concern to Indian County.

The issue I speak about today is law enforcement in Indian Country, and specifically within the boundaries of the Fort Hall Reservation. First, I would like to commend Senator Dorgan on his efforts to address law enforcement in Indian Country in a meaningful and effective way. Senator Dorgan and members of this Committee have held several hearings on this issue, and we commend the Committee Chairman and co-sponsors of the Tribal Law and Order Act of 2009 for their efforts to address the law enforcement needs in Indian Country. We particularly appreciate that Senator Crapo, our Senator from Idaho, recently became a co-sponsor of the Tribal Law and Order Act as well as all his other efforts on our behalf. He has been a good friend to the Tribes.

S. 797 contains acknowledgements that the United States has a trust obligation to provide for the public safety of tribal communities and that tribal justice systems are the most appropriate institutions for handling law and order in tribal communities. The present status of Indian Country law enforcement has resulted in unsafe communities, victimization of Reservation families, promoted drug trafficking, and has deterred economic development.

The Fort Hall Reservation faces many law enforcement challenges common within Indian County. Tribal communities suffer from misdemeanor and felony crimes com-

mitted on the Reservation that often go unprosecuted because of the lack of federal resources or the jurisdictional limits placed on our Tribal Courts. In many cases, the lack of prosecution by federal and state authorities remains unexplained to Tribal leaders and the crime victims. For example, when a Shoshone-Bannock Tribal member mother and her infant child were brutally murdered on our Reservation, federal prosecutors struck a plea deal and declined to prosecute the defendant for the infant's death without first consulting the Tribes or explaining their decision to our Tribal leaders.[1] On another occasion, where an individual eligible for adult prosecution raped a young child on the Reservation, the Federal Government refused to prosecute the case because the State was handling the case in juvenile State court under Public Law 280. And, more recently, federal prosecutors did not consult the Tribes or explain their decision not to prosecute suspects who killed a man on the Reservation by inflicting blunt force trauma to his head at a party. The unexplained failure to prosecute serious felonies on the Reservation gives the Tribal membership the impression that it is okay to commit serious crimes against Indian people on the Reservation.

While our Fort Hall Tribal police officers are well-qualified and properly trained to respond to all crime on the Reservation, Tribal police are presently limited in their ability to arrest all persons who violate applicable Tribal and federal laws and more officers are needed to address the law enforcement needs on our large Reservation. Many times our tribal police only have two officers available at any given time to cover half a million acres of Reservation territory.

Effective law enforcement on our Reservation requires greater federal support for training, equipment, and access to the investigation and crime database tools available to federal and state law enforcement officers. Greater coordination and cooperation is needed between federal officials and Tribal law enforcement personnel. Local federal prosecutors need additional resources to fill jurisdictional gaps and to more fully prosecute Reservation crime that falls within federal jurisdictional statutes.

The provisions of S. 797, known as the Tribal Law and Order Act of 2009, address many of the law enforcement problems we experience on our Reservation. The bill provides for increased consultation and coordination between the Federal Government and tribes. It facilitates greater prosecution of Reservation crimes and provides for accountability for decisions not to prosecute crimes in Indian Country. The bill also establishes federal offices and funding sources specifically committed to Tribal law enforcement purposes. We are pleased that the bill specifically targets resources towards drug enforcement, tribal youth, and violence against women.

Further, we support section 401 of the bill which directs the Substance Abuse and Mental Health Administration to take the lead role in interagency coordination on tribal substance abuse programs and in setting up the Office of Indian Alcohol and Substance Abuse. In the past, it has been difficult to access assistance from the various federal agencies to address the behavioral and mental health problems in our community, which often lead to alcohol and drug abuse and criminal activity, given the stove pipe and bureaucratic nature of agencies that administer federal alcohol and substance abuse programs. With SAMSHA designated as the lead agency on these issues, there will be clarity for tribes seeking this type of assistance and within the Federal Government in terms of the role that each agency plays on these issues.

Importantly, the proposed bill recognizes the qualifications of Tribal law enforcement personnel to obtain the training and certification to act as federal law enforcement agents within the Reservation boundaries. And, the bill provides for increased tribal court sentences of up to 3 years for serious crimes committed within Indian Country.

The Tribal Law and Order Act also prioritizes and increases funding for the construction of tribal detention centers under the DOJ Tribal Jails Program and would provide authorization for grants for the construction of juvenile detention and treatment centers and halfway houses under the Indian Alcohol and Substance Abuse Act. The current buildings used for the Fort Hall Tribal police station, jail, and Tribal Court are extremely old, nearly uninhabitable, out of code, and grossly insufficient for tribal law enforcement needs. Our present detention facility should be condemned. For example, on a recent tour of the Tribal jail there was only one shower and two toilets in working order and the entire facility reeked of raw sewage. The detention space is totally inadequate for the number of inmates ordered to serve detention, and it cannot be used for current needs and certainly not the increased sentences provided for by the proposed law and order bill. The inadequate detention facility poses health and safety risks that cannot continue in our Reservation community. The general lack of tribal justice buildings creates a backlog of hearings,

[1] *See United States v. Abel Hidalgo,* Cr. No. 02–043–E–BLW (Idaho Federal District Court)

inefficient case processing, and leaves Reservation residents without places to conduct hearings, mediations, and family consultations.

Because of our Tribes' dire need for an adequate law enforcement building, the Shoshone-Bannock Tribes independently undertook the financing and construction of a Tribal Justice Center. The Tribes previously sought funding from the BIA and other federal agencies for many years without success for this project. The Tribes borrowed over 19 million dollars to construct the Justice Center that will house the Tribal police department, Tribal Courts, Fish & Game, and separate adult and juvenile detention facilities. While we are happy to report that the Justice Center is expected to be completed in December of this year, we are in need of immediate federal assistance for start up costs and annual operational costs for the Justice Center. This funding should come in the form of enhanced 638 contracts for adult and juvenile corrections, law enforcement, and tribal courts as well as a new 638 contract for operations and maintenance for the Justice Center. We extend our gratitude to Senator Crapo and the other members of the Idaho congressional delegation, Senator Risch and Representatives Mike Simpson and Walt Minnick, for recently sending a letter to Secretary Salazar asking him to assist the Tribes in immediately securing annual operational and maintenance costs for the Justice Center from the Federal Government.

The Justice Center now under construction will allow adult and juvenile inmates to remain in a local community facility that will accommodate educational and rehabilitation services connected to our Indian culture and traditions. I note that the Shoshone-Bannock Justice Center will have bed space for the BIA to utilize to detain inmates from other reservations, and the Tribes are willing to have the BIA designate the Justice Center as one of the regional detention facilities identified in the proposed Tribal Law and Order Act.

While our Reservation's law enforcement problems will be addressed in part by the Tribal Law and Order Act, they are also the unfortunate product of the State of Idaho's assumption of partial jurisdiction over our Reservation affairs through Public Law 280. Public Law 280 in an antiquated law passed in 1953 during a time period when the policy of the United States was to terminate Indian tribes. This law allowed States to take, without tribal consent, jurisdiction over Indian affairs that should always have remained matters of Tribal self-government and the federal trust responsibility and jurisdiction.[2] Pursuant to Public Law 280, Idaho passed a law assuming concurrent jurisdiction over seven areas of jurisdiction in Idaho including juvenile delinquency, domestic relations, and traffic jurisdiction on state and county maintained roads.[3]

Because of Public Law 280, Shoshone-Bannock Tribal members and Indian residents continue to face the assertion of State court jurisdiction over Reservation traffic offenses and domestic relations and receive unequal treatment in sentencing due the present system of confusing jurisdictional rules that apply to our Reservation. The Fort Hall Reservation also currently struggles to address juvenile delinquency through a Tribal system that lacks adequate support from the Federal Government or the State of Idaho. The State of Idaho has neglected its responsibility for juvenile matters within its assumed jurisdiction under Public Law 280. Further, the Federal Government, through the BIA, in the past has been reluctant to provide assistance to the Tribes for detention and rehabilitation of juveniles and has articulated the rationale that the State of Idaho should be providing this assistance under Public Law 280 and Idaho state laws pertaining to juvenile delinquency. Even though the jurisdiction set forth under Public Law 280 and Idaho state laws allows for concurrent jurisdiction over juvenile delinquency, the BIA has pointed to the State of Idaho as the entity responsible for juvenile delinquency matters while the State of Idaho utterly disregards these responsibilities. Due to the confusion created by Public Law 280 and Idaho state laws and lack of will at the state and federal levels, the needs of the Shoshone-Bannock Tribes and its troubled youth have gone unaddressed for far too long.

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[2] The United States Congress subsequently passed Public Law 90–284 in 1968, requiring that the states desiring to assume jurisdiction after 1968 could do so only with the consent of the tribe affected. Pub. L. No. 90–284, §§ 401, 402, 82 Stat. 78, 79 (1968) (codified in relevant part at 25 U.S.C. §§ 1321, 1322 (1997)). Since that date, no tribe has consented to significant state jurisdiction over their reservations. In contrast, a number of states surrounding Idaho have "retroceded" or given back to the Federal Government and tribes the jurisdiction taken pursuant to Public Law 280.

[3] The seven areas of concurrent jurisdiction assumed by the State of Idaho pursuant to Public Law 280 include: compulsory school attendance; juvenile delinquency; dependent, neglected or abused children; mental illness; public assistance; domestic relations; and vehicle operation on county or state-maintained roads. Idaho Code §§ 67–5101 to 67–5103.

For example, the Ft. Hall Indian Reservation is located within the counties of Bannock and Bingham, but both counties have refused to lend assistance with Native American juvenile runaways unless they commit crimes off the Reservation. Six months ago, a 16-year old Native American girl known to be a drug user ran away from home, and Tribal police contacted the Bingham County prosecutor to ask if the county would assist in finding her. The county prosecutor, Scott Andrew, stated that, unless she committed a crime off the Reservation, they would not get involved in trying to locate her. Bannock County also has the same policy. Further, Bannock County policy is to only house Native American juveniles in its jail at $150 a night if there is room in the jail.

As you can see, issues such as these create many challenges for the Shoshone-Bannock Tribes in ensuring for public safety on our Reservation and for the safety of our people due to the failure of the federal and state governments to meet their responsibilities to assist us. Consistent with the principle of tribal sovereignty and self-determination, the Shoshone-Bannock Tribes seek to obtain retrocession of the jurisdiction taken by the State of Idaho without the Tribes' consent. We would appreciate assistance from this Committee on our retrocession efforts given that it directly impacts our ability to provide basic services designed to meet the health, safety, and well-being of our people. With the construction and proper funding of the Justice Center, the Shoshone-Bannock Tribes are willing and qualified to fully assume responsibility over Reservation affairs while working together with the Federal Government as our trustee.

In sum, I am happy to express support for the proposed Tribal Law and Order Act of 2009 and the significant measures contained therein to address the serious law enforcement problems facing the Fort Hall Reservation and Indian Country in general. Thank you for this opportunity to participate in this hearing on this critically important subject.

Senator UDALL. Thank you, Mr. Chairman. Good to have you here.

Please go ahead, Mr. Eid.

STATEMENT OF TROY A. EID, PARTNER, GREENBERG TRAURIG, LLP

Mr. EID. Thank you very much. My name is Troy Eid. I am the former U.S. Attorney from Colorado. It is good to see you again, Mr. Chairman. I think I last saw you at Chelle's Restaurant in Gallup. It is gone, but we are still here, so it is great to see you. [Laughter.]

Mr. EID. Very briefly, I am a former prosecutor. I am a current practitioner. I practice in this area at Greenberg Traurig in Denver. I represent the Ute Mountain Ute Tribe as Special Counsel, and I am a Professor at the University of Colorado School of Law. I teach criminal and civil jurisdiction in Indian Country.

This is a great bill. I strongly support it. Mr. Chairman and Committee Members, don't give up on this. And I want to especially talk briefly in my time about section 102, which is the provision that deals with case declinations.

Now, I know that there are colleagues here, former colleagues, members who are in the Justice Department today who feel differently than I do about this bill. And I respectfully disagree with them, and I appreciate all their service.

The bottom line is that we have got to get on with this declination reporting, Mr. Chairman. We have an obligation to be accountable to the American people and the native tribes that we serve should expect of us, as the temporary stewards of the Federal trust responsibility, that we will tell them what we are doing.

When I was appointed, just by example, I met with the tribal council of the Southern Ute Indian Tribe. I met with the council and they said, we would like you to take a look at the declinations

your office did before you got here, Mr. Eid. And I did. And guess what? I found two cases right out of the blocks. We declined them because the Federal system "is not very good at handling juveniles." Well, guess what? Where else do native people go when the Major Crimes Act has required them since 1885 to go to the Federal system?

So we took those cases up again. We got convictions out of both of them. They were both declined with no explanation to the tribes. That is not right, and after 1885, we should have figured out a way to get it correct.

And so we have to start reporting. Frankly, with all due respect, this Committee ought to expect better, and you ought to require of any Administration, including the past one and the current one, that they report this information to Native people. They have to depend on us as local prosecutors. U.S. Attorneys have a different role in Indian Country and we need to be locally accountable, like a D.A. would be locally accountable. And that is the point and that is the difference.

Now, it is true that it is not an all-inclusive metric. It is not a perfect measure. It never measures, in a case that is declined, the cases you never got because the law enforcement gap in terms of resources is so bad. The tribe I represent now, Ute Mountain Ute, on a good day has a total of five BIA officers. They do a wonderful job by the way, but they patrol an area that is bigger than Rhode Island. Our response times, on average, can be as much as an hour and a half at night. That is from when they get the call to the time they get out to where they need to go.

So we need to have some local accountability, Mr. Chairman, and section 102 is the way to do it. If there is a separation of powers issue, and with all due respect I have never bought it and I don't buy it now, but if there is, then the Department today should start figuring out a way to do case declinations, and they ought to start doing this reporting. Figure out what to measure and start measuring it, and quit making excuses. Since the year 1885 is a long time to be making excuses, and I think we can do a lot better than that.

I also want to talk very briefly about section 301, Special Law Enforcement Commissions. Your State, Mr. Chairman, a great State, but, when last I checked, out of the 22 tribes and pueblos, there were only three agreements to do Federal deputation for three tribes in the entire State of New Mexico.

I worked with the Director of the Justice Department at Southern Ute, Janelle Doughty, and she just said enough is enough. She said we need to work with people in the BIA, figure out how to do onsite deputation training. And through our office, the Colorado U.S. Attorney's office, the U.S. Attorney's offices in South Dakota and New Mexico, the National Congress of American Indians and the Justice Department National Advocacy Center, we had a partnership. We trained 400 officers in less than two years, and many of them were federally deputized, representing 35 tribes from 17 States.

We can do a lot better, and that part of the bill will create the expectation that the Departments of Interior and Justice will finally partner on deputation. Deputation simply means give the offi-

cer in the field the Federal tool kit so they can also arrest non-Indians. They can arrest Indians if the Major Crimes Act so provides. That is all it is for, and it needs to be respected and used.

When the Supreme Court took away the tribes' jurisdiction over non-Indians in 1978 in *Oliphant,* Justice Rehnquist essentially said, "Don't worry. We will rely on Federal deputation. That will solve the problem." Well, you know, three tribes out of 22 in New Mexico, we can do better than that, and the same condition exists around Indian Country. Emphatically, it is nobody's fault, but we can and we should do better.

And so I strongly endorse this bill. I hope that this Committee will act. I greatly appreciate your time, Mr. Chairman. I appreciate Chairman Dorgan. He has been a true leader in this, and all the supporters of this bill.

Thank you.

[The prepared statement of Mr. Eid follows:]

PREPARED STATEMENT OF TROY A. EID, PARTNER, GREENBERG TRAURIG, LLP

Mr. Chairman, Committee members, thank you for the opportunity to testify in support of S. 797, the Tribal Law & Order Act. My name is Troy Eid and I live in Golden, Colorado. I recently returned to private life after serving as the United States Attorney for District of Colorado. I've worked in and around Indian country for more than two decades. This includes public service as an aide to former U.S. Representative Jim Kolbe of Arizona, a cabinet secretary to former Governor Bill Owens in my home state of Colorado, and most recently as Colorado's U.S. Attorney.

Currently I'm a shareholder in the Denver office of Greenberg Traurig LLP, where I co-chair our American Indian Law Practice Group. The firm's tribal clients include the Ute Mountain Ute Tribe of Colorado, which I represent as Special Counsel, and the Seminole Tribe of Florida. We also advise organizations and individuals doing business with Indian nations, operating on tribal lands, and investing in Native American-owned assets.

Besides practicing law, I teach as an Adjunct Professor in the American Indian Law Program at the University of Colorado School of Law in Boulder. I'm also active in the Navajo Nation Bar Association and serve on its Training Committee. This includes teaching Continuing Legal Education classes for tribal judges, attorneys and advocates, along with the semi-annual bar review course for candidates seeking admission to practice law before the Navajo Supreme Court and district courts. Additionally, I'm a consultant to Fox Valley Technical College of Appleton, Wisconsin. Fox Valley is a contractor to the U.S. Department of Justice and develops law enforcement training curriculum and programs for nearly 200 federally recognized Indian tribes and nations. My own work for Fox Valley focuses on the implementation by tribal justice departments of the National Sex Offender Notification and Registration Act or SORNA, which as you know is Congressionally mandated by the Adam Walsh Act of 2006.

S. 797 and the Challenges it Addresses

I'm very encouraged by this bill and strongly support it. S. 797, the Tribal Law & Order Act of 2009, is a necessary first step toward strengthening criminal justice for people living and working on Indian lands. After brief introductory remarks, my testimony will discuss how this legislation can address three of the most significant challenges to making Indian country safer:

1. *Overly complicated jurisdictional rules* that undermine criminal investigations, preventing far too many prosecutions from going forward and, in the memorable phrase of an April 2007 report by Amnesty International, can create a "maze of injustice."

2. *A chronic resource deficit* in which Indian tribes have access on average to less than one-half of the law enforcement resources available to comparable off-reservation communities, and which extends to the entire criminal justice system.

3. *A lack of respect for tribal sovereignty* and how it can reinforce the fundamental American value of localism—the expectation that governmental deci-

> sions, including those involving public safety, are best made closer to citizens by officials who are directly accountable to them.

My testimony will explore how specific provisions of S. 797 can help address each of these challenges in order to make Indian country safer. This legislation is vitally important and long overdue. Yet it is still just a first step on a much longer journey that has never been and will never be easy. So I will conclude my remarks today by raising some additional ideas that this Committee might consider in its quest to make equal access to justice a reality for *all* Americans, including First Americans.

Before I begin, Mr. Chairman, let it be said that you are a true champion in honoring the Federal Government's trust responsibility to Indian tribes and nations through enhanced public safety. Your sustained commitment to meaningful reform, and that of your co-sponsors and supporters—Democrat and Republican alike—is refreshing to many of us serving in the field. Your continued leadership is also essential to reversing the circle of violence and despair that prevails on far too many Indian reservations. It is also my observation that this Committee is very well-served by its professional staff.

In terms of fulfilling Congress' federal trust obligations, this Committee has repeatedly recognized that there is no more urgent priority than strengthening criminal justice for people living and working on Indian lands. Much has been accomplished to make Indian Country safer, under both Republican and Democratic Administrations, since President Richard M. Nixon formally adopted Tribal Self-Determination as national policy. Yet far too much of the federal criminal justice system that is supposed to serve Indian Country—designed as it was to keep Native people isolated on reservations, with the real political power elsewhere—remains stubbornly frozen in the Termination Era.

The need to make Indian country safer has also been a priority for President Obama, who declared during the last fall's campaign:

> The most fundamental function of all governments is to ensure the safety of their citizens and maintain law and order. The Federal Government has a legal trust responsibility to aid tribal nations in furthering self-government in recognition of tribes' inherent sovereignty. Unfortunately, the government has failed to live up to its obligation to help tribes maintain order.

There are plenty of statistics to illustrate the President's point, but it is perhaps more meaningful for me as a former United States Attorney to relate it in human terms. We're talking, after all, about a federal criminal justice system in which one of the most basic legal questions of all—jurisdiction—depends on determining the *ethnicity* of the perpetrator as well as the victim, along with the intricacies of land status. This breathtaking inconsistency—using the ethnicity of an *American citizen* to decide which laws apply and who investigates and prosecutes a crime—gives rise to the so-called "jurisdictional maze," a web of confusing and sometimes contradictory rules that attempt to determine who does what in Indian country.

Navigating the Jurisdictional Maze

The breathtaking jurisdictional complexity of federal Indian law—with both the adjudicative forum and applicable laws depending on the type of crime, status of the land where the offense occurred, and identity of the victim and the suspect—seriously impedes the effective administration of justice. There is also a perverse irony in the fact that people living in some of the poorest and most geographically isolated parts of our country must confront some of the most complicated legal rules anywhere during the ordinary course of their lives.

Since 1885, United States Attorneys and tribal governments have had the primary responsibility for prosecuting violent crimes in Indian country. Yet even this basic division of labor has its arcane exceptions. For instance, crimes involving only non-Indians in Indian country are ordinarily subject to exclusive *state* jurisdiction. However, in states where Public Law 280 applies, state governments may or may not exercise criminal jurisdiction over Indians and non-Indians alike depending on the specific reservation and criminal offense at issue. Federal court decisions often add still another layer of complexity. For instance, in the 2001 case of *Nevada v. Hicks*, the U.S. Supreme Court ruled against tribal court jurisdiction over tribal court claims against state game officers who exceeded the scope a state-issued, tribal court-approved search warrant. Despite its narrow holding, widespread misperceptions about *Hicks* and its importance have seriously undermined the often-delicate cooperative policing arrangements forged among local, state and tribal law enforcement officers.

In some investigations, it can be difficult or even impossible to determine at the crime scene whether the victim, the suspect, or both is an "Indian" or a "non-Indian"

for purposes of deciding which jurisdiction—federal and/or tribal, or state—has responsibility and which criminal laws apply. In those crucial first hours of an investigation, this can raise a fundamental question—which agency is really in charge? This is the antithesis of effective government.

By way of illustration, Colorado's U.S. Attorney's Office recently prosecuted a case on the Southern Ute Indian Reservation where two victims of a vehicular homicide were hit by a non-Indian drunk driver and tragically burned to death in their vehicle. The victims were an elderly woman, an enrolled member of the tribe, and her eight-year-old granddaughter. The child was not an enrolled member of the tribe, but had a sufficient degree of Indian blood to be considered an "Indian" for federal jurisdictional purposes so long as the community in which she lived also considered her to be an "Indian."

As our federal prosecution proceeded, defense counsel countered that despite having Native blood, the child victim was still not considered to be an Indian within the particular reservation where the crime occurred. It turned out that the little girl had received Indian Health Service benefits on the Southern Ute Reservation and was visiting her grandparents there at the time, but legally resided with her mother off-reservation. Literally dozens of people, ultimately including the tribal council, got involved to decide whether the child was really an "Indian" or not. There was considerable disagreement. After several months of jurisdictional gymnastics, the case involving the child's death was referred to the local District Attorney as a matter of exclusive state jurisdiction. Meanwhile, the U.S. Attorney's Office prosecuted the non-Indian driver of the vehicle for the death of the little girl's grandmother. The Southern Ute Tribe, incidentally, had no criminal jurisdiction whatsoever to vindicate its interest in the death of its own tribal member by a non-Indian defendant. This was because of the U.S. Supreme Court's 1978 ruling in *Oliphant v. Suquamish Indian Tribe,* which held that absent express authorization from Congress, Indian tribes lack criminal jurisdiction over non-Indians.

As prosecutors we actually got a break in that case, in a way, because the defendant—a non-Indian drunk driver—happened to be operating his vehicle in a Colorado state right-of-way at the time of the accident. The reservation in question, the Southern Ute Indian Reservation, has its very own federal jurisdictional statute, Public Law 290, limited solely to that reservation, which clarifies when state jurisdiction applies within highway rights-of-way. This made it easy for two of the first-responders, a Colorado state trooper and a LaPlata County Sheriff's deputy, to make a valid state arrest. In other so-called "checkerboard" Indian reservations such as the Eastern Agency of the Navajo Nation, where Indian trust and allotted land parcels alternate with private fee lands and various other landholdings, highway rights-of-way are typically exclusive *federal* jurisdiction pursuant to the Indian country statute, 18 U.S.C. § 1151. This means that a Navajo Nation tribal police officer responding to a similar accident on the Eastern Agency ordinarily could not arrest a non-Indian defendant without being trained and federally deputized by the Bureau of Indian Affairs.

S. 797 addresses the jurisdictional maze in at least two ways. First, Section 305 of the bill creates an Indian Law and Order Commission ("the Commission"). This nine-member Commission is charged with undertaking a comprehensive study of law enforcement and criminal justice in Indian communities and reporting back to Congress within two years of the date of the bill's enactment. This includes an analysis of jurisdiction over offenses committed in Indian country and how the current rules affect criminal investigations and prosecutions. The Commission is expressly charged in Section 305(e)(1) with making recommendations to Congress for "simplifying jurisdiction in Indian country[.]"

Such an approach is welcome news. Second, another part of the bill, Section 301, takes direct aim at the maze of injustice by helping ensure that more tribal, state and local law enforcement officers are commissioned as federal officers—that is, federally deputized—to fight Indian country crime. There is already reason to believe that encouraging U.S. Attorney's Offices and the Bureau of Indian Affairs to provide expanded federal deputation training and commissioning, in full partnership with the Indian nations they serve, can increase law enforcement cooperation, strengthen prosecution, and save lives.

I say this from direct personal experience as a United States Attorney. Between February 2007 and December 2008, the U.S. Attorney's Office in Colorado partnered with the Southern Ute Indian Tribe's Justice Department and its visionary director, Janelle Doughty. Together with our respective offices and the Bureau of Indian Affairs' Indian Police Academy, we developed a model curriculum and training program to teach and test tribal, state and local law enforcement officers on-site in Southwestern Colorado. Our goal was for these officers to be federally commissioned by the Bureau of Indian Affairs to enforce federal laws in Indian Country, thereby

strengthening "boots-on-the-ground" law enforcement and fostering inter-jurisdictional collaboration. The curriculum focused on Indian Country jurisdiction, the federal judicial process, investigative techniques, officer criminal and civil liability, and other challenges routinely encountered by tribal, state and local law enforcement officers.

The genesis of this unique partnership between a U.S. Attorney's Office and an Indian tribal justice department is worth noting because it attests to how Section 301 can reasonably be expected to help law enforcement officers navigate the jurisdictional maze and increase cooperation among different agencies. Ms. Doughty, who testified before this Committee last September on a previous version of this bill, is the first tribal member—and first woman—ever to direct the Southern Ute Indian Tribe's 100-employee Department of Justice & Regulatory, which includes the tribal police, wildlife rangers, corrections, and division of gaming. Her challenge to me as a new U.S. Attorney in 2006 was to find a way for the Federal Government to conduct on-site law enforcement training and testing on the Southern Ute Indian Reservation and invite neighboring non-Indian agencies to participate in this effort. Qualified law enforcement officers who completed this training and passed the standard test administered by the BIA Indian Police Academy could then receive their Special Law Enforcement Commissions or "SLEC" cards from the BIA to enforce federal laws on the reservation.

Ms. Doughty, a law enforcement officer with a master's degree in social work, had previously been the Crime Victims' Advocate for the Southern Ute Tribe. She knew that without valid SLECs cards, tribal law enforcement officers could not legally arrest non-Indian defendants who committed crimes against Native American victims there. In far too many instances, domestic violence laws on the reservation were under-enforced to the point that many victims failed to report crimes. Precious few Southern Ute law enforcement officers were federally commissioned by the BIA and therefore could not investigate crimes allegedly committed by non-Indians, to whom exclusive federal jurisdiction applies under the Indian Country Crimes Act, 18 U.S.C. § 1152.

Working together with our respective offices, Ms. Doughty and I gained the support of veteran Indian country prosecutor Christopher Chaney, who at the time directed the Bureau of Indian Affairs' Office of Justice Services. Chris proposed partnering with the BIA and its Indian Police Academy to develop our training as an on-site "pilot" program. We began in February 2007 by successfully training and federally deputizing the first group of 40 tribal, state and local law enforcement officers on the Southern Ute Indian Reservation in Ignacio, Colorado.

Word of our efforts quickly spread. What started as a local partnership in Colorado eventually led to the nationally recognized "Criminal Justice in Indian Country" pilot training program, a combined effort that included:

- Bureau of Indian Affairs/Indian Police Academy.
- National Congress of American Indians.
- Deputy District Attorney Bernadine Martin of the McKinley County-New Mexico District Attorney's Office.
- U.S. Department of Justice/National Advocacy Center.
- The U.S. Attorney's Office in Colorado, New Mexico and South Dakota.

In less than two years, what began as a pilot training program limited to the Southern Ute Indian Reservation and surrounding communities had grown into 14 separate training sessions across the country, attended by more than 400 law enforcement officers and tribal leaders representing 35 Indian tribes and 17 states. Many of the officers who graduated from the program have since been federally deputized.

In Colorado, the Criminal Justice in Indian Country program has already strengthened inter-agency cooperation and federal criminal prosecutions, including domestic violence cases. Last fall, Ms. Doughty testified before this Committee about how the program had succeeded. As an example, she described how a Southern Ute tribal officer had responded to a crime scene in a domestic-violence case on the reservation. The officer, Chris Naranjo, had received on-site training to renew his SLEC card, which otherwise would have expired long before he could have left his job to attend a week-long refresher course a full days' drive away at the Indian Police Academy in Artesia, New Mexico. "Because he was federally deputized," Doughty told the Committee, "Chris could arrest the non-Indian suspect who had allegedly victimized one of our Tribal members in that case, which is now being prosecuted by the U.S. Attorney's Office." A conviction has since been obtained in that case.

S. 797 has the potential to build on such successes and increase SLEC training exponentially. Section 301(b) of the bill directs the Secretary of the Interior to de-

velop a plan within 180 days of the bill's enactment "to enhance the certification and provision of special law enforcement commissions to tribal law enforcement officials." This expressly includes regional SLEC training sessions such as those we developed in Colorado and later conducted in other states. As this plan takes shape, there would be minimal additional cost to enabling U.S. Attorney's Offices to offer such training in partnership with BIA and with the approval and support of the affected Indian tribes. This training should not be limited to tribal officials, but should include neighboring border communities for effective interagency collaboration, back-up and emergency response. In this way, law enforcement officers on and near reservations can have the tools to help navigate the jurisdictional maze.

Closing the "Resource Gap"

The maze of injustice is not the only nemesis facing criminal justice professionals in Indian country. The chronic lack of federal resources has become a way of life on far too many reservations. S. 797 addresses this problem in several important ways. Let me briefly discuss just two.

1. Measuring the Resource Deficit

First, Section 101 includes detailed reporting requirements to track federal criminal justice expenditures and programs provided to Indian country every fiscal year. These annual reporting obligations extend across the system to include law enforcement, corrections and judicial human and financial resources. Section 101 is a critical tool to help address the resource deficit that has plagued much of Indian country for decades. On average, Indian country has roughly half as many police officers per capita as similarly situated rural communities. This was the case in 1997, according to a report that year by the Clinton Justice Department, and in 2006, when the BIA commissioned its own analysis by a private consultant. While economic times are tight, it is essential that Congress work with the Obama Administration work to close this gap in a systematic and sustained way.

Section 101 can and should be used as part of an internal process to estimate what it would actually take for Congress to erase the resource gap entirely, in all major categories, by a reasonable date certain, and then budget accordingly. The resource deficit is all too familiar across much of Indian country. This includes the Ute Mountain Ute Reservation in Southwestern Colorado, which borders the Southern Ute Indian Reservation I spoke of earlier. The name of the Ute Mountain Ute Tribe comes from a local landmark called Sleeping Ute Mountain, which resembles a giant warrior lying on his back. It is said that one day this warrior will arise and defend the remnant of his people. For the time being, members of the Ute Mountain Ute Tribe, unlike their neighbors at Southern Ute, must rely exclusively on the Bureau of Indian Affairs Office of Justice Services for their law enforcement, corrections and judicial services.

The people of the Ute Mountain Ute nation live in an area of remarkable natural beauty that is home to the world-famous Ute Mountain Tribal Park. For those who have visited nearby Mesa Verde National Park, the Ute Mountain Tribal Park and its extensive ancestral Pueblo ruins are among the most spectacular places in the American West. In terms of criminal justice services, however, the Ute Mountain Ute people deserve far better than what the Federal Government provides them. On any given day or night, there are just one or two BIA law enforcement officers on duty to patrol the entire reservation, which extends into three states and is bigger than Rhode Island. The life-and-death mission performed by these and other BIA law enforcement officers, and the many sacrifices by their families, deserves our gratitude and respect. The entire BIA Police Department for Ute Mountain usually consists of just five officers who often work 12-hour shifts for days at a time. Nationally, the average police response time in the United States is about six minutes. On Ute Mountain Ute, response times of an hour or more are the norm.

The same resource deficit extends to the entire criminal justice system. As I testify here today, the BIA has failed to provide a public defender on the Ute Mountain Ute Reservation for more than two years. This means that virtually all criminal defendants appearing before the Court of Indian Offenses lack any legal representation, and cases are routinely dismissed, resulting in an almost total lack of misdemeanor law enforcement. Earlier this decade, the BIA detention center on the reservation also shut down entirely for several months due to lack of federal funds. Other key positions, including the BIA tribal prosecutor, have been unfilled during much of this same time. Section 101 can help Congress to quantify and address this continuing mockery of the federal trust obligation.

2. Reporting Case Declinations by U.S. Attorneys

S. 797 addresses another symptom of the larger criminal justice resources deficit: Case declinations by federal prosecutors. The term "declination" in this context

means a decision by a United States Attorney's Office not to seek criminal charges after being presented with the confidential findings of a law enforcement investigation of a suspected federal offense arising in Indian country. Section 102 of the bill establishes mandatory reporting requirements for all U.S. Attorneys when cases are declined in such instances. What is now Section 102 has been criticized in previous versions of this legislation by several former and current U.S. Attorneys for whom I have great respect, and by the Justice Department in the previous Administration in which I served. I respectfully disagree with these former colleagues and strongly encourage this Committee to support Section 102. At the same time, it is vitally important for this Committee to explain to the American why declination reports have useful but limited value so that the entire matter is kept in proper perspective.

I support Section 102 as a way to bring greater accountability to U.S. Attorney's Offices, and to individual U.S. Attorneys themselves as Presidential appointees serving as temporary stewards of the federal trust responsibility. Declination reports that respect individual privacy and the legal confidentiality of investigative information, as the language of Section 102 clearly envisions, would be extremely valuable in helping U.S. Attorneys set Indian country enforcement priorities and make the case for additional resources in specific areas. These reports would also assist the Justice Department in its supervisory role of monitoring case trends and aligning national prosecution priorities based on more complete criminal justice information than currently exists today.

Rather than fear such enhanced accountability, U.S. Attorney's Offices should embrace it as an opportunity to ease suspicions among some critics that Indian country cases are somehow treated less seriously than other federal criminal prosecutions. Such rumors are unfounded. In my experience, the vast majority of Assistant U.S. Attorneys serving Indian country are committed to achieving equal justice for all Americans, including First Americans living and working on Native lands. Tracking case declinations and developing other ways to measure the performance of the criminal justice system can assist AUSAs and their offices by helping educate the public as to what prosecutors in the field really face.

As I discussed earlier, the pervasive lack of available federal law enforcement officers is only a symptom of the relative lack of criminal justice resources in Indian country as compared with off-reservation communities. As Colorado's U.S. Attorney, I faced this problem frequently, especially in cases arising on the Ute Mountain Ute Reservation. The on-the-ground reality was sometimes ludicrous, as when I joined a police ride-along where the BIA officer had to leave the patrol vehicle motor running for his entire shift because it wouldn't start if he shut off the engine. The officer's innovative approach worked well until the vehicle ran out of gas.

More often, the situation was grim or even tragic. I especially remember one night at Ute Mountain where BIA police dispatch received a report of an apparent homicide. By the time a patrol officer arrived, a crowd had converged at the crime scene. As often happens, the lone BIA officer simply could not establish a perimeter by himself. The mob broke into the apparent victim's home, some people literally climbing through the windows. The crime scene was hopelessly contaminated. It bears mentioning that the resident agent from the Federal Bureau of Investigation was 400 miles away in Denver at the time—preparing to testify before the nearest Article III federal judge—in another Indian country case. This cold case remains an "unexplained death," and it is doubtful that sufficient legally admissible evidence will ever be collected to solve the crime.

I mention this in context of declinations and what they can and cannot measure. According to the official *U.S. Attorney's Manual,* United States Attorneys may only bring a criminal prosecution if there is a reasonable probability of obtaining a conviction at trial. Such was not the case here, where the crime scene was compromised—again as so often happens—in the critical hours immediately after the crime. Reporting declinations is important to reinforcing the accountability of individual U.S. Attorneys and the vitally important offices with which they are temporarily entrusted. Unlike elected local prosecutors, U.S. Attorneys obtain their positions by political appointment—Presidential nomination, with the advice and consent of the Senate—are not directly accountable to voters.

This lack of institutional accountability is magnified when U.S. Attorneys essentially function as local officials in the prosecution of major crimes. When I was teaching tribal law enforcement officers, I used to start my classes by asking how many had voted for me as their United States Attorney. The confused looks and occasional display of hands from the audience spoke volumes about the lack of direct institutional accountability between me as a politically appointed chief federal criminal prosecutor, acting in effect as a local district attorney, and my "constituency" hundreds of miles from Denver.

This lack of local accountability means it is vital for Congress to enact meaningful performance measures for Indian country investigations and prosecutions. This leads to Section 102 and mandatory case-declination reporting. By definition, declinations can never tell the full story. Investigative information is highly sensitive and must be protected by law in order to safeguard Constitutional rights. An obvious example is grand jury information, the unauthorized release of which is appropriately punishable by criminal sanction, including imprisonment. It can be unreasonable, unethical and illegal for a federal prosecutor to attempt to explain why he or she declined to prosecute someone.

Focusing on case declinations in and of themselves, without putting them into the larger context of the criminal justice system, can be of limited value for another reason. As I discussed earlier, the jurisdictional maze can wreck havoc in Indian country investigations. Not knowing which agency is supposed to what in a given set of circumstances means that too many crimes fall through the cracks. And much of Indian country suffers from scarce resources at every step in the process, including law enforcement, prosecution, indigent defense, courts and corrections. A weak link in any part of this chain can undermine the integrity of the entire system, to the point where victims simply fail to report crimes in the first place. This tracks with the findings of scholarly researchers, such as professor Barbara Perry of the University of Ontario, who recently estimated that no more than 5 to 10 percent of victims of all domestic violence in Indian country report their abuse to the relevant authorities.

In sum, declinations are an under-inclusive metric that can never measure crimes that go unreported or investigations that fail to take place or are compromised. Yet that does not mean declination reports are somehow unimportant, especially in reinforcing the local accountability of U.S. Attorneys and their offices. During testimony on previous versions of this bill, it was suggested that mandatory case-declination reports might raise concerns with the Constitutional separation of powers by intruding on prosecutorial discretion and therefore Executive Branch authority. There can be legitimate debate on that issue. But even if a legal impasse does arise over this portion of the bill, I see no barrier to the U.S. Department of Justice simply adopting Section 102 as an internal policy statement and operating accordingly.

Respect for Tribal Sovereignty

Let me briefly address one final aspect of S. 797: Section 304, which deals with tribal court sentencing authority. Among other things, this section amends the Indian Civil Rights Act of 1968 to give tribal courts the sentencing option to impose terms of incarceration for up to three years, a fine of up to $15,000, or both for conviction of a single tribal offense. This compares with a maximum penalty of one year imprisonment, a $5,000 fine, or both under current law. Consistent with the Supreme Court's *Oliphant* decision, tribal courts could not impose these increased penalties on non-Indians. With respect to Indians, Section 304 would only permit tribal courts to impose these enhanced penalties if they guarantee the defendants' due process of law. The bill further requires that the presiding judge and defendants' defense attorney be "licensed to practice law in any jurisdiction in the United States."

This language attempts to strike a balance between respect for criminal defendants' federal Constitutional rights and the sovereignty of tribal courts to enforce their own laws. However, it is reasonable to expect that should the provision pass, the ball would be hit into federal court. Increasing the maximum sentence of imprisonment that tribal courts could impose would almost certainly be interpreted by federal judges to expand tribal court jurisdiction over Indians beyond misdemeanor sentences to include felonies. Additionally, Section 304 purports to permit tribal courts to "stack" offenses to increase aggregate penalties for multiple offenses. There is a significant legal question, in my judgment, as to whether the U.S. Supreme Court would uphold tribal criminal jurisdiction over felonies in cases involving non-member Indians and perhaps all Indians. Rather than test these legal waters and obtain an adverse interpretation of federal Constitutional law that could not be amended later by statute, the Committee should consider amending Section 304 to retain the current one-year cap under the Indian Civil Rights Act—thus continuing to limit tribal courts to misdemeanor sentencing authority only—but increase the maximum fines.

Another issue concerns the representation of criminal defendants and the judges who preside over their cases. I read the text of Section 304(b)((1)(C)(2)(A) as enabling tribal court judges who are tribally-licensed but not necessarily attorneys to impose the enhanced penalties permitted by the bill. In contrast, no Indian tribe may deny a criminal defendant the assistance of a defense *attorney,* as opposed to

lay advocate, but that the attorney need not be *state-licensed* so long as he or she is admitted to practice in tribal court.

What the bill is really trying to do here is not just ensure that criminal defendants receive due process of law, but also specify how much process is actually *due.* Here again, it seems likely that the federal courts will ultimately confront the issue of tribal judges' and defense attorneys' professional qualifications if this portion of Section 304 passes. For those of us practicing in tribal court and our clients, the point is critically important on several levels. For one thing, not all tribal bar admission processes and licensing requirements are alike. On the Navajo Nation, for example, just one of 20 tribal court judges is a state-licensed attorney. One Navajo District Court judge is an attorney but not state-licensed. The rest of the bench consists entirely of non-lawyers who were admitted to practice before the Navajo Nation Supreme Court after passing the required eight-hour examination administered by the Navajo Nation Bar Association ("NNBA").

As a member of the Training Committee of the NNBA, I can attest that the Navajo bar examination is rigorous. While lawyers and lay advocates may both take the test, the bar passage rate for non-attorneys is comparatively low. The admission and continuing legal education requirements closely track state attorney licensing requirements in some respects and differ in others. And the integrity and professionalism of the Navajo Nation judiciary is admired throughout Indian country. Yet it is also true that the approach taken at Navajo bears little resemblance to some other tribal court admission requirements with which I am familiar, in which a non-attorney need only fill out a form and pay a fee. Section 304 should be amended to reflect such realities. One way might be to set minimum qualifications for tribal admission requirements for those tribal courts that decide to adopt the heightened sentencing provisions.

Despite these concerns, Section 304 properly seeks to reinforce the critical importance of tribal courts in misdemeanor enforcement. This section could be further strengthened in two ways. First, I suggest adding language encouraging support for tribal sentencing based on the traditional and customary law of each Indian community. Second, the expanded sentencing authority in Section 304, no matter what form it eventually takes, ought to be extended to the BIA Courts of Indian Offenses, which serve as the primary source of misdemeanor adjudication on "BIA-only" reservations such as Ute Mountain Ute. This section, like the rest of the bill, will also require reasonable funding. In recent years, the BIA court and detention center at Ute Mountain have functioned only sporadically. Besides preventing misdemeanor enforcement, violent crimes sometimes go unpunished under federal law because potential witnesses cannot be detained locally while investigations are completed and federal charges filed. Such systemic neglect must not continue.

S. 797 has many other worthwhile provisions. Time does not permit a comprehensive analysis, but I welcome the Committee's questions either at this hearing or later in writing.

Looking Forward

The Tribal Law & Order Act merits the strong support of the Congress and the Obama Administration. Looking forward, several related issues are also worthy of continued attention by this Committee, either as additions to S. 797 or in the days ahead.

1. U.S. Attorney Qualifications

While the Senate Judiciary Committee handles the confirmation process for United States Attorneys and federal judges, the perspective of the Committee on Indian Affairs on such appointments is absolutely critical, as is the role of Indian tribes and nations in informing that process. Perhaps a personal story helps illustrate this point.

As Colorado's U.S. Attorney, I vowed to make Indian country a top priority. I had worked extensively in Indian Country and vowed to act like a local District Attorney when dealing with the two Indian nations headquartered in Colorado. This meant meeting every month with both tribal councils and working daily with tribal justice department leaders. I asked the Governor of our state to appoint me to the Colorado Commission of Indian Affairs and participated actively in that body. The U.S. Attorney's Office partnered with the Southern Ute Indian Tribe as discussed above and became actively involved in teaching tribal law enforcement officers and their state and local counterparts, negotiating inter-governmental agreements for mutual assistance and emergency response, and cutting through bureaucratic red tape. Our office secured funding from the Justice Department for an additional Assistant U.S. Attorney position to increase Indian Country prosecutions, as well as a second Victim Witness Coordinator position to support our cases. I traveled to Albuquerque,

Washington, DC and elsewhere to seek more BIA law enforcement resources. Each quarter, I invited a senior law enforcement leader to join me in visiting the two Indian nations headquartered in Colorado. Supervisory Agents-in-Charge from the Federal Bureau of Investigation, Drug Enforcement Administration, U.S. Marshal's Service, Bureau of Alcohol Tobacco and Firearms, Bureau of Land Management, the Internal Revenue Service, U.S. Environmental Protection Agency, and other federal agencies all participated in these site visits and briefings.

Yet the fact remains that my Indian country agenda as a United States Attorney was largely self-imposed. I could just as easily have taken a limited interest in the topic and perhaps not experienced any adverse repercussions. This became perfectly clear to me during my nomination and confirmation process to become Colorado's U.S. Attorney. Not once was I questioned by anyone in Washington as to how I would prioritize Indian Country law enforcement and prosecution. I then asked to meet with members of the two tribal councils after my nomination but prior to my Senate confirmation. The response from officials in both the Executive and Legislative branches of government was that it would be inappropriate for me to meet with Indian tribal leaders prior to taking the oath of office.

To me this is exactly backwards. The Constitutional separation of powers properly places the confirmation process with the Senate. However, as part of the government-to-government consultation process required by executive order, each President should consult directly with the affected tribal governments before nominating any U.S. Attorney. The same process should apply to all potential nominees for other Presidential appointments requiring Senate confirmation, including candidates for the federal bench. Once a candidate is nominated, both the Justice Department and the Senate should actively encourage tribal leaders to meet and question the nominees who aspire to become their next chief federal prosecutor or judge. The U.S. Constitution recognizes three sovereigns: The Federal Government, states and Indian tribes. Tribal governments should be guaranteed a full and fair opportunity to meet face-to-face with would-be U.S. Attorneys and federal judges *before* they are confirmed by the Senate and take the oath of office, and regularly thereafter.

2. Expanding Federal Judicial Access

A second vitally important issue concerns expanded federal judicial access on and near Indian reservations. On December 13, 2005, a federal criminal trial was held on the Navajo Nation. This little-noticed trial, convened in Shiprock, New Mexico and involving tribal members, apparently marked the first time a U.S. District Court had heard a case on the country's largest Indian reservation. The Navajo Nation covers an area nearly the size of West Virginia—a state, incidentally, with nine separate federal courthouses for the convenience of its citizens.

The lack of federal judicial access for Native people living on Indian lands is one of the great civil rights issues of our time. As discussed earlier, American citizens rightly value *localism*—having government officials who are accountable and accessible to them, and who live and work in their communities. It would be unthinkable off-reservation for a crime victim to travel hundreds of miles just to participate in a criminal case. Yet this is commonplace in Indian Country, as is the lack of jury pools with meaningful Native American representation. As Janelle Doughty of the Southern Ute Tribe testified to the Senate last fall:

> It is totally unacceptable that the nearest U.S. District Court Judge in Colorado is 350 miles away from the Southern Ute Indian Reservation, and even farther from our sister tribe to the west, the Ute Mountain Ute Reservation. We have been pushing for a federal courthouse and judgeship in our area. Trying cases that meet the elements of the Major Crimes Act 350 miles from the jurisdiction in which they occur stands as a road block to justice and must be resolved. Federal juries in Colorado rarely include a single American Indian, yet they decide purely local crimes. And we have never had a federal grand jury in Western Colorado in my lifetime.

The federal judiciary is a separate branch of government responsible for administering its own affairs. Yet Presidents and the Congress influence judicial policy through authorizing legislation and appropriations for judges and judicial resources. It is time to recognize and start reversing this injustice.

3. Thinking Beyond Oliphant

A final topic concerns tribal criminal jurisdiction over non-Indians and the limits of federal deputation. As an *Oliphant* jurisdictional work-around, Special Law Enforcement Commission ("SLEC") agreements are not nearly as practical or plentiful as one might conclude from reading about them in federal court decisions. Effective

law enforcement over non-Indians who commit crimes in Indian Country varies widely depending on the reservation, and in practice sometimes does not exist. In New Mexico, for example, just three of 22 Indian tribes and pueblos currently have SLEC agreements with the BIA that permit federal deputation. One of those is the country's largest Indian reservation, the Navajo Nation, which has entered into some state cross-deputation arrangements but which still lacks an SLEC agreement with the BIA even though Oliphant was decided more than 30 years ago.

This, in turn, has prompted a searching review by several commentators into whether *Oliphant* itself should be modified or repealed. There are deeply held and often passionate views on both sides. Certainly a Congressional repeal of *Oliphant* would give non-Indians a far greater stake in the future of Indian country than would otherwise exist during our lifetimes. The possibility that a non-Indian might someday face criminal proceedings in tribal court, unlikely though it might be for most Americans, would nonetheless be real. Over time, that potential exposure of non-Indians to tribal courts and police departments, and federal and tribal policymakers' concern about such matters, will time will create an invaluable off-reservation constituency to support tribes in improving their criminal justice systems. But we must also be realistic about the scope, magnitude, and difficulty of what we are talking about. To me, ending *Oliphant* means extending tribal court jurisdiction to all citizens in a way that fully protects their rights under the U.S. Constitution.

In my view, any serious discussion of what a post-*Oliphant* world might look like starts with a simple premise: The depth and consistency with which tribal courts protect criminal defendants' civil rights must be on a par with that of defendants in state court criminal proceedings. Otherwise, federal *habeas corpus* relief from tribal court decisions alleged to have violated federal constitutional rights might not realistically be a sufficient remedy. Defendants would presumably expect to be retried *de novo* in U.S. District Court on tribal criminal code violations—essentially imposing a costly and frustrating exhaustion requirement for all concerned and, from the tribes' perspective, a serious infringement on tribal courts' sovereignty, with federal judges applying tribal law.

A better approach would be to ensure that the tribal courts themselves—based on their own assessment of their sovereign interests—meet federal Constitutional requirements in terms of due process and providing a full and fair forum by an independent, neutral arbiter. Several tribal court systems, such as the Navajo Nation Supreme Court and District Courts, are already meeting that threshold standard in some respects but not all, such as judicial independence. This is promising given that these court systems were not designed, and are not currently configured, to adjudicate criminal matters involving non-Indian defendants. Others could probably make the transition in time, provided the tribe's leadership decided it was priority. Still other tribal courts are not ready and may not be for the foreseeable future, whatever their intentions.

All this suggests that tribes might be given the freedom to opt-in to a post-*Oliphant* world on a case-by-case basis. Those tribal courts wishing to exercise criminal jurisdiction over non-Indian defendants could be supported in doing so starting on a certain date, provided they agree voluntarily to integrate federal constitutional substantive and procedural protections into their justice systems. This would mean, as in state courts, that the definition of what constitutes a permissible search and seizure under tribal case law, say, would be separate and distinct from its federal counterpart, provided again that all federal constitutional requirements were met as a "floor" on permissible rights. The Indian Civil Rights Act would necessarily need to be modified in several critical respects, such as providing under tribal law (unlike ICRA) that indigent criminal defendants are entitled to legal representation. Another concern—one raised by the *Oliphant* Court—involves jury pools. At the time the case was decided, the court for the Suquamish Tribe did not allow non-Indians to participate in juries. That situation has changed dramatically for some tribal courts, which now require a "fair cross-section of the community" standard for jury selection and service.

Still another matter that might arise should *Oliphant* be repealed is the sovereign immunity of government officials in the civil context. The combined effect of Section 1303 of the Indian Civil Rights Act and the U.S. Supreme Court's 1978 decision in *Santa Clara Pueblo v. Martinez* is to limit federal review of tribal court decisions to habeas corpus. This expansive definition of tribal sovereign immunity is greater than that afforded to the states, where defendants have the alternative remedy under 42 U.S.C. § 1983 to challenge alleged misconduct by state and local police and other governmental officials. In conjunction with repealing *Oliphant, Santa Clara Pueblo* might be modified to provide a waiver of qualified sovereign immunity in such cases, again to ensure greater governmental accountability and protection of defendants' civil liberties.

Conclusion

Whatever reforms this Committee ultimately chooses to pursue, the dialogue is timely and extraordinarily important given the disproportionately high violent crime rates in Indian Country and the need for expanded law enforcement. A greater emphasis on reinforcing tribal sovereignty and self-determination in tribal criminal justice policy is the same approach that has so dramatically improved the delivery of many other essential governmental services on Indian reservations in recent years. That approach holds enormous promise for making Indian Country safer for all, provided there is no compromise on the rights of the accused in federal criminal proceedings. The status quo—and the lingering public-safety gap between Indian Country and similarly situated rural communities—was never acceptable, and the time to end it is now.

Thank you.

Senator UDALL. Thank you very much for your testimony.

Judge Brandenburg, please go ahead.

STATEMENT OF HON. ANTHONY J. BRANDENBURG, CHIEF JUDGE, INTERTRIBAL COURT OF SOUTHERN CALIFORNIA

Mr. BRANDENBURG. Please thank the other Members of the Committee for allowing me to be here today.

As you said, my name is Anthony Brandenburg. I am the Chief Judge of the Intertribal Court of Southern California. Now, the Intertribal Court of Southern California is a consortium of tribes. It is a court system where it works as a circuit court on that concept, whereby the judge travels from one reservation to the other, presiding over assigned cases. The rules are based essentially on tribal laws, ordinances, customs and historical precedent.

The Intertribal Court provides the tribes with a judge, a court administrator, court clerks, bailiffs and case management system. Court hearings are held at the respective tribal facilities as an exercise of that tribe's civil regulatory jurisdiction.

Prior to my appointment as Chief Judge of the Intertribal Court, I spent approximately 17 years on the State bench in San Diego, California, with both the Municipal and Superior Courts. Because I had worked so many years pro bono in Indian Country, somehow I got the reputation of being the Indian judge.

I think you heard the many complaints about Public Law 280 and how it has injured and affected negatively the sovereignty of our tribes. Well, let me tell you about the practical effects of a guy in the trenches, first-hand at the State and tribal level what is going on.

Until recently, there were absolutely very few, in some cases no tribal courts in Southern California to speak of. Yet, in San Diego County alone, there are 17 federally recognized tribes. If you add in our neighboring tribes in the local counties—Riverside, San Bernardino and Imperial—you can add another 17 tribes just about.

Basically, when I was on the State court, whenever an Indian case came along, I got the call. If you were to ask 20 of our judges about Public Law 280, 19 would tell you they essentially knew very little or nothing about it at the State level. In fact, I recall one of our presiding judges telling me when an Indian case came up, now it's a Federal case. It goes to Federal court. Forget about it.

Actually, he was serious. The trouble is, you can't blame the judges because in reality they are simply not schooled on the issues of Public Law 280 at the State level. During my entire career on

the bench, I was never offered a case, or a program I should say, on Indian law, nor did I ever hear of one on Public Law 280.

Allow me to offer you a sobering fact that I am sure you are aware of. The highest crime rate in the United States is not in the inner city. It is not Black. It is not White. It is Indian-on-Indian crime. And addressing Public Law 280 and the law enforcement gap that it was supposed to close some 50-odd years ago, it has only made it worse. The very often confusing jurisdictional issues, coupled with a pervasive distrust of local law enforcement and State courts, has left our Indian Country a virtual legal no-man's land.

For example, Public Law 280 does not allow local or State law enforcement to enforce tribal law, nor can county ordinances be enforced on tribal courts. In short, what this means very often is that local law enforcement simply refuses to come on to the Indian reservations.

Public Law 280 has been a failure. As I stated earlier, as a judge and as an individual who has worked and lived in Indian Country, we need help. The first job of government is to provide public safety. That is what Indian Country needs. Our tribes have to exercise their jurisdiction and provide law and order to the individuals, and fundamentally that is a significant legal power that tribal governments must do and can do, but they need this type of legislation to do that.

Providing safe, healthy communities where our elders, our children, are safe; where families are able to work and thrive, and where people can provide for themselves in the community, all in a manner that is consistent with and reinforced by tribal values and cultures, is the most significant power as sovereigns a tribe can exercise.

I have to skip over some things here. Providing the resources for tribal custodial facilities would be a first in California. This would allow for the development of culturally appropriate facilities that can have a direct and lasting impact on rehabilitation and the reduction of recidivism in our communities.

The Intertribal Court as a consortium is in the unique position to benefit from all this because it allows the pooling of resources, which is particularly relevant to our tribes because so many of them share not only a common heritage, but common goals.

The people of Native America, the people of our native communities, want to feel safe and secure in their homes and their properties and on their ancestral homelands. They want nothing more than any other person in any other neighborhood in any other part of this Country, and they should get nothing less. With the help of this legislation, we can do good things. In addressing the cross-deputization and cooperation and mutual aid agreements, we have come a long way.

In conclusion, I am very encouraged by what this Committee is trying to do. I am totally supportive, as are our tribes. Let me add one caveat, however. The true goals and intent of S. 797 will only be realized if the Federal Government makes a long-term commitment to provide the resources, and equally as important, the influence to encourage all of law enforcement jurisdictions, be it tribal, Federal, State or local, to join in the effort.

The time is now for everybody to step up to the plate. This is an opportunity and we can't let it pass by. Tribes need your support and appreciate your suggestions and support and encouragement in improving their relationships with the Federal, State and local agencies to protect our women, children and elders, and most of all to provide native people with equal access to justice.

This legislation goes a long way in closing the gap I spoke of, and I respectfully pray that you encourage Congress to support it. It deserves your support.

Thank you, Mr. Chairman. Thank you, Mr. Udall.

[The prepared statement of Judge Brandenburg follows:]

PREPARED STATEMENT OF HON. ANTHONY J. BRANDENBURG, CHIEF JUDGE, INTERTRIBAL COURT OF SOUTHERN CALIFORNIA

Chairman Dorgan, Vice Chairman Barrasso, honorable Members of the Senate Committee on Indian Affairs, thank you for this opportunity to appear before you this afternoon to provide testimony on matters of such great importance. My name is Anthony Brandenburg, and I have the privilege and honor of serving as the Chief Judge of the Intertribal Court of Southern California.

The Intertribal Court of Southern California (the "Intertribal Court") is an intertribal court system, which works on a "circuit court" format whereby a judge travels from one Reservation to the next presiding over assigned cases. Rulings are based on tribal laws, ordinances, customs and historical precedent. The Intertribal Court provides a judge to each tribe, court administration, court clerks, bailiffs, and case management. Court hearings are held at the respective tribes' reservations, as an exercise of that tribe's civil jurisdiction.

Prior to my appointment as Chief Judge of the Intertribal Court, I served almost 17 years on the Superior and Municipal Court Bench in San Diego County, California. Because I had worked so many years on a pro bono basis in Indian Country, I had gotten the reputation as the "Indian Judge."

I think you have heard many complaints from tribes about P.L. 280 and how it has injured their sovereignty. Let me tell you about the practical effects that I have witnessed as a state judge and tribal judge.

Until very recently, there were no tribal courts to speak of in all of Southern California. Yet in San Diego County alone there are 17 federally recognized tribes. Add in our neighboring Southern California counties of San Bernardino, Riverside and Imperial, and we have almost another 17 tribes.

So when a case regarding Indians or Indian Reservations came along I usually got a call. If one were to ask twenty local judges about P.L. 280 nineteen would not know nothing or very little about it. "It's a federal issue," I was once told by one of my presiding judges. "It belongs in federal court," he went on to say, and he honestly believed so. In fact, you can't blame the judges, the reality is they simply have not been schooled on the issues. During my entire tenure on that bench, not once did I hear of nor was I offered a program on Indian Law. Consequently, I knew of no judges who were familiar with P.L. 280.

Allow me to offer this sobering fact. The highest crime rate in the United States per capita does not occur in our inner cities nor is it black or white. It is Indian on Indian crime.

In addressing P.L. 280, and the law enforcement gap it was supposed to close some 50 years ago, I can only say things have gotten worse. The very often confusing jurisdictional issues, coupled with a pervasive distrust of local law enforcement and state courts has left our Indian Country a virtual legal no man's land. For example, P.L. 280 does not allow local or state law enforcement to enforce tribal laws, nor can county or municipal laws or ordinances be enforced on tribal land. In short, this means that local and state law enforcement is frequently reluctant to even come on the reservations.

I think we can all agree that P.L. 280 has been an abject failure. But today we can do something about this! As I stated earlier, as a judge and individual who has lived and worked in Indian Country, I believe the topic of this hearing is a matter of great importance to Indian Country. The first job of any government is public safety. For our tribes, exercising their jurisdiction to provide law and order is a fundamentally significant legal power that tribal government must do and can provide. Providing safe, healthy communities where our elders and children are safe, where families are able to work and thrive, where people can provide for themselves and

the community, all in a manner that is consistent with and reinforced by the traditional values and culture of our tribes, is the most significant power the tribes, as sovereigns, can exercise.

While P.L. 280 did not remove tribal criminal jurisdiction over Indians, the practical effect of removing federal jurisdiction was the elimination of federal resources, and the states have not filled the gap. Without those resources, it was all but impossible for tribes to develop and maintain effective justice systems. What our tribes have done in response has been to decriminalize activities to fit within a civil jurisdictional scheme. The result has been that tribes in P.L. 280 states like California have not developed the type of justices systems needed to exercise criminal justice. Our tribes have no criminal codes to speak of, tribal court staff are not trained in criminal matters, and tribes have no custodial facilities.

Among the goals of S. 797, is a fundamental effort to not only do away with the various misconceptions of P.L.280, but to educate and train at the tribal, local and state level our judges and staffs, while at the same time bringing the Federal Government back into the equation. The result, if effective, being that tribes will be empowered in their efforts to reestablish and maintain law and order on our reservations. It also serves in allowing the tribes and tribal courts to re-enforce their laws by including cultural and traditional values in their judicial decision-making processes.

In my view as a judge, S. 797 will help us to accomplish these necessary goals by: (1) repealing of the P.L. 280 provisions removing federal jurisdiction; (2) Authorizing and encouraging cross-deputization, mutual aid, and other cross-jurisdictional agreements through the cooperative assistance grants; (3) giving expanded sentencing authority for tribes; and (4) providing resources for tribal custodial facilities. I cannot emphasize enough the positive benefits that would be achieved by expanding tribal sentencing authority, and allowing tribes to provide realistic, culturally appropriate sentencing which would actually deter behavior. And providing resources for tribal custodial facilities would be a first for California. This would allow for development of culturally appropriate facilities that can have a direct and lasting impact on rehabilitation and the reduction of recidivism in our communities.

The Intertribal Court, as a consortium of tribes, is uniquely positioned to benefit from this legislation. It allows for the pooling of resources, which is particularly relevant to our tribes since many of them share not only a common heritage, but common goals.

The people of our Native Communities want to feel safe and secure in their properties and on their ancestral homelands. They want nothing more than any other person in any neighborhood in any other part of this country, and they should accept nothing less. With the help of this legislation we can continue our work on winning the trust and confidence of our people in a tribal judicial system, as well as our state and federal systems. But we can not do this alone any more than local, state or federal agencies have succeeded in doing this on their own.

In addressing cross-deputization, cooperation and mutual aid agreements this bill suggests that these agreements are critical to the success of our efforts, and I wholeheartedly agree. I know this from first hand daily experiences. I am in the trenches. If any efforts are to succeed you must first have the trust and respect of the members of your tribal community. This can only happen with a fair and effective law enforcement system.

Recently I had the privilege of meeting with the California Joint State/Federal Judicial Council. Members of this group include the Chief Justice of the California Supreme Court, the Senior Judges of the 9th Circuit Court of Appeals. In essence, I can tell you they agree that we must work together in our efforts as we approach issues of law in Indian Country.

In conclusion, I am very encouraged by your efforts as reflected thus far in S. 797. This legislation can help create a seamless state, federal and tribal law enforcement procedure to the mutual benefit of all. Let me add this as a caveat though: the true goals and intent of S. 797 will only be realized if the Federal Government has a long term commitment to provide the resources and, as important, the influence to encourage all the law enforcement jurisdictions—tribal, federal, state and local—to join in this effort.

The time is now once and for all for everyone to step up to the plate. Whether it is expanding the tribal courts' sentencing authority or the building of tribal custodial facilities, we have not only have an opportunity here, but an obligation to act. Tribes need your support in their efforts at improving their relationships with state and federal agencies in helping them protect our children, woman and elders, and most of all in providing our Native Peoples with an equal access to justice.

This legislation goes a long way in closing the gap and, respectfully, I pray that Congress gives it the support it deserves.

Thank you, Chairman and Members of the Committee. I stand ready to answer any questions you may have.

Senator UDALL. Thank you very much, Judge Brandenburg, for your testimony.

President Quasula?

STATEMENT OF THEODORE R. QUASULA, PRESIDENT, QUASULA CONSULTING

Mr. QUASULA. Good afternoon, Mr. Chairman.

I deeply appreciate this opportunity to offer my thoughts and remarks regarding the Law and Order Act of 2009. By way of introduction, I am Ted Quasula, an enrolled member of the Hualapai Tribe in Arizona. The reservation consists of nearly one million acres and a tribal enrollment of about 2,500. The Hualapai Tribe is also the home of the Skywalk, a glass-bottom walkway over the west end of the Grand Canyon.

I have spent most of my entire adulthood in law enforcement, beginning as a patrol officer in the city of Flagstaff. After a couple of years, I moved on to the Bureau of Indian Affairs as a criminal investigator, and eventually worked up the ranks, becoming Director for the last 10 years of my 26-year career in the BIA.

After retiring from Federal service in 2001, I started a consulting business to work with Indian criminal justice systems. However, I still had the itch to be active in law enforcement so I became Chief of Police for the Las Vegas Paiute Tribe in Las Vegas, Nevada for the next five years. It is a small tribe, but its location in downtown Las Vegas kept things pretty lively, as you can imagine.

I have tracked the formation of Senate Bill 797 since Chairman Dorgan sent a letter to tribal leaders with a concept paper back in November, 2007. I commend this Committee and its staff for the listening sessions, meetings and previous hearings on what could be the most comprehensive and complete legislation ever to modernize Indian Country criminal justice systems. There is obviously considerable thought and effort that went into the formation of the bill.

On June 12, 2008, Senator Dorgan, Senator Thune, Senator Johnson, and Senator Tester signed a letter seeking comments on the proposed legislation. In the letter, the Senators concluded that "Many tribal communities are in the midst of a public safety crisis."

After reading and re-reading the Tribal Law and Order Act of 2009, I thought to myself this is deja vu all over again. In 1997, Attorney General Janet Reno and Secretary of the Interior Bruce Babbitt were directed by President Clinton to come up with a plan to improve law enforcement in Indian Country. There were meetings and listening conferences with tribal leaders and many others involved in the Indian Country criminal justice systems.

The beginning of that report, which is named The Report of the Executive Committee for Indian Country Law Enforcement Improvements of October 1997, starts out "There is a public safety crisis in Indian Country." The findings of 1997 and the findings in S. 797 are nearly identical. The only change is that the crisis has worsened, if that is possible, as a result of the surge or scourge of methamphetamine use on Indian reservations. There was a public

safety crisis before 1997. There was a public crisis in 1997. And there is a public safety crisis today.

In the BIA, we all knew what needed to be done, but funding was so inadequate that the aforementioned public safety crisis continued to grow right before our eyes. In a nutshell, there were not enough cops and the jails were antiquated and overcrowded.

If it were not for the many tribes that utilize their own funding resources for criminal justice systems in Indian Country, the problems would certainly be worse than what they are today. S. 797 proposes sincere and greatly needed changes in Indian Country law enforcement. I provided specific comments which are submitted in my written testimony. I offer you my views based on my professional and personal experience.

There must be accountable policing. In 2001, the Hualapai Tribe asked that I start a Police Department for the tribe. The BIA had the same problem then as it does today. It could not attract and hire police officers. There was always a shortage of officers and criminal activity was increasing. The tribe thought it could do better, so it contracted with the BIA to operate the Police Department.

The BIA funding was limited, but the tribe was desperate for adequate and sufficient law enforcement protection. Today, the tribe supplements the Federal Government funding and provides for 50 percent of the Police Department's operating budget. The tribe understood that attracting and retaining officers would not be cheap. The tribe pays its officers a little more than the surrounding communities and counties.

The Hualapai Police today participate in the State of Arizona public safety retirement system, the same as any city, county and State law enforcement in Arizona. Arizona is the only State that I know of that has passed legislation authorizing tribes, tribal police and firefighters to participate in the State's public safety retirement system. This allows officers from other departments to transfer to the Hualapai Police Department without losing their retirement.

Hualapai Police are required to complete the Arizona State peace officer standards, Arizona POST, background checks, and training requirements. When tribal officers graduate from Arizona POST basic training, they are authorized to enforce State law. I advocate State training in that it gives the tribal officers the opportunity to train side by side with State, county and local law enforcement officers. We find that sheriffs and chiefs of police realize that tribal police are required to meet the same standards as their officers.

Hualapai Police are also required to complete the BIA certification course and hold BIA special law enforcement commissions.

Now, we all know that criminals have no respect for reservation boundaries. The Hualapai Tribe has established interagency governmental agreements with the Arizona Department of Public Safety, Mohave County and Yavapai County for mutual aid and assistance. The IGAs did not happen overnight. It took open communication, a lot of give and take with State and county officials. But in the end, everybody fully agreed that there is a great need to coordinate and work together in the interest of public safety for all.

The Hualapai Police was located in a renovated residence which is wholly inadequate, not to mention unsafe. Like many other res-

ervations of comparable size and enrollment, a criminal justice center is necessary to house the courts, the police and detention.

There also must be competent court systems. The Hualapai Tribe operates its tribal court through a contract with the BIA. The tribe supplements the BIA contract with its own funds. In fact, it covers 62 percent of the operating costs. Judges and prosecutors are not required to be licensed attorneys. The law and order code is five years old and needs some updates. And the court, too, is located in a renovated community center that is 35 years old and was never designed to be a courtroom.

The adult detention facility in Peach Springs is operated by the BIA. The BIA has chronically been unable to fill its correctional officer positions primarily because of the lack of housing in the community and the lengthy recruitment process, which often exceeds a year. The fact that the BIA only posts its vacancies on a Federal website prevents many people on reservations from accessing the vacancy information.

The low pay in comparison with surrounding county jails is another obstacle. As of two weeks ago, the BIA had four correctional staff to staff a 45-bed facility which is always filled to capacity.

Tribal police yesterday had 197 arrest warrants that are not processed because there is simply no place to book or house prisoners. Because of staff shortages and unsecure outdoor recreation yards, prisoners are not allowed to go outdoors to exercise or to even see the sunlight. They are confined to cells or day rooms 24 hours a day.

In September, 2005, through February, 2007, the BIA closed the jail on a one-day notice. It was a monumental disaster. If there was jail space available, tribal police could house prisoners in Flagstaff, Arizona, 115 miles away. If no space was available, officers were forced to take prisoners to Gallup, which is 300 miles away one way. BIA had a contract with those facilities.

Because the jail closure created so many problems for tribal officers and the community in general, we truly believed it would never happen again. However, earlier this month BIA detention officials contacted the tribe and said it was closing or suspending the operation of the jail again.

You know, S. 797 increases sentencing from one year to three years. For us, it doesn't really matter. Unless there is a detention facility available, increased time makes little sense, although we fully agree with it.

We have a new juvenile detention facility. The tribe is operating it under contract, and quite frankly, we are off to a great start, although it, too, is already underfunded. Out of necessity because the BIA could not open the facility, the tribe took over via contract and we are operating it and I think we are off to a great start.

In closing, I want to say that tribal governments have equal responsibility to ensure public safety in Indian Country. I have said repeatedly that if tribes expect Washington, D.C. to fix all the social ills on the reservation, they will be waiting forever. Tribal governments must ensure that all local service providers, including those in the criminal justice system, collaborate to ensure that maximum effective services are provided.

Too many times the police are blamed. Police cannot arrest their way out of community problems. Finger-pointing, placing blame is a waste of time. I say Washington can provide the tools, but it is the tribes that must do the work.

You know, section two in the Tribal Law and Order Act lists a number of findings that we have heard over and over and over. Commitment is the next finding that we need.

Honorable Members of the Committee, again thank you and your staff for the outstanding work in introducing S. 797. We all agree that there is a public safety crisis that affects the lives of our citizens living and working on the Indian reservations. Let us get the legislation passed and signed into law because there is a lot of work to do to make all of Indian Country safe and secure.

Let's not let the next generation of tribal criminal justice practitioners read about another fruitless effort. I commend you for striving to enact effective comprehensive legislation which finally addresses all the needs for public safety in Indian Country.

Thank you very much.

Before I quit, I would like to introduce the Chairman of the Hualapai Tribe, Mr. Wilfred Whatoname.

Senator UDALL. Thank you for being here, Mr. Chairman.

[The prepared statement of Mr. Quasula follows:]

PREPARED STATEMENT OF THEODORE R. QUASULA, PRESIDENT, QUASULA CONSULTING

Good afternoon Chairman Dorgan, Vice Chairman Barrasso and Members of the Committee. I deeply appreciate this opportunity to offer my thoughts and remarks regarding S. 797, the Tribal Law and Order Act of 2009. By way of introduction, I am Ted Quasula, an enrolled member of the Hualapai Tribe in Arizona. The reservation consists of nearly 1 million acres, and the tribal enrollment is about 2,500. The Hualapai Tribe is also home of the Skywalk, a glass bottomed walk way over the west end of the Grand Canyon.

I have spent most all my entire adulthood in law enforcement, beginning as a patrol officer in the City of Flagstaff, Arizona. After a couple of years I moved on to the Bureau of Indian Affairs as a criminal investigator and eventually moved up the ranks, becoming director for the last 10 years of my 26 year career in the BIA. After retirement from federal service in 2001, I started a consulting business to work with Indian criminal justice systems. However, I still had the itch to be in active law enforcement so I became chief of police for the Las Vegas Paiute Tribe for the next five years. It is a small tribe, but its location in downtown Las Vegas kept things pretty lively as you can imagine.

I have tracked the formation of S. 797 since Chairman Dorgan sent a letter to tribal leaders with a concept paper back in November 2007. I commend this Committee and its staff for the listening sessions, meetings and previous hearings on what could be the most comprehensive and complete legislation ever to modernize Indian Country criminal justice systems. There was considerable thought and effort that went into the formation of the bill. On June 12, 2008, Senator Dorgan, Senator Thune, Senator Johnson and Senator Tester signed a letter seeking comments on the proposed legislation. In that letter the Senators concluded that "many tribal communities are in the midst of a *public safety crisis*."

After reading and re-reading the Tribal Law and Order Act of 2009, I thought to myself, "This is déjà vu all over again." In 1997 Attorney General Janet Reno and Secretary of the Interior Bruce Babbitt were directed by President Clinton to come up with a plan to improve law enforcement in Indian Country. There were meetings and listening conferences with tribal leaders and many others who were involved with criminal justice systems. The beginning of that report, named *Report of the Executive Committee for Indian Country Law Enforcement Improvements* of October 31, 1997, starts out with, "There is a *public safety crisis* in Indian Country." The findings in 1997 and the findings in S. 797 are nearly identical. The only change is that the crisis has worsened, if that is possible, as a result of the surge of methamphet-

amine use on reservations. There was a public safety crisis before 1997, there was a public safety crisis in 1997, and there is a public safety crisis today.

In the BIA we all knew what needed to be done but funding was so inadequate the aforementioned public safety crisis continued to grow right before our eyes. In a nutshell, there were not enough cops, and jails were antiquated and over-crowded. If it were not for the many tribes that utilize their own funding resources for criminal justice systems, the problems would certainly be worse than what they are. I must note that the BIA was created for the purpose of effecting treaties and obligations stemming from the unique trust responsibility established by the United States Constitution and centuries old United States Supreme Court cases.

And now for specifics. S. 797 proposes sincere, greatly needed changes in Indian Country law enforcement. I offer you my views, based upon my professional and personal experience.

Police

There must be accountable policing.

In 2001 the Hualapai Tribe asked that I start a tribal police department for the tribe. The BIA had the same problem then as it does today—it could not attract and hire police officers. There was always a shortage of officers and criminal activity was increasing. The tribe thought it could do better so it contracted with the BIA to operate the police department. The BIA funding was limited but the tribe was desperate for adequate law enforcement protection. Today the tribe supplements the Federal Government funding and provides for 50 percent of the police department operating costs. Law enforcement is expensive. Hualapai law enforcement officers are required to meet professional standards for hiring and training. Officers undergo an intense background check including a polygraph examination.

The tribe understood that attracting and retaining officers would not be cheap. The tribe pays its officers a little more than the surrounding counties and communities. Hualapai police participate in the State of Arizona Public Safety Retirement System, the same as city, county and state law enforcement officers. Arizona is the only state that I know of that passed legislation authorizing tribal police and firefighters to participate in the state public safety retirement program. This allows officers from other departments to transfer to the Hualapai Tribal Police Department without losing their retirement. Hualapai tribal police officers are required to complete the State of Arizona Peace Officers Standards and Training (AZPOST) background checks and training requirements. When officers graduate from AZPOST basic training they are authorized to enforce state laws. I advocate state training in that it gives tribal officers the opportunity to train side-by-side with state, county and local law enforcement officers. Sheriffs and chiefs of police realize that tribal police are required to meet the same standards as their officers. Hualapai tribal police are also required to complete the BIA certification course and all hold BIA Special Law Enforcement Commissions. The problem is that the BIA does not regularly offer the required course and takes up to a year to get officers BIA trained and certified. All Hualapai law enforcement officers must also complete annual in-service training of no less than 40 hours.

Criminals have no respect for reservation boundaries. The Hualapai Tribe has established Interagency Governmental Agreements with the State of Arizona Department of Public Safety, Mohave County and Yavapai County for mutual aid and assistance. The IGAs did not happen overnight. It took open communication and some give and take with state and county officials but in the end everyone involved agree that there is a need to coordinate and work together in the interest of public safety for all. The fact that tribal police were state trained and certified may very well have been the deciding factor.

The Hualapai police department is located in a renovated residence which is wholly inadequate not to mention unsafe. Like many other reservations of comparable size and enrollment a criminal justice center is necessary to house the courts, police and detention programs.

Las Vegas Paiute tribal police officers are Nevada POST certified and hold BIA Special Law Enforcement Commissions. The Las Vegas Paiute Tribe has an Intergovernmental Agreement with Las Vegas Metropolitan Police Department and Clark County. The location of the tribe's headquarters in downtown Las Vegas created numerous situations involving fresh pursuit onto tribal lands. Like the Hualapai Tribe, the Las Vegas tribe supplements the Federal Government funding. The tribe contributes 90 percent percent of the police and dispatch operating costs. The tribe contributes 100 percent of contract detention costs with the City of North Las Vegas. There is no BIA jail in southern Nevada.

Courts

There must be a competent court system.

The Hualapai Tribe operates its tribal court through a contract with the BIA. The tribe supplements the BIA court contract with its own funds. The tribe's portion covers 62 percent of the operating costs. The judges and prosecutors are not required to be licensed attorneys. The law and order code is five years old and needs some updates and revisions. The court is located in a renovated building that is 35years old and shares the building with the tribe's mental health program. The BIA jail is 100 yards from the courtroom so prisoners are marched to attend court.

Adult Detention

There must be adequate detention.

The adult jail in Peach Springs is operated by the BIA. The BIA has chronically been unable to fill its correctional officer positions primarily because of the lack of housing in the community and the lengthy recruitment period that often exceeds 12 months. The fact that BIA only posts its vacancies on *www.usajobs.gov* prevents many people on reservations from accessing the vacancy information. The low pay in comparison with surrounding county jails is another obstacle. As of two weeks ago, the BIA had four correctional staff to staff a 45-bed facility which is always filled to capacity. Tribal police have 197 arrest warrants that are not processed because there is simply no place to book or house prisoners. Because of staff shortages and unsecure outdoor recreation yards, prisoners are not allowed to go outdoors to exercise or to even see sunlight. They are confined to cells or dayrooms 24 hours per day. One prisoner from the Pascua Yaqui Tribe is serving a sentence to 2014.

In September 2005 through February 2007, the BIA closed the jail on a one-day notice. It created a monumental disaster. If there was jail space available tribal police could house a prisoner in Flagstaff, Arizona, 115 miles away. If no space was available tribal police were forced to take prisoners to Gallup, New Mexico, 300 miles away. The BIA had contracts with these county jails.

Because it created so many problems for tribal police and the community in general we truly believed this cannot happen again. However, earlier this month BIA detention officials notified the tribe it was closing the jail again because it could not hire staff.

Last week the Hualapai Tribe sent a letter to the Assistant Secretary—Indian Affairs asking for meaningful consultation between the BIA and tribe hopefully to work out a practical solution.

S. 797 increases sentencing from one year to three years. Unless there are detention facilities available increased time makes little sense.

Juvenile Detention and Rehabilitation Center

There must be a comprehensive juvenile delinquency program.

The Juvenile Detention and Rehabilitation Center, located on the Hualapai Reservation is proving to be a great success after 10 years of planning and efforts to secure funding for construction and operations. The Center was opened on May 15, 2009 and now provides a safe, secure detention and rehabilitation option on the reservation. Prior to this time, youth were transported hundreds of miles to contract facilities in nearby states.

The Department of Justice, Bureau of Justice Assistance, provided $4.65 million for the design and construction of this facility. $3.5 million was initially awarded and another $1.15 million was provided to complete the project as it now stands. Importantly, the Hualapai Tribal Council provided an additional amount of nearly $1million of cash in addition to all of their in-kind contributions of land, staffing and support services. In addition, BJA provided technical assistance for over five years through the Native American and Alaskan Technical Assistance Project.

The BIA entered into a P.L. 93–638 contract with the Tribe in July 2008 which enabled the Tribe to manage and operate this program. In addition to annual operating funds which amount to nearly $1.9 million in FY 2009, funds were also provided for start-up expenditures to furnish offices and housing units. Although there is currently funding for partial operations, the BIA has yet to make requests of Congress for complete funding for the actual operating expenditures. When the facility is fully staffed and operational, the costs are calculated to be $2.5 million per year, some $600,000 short of the current funding level. In addition, the BIA will not pay for any treatment and/or educational programming in the juvenile center. As we all recognize, it is not practical to house youth for lengthy periods of time without affording them access to education and treatment programs to address the issues that resulted in their delinquent behavior.

All components in criminal justice systems must work effectively and cohesively. At Hualapai we have a good tribal police department, a tribal juvenile detention and

rehabilitation facility that promises to be a success and a competent court system; however, the downfall is adult detention services. The tribe is interested in contracting with the BIA for the operation of the adult jail program but it is extremely underfunded. The tribe is not about to take over another ill funded federal program and be forced to use its scarce funding resources for adequate operation and service.

Tribal governments have equal responsibility to ensure public safety in Indian Country. I have said repeatedly that if tribes expect Washington DC to fix all the social ills on reservations they will be waiting forever. Tribal governments must ensure that all local service providers, including those in the criminal justice system, collaborate to ensure maximum effective services. Too many times the police are blamed. Police cannot arrest the way out of community problems. Finger pointing and placing blame is a waste of time. Washington can provide the tools but it's the tribes that must do the work.

I have some specific remarks about S. 797 as follows:

- Federal Accountability and Coordination—I have a problem with creating an office in the BIA where one person is in charge of police and courts. This goes back to pre-1975 when the BIA had such an office called Judicial, Prevention and Enforcement Services. It did not work effectively, especially when a person with strictly a "police" mentality is placed in charge. Courts and juvenile services always came in second. Even the BIA then decided it was better to separate enforcement and detention from the courts. Ideally they should be separate and distinct offices at equal levels. Many tribes have amended their constitutions to separate the two arms of government.
- DOJ COPS grants are a giant welcome back especially for overtime, equipment and training. The main issue with the hiring grants is that many times tribal governments do not have a steady income base to ensure they can pick up these costs when the hiring grant funds expire. Instead additional funds should be made available to the BIA on a permanent basis.
- NCIC access for tribal police is a standard practice at some tribal police agencies. The Las Vegas Paiute police dispatch center has access to NCIC information. It is an important and life-saving tool for law enforcement. The tribe was required to meet certain security standards and the Nevada Department of Public Safety conducts periodic training, inspections and audits. This requirement cannot be disregarded because it ensures professionalism, security and trust.
- I have an issue with housing tribal misdemeanor convicts in Bureau of Prisons detention facilities. From my experience, BOP houses felons. Moreover, the nearest BOP facility from Peach Springs in over 225 miles away. In any case, tribal court offenders must be incarcerated somewhere whether it is in a county, city, federal or tribal jail. Of equal importance is for tribes to have the ability to house these offenders in close proximity to their families and potential employment options upon release.
- Year after year tribes request additional funds from the BIA. They are told there is no money available yet it is widely known that BIA law enforcement continues to carry over unspent funds at the end of the fiscal year. There is simply no transparency or accounting on how BIA law enforcement spends appropriations. Legislation requiring annual accounting reports from the BIA may resolve this problem.
- A funding formula for the distribution of funds is fine except that the pot of money must be sufficient in the first place. Back when law enforcement was a part of the Tribal Priority Allocation process many tribes prioritized law enforcement funding. Other tribes did not. It is unfair to take money from the tribes who prioritized law enforcement to offset those that did not.
- A uniform database for crime data collection and information sharing is absolutely necessary; however, in the past some tribes objected to publicizing their crime information saying it had negative impact especially when they were dealing with economic development.
- If it takes legislation to get all U.S. Attorneys to appoint Assistant U.S. Attorney liaisons this may assist in promoting continuity of prosecutions in Indian Country. Federal prosecutors serve an important function in building trust by serving tribal communities, much like a local district attorney. We all recognize that violent crimes cannot be addressed except by them.
- The Indian Law and Order Commission should be a low priority. It seems to me that if the Administration and Congress agree there is a crisis in Indian Country there is no need to study it some more.

- Do all federal law enforcement agencies have foundations to subsidize their operations or are they sufficiently funded with federal funds? Or will Indian Country Law Enforcement be alone in taking gifts and donations to fund their law enforcement programs? There cannot be a double standard.
- The Office of Indian Country Crime is necessary for ensuring uniformity with prosecuting federal crimes. Currently it varies from district to district. Many times there will be prosecution in one case then declination of a similar case—sometimes from the same reservation. Some districts have thresholds on the dollar amounts stolen or amount of drugs involved. For felony crimes by or against Indian people, the United States has exclusive jurisdiction.
- Reauthorizing past legislation is fine but I have learned that sometimes there is a huge disconnect between authorization and appropriation. Unfunded authorization means failure for promising ideas.
- If the Federal Government is going to build jails, it must ensure adequate funding for safe and effective operations. There must be a well coordinated effort between DOJ and DOI. Too many jails are left empty or in partial use because of insufficient funding.
- There is a lot of responsibility in the Tribal Law and Order Act of 2009 that falls on the BIA. I can honestly say the Act requirements are doomed for failure if additional resources are not made available to the BIA to carry out its responsibilities under the Act.

I have had the opportunity to work with Indian Tribes all over the Country. I have met with numerous tribal leaders and tribal chiefs of police throughout the years. I have read accounts of criminal justice on Indian lands going back to the 1930's. I have attended numerous meetings and conferences regarding public safety in Indian Country. I have provided testimony to the Congress about the dire needs in Indian Country. I have met with Federal and state officials in an effort to better law enforcement in Indian Country. My point is that it all comes down to lack of, or shortages of resources. Section 2 in the Tribal Law and Order Act of 2009 lists a number of findings that we have all heard over and over. Commitment is the next finding that we need.

Honorable Members of this Committee, again thank you and your staff for the outstanding work in introducing S. 797. We all agree there is a public safety crisis that affects the lives of our citizens living and working on Indian reservations. Let us get the legislation passed and signed into law because there is a lot of work to do to make all of Indian Country safe and secure. Let's not let the next generation of tribal criminal justice practitioners read about another fruitless effort. During the last century, scholar and solicitor Felix Cohen observed that Indian people have been the canary in the coal mine for Congressional ideas. I commend you for striving to enact effective, comprehensive legislation which finally addresses this public safety crisis in Indian Country.

Senator UDALL. Well, let me thank the whole panel here for your statements and for your passion. I think you make a very strong case for dramatic action, a strong case for reform. And so I want to probe a little bit with you on some of the parts of this Act to see if we have it right.

President Quasula, you were a strong proponent of removing BIA police from the BIA superintendent system. The new line of authority has worked well in some districts. However, some tribes point to the change in authority as one of the main reasons for increased crime in the region.

Tribal leaders have stated that their calls to special agents in charge go unanswered for days. Tribal members report making distress calls that go unanswered. The BIA police force is the local police. They are the only show in town to provide protection, yet our staff have heard stories about BIA police officers refusing to enforce tribal laws, claiming that they are only responsible for Federal crimes.

Short of mandating a return to the old system, what can be done to provide greater accountability on the part of the BIA police to tribal communities?

Mr. QUASULA. Certainly, I can't speak for the Bureau of Indian Affairs, but professionally, personally, I think police ought to be in charge of police, and that was the whole purpose of the line authority under the Indian Law Enforcement Reform Act of 1990.

If it is not working, I would think that folks are not being held accountable. I would think from what we have heard and read with this whole reason for this hearing is it is the lack of resources. But if officers are refusing to respond to calls, they wouldn't work under my watch.

Senator UDALL. You would take strong action to make sure that they would be eliminated from the system?

Mr. QUASULA. I think you have to.

Senator UDALL. Yes, yes. Now, one of the issues here has to do with the national crime databases, and we all know that tribal police have one of the toughest jobs in the Nation. As you stated, they are forced to patrol vast reservations alone without backup. In addition, the Committee has heard that tribal police often do not have access to national criminal databases. This means that when they make a routine traffic stop, they have no information on whether the suspect is driving a stolen car, has prior weapons convictions, or poses some other danger.

In working with tribal police throughout the Nation, what is the barrier to accessing this critical information? Are you satisfied that our proposal would remove that barrier?

Mr. QUASULA. I think the legislation as written, you know, is going to work fine. I think the problem that I have experienced is the resources aren't there. Now, there are a number of the tribes that have access. The two tribes that I have just mentioned that I work for, Las Vegas Paiute and Hualapai, both have access.

Nobody is going to come do it for you. You have to do it. You have to set it up. You have to make the communication with those in charge, but it can be done. The big difficulty is the lack of resources. It costs money to do those, and the two tribes that I am involved with, thank goodness, put the money on the table to make it happen. But it can happen, it has happened.

And I think that the reason I took a little bit more of my time than I should have is that I want to explain that it can work if you put your mind to it and get the right people and hold people accountable. It can work. And I think every tribe should strive for that and most likely have that capability whether—and again, I don't want to beat it to death, but if you wait for somebody else to come do it for you, it is not going to happen.

Senator UDALL. Yes, yes. Thank you.

Judge Brandenburg, this Committee is well aware of the broken jail systems that exist in Indian Country. The few tribal jails that exist are neither safe nor secure for corrections officers or inmates. While incarceration may be necessary punishment for violent offenders, it is simply not an option that is available to all tribal judges.

What effective alternatives to incarceration have you employed? Have these alternatives been successful in reducing recidivism and rehabilitating offenders?

Mr. BRANDENBURG. Well, first of all, you have to remember we have no criminal codes. We have no personnel that are trained in Southern California at least as to criminal matters. So we are completely lacking.

What we have had to do is to decriminalize certain things and make them fall within the civil regulatory scheme so that if we have a particular gaming tribe, the result is if you are convicted of this particular offense, we call them civil infractions, we will take your money. And that is as far as we can go.

Our problem has been with non-Indians. We have civil regulatory jurisdiction in California over non-Indians. Our problem is working with the State to use the State's collection remedies to get the money from these people. Other than that, we have one tribe that is working on a regional detention facility, and hopefully with this particular legislation we will be able to develop our criminal codes and to build that region detention facilities.

Again, it goes back to us being a consortium of tribes and pooling our resources. That is where we can most benefit from this particular legislation.

Senator UDALL. Judge, the Department of Justice raises some concern with the proposal to enhance tribal court sentencing authority. They claim that it may invite greater scrutiny from Federal courts. Do you see any constitutional concerns with this proposal? Should it be amended?

Mr. BRANDENBURG. I think if you have adequate codes, and I think if the due process requirements are met and your judges and staff are properly trained—and again, that comes through this legislation—I really don't see any key issues.

There is always the habeas thing that Federal courts will hold onto, but other than that I don't see any major issues that will flow out of this if it is implemented properly.

Senator UDALL. Thank you. And thank you very much for your statement in your testimony where you said the first job of government is to provide public safety. I mean, that is really the issue that we are here about today, and that really resonates with me, and I am sure resonates with everybody here in this room.

Mr. BRANDENBURG. And if I might add briefly, sir, with your approval.

Senator UDALL. Please.

Mr. BRANDENBURG. There is no greater compliment to the sovereignty or autonomy of any tribe than an independent tribal justice system. This legislation is going to help.

Thank you, sir.

Senator UDALL. Thank you.

Mr. Eid, we have heard from some tribal leaders and from some former U.S. Attorneys that Federal prosecutors are strapped, just like everybody else in the tribal justice system. Some prosecutors hold caseloads of more than 100 active cases. To account for these caseloads, the bill encourages the Justice Department to deputize or appoint Indian law experts to serve as Special Assistant U.S. At-

torneys to prosecute minor reservation crimes when they fall through the cracks in the system.

What resources are needed for both tribes and U.S. Attorneys' Offices to make this proposal work on the ground and in these native communities?

Mr. EID. Thank you, Mr. Chairman. I think it is a good proposal, but I also want to talk about the downside. What this does, of course, is it authorizes U.S. Attorneys to designate tribal prosecutors as Special Assistant U.S. Attorneys. We call them SAUSAs in our lingo. And that means that they have the same kinds of powers that an Assistant U.S. Attorney would have.

That is great. I did one of those arrangements with one of our tribes, the Southern Ute, and it was good because the tribal prosecutor and our office were able to act transparently. And by the way, we shared all declination information of every kind with our tribes. We didn't hold anything back. I still don't understand why that would ever be done. As long as you protect confidentiality and grand jury secrecy, there is no reason to hold it back.

But having said that this is a good provision, I think the tribes have expressed concern, at least in my district they did, about the Federal Government yet again nickel and diming on the trust responsibility. If you have the right level of Assistant U.S. Attorneys, why do the tribes have to cough up yet more resources to do something the Feds should be doing in the first place? And so that is the downside of this.

I happen to support declination reporting because I think it will be a powerful vehicle to help Assistant U.S. Attorneys in the field, particularly tribal liaisons who are struggling because they don't have the same level of resources as they really need to get their job done, in many instances. And I think as a friend of the prosecutor, we need to embrace this opportunity for transparency and not try to run away from it.

Senator UDALL. And you emphasized that in your testimony and in your statement here today on case declination. Can you describe a little bit in detail how you see that working? I mean, do you report on a three-month basis, a yearly basis, and then who gets the information? And then what are the feedback loops that make it work?

Mr. EID. Well, Mr. Chairman, I would just say that the bill in section 102 protects everything in terms of its confidentiality. And that is critical. And so we will remove that red herring from the debate because everyone wants to protect law enforcement privacy and secrecy.

With that in mind, the declination system ought to report across the whole justice system. That is to say, when a matter comes in to the tribal police or the BIA and so on, you log it there. When it comes in to the FBI, you log it there, just like is currently done, by the way, for terrorism cases. I used to be on the Advisory Board for National Security and Antiterrorism.

We do this in our offices. We are always logging things that come in. And we agree on a set of uniform measures that we use. If an agency, for example the FBI, decides that there is not a sufficient basis to continue an investigation, guess what? In most cases, they

give us a letter. The IRS does it if they decide not to go after somebody. And so that never becomes a "declination."

When it gets to the point where an agency is ready with a case and then the U.S. Attorney looks at it and says, there is not a sufficient quantum of admissible evidence here, then we have a legal, ethical and frankly moral duty not to prosecute that case.

So all of that ought to be tracked. You don't have to disclose any confidentiality to be able to say when you look at those charts that we ought to be doing more in some of these areas. And it was often said on the Ute Mountain Ute Reservation, which I now represent, it was often said among tribal members, they would tell me when I was U.S. Attorney and they tell me now, do you just have to kill somebody or rape some woman in order to get the Federal Government's attention?

That is not a criticism of anyone in the system. It is simply to say that too many cases are falling through the cracks. We had a case, Mr. Chairman, as a typical case to illustrate this point. We had a situation one night where we had an apparent homicide, and the one FBI agent assigned to our region was up in Denver, 400 miles away testifying in front of a judge. So he was not around. He is a great agent, by the way, but he was not there.

There was no one to secure that crime scene but one BIA officer, because typically we have only two on duty and they work 12-hour shifts a lot of the time. Try working back to back 12-hour law enforcement shifts. And by the time the one officer tried to establish a perimeter, he couldn't do so and the crime scene was compromised.

That is a great example of a case that is not a declination, but that needs to be reported and factored into the system so that people understand at the community level that something will be done in the future to avoid that. So we should not fear this. We should get together and do what we do in terrorism cases, what we do in other kinds of cases, even as mundane as tax fraud, and simply decide which agency is going to report; what is sufficient for evidence; and make a determination. If it is not, if they refer it to the U.S. Attorney's Office, they will look at it. And if you say decline it, then decline it, and stand up, damn it all, for what you are supposed to do.

Senator UDALL. Yes, yes.

Mr. EID. Forgive my language, Mr. Chairman. It is a Western thing.

[Laughter.]

Senator UDALL. It is a Western thing, right? Okay. Thank you.

Chairman Coby, and this is really a question for you and Judge Brandenburg. The Department of Justice raises some concern with the proposal to enhance tribal court sentencing authority. They claim that it may invite greater scrutiny from Federal courts, this question.

Do you see any constitutional concerns with this proposal? Or should it be amended?

Mr. COBY. No, we support that amendment.

Senator UDALL. Great.

Judge Brandenburg?

Mr. BRANDENBURG. Do I see any conflict? Providing your judges are adequately trained, your staff is adequately trained. And this legislation provides for that. I say in terms of additional scrutiny, bring it on because you have to start at the tribal level first. I always used to say, and I still say this, as far as the appellate courts go, I am a very appealing guy. But let's make some decisions and let's move on. And if the appellate courts want to take it under, it can only help us because they will close the gaps for us.

I know that is a different approach, but for too long Indian Country, the people in Indian Country have just sat back and taken a passive view. Someone tells them they can't do it, they just step away.

Well, my approach is I am not stepping away. I am stepping up. And that is what we are asking the Federal Government to do. Let's step up. Let's get this done. If there are issues to resolve, as we move through the process, the legal issues, the due process issues, we will resolve them. But let's not back off of this because we are concerned. Let's move forward.

Senator UDALL. Thank you.

Now, I have proceeded through a series of questions here to all of you. Just to close out here, if there are any of you that would like to comment on what has been said by others, or clarify, I would be happy to take some brief comments at this point.

Please.

Mr. QUASULA. Well, thank you for the opportunity, first. You know, we all agree that folks out in Indian Country deserve and expect public safety for all. In my many years in Indian Country law enforcement, the problem is there isn't enough money. It is as simple as that. I don't know how more simple I could explain it.

Senator UDALL. The resources aren't there.

Mr. QUASULA. The resources are not there. And there is just no sense in revisiting this every 10 years or so and talk about the same things.

Senator UDALL. Right.

Mr. QUASULA. And the bill closes a lot of the gaps, but the resources are necessary. Otherwise, it is not going to work. Simple as that.

Senator UDALL. Yes, yes.

Well, and I am very happy that Assistant Secretary Echo Hawk stayed here, and Mr. Ragsdale stayed here, sitting behind you to hear all of this. I am going to expect that this Administration will step forward and let us know the resources they need, so that the Congress can then step up and provide them. Because as several of you have said and reiterated and driven home the point with curse words and everything else, public safety is the most important thing in these communities. And we need to give the people there on the ground the resources in order to get the job done.

Any other?

Mr. BRANDENBURG. Yes, a comment was made by the Senator from Alaska with regards to somehow implying that reservations sometimes people, when some of these crimes are committed, the tribal members turn a blind eye, or it just goes away through the whole process of the tribal members.

One of the fundamental things that we have to deal with here is that you have to develop—law enforcement, the courts, whoever works in Indian Country—has to develop a basic trust one on one with the people. You have to remember that there is an inherent distrust of not only the court system, particularly the State court system, but law enforcement, with tribal members. They just don't trust them. And it is because of all the things we have been talking about here today.

Just for a moment think of every atrocity that has ever been committed in Indian Country, whether it is the taking of land, whether it is genocide, whether it is the taking of children, whether it is the taking of natural resources—every wrong that has ever been committed in Indian Country has been somehow approved by the Congress, by the courts, or by law enforcement.

How can I trust those people? That is the issue, building trust. Once you build that level of trust, people will come forward. Our people don't to turn a blind eye to rape. They don't want to turn a blind eye to murder. But who are you going to trust? That is the issue. That is a key fundamental issue we have to deal with in Indian Country.

And hopefully, this legislation will allow us the funds or the avenue to approach that and deal directly with it, building trust.

Senator UDALL. Excellent, excellent point.

Please?

Mr. EID. Mr. Chairman, I just wanted to acknowledge a distinguished guest who is here today. That is the Chair of the Navajo Nation's Judiciary Committee of the Navajo Nation Council, Kee Allen Begay. Mr. Begay I hope will stand up.

Well, he got on a plane. He was here before, and I wanted to use that to illustrate the point that out on Navajo where I am barred and I practice in the tribal courts, we have 20 wonderful judges out there. We have one of those judges, the Chief Justice, who is admitted to a State bar. We have another judge, Judge Perry, who is a lawyer, but is not admitted to a State bar. The rest of these wonderful judges are not lawyers, but they do a fantastic job. And we need to make sure, as this bill attempts to do, to respect their role.

And I have to say I practice law all over the United States. I have had only positive experiences and positive treatment in tribal court. And I appreciate the respect that this Committee has shown through this bill to tribal justice system. It is long overdue. Thank you.

Senator UDALL. Thank you.

Chairman Coby, do you want to have the last word here?

Mr. COBY. Yes, I will have the last word.

I just want to thank Mr. Echo Hawk and Mr. Ragsdale for staying here to hear the testimony. I believe each tribal leader that is in the room today shares the same interest. It is the public safety of our respective reservations.

And also I would like to thank the other testifiers that testified today for speaking up on behalf of Indian Country. And again, if you would share with Senator Dorgan I really appreciate him and the Committee for this very, very important bill for Indian Country.

And also the young man and young lady behind you for their hard work and dedication, too.

Senator UDALL. The staff are absolutely incredible on this Committee.

Mr. COBY. I just want to comment on the Public Law 280 issue. I think if the States aren't going to uphold their issues with respective tribes, I think we better get those things retroceded, especially for our tribe, especially our juvenile delinquency issues. There are a lot of issues on Indian reservation, and they are our future. They may be getting into trouble now, but our younger generation is our future leaders and so hopefully we can get those things straightened out.

And thank you.

Senator UDALL. Thank you very much, Chairman Coby. And please realize that Chairman Dorgan is very, very committed and interested in this issue and wants to move this along in an expeditious way.

We have just started a roll call vote on the Senate Floor, a 15-minute vote. So I am going to wrap up at this point.

I once again, like you did, Chairman Coby, thank Assistant Secretary Echo Hawk and Mr. Ragsdale for being here. I think it shows their commitment to this issue and getting to the bottom of what is happening.

I want to thank all of the witnesses that have testified today. The Committee will submit follow-up written questions to witnesses and the record will remain open for two weeks.

And this hearing is adjourned.

Thank you.

[Whereupon, at 4:13 p.m., the Committee was adjourned.]

A P P E N D I X

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General — *Washington, D.C. 20530*

June 23, 2009

The Honorable Byron Dorgan
Chairman
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice (the Department, or DOJ) on S. 797, the "Tribal Law and Order Act of 2009." The Department shares the Committee's desire to improve public safety in Indian Country, and we are committed to working with the Committee to accomplish that goal. However, we have a number of concerns about the manner in which this draft legislation seeks to accomplish that end. The Department objects to section 102 at this time. We also oppose certain parts of the legislation that impose organizational and structural changes on how the Department responds to Indian Country crime, expand tribal court sentencing authority, and mandate the transfer of tribal court offenders to the custody of the Bureau of Prisons. Our specific concerns are described below. We look forward to working with you and the Committee on Indian Affairs to address these important issues.

Sec. 2. Findings & Purposes.

The Department disagrees with several of the findings contained in section 2(a) of the legislation. In particular, sections 2(a)(3)(B) and 2(a)(8)(A) fail to recognize the important role that Federal and State courts play in maintaining public safety and the rule of law – both criminal and civil – in tribal communities. Section 2(a)(10) would find that a "significant percentage of cases referred to Federal agencies for prosecution of crimes allegedly occurring in tribal communities are declined to be prosecuted." This wrongly implies that the Department regularly refuses to proceed with Indian Country cases that otherwise meet the Department's standards for prosecution, that is, that the prosecutor believes that the conduct at issue constitutes a Federal offense and that the admissible evidence will probably be sufficient to obtain and sustain a conviction. The Department disputes that implication.

Sections 2(a)(13) (B) and (C) recite percentages of Indian and Alaska Native women who will be raped or subjected to domestic or sexual violence in their lifetimes. The Department certainly agrees that the incidence of rape and sexual or domestic violence perpetrated against

Indian and Alaska Native women requires immediate attention and a long term commitment. However, these particular figures are not drawn from research studies that included statistically representative samples of women living in Indian Country and therefore should not be relied upon in the findings section of the Act. Finally, section 2(a)(17) states that "the Department of Justice has reported that drug organizations have increasingly targeted Indian country to produce and distribute methamphetamine, citing limited law enforcement presence and jurisdictional confusion as reasons for the increased activity." This overstates the Department's position. The Department does not believe that drug organizations are producing significant amounts of methamphetamine in Indian Country, but we do acknowledge that methamphetamine is being smuggled and distributed there. The level of smuggling and distribution of methamphetamine in Indian Country has been increasing for various reasons. The Department does not believe that the lack of law enforcement resources or jurisdictional confusion is the driving force behind those increases.

Title I, Sec. 101. Office of Justice Services Responsibilities - Law Enforcement Authority

Section 101(c) would allow the Secretary of Interior to authorize Bureau of Indian Affairs (BIA) law enforcement officers to make arrests without a warrant for offenses committed in Indian Country if "the offense is a Federal crime and [the officer] has reasonable grounds to believe that the person to be arrested has committed, or is committing, the crime." Currently, BIA officers without a warrant are not authorized to arrest persons for Indian Country offenses that are not committed in their presence, unless the offense is a felony, or among certain misdemeanors involving domestic violence, dating violence, stalking, or the violation of a protective order. The Department would support increasing the categories of misdemeanors for which a warrantless arrest may be authorized by BIA officers when the offense is committed outside their presence. In particular, we support expanding BIA's warrantless arrest authority for misdemeanor controlled substances offenses, in violation of Title 21, U.S. Code, Chapter 13; misdemeanor firearms offenses, in violation of Title 18, U.S. Code, Chapter 44; misdemeanor assaults, in violation of Title 18, U.S. Code, Chapter 7; and misdemeanor liquor trafficking offenses, in violation of Title 18 U.S. Code, Chapter 59. We do not support expanding BIA's warrantless arrest authority to encompass all "Federal crimes" committed in Indian Country, but outside the officer's presence. For minor offenses not involving a measureable risk to public safety, the Department believes an arrest warrant should be obtained.

The Department also recommends that the standard for a warrantless arrest contained in 25 U.S.C. §2803(3) be modified to more closely track U.S. Supreme Court precedent. Currently, the statute requires that an officer possess "reasonable grounds" to believe that the person to be arrested committed the offense. We suggest that the officer should be required to possess "probable cause" to believe that the person to be arrested committed the offense. *See Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

Sec. 102. Declination Reports.

Section 102 requires that, when federal law enforcement agencies or a U.S. Attorney decide not to pursue an investigation or prosecution of an alleged violation of federal law committed in Indian Country, the agency and/or the U.S. Attorney provide its "evidence," and "related reports" to "appropriate tribal justice officials." For U.S. Attorneys, the obligation must be complied with "sufficiently in advance of the tribal statute of limitations." The apparent intent is to allow tribal authorities to pursue the case in tribal court, should they choose to do so. It appears that the section is also intended to address the perception that U.S. Attorneys decline Indian country cases that should be prosecuted.

The Department is both mindful of and attentive to the fact that certain cases may be more appropriately pursued in tribal court; or in some cases in both federal and tribal court. To that end, federal authorities routinely coordinate and cooperate with tribal authorities to ensure that, subject to applicable rules and regulations, any other jurisdiction with prosecution authority has the information and evidence it needs to pursue its case. The Department therefore believes that section 102 is designed to fix a problem – a perceived lack of federal, state, and tribal law enforcement coordination – that is atypical.

However, to the extent there are instances in which coordination is lacking, this is not a problem that will be cured through legislative mandates. Only through the development of improved information sharing and strengthened intergovernmental relationships will we successfully address this issue. Likewise, we believe that the perception that U.S. Attorneys decline meritorious criminal cases is in general a misperception. Again, only by building improved lines of communication between federal and tribal law enforcement, as well as tribal communities, will these misperceptions be addressed.

The Department is committed to improving communication between federal and tribal law enforcement and, more generally, is actively focused on criminal justice in Indian country. In the coming months we will work closely and collaboratively with tribal law enforcement to improve the exchange of information. While Section 102 is intended to address declination issues, the Department believes that the best solutions will come through discussions and communication between the parties. We are concerned that any solution that does not involve meaningful collaboration between the parties will, in the final analysis, not really address the issue. The leadership of the Department would like the opportunity to work through this issue with tribal leadership before we endorse legislation. To that end, we oppose section 102 at this time.

While we do not support this section, we note that the section has an internal inconsistency. Sections 102(a)(1) and (2) provide that investigators and prosecutors "shall" submit "evidence relevant to the case" whereas section 102(c) states that the reports under those subsections "may include the case file, including evidence collected and statements taken. . . ." Finally, section 102(a)(1)(B) should be amended in two ways. Instead of referring to

declinations, the body of that subsection should address the submission of "relevant information regarding the decisions by federal investigative agencies to not investigate or to terminate an investigation without referring it to the appropriate prosecutor." Subsection 102(a)(1)(B)(iv) should be amended to require that submissions include "the reason for deciding not to initiate or open an investigation, or for deciding to terminate an investigation." Both of these changes are intended to clarify that "declination" is a term of art associated with prosecutorial decision making, not investigative decision making.

Sec. 103. Prosecution of Crimes in Indian Country.

The Department strongly supports the appointment of tribal Special Assistant United States Attorneys (SAUSAs) under the Department's current procedures and guidelines. We welcome the clarification in section 103(a) that the authority contained in 28 U.S.C. § 543(a) includes tribal SAUSAs. We agree, moreover, that SAUSA appointments should be made in consultation with the tribe(s) expected to be serviced by the SAUSA. However, we suggest a coordinate clarification in 18 U.S.C. § 209(a), which addresses state and local contributions to a federal officer or employee's salary. DOJ recommends an amendment to 18 U.S.C. § 209(a) that inserts "tribe," between "county," and "or municipality;".

The Department also supports the practice of having an Assistant United States Attorney serve as a tribal liaison in each federal district that includes Indian Country. In practice, this already occurs in almost every federal district that includes Indian Country. Because we believe that the U.S. Attorney in the district is best suited to determine the needs, priorities and personnel assignments of the Assistant U.S. Attorneys in his or her district, we do not believe it is necessary for this to be statutorily mandated at this time.

The Department also opposes the codification of the duties, obligations, and assignments that a tribal liaison must perform within a U.S. Attorney's Office. Section 103(b) would amend The Indian Law Enforcement Reform Act by adding a list of nine functions for which tribal liaisons "shall be responsible." The Department fully recognizes the importance of tribal liaisons and currently has 44 tribal liaisons in districts that include Indian Country within their jurisdiction. In fact, earlier this year, the Director of the Executive Office for U.S. Attorneys sent a memorandum to the 26 U.S. Attorneys whose districts include Indian Country reminding them of the value of their tribal liaisons and suggesting that they be used for many of the same duties listed in the bill.

As the Director noted in that memorandum, however, it is important that tribal liaisons are best employed in the context of local needs and conditions. The Department has learned through long experience that the public safety problems facing Indian Country do not lend themselves to a one-size-fits-all approach. The problems facing tribes in one district may not mirror those in a neighboring district, much less a district hundreds or thousands of miles away. Often, tribes within the same district face fundamentally different challenges. Tribes have access to differing levels of resources, are subject to different forms of governance, range in size from

hundreds to hundreds of thousands of enrolled members, and have reservations of all shapes, sizes, configurations, uses, and locations.

As a technical matter, the proposal in section 103(b), amending 25 U.S.C. § 2801 et seq., should read, in section 11(c)(2)(A), that the Attorney General should take all appropriate actions to "encourage the aggressive prosecution of all federal crimes," not "all crimes."

Sec. 104. Administration.

Section 104(a). Office of Tribal Justice: The Office of Tribal Justice (OTJ) has been recognized in statute 25 U.S.C. 3653(6), and has functioned for some time with staff detailed to it by other components of the Department. We understand Section 104(a) as an effort to give prominence to OTJ by making it a separate component of the Department. The Department strongly supports Section 104(a) with some modification. First, OTJ should remain an "office" within the Department, not a "division." Divisions within the Department are generally large litigating components. Instead, OTJ – like the Office of Legal Counsel or the Office of Legal Policy – should remain an "Office."

Second, because OTJ exists in statute, the Department recommends that Section 104(a) direct that the Attorney General establish OTJ as a separate component. That would have the effect of placing it on the Department's organizational chart and giving it greater prominence. This may be accomplished by amending the proposed Subsection 106(a) (the provision to be inserted into the Indian and Tribal Justice Technical and Legal Assistance Act of 2000) to read as follows:

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

Third, the Department recommends striking Subsection 106(b) (of the provision to be inserted) which addresses personnel and funding. The Department will continue the current personnel and funding arrangements until appropriations are provided.

Finally, the duties identified in Subsection 106(c) (of the provision to be inserted) reflect what are currently OTJ's core functions. Accordingly, the Department recommends that the heading of this Subsection be changed from "Additional Duties" to "Duties of the Office of Tribal Justice." In addition, the opening paragraph of proposed Subsection 106(c) should be replaced with "The Office of Tribal Justice shall – "

With the above modifications, the Department actively supports Section 104(a). 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 constant channel of communication for Indian tribal governments with the Department. The Department agrees that it is time to recognize OTJ as a critical and permanent entity within DOJ.

Section 104(b). Office of Indian Country Crime: Section 104(b) would create an Office of Indian Country Crime within the Department's Criminal Division, to be overseen by a Deputy Assistant Attorney General. The Office would be assigned responsibility for directing and coordinating the Department's policies and prosecutions with respect to Indian Country crime. The Department is opposed to this provision, which will consume DOJ resources without measurably improving public safety in Indian Country.

First, the Department objects to one of the duties this legislation would assign to the Office of Indian Country Crime: the responsibility to "develop and implement criminal enforcement policies for United States Attorneys and investigators of Federal crimes regarding cases arising in Indian Country." The authority to "develop and implement" policies directed to presidentially appointed U.S. Attorneys should be reserved to the Attorney General or the Deputy Attorney General. At most, the Office of Indian Country Crime may be assigned a coordination function.

More importantly, the vast majority of the Department's most experienced Indian Country professionals now serve where they are most needed – in Indian Country. Bringing some number of them to Washington, D.C., to staff the Office of Indian Country Crime would degrade the Department's capability, not enhance it. Whatever problems exist in the Department's approach to public safety in Indian Country, those problems are not attributable to a lack of coordination or direction from Washington. Indian Country criminal justice issues are already coordinated from the Executive Office for U.S. Attorneys, which recently hired a full-time career employee as its Native American Issues Coordinator. Last year the Deputy Attorney General created the Advisory Council on Tribal Justice, made up of representatives from all DOJ components with Indian Country responsibilities. The Council meets periodically, and advises senior leadership on the entire spectrum of issues the Department faces in Indian Country. Moreover, the Office of Tribal Justice continues its long history of being DOJ's primary conduit between tribes and the Department on criminal justice policy matters. Creating an Office of Indian Country Crime would simply add a layer of bureaucracy, without any coordinate benefit to the Department or the residents of Indian Country.

In that regard, the Criminal Division already plays an important role in Indian Country prosecutions. Criminal Division expertise has long been applied to specific Indian Country cases involving gaming, child pornography, and public corruption. Indeed, the entire range of Criminal Division expertise is available to Indian Country prosecutors when needed. An Office of Indian Country Crime will not add to this role.

Title II, Sec. 201. State Criminal Jurisdiction and Resources.

The Department supports the objective of Section 201, which purports to clarify and streamline the process by which concurrent criminal jurisdiction in Public Law 280 (P.L. 280) states may be retroceded to the United States. The Department is concerned, however, that as drafted Section 201 may have the unintended consequence of automatically creating concurrent federal jurisdiction in all P.L. 280 states. Section 1162(c) of title 18 now makes sections 1152 and 1153 inapplicable in P.L. 280 states. Section 201 would replace section 1162(c) with language delineating the circumstances under which sections 1152 and 1153 "shall remain in effect" in P.L. 280 states. But upon elimination of the existing language of section 1162(c), there will be no provision of law exempting the application of sections 1152 and 1153 in those states, thus negating the intended purpose of Section 201, which is to provide a mechanism for selective retrocession of concurrent jurisdiction.

In addition, the statutory amendments effected by Section 201 would require a tribe to consult with the Attorney General before retrocession occurs, but does not hinge retrocession on the Attorney General's consent. The Department is concerned that individual tribes not be allowed to retrocede jurisdiction to the United States without the consent of the Attorney General. The decision whether and on what time frame to accept concurrent criminal jurisdiction in a P.L. 280 state is likely to raise difficult resource and policy issues.

The Attorney General is the chief law enforcement officer of the Unites States. As such, the Attorney General is in the best position to evaluate and balance the competing federal law enforcement needs of communities across the country. This expertise and perspective is particularly important when working with Indian Country, as each Indian community's law enforcement needs are unique. To ensure that retrocessions are accomplished methodically, and in the best interests of public safety, tribes should be allowed to request a jurisdictional retrocession, but it should only be effective upon the consent of the Attorney General.

To accommodate the Department's dual drafting concerns, we recommend that Section 201 be changed to more clearly ensure that sections 1152 and 1153 of title 18, U.S. Code, continue to be exempted from application in P.L. 280 states except upon a tribe's request, and that retrocessions of concurrent jurisdiction only occur with the express consent of the Attorney General.

Moreover, the Department observes that for every tribe seeking concurrent federal jurisdiction, there will be the need for a concomitant increase in federal law enforcement resources. That is, additional agents, prosecutors, and judicial staff will need to be authorized, funded, hired, and trained. Any retrocession of jurisdiction to the federal government should be conditioned on the prior identification of such resources. Without the necessary additional resources, an increase in prosecutorial authority cannot produce an increase in prosecutions, except at the expense of other competing public safety priorities.

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

Section 202 develops a grant program to encourage cooperation on law enforcement issues between tribes and state or local governments. The Department supports efforts to enhance cooperation between state, tribal, and local governments. Rather than creating duplicative programs aimed at accomplishing identical or very similar goals, the Department recommends providing additional funding for the existing current Community Oriented Policing Services (COPS) Tribal Resources Grant Program.

Title III, Sec. 301. Tribal Police Officers.

Section 301 mandates that the Attorney General and the Secretary of Interior "develop a plan to enhance the certification and provision of special law enforcement commissions to tribal law enforcement officials." The use of special law enforcement commissions allows tribal officers to make arrests under federal law, and is a bonafide force multiplier in Indian Country. DOJ supports efforts to expand this effort, which has already resulted in the training of several hundred tribal officers.

Sec. 303. Access to National Criminal Information Databases.

Section 303 seeks to grant qualified tribal police officers access to national criminal databases. The FBI's Criminal Justice Information Services Division (CJIS) has always recognized tribal law enforcement agencies as qualified criminal justice agencies and has consequently assigned Originating Agency Identifier (ORI) numbers to tribal law enforcement agencies upon request. The ORI enables access to the National Crime Information Center (NCIC), which includes the ability to both view data and input data.

The Department supports efforts to increase tribal access to NCIC, and believes such efforts are critical for public safety. The Department, however, requests the following modification to Section 303(b) to insure that the provision is not interpreted to impose an affirmative, mandatory duty on the Attorney General to provide each tribe seeking to access the NCIC with the technical resources the tribe would need to do so: that Section 303(b)(1) be revised with the language used in Section 303(a), to read, "The Attorney General shall ensure that tribal law enforcement officials that meet applicable Federal or State requirements ~~have~~ be permitted access to national crime information databases."

Sec. 304. Tribal Court Sentencing Authority.

Section 304 increases the authority of tribal courts to sentence offenders to up to three years in prison (the current limit is one year), and authorizes tribal courts to direct that defendants convicted in tribal court serve their sentences in federal prisons. These provisions are significant changes to the *status quo*.

The Department further notes that increasing the maximum tribal court prison sentence to three years may invite greater scrutiny if those convictions are challenged in federal court, unless indigent defendants are provided with counsel. As drafted, section 304 would prohibit tribes from denying defendants the assistance of counsel, but does not provide for such assistance if the defendant is unable to afford counsel.

Furthermore, the Department strongly opposes the transfer of persons convicted in tribal court of crimes of violence, serious drug crimes, or sex offenses, to Bureau of Prisons (BOP) facilities to serve their sentences. DOJ understands that BIA and tribal detention facilities may be inadequate in quantity and quality to accommodate the number and type of defendants being sentenced in tribal court. The Department supports an upgrade and expansion of those facilities to meet the current shortfall. In fact, the American Recovery and Investment Act of 2009 provided $225 million for the construction or renovation of tribal correctional and detention facilities. The Office of Justice Programs has already solicited and received grant applications for this money, and preference will be accorded to projects that can be started and completed expeditiously. This money and the construction it funds present a far better solution to the problem of inadequate tribal facilities.

In addition, BOP attempts to designate an inmate to the appropriate security level institution that is within 500 miles of his or her release residence. But because of inmate population conditions and facility locations, inmates serving tribal court sentences would almost certainly be housed more than 500 miles from their communities. As a result, visits by family and friends are likely to be difficult, expensive, and infrequent. Pre-release community contact designed to facilitate reentry will be all but impossible. Instead, offenders will be reintegrated into their communities with few of the pre-release support mechanisms that can increase the prospects of success and reduce recidivism. This is counterproductive to the reentry needs of the inmate and the public safety goals of the community.

The implementation provisions contained in section 304 also raise concerns. That section requires that the costs of tribal court inmate incarceration, including the costs of "transfer, housing, medical care, rehabilitation, and reentry" be borne by the "United States." But there are a number of federal entities – BIA, BOP, the U.S. Marshals Service, the Indian Health Service – that might logically be expected to pick up some or all of these costs, and the legislation does not specify which entity should bear which costs. We believe this will generate confusion and conflict. Moreover, regardless of which federal entities bear the burden, the additional costs associated with housing tribal offenders in BOP facilities will be substantial, and this legislation should not transfer the responsibility for those costs without authorizing appropriations to meet them.

The Department is also concerned about being required to execute a memorandum of agreement that may be construed as limiting BOP's authority to deal with categories of inmates entrusted to its custody. Section 304 would amend 25 U.S.C. § 1302 by adding subsection (b)(4). That new section dictates that BOP recognize continuing tribal jurisdiction over tribal members serving tribal court sentences in BOP facilities. The Department is opposed to this

provision.

To maintain the safety and welfare of staff and inmates, the BOP must have jurisdiction and authority over all inmates in its institutions. In order to operate safe, secure, and uniform prisons, the BOP must be able to designate, impose administrative discipline, and control the provision of programs for all inmates in the agency's custody. In addition, the Federal government must be able to charge, prosecute, and sanction any offender for a crime committed while the offender is confined in a BOP facility. Section 1302(b)(4) undermines that authority, and it should be stricken from the bill.

Sec. 305. Indian Law and Order Commission.

Section 305 creates the Indian Law and Order Commission composed of members selected by the President, the Senate Majority and Minority Leaders, and the Speaker of the House and the Minority Leader of the House to conduct a comprehensive study of law enforcement and criminal justice in tribal communities and to develop recommendations for necessary modifications and improvements to tribal, state, and Federal justice systems. The Department agrees that bringing together a group of experts to discuss the problems facing the tribal criminal justice system and to recommend some possible solutions to the problems would provide valuable insight into these issues. Nevertheless, the Department has several concerns.

First, the Commission would include three members appointed by the President and six members appointed by congressional leaders. While this provision does not raise Appointments Clause concerns insofar as the Commission would serve only in an advisory function, the Department has consistently objected to such hybrid entities as inconsistent with the Constitution's separation of powers into three distinct branches. The creation of a commission that is neither clearly legislative nor clearly executive tends to erode the structural separation of powers and blurs clear lines of government accountability, raising concerns that the Department has long noted with such provisions. *See Common Legislative Encroachments on Executive Branch Authority*, 13 Op. O.L.C. 248, 251-52 (1989). Moreover, the size and composition of the Commission under the amended bill would result in representation of the Executive and Legislative Branches lacking proper balance. As the Department has frequently advised, the proper relationship between the co-equal branches requires that they be equally represented on the Commission if this hybrid commission is to exist at all. *See id.*

Second, section 305(g)(3) permits the Commission to "secure directly from a Federal agency such information as the Commission considers to be necessary to carry out this section." The Department does not interpret this authorization as purporting to limit DOJ's ability to protect sensitive internal deliberative communications, law enforcement matters, and information subject to attorney-client, attorney work product, and other privileges from inappropriate disclosure. Subject to that understanding, the Department does not object to this section, and in responding to any request for information from the Commission DOJ will apply, in spirit, the principles of disclosure and transparency announced by the Attorney General on March 19, 2009.

Third, section 305(h)(3) provides both the Attorney General and the Secretary of Interior with the competing responsibility of providing administrative support to the Commission. To avoid confusion and conflict, that responsibility should rest with one agency, not two. Because of its historic role supervising the administration of tribal justice that entity is most appropriately the Department of Interior.

Finally, Subsection 304(i)(1)(B) provides that the National Institute of Justice (NIJ) may contract with researchers and experts selected by the Commission to provide funding in exchange for services. The Department does not object to providing NIJ with this discretion, but notes that in exercising its discretion NIJ will evaluate Commission proposals using sound analytical principles regarding research decisions, grant management, progress and financial reporting, and scientific integrity. As a result, the Department recommends that Commission proposals for research funding be developed and selected in consultation with NIJ.

Title IV, Sec. 401. Indian Alcohol and Substance Abuse.

The Department recognizes the legal and community problems caused by alcohol and substance abuse in Indian Country. The Department does not object to establishing certain DOJ responsibilities under the Indian Alcohol and Substance Abuse Prevention and Treatment Act. However, in section 401(e), amending 25 U.S.C. §2442(a)(2), the phrase "Immigration and Customs Enforcement and the Drug Enforcement Administration" should be inserted after "United States Custom and Border Protection."

Sec. 402. Indian Tribal Justice: Technical and Legal Assistance

Section 402 reauthorizes the Indian Tribal Justice Act and Indian Tribal Justice Technical and Legal Assistance Act of 2000. The Department supports the reauthorization of these programs.

Sec. 403. Tribal Resources Grant Program.

The Department generally supports reauthorization of the Tribal Resources Grant Program (TRGP), as administered by the Department's Office of Community Oriented Policing Services (COPS).

However, section 403 would amend the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3796dd(b)) to allow tribes to obtain TRGP funds "on behalf" of BIA. This provision would violate fiscal law restrictions on using funds appropriated to one federal agency (in this case COPS grants) to augment another agency's budget. The provision is also unnecessary. The TRGP already permits tribal governments to use COPS grant funds to hire tribal police officers, regardless of whether the tribes also receive BIA law enforcement services or funds. This provision should be stricken.

Title V, Sec. 501. Tracking of Crimes Committed in Indian Country.

The Department actively supports the goal of improving crime and arrest data collection in Indian Country. DOJ offers the following technical amendments to section 501. First, in Subsection 501(b)(2), adding 42 U.S.C. § 3732(d)(2), "Office of Law Enforcement Services" should be changed to the office's current name, the "Office of Justice Services." Second, in section 501(b)(5), DOJ recommends extending the deadline for the first report to Congress to at least two years from the date of enactment, to allow one year for the design and implementation of the data collection system and one year for actual data collection. The Department also recommends an authorization for appropriations of $1 million to meet the reporting mandate, because the mandate requires activities such as the build-out and maintenance of an electronic system to transfer data between tribes and their federal partners, data processing, analysis, and report development.

Title VI, Sec. 601. Prisoner Release and Reentry.

Section 601 includes an amendment to 18 U.S.C. § 4042(a)(4) authorizing the Bureau of Prisons (BOP) to provide technical assistance to tribal governments in the improvement of their correctional systems. The Department believes that tribal jurisdictions would be better served by obtaining technical assistance from BOP's National Institute of Corrections (NIC). NIC's statutory mandate includes providing assistance to State and local governments and other public and private agencies, institutions, and organizations in the improvement of their correctional programs. *See* 18 U.S.C. § 4352. Instead of amending 18 U.S.C. § 4042, the Department recommends adding tribal entities to the organizations authorized to receive assistance from NIC pursuant to 18 U.S.C. § 4352.

The Department strongly supports the addition of tribal jurisdictions to the list of entities that BOP must notify concerning the release of inmates convicted of violent crimes, drug offenses, and sex offenses. The Department also favors notifying sex offender registry officials of the release of a sex offender, and advising released sex offenders of their duty to register.

However, BOP cannot effectuate the initial registration of the sex offenders it releases to tribal communities. Nor can it effect the registration of sex offenders in tribal registries *before* the offender is released. The Sex Offender Registration and Notification Act (SORNA), within the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), recognizes this reality, and existing SORNA procedures are designed to ensure that sex offenders released from federal custody will be fully registered in the jurisdictions where they will be residing shortly after their release from custody.

Section 601 imposes an unworkable requirement upon BOP that would treat Indian offenders being released into tribal jurisdictions disparately from all other offenders, and would not substantially enhance public safety. The Department believes that the regulatory process it currently employs to inform jurisdictions about the imminent release of sex offenders works well

with State and local jurisdictions, and will also work well with tribal jurisdictions. No new process is necessary, and creating and implementing a new process for tribal offenders will simply divert resources from protecting all communities, without making tribal communities more safe.

Sec. 603. Testimony By Federal Employees in Cases of Rape and Sexual Assault.

Section 603 provides that the Director of Indian Health Services and the Director of the Office of Justice Services must approve or disapprove, in writing, any request or subpoena of their employees to provide testimony in a deposition, trial, or other similar proceeding regarding the performance of their duties. This provision, which fails to distinguish between requests or subpoenas for testimony in federal court, or in cases where the United States is a party, is too broad. It would treat these employees differently than their counterparts in other federal agencies, is likely to conflict with existing agency regulations, and could hamper the federal prosecution of sexual assault cases arising in Indian Country. We recommend that this provision be limited to subpoenas or requests for employee testimony arising in or from cases pending in tribal courts. Additionally, we note that HHS has concerns about this provision and we understand will be communicating those separately.

Please do not hesitate to contact this office if we may be of additional assistance. The Office of Management and Budget has advised us that from the standpoint of the Administration's program, there is no objection to the submission of this letter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable John Barrasso
Vice Chairman

PREPARED STATEMENT OF WILLIAM V. ELLIOTT, DETECTIVE, WARM SPRINGS TRIBAL POLICE DEPARTMENT (WSTPD)

Dear Senators,

My name is William V. Elliott, and I am currently a Detective with the Warm Springs Tribal Police Department (WSTPD). Prior to becoming a detective for WSTPD, I was a Special Agent with the United States Department of the Interior (DOI). I initially served in the Bureau of Indian Affairs (BIA), finishing up my last 10 years with the Bureau of Land Management (BLM). Even though I am an enrolled member of the Kiowa Tribe of Oklahoma, I was raised in a relatively affluent off reservation environment.

Both my personal and professional life experiences has given me an unique vision of tribal law enforcement, viewing it from both the inside out, and the outside in. In the testimony for this bill there is a lot of talk about Tribal self determination, yet all of the answers seem to be placed on more involvement by the Bureau of Indian Affairs (BIA), United States Department of Justice (DOJ), Federal Bureau of Investigations (FBI), and state agencies. This layering of bureaucracy already has a detrimental effect at the field level for Tribal Police Departments (TPD).

Even though I strongly agree with the need for the United States Attorney's Office to have additional resources and incentives to prosecute major violations in Indian Country, federal enforcement agencies should be there to support The Tribal Police, similar to what occurs with non-Tribal departments off the reservation. The current situation depends too much on personalities, and sometimes federal response being used as a way to dictate policy and procedure to the Tribal Departments. In addition, TPDs are often held victim by state agencies, as the current federal grant (COPS and other Bureau of Justice Assistance (BJA)) and other funding support mechanisms are often funneled through the state.

A couple of examples are the BJA funded Regional Information Sharing System (RISS), and the Presidents Office of National Drug Control Policy (ONDCP) High Intensity Drug Trafficking Area (HIDTA) programs. Incorporated in the RISS founding charter, and part of it's justification for federal funding, is the promotion of law enforcement information and intelligence exchange nationally between all federal, state, local, and TRIBAL police agencies. Yet, one the biggest participant in this system, the Western States Information Network (WSIN), refuses to let Tribal agencies participate. Thus the TPDs in California, Oregon, Washington, and Alaska are not allowed to connect into this federally funded national information network.

The ONDCP HIDTA system is designed to provide funding for counterdrug programs throughout the country that have verifiable problems with drug related criminal enterprises. The HIDTA funding is controlled by each state through a board representing State, County, Local, and Federal enforcement interests in that state. Yet, even though the Tribes have demonstrated a growing drug problem in most of these states, occupy land areas bigger than most counties, and have an actual federal nexus for federal assistance, there is no Tribal Police representation on these boards. In addition, ONDCP allocated funding for "Indian Country" drug problems is routinely given to state or local enforcement agencies to "help" the tribes, rather simply funding the affected Tribal Police agency.

Recently the Drug Enforcement Administration (DEA) ruled that tribes do not have access to their national Domestic Cannabis Eradication Program (DCEP). The DCEP program provides funding to all state, county, and local departments, but because the Tribes are not considered proper "Peace Officers" under the eyes of some states, they are excluded. This causes a problem in an era of growing concerns related to the intrusion on Tribal lands by Mexican Drug Trafficking Organizations (DTO). As a result of that finding, Indian Country such as the Colville Indian Reservation, which is larger than the State of Rhode Island, has no outside funding support for marijuana detection overflight missions, or access to the DCEP program for the same overtime and equipment funding as their off reservation peers.

The Tribal law enforcement agencies, at least in the Pacific Northwest, have grown to a level of professionalism that is equal to, or surpasses their off reservation counter-parts as they normally attend both state and federal law enforcement academies. Yet, the tribal officers are automatically thought of as inferior. The United States Attorney's Office puts in criteria that all cases need to be vetted through the FBI on the assumption the Tribal Detective is going to make some critical mistake. I have worked in State, Federal, and Tribal enforcement environments. Yet, when I worked in the State and Federal environments the prosecutors' office just assumed I was competent until proven otherwise, it is only in the Tribal environment that this dynamic reversed.

Most tribal departments are simply looking for some mutual respect, and to have access to all of the other tools, and support services as their state and federal counter-parts.

I am truly impressed at the scope and detail of this legislation, and applaud the fact that Congress is addressing the root causes for the problems with law enforcement in Indian Country, instead of the old band-aid here, and band-aid there approach.

This legislation will solve a number of issues which have been brewing for sometime in the Pacific Northwest, and quite frankly were nearing a critical state. By creating solutions to tribal jurisdictional and funding issues, there will be an easing of tension between tribal, state, and county law enforcement entities.

The tribes in this region are committed to both an inter-agency and inter-tribal approach of meeting our enforcement needs and attacking the problems of drugs, gangs, and violent crime in Indian Country and neighboring communities. People on both sides of this issue need to move past old stereo types, and trust the professionalism which has grown over the last several years in tribal police departments and rural county law enforcement agencies. If the criminals can put aside personal differences for "business," then we should be able to do the same.

The tasks which have been set out in this legislation is massive, and I hope that Congress will authorize the Secretary of the Interior and the various committees to bring aboard consultants who have extensive Indian Country experience to help move the process forward quickly.

For what is worth, here are some of my observations and recommendations concerning this Indian Law Enforcement Reform Act Bill.

Section 102. Definitions

Problem Statement:

In subsection (c)—Inclusion of Case Files, the wording "may" gives the contributing agency the prerogative of either doing it or not. This is sometimes necessary

in that federal case files can be extensive, and contain information which is not relevant in supporting a specific tribal prosecution.

Possible Solution:

—Instead of case file, you may want to use the wording such as "agencies shall submit a report outlining all pertinent evidence which will support tribal prosecutions." This requires an agency to provide needed information, yet allows the contributing agency to protect internal case file sensitivity, and come up with an alternate format which can meet tribal prosecutorial needs.

Section 401. Assumption By State of Criminal Jurisdiction

Problem Statement:

One of the most pressing problems in Indian Country either under federal or state jurisdiction is the ability of the tribal or BIA police agencies to respond to instances of criminal conduct of non-Indian subjects. This portion of the bill more than adequately addresses the need to provide for a prosecutorial forum for felony events in Indian Country, but does not address the more common occurrences of misdemeanor violations.

Over the last several years tribes have opened up their reservations through the introduction of casinos, opening up of campgrounds and hotels, and the development of cultural tourism. This has caused a dramatic increase in the number of misdemeanor, or lower level felony type events (simple assault, drunk driving, disorderly conduct, etc.) which occur that the tribes or Federal Government can not adequately address within current jurisdiction. This burden then fails on Sheriff's Departments which are already stretched thin.

Possible Solution(s):

—The most practical solution would be the implementation of a system which is already operational and proven successful in managing visitor conduct on Department of Interior Lands, such as the National Parks, Bureau of Reclamation, and the Bureau of Land Management. This is done through the use of Code of Federal Regulations (CFR) which the Secretary of the Interior has the authority to promulgate. CFR regulations provide law enforcement with another option other than making an arrest, or raising an incident to felony status to resolve the issue. Most CFR violations are resolved through the issuance of a Central Violations Bureau (CVB) citation, and the United States Attorney's Offices have bail schedules, and established CVB courts already in place. This option would not necessitate the creation of a separate mechanism to handle non-Indian violators, and would not result in a dramatic rise in case load for the affected U.S. Attorney's Office(s).

This option would also provide the non-Indian violator with the ability to have the matter resolved in federal court. On the other hand, the use of CVB violation would insure that violators did not elude their responsibility for handling this matter, as a CVB citation is enforceable anywhere in the United States.

This process could be accomplished through adding verbiage to 25 CFR 11.102 or 11.104, or including it in this section, stating something to the effect; "The Secretary of the Interior, acting in consultation with the Office of Indian Country Crime, can promulgate regulations in 25 Code of Federal Regulations (CFR) as to illegal conduct of non-Indian persons visiting or residing on Tribal Trust property. These regulations will be in conformity with already existing CFRs which govern conduct on Public Lands under the jurisdiction of the Department of the Interior." The Secretary will also have the authority to delegate the authority to enforce these CFR violations to any tribal, or at the request of the affected tribe, federal, state, or local law enforcement official who meet the training and certification criteria that shall be established by the Office of the Secretary.

—The only other option would be to replace 18 USC 1153(b) with something to the effect "Any felony or misdemeanor offense committed in Indian Country that is not defined by federal laws under the jurisdiction of the United States, that offense will be subject to the provisions of 18 USC 13 (Laws of States adopted for areas within Federal jurisdiction)."

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

Problem Statement:

The Tribes may ask if county and state law enforcement agencies are going to be required to include the tribe in their grant process if they feel there is tribal impact (This is just an ethical concern and not a practical one). However, as this section is kind of ambiguous, there may be concerns by the tribes that they will have to consult, or get the approval of the states on all federal law enforcement grants available to the tribes.

Possible Solution:

—You may want to consider some verbiage that this joint committee is only for funding or grants allocated under this provision and not generally extended to all federal grant processes available to Tribal Police Departments.

Section 5. Special Law Enforcement Commissions

Problem Statement:

There are emergency situations when tribes need to mutually support one another, or there is a need to interface with the state and county law enforcement agencies and provide a mechanism for them to have authority to come onto the reservation, and for the tribal officers to travel off the reservation. These situations usually appear when you have fast breaking narcotics or violent crime investigations, civil unrest, national security such as border interdiction, or natural disaster scenarios.

At this time it is easier to get emergency U.S. Marshal Deputations, than to try and process the layers of paperwork, background investigations, and training (months) required by the Bureau of Indian Affairs. By the time you get a special deputation with the BIA, the situation is already out of control, the case has been lost, or there is just no need as the fire has burned everything to the ground.

The tribes also have the need to summon help from state and local agencies during life threatening situations such as shots fired calls, bomb threats, or hostage situations. However, local officers are exposed to civil liability and injury on the job coverage problems when working outside their jurisdiction.

Possible Solution(s):

—The Secretary, through the Bureau of Indian Affairs (BIA) Regional Directors, should be authorized to apply for emergency group deputations that will be valid for less than one year, or early if the situation(s) resolves itself in that time period, and specific to the situation for which it was issued. These emergency group deputations should adopt the same guidelines and policies as are in effect with the United States Marshal's Service. Section (c) would remain in effect for these deputations.

—There also needs to be a provision which allows the tribal police to request local assistance in life threatening, or dire emergencies, and provide protection to the officers who respond. Some possible working would be "In life threatening emergencies, or situations of dire circumstance, tribal law enforcement officials can request assistance from state or local law enforcement resources. The local officers who respond to the reservation, while acting under the direction of the tribe will be considered federal officers, and provided all of the rights and protections in this status for the limited duration of the requested assistance."

Section 301. Tribal Police Officers

Problem Statement:

In this section there is reference to "National Peace Offices Standards of Training." There is no such standard, only models identified as National Standards, and I didn't see in the draft bill where the Secretary is authorized to set any standard that is so named.

Possible Solution:

—Each state has its own POST (Peace Officer Standards and Training), which most tribal officers attend and adhere, and a more feasible statement might be "meets the standards set by the laws of the state within which the tribal lands are located, and/or in compliance with the standards established through the Federal Law Enforcement Training Center". Adequate authority exists under this act to disallow state academy training if it does not meet BIA standards.

Section 302. Drug Enforcement in Indian Country

Problem Statement:

The most pressing issue for tribes is the ability to access, and enter criminal intelligence information into two (2) primary counterdrug support systems which they are currently restricted from accessing. The first is the Bureau of Justice Assistance (BJA) funded program called the Regional Information Sharing System (RISS). This system interlinks all law enforcement units in the United States, and is critical to the tribes linking to the rest of this country's law enforcement matrix.

The second problem is tribes being denied access, and direct intelligence and analytical support from the Office of National Drug Control Policy (ONDCP) High Intensity Drug Trafficking Area (HIDTA) program. This federally funded program is supposed to provide for funding, and assistance to all law enforcement agencies operating in their areas. However, since the states act as the fiduciary for the funding,

those states that have determined tribal police officers are not "peace officers" by their definitions, have then excluded the tribes from these resources.

Additionally, the tribes currently lack the ability to make direct requests of Department of the Defense, and other military agencies involved in the counterdrug support mission for such things as equipment, training, and aviation support.

Possible Solution(s):

—Change section (d)(1) to read "to directly access and/or enter information into Federal criminal information databases and/or criminal intelligence databases which are fully or partially federally funded and designed to support regional law enforcement efforts."

—Include a section that mandates that federally recognized tribal law enforcement agencies will be allowed all access and services from the High Intensity Drug Trafficking Area (HIDTA) program as provided to other state and local law enforcement agencies of the State in which the tribe is located.

—Include a section that "allows federally recognized tribal law enforcement agencies the same access to Department of the Defense (DOD), and other federal agencies tasked with supporting counterdrug, and Homeland Security missions as provided to other Department of the Interior law enforcement units."

Section 303. Access to National Criminal Information Databases

Problem Statement:

Section 303, "Access to National Criminal Information Databases", will not necessarily guarantee tribal access to RISS databases in those places where they are currently being denied access. The section cited, 28 USC 534, specifically refers to FBI information, which means it refers to criminal history information in the Interstate Identification Index (III), and not to the information available through the RISS projects.

Possible Solution:

—I suggest that the section numbering be changed so that (b) is entitled "Authorized law enforcement agency". The remaining wording in that section becomes subsection (1). I would suggest adding a subsection (2) that reads as follows:

> (2) Eligible tribal justice officials of a federally recognized Indian tribe exercising criminal authority over Indian country shall be deemed an authorized law enforcement agency for the purpose of being granted access to any federally funded information sharing system designed and used for the sharing of information between federal, state, and local law enforcement agencies.

Section 304. Tribal Court Sentencing Authority

Problem Statement:

This section is very well done, and the only other need I can see from the tribes would be the ability to execute tribal arrest warrant off reservation, and allow state and local law enforcement agencies to detain persons found to have tribal warrants until the tribe can accept custody. In some instances tribal police officers are taunted by Indian offenders who have warrants, but who simple skip back and forth across reservations boundaries to avoid apprehension.

If it is the intent of this legislation to allow tribal courts the ability to hand down harsher jail sentences, than there will be a greater likelihood of flight, and the need for the tribes to issue warrants that are recognized outside of the reservation boundary.

There is a reciprocal problem in the presence of persons having outstanding state and local arrest warrants on the reservation. The tribal police, on reservations under full federal jurisdiction, lack the authority to arrest and extradite, and the state agency can not pursue onto the reservation.

Possible Solution:

This legislation would need to amend Title 18 USC 3182 by adding federally recognized Tribe along with State, and Territory.

This amendment would satisfy both the needs of the tribe and those of the state.

General

In two separate places, the Indian Law Enforcement Reform Act is cited for amendment by adding a "Section 11." Those two amendments are on page 9, and page 38, of the draft. The two amendments are numbered the same. If this is a drafting error, then if passed in its current form, it will complicate codification into the United States Code. If it is an error, than one of them needs to be amended to be called "Section 12" or some similar fix.

I appreciate the opportunity to enter my opinions into the formal record.

PREPARED STATEMENT OF BRUCE ADAMS, CHAIRMAN, SAN JUAN COUNTY (UTAH) COMMISSION

Introduction

On behalf of the San Juan County Commission, I want to thank Chairman Dorgan, Vice-Chairman Barrasso, and all the Members of this Committee for allowing us to submit our testimony for the record. As a county government that shares geographic jurisdiction with tribal governments and Indian people, San Juan County, Utah is very concerned about Indian Country policy.

San Juan County itself encompasses 7,821square miles, of which more than 1,155,000 acres is the Utah portion of the Navajo Reservation. Our county population is 15,055, with the majority of our residents, or 53.6 percent, being American Indians. In addition to Navajo, our county also includes the White Mesa Ute community, a federal trust reservation that is a satellite of the Ute Mountain Ute Reservation in Colorado, and the landless, yet federally recognized, San Juan Southern Pauite Tribe.

We hope that our testimony on S. 797, the Tribal Law and Order Act, can provide you with a local government's perspective about the impact the current state of law enforcement in Indian Country has on county residents who reside on federal trust reservation land. Law enforcement in Indian Country effects us all. Hopefully, our perspective will help your Congressional colleagues appreciate that tribal law and order, or the lack thereof, effects them too, no matter where there congressional district is located.

Federal Neglect Permits Crime and Prevents Punishment in Indian Country

San Juan County supports S. 797 because its call for federal coordination and accountability, and enhancement of tribal justice systems, and can help reverse the trend of unpunished crime in Indian Country.

As elected county officials, we hear from our Indian constituents when a felony occurs on their reservation. Typically, after the local tribal police have completed their investigation, it takes several days for the FBI to arrive and begin their investigation. Months later, the U.S. Attorney usually opts not to prosecute because the evidence is old, the trail is cold, and it costs too much to transport suspects to federal court.

In his testimony before this committee, Associate Attorney General Thomas J. Perrelli stated that, "in a typical year, approximately 25 percent of cases opened by U.S. Attorneys occur in Indian Country." On its face, this statement sounds like the U.S. attorney is committed to seeking justice in those 25 percent of cases. We beg to differ.

On behalf of tribal constituents everywhere, we urge this Committee to request that Mr. Perrelli answer this follow-up question, in writing, for the congressional record: Of the 25 percent of cases opened by U.S. Attorneys that occur in Indian Country, how many do the U.S. Attorneys actually prosecute?

We hope that this committee will insist that the U.S. Department of Justice (hereafter, USDOJ) provide more then just lip service to law enforcement in Indian Country. From our perspective, that is all USDOJ has done thus far. You need look no further for evidence of their indifference than to the staggering rate of crime victimization among Native Americans across the country.

The 2003 U.S. Commission on Civil Rights report—A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country—found that American Indians are crime victims at a rate more than twice that of all other U.S. residents. Indian women are victimized at a rate that is 50 percent higher than the next highest group, African American males. Indian Country crime is twice as likely to be violent than in the rest of the U.S.

Unbelievably, these extraordinary rates of crime victimization have not moved this Administration, nor any Administration before it, to use every opportunity available to invest federal resources into Indian Country. Just last year, your Committee colleague, Senator Tim Johnson, asked then President-Elect Obama to fully fund Indian Country programs enacted as part of the President's Emergency Plan for AIDS Relief reauthorization bill, which passed Congress earlier. Senator Johnson's amendment to that bill authorizes $750 million for public safety and criminal justice programs in Indian Country, but President Obama did not include such funding in his budget this year.

The Federal Government's persistent neglect of law enforcement in Indian Country has given Mexican drug cartels carte blanche to operate on reservations throughout the nation, to use them as distribution points to congressional districts everywhere, but most especially the midwest and Northeast. Drug smugglers now use secondary routes, both tribal and county roads, throughout Indian Country for trafficking. According to the Arizona Criminal Justice Commission, 40 percent of all drugs entering the United States from Mexico travel along Interstate 40, through the Navajo Nation, for disbursement across the country, yet in 2007, the Bureau of Indian Affairs had less than 10 certified drug investigators to cover all 55.7 million acres of Indian Country.

Public Safety Must Become More Important than Public Relations

A good faith commitment to law enforcement in Native American communities is long overdue. We all need the Federal Government to become more interested in keeping Indian Country safe from crime and injustice. Unfortunately, in San Juan County, Utah, it seems that USDOJ and the U.S. Department of Interior are less interested in prosecuting crimes against Indian people than using Native American culture as a pretext for high priced, high profile, public relations events.

On the morning of June 10, 2009, over 240 federal law enforcement officers descended upon San Juan County, Utah to serve warrants on 10 people and make arrests in a two-year undercover operation by the Bureau of Land Management and the Federal Bureau of Investigation to apprehend individuals who allegedly traffic Anazasi artifacts found throughout our remote county in southeast Utah. During that same two year period, violent crime and international drug dealing proliferated on the Navajo Nation because USDOJ and the U.S. Department of Interior are doing nothing to stop it. The public safety of the Navajo people did not seem to warrant any federal law enforcement officers, much less 240.

The same federal officials who cannot seem to ever find the resources to prevent and prosecute crimes in Indian Country had no problem finding the funds to descend upon Salt Lake City for a June 10 press conference, in which Assistant Secretary for Indian Affairs Larry Echo Hawk boldly claimed that, "Today's action should give American Indians and Alaska Natives assurance that the Obama Administration is serious about preserving and protecting their cultural property."

From our perspective, the only assurance the federal agencies' actions have provided thus far is that they care more about protecting artifacts of the dead than the safety of the living. This Administration, and this Congress, owe Native Americans more than talking points and press conferences. S. 797 is needed to require USDOJ and Interior to invest in the creation of modern law enforcement to keep Indian Country safe, rather than allowing federal agencies the discretion to lavish resources on high profile, headline-grabbing cases, that do not even involve living Indians.

Conclusion

San Juan County remains committed to working for the betterment of all of our people, and we thank you for the opportunity to provide testimony about S. 797 and the impact the lack of federal resources has on our tribal constituents.

PREPARED STATEMENT OF CHAD SMITH, PRINCIPAL CHIEF, CHEROKEE NATION

Mr. Chairman, Mr. Vice Chairman, and members of the Committee, I am pleased to provide a statement on behalf of the Cherokee Nation regarding Law Enforcement in Indian Country. Sharon Wright, Director, Cherokee Nation Marshal Service (CNMS) has provided information and support in the development of this statement. We thank you for accepting the Cherokee Nation's statements for the record on these important issues that impact the welfare of our citizens, our communities and other American Indians in Northeast Oklahoma.

The Cherokee Nation has 286,323 citizens. Within the fourteen county jurisdictional boundaries there is a population of 268,761 with 109,095 being Cherokee citizens. The CNMS is responsible for providing law enforcement services on approximately 105,922 acres of Indian Country checker-boarded throughout 7,000 square miles of northeast Oklahoma. The Cherokees also support law enforcement in the local jurisdictions through cross-deputations which provides a more seamless law enforcement service and public protection for our citizens residing off Indian Country. The Cherokee Nation has 49 cross-deputation agreements.

Our officers are trained through the federal Indian Police Academy and the state Council of Law Enforcement Education and Training, and undergo 40 hours of continuing education each year. CNMS operates a department of 33 sworn officers and 12 security personnel to provide a full range of law enforcement services: public

safety, protection of property, prevention, criminal investigations and narcotic investigations. The tribal justice system has an Attorney General's office and a two tiered court system with a district court and a supreme court. The funding sources used to promote justice and law enforcement in the Cherokee Nation are tribal finances, Department of Justice (DOJ), Department of Interior (Self-governance) and Housing and Urban Development (IHP–NAHASDA) allocations.

The Cherokee Nation fully supports efforts to increase the capabilities of law enforcement in Indian Country. The Tribal Law and Order Act of 2009 is a promising start to combating the problems the Cherokee Nation faces in protecting our citizens and communities. Re-authorizing and funding the Indian Alcohol and Substance Abuse Act, Indian Tribal Justice, tribal jails, and tribal youth programs is essential to improving law enforcement and we are pleased that these are included in the proposed legislation. However, we believe these authorizations should be made permanent, or at the very least, not allowed to lapse as they have in the past.

Requiring federal law enforcement officials and U.S. Attorney's Offices to submit reports stating their reasons for declining to investigate or prosecute offenders is also an essential provision to combating criminal violence in Indian territories. This condition will hold federal offices more accountable for declination rates in Indian Country, and also allow tribal attorneys to pursue action in tribal courts when appropriate.

Explicit authorization allowing a U.S. Attorney to appoint tribal attorneys as Special Assistant U.S. Attorneys is a provision currently allowed by statue though it has rarely been utilized. Utilizing tribal attorneys in this manner would help greatly in alleviating the declination problem on the federal level. Unless there is a greater effort to actively involve more tribal attorneys in prosecuting crime in Indian Country, declination rates will not improve.

Amending ICRA to allow tribes greater sentencing authority will help the Cherokee Nation better protect its citizens from Indian offenders. By also funding the creation of new jails and allowing convicted offenders to be housed in Bureau of Prisons facilities, this bill will help alleviate the costs of longer incarcerations. The Cherokee Nation is proud to say that we already provide legal assistance to all criminal defendants in tribal court, as this bill would require such for cases involving jail sentences over one year.

While increased sentencing authority over Indians will help combat crime in Indian Country, crime committed by non-Indians must also be addressed. A Bureau of Justice Services report indicated that 70 percent of domestic violence and sexual assaults against Native American women is committed by non-Indians whom tribes have no authority over. In addition to appointing tribal attorneys as Special Assistant U.S. Attorneys, Congress should state that tribes have the inherent authority to prosecute all criminals in Indian Country, regardless of their race. If Congress is unwilling to let non-Indians be tried in tribal court, then it should be allowed for tribal attorneys to bring charges against non-Indians directly in the federal courts.

By increasing funding to many needed programs and initiatives, the proposed legislation will go far in addressing the problems the Cherokee Nation and all tribes face. While all improvements to tribal law enforcement agencies are greatly appreciated, until tribes have the authority to combat all crime in Indian Country, and not just those crimes committed by Indians, no amount of money will fully fix the problems we are facing.

Mr. Chairman, we want to thank you for holding this hearing on such an important issue for Indian Country. We hope our testimony will assist you and your colleagues in making decisions to improve the safety of our people who reside on Indian lands. Because of the many cross-deputation agreements that CNMS has entered into, any improvements to our tribal law enforcement capabilities also improves law enforcement for all of Northeastern Oklahoma.

We will be happy to answer any questions you may have.

PREPARED STATEMENT OF ESTA SOLER, PRESIDENT/FOUNDER, FAMILY VIOLENCE PREVENTION FUND

As the National Health Resource Center on Domestic Violence, The Family Violence Prevention Fund (FVPF) is pleased to be a part of the National Task Force to End Sexual and Domestic Violence, and supports the recommendations and comments submitted by other national advocacy organizations concerned for the safety of women, such as Sacred Circle.

Since 2002, the Family Violence Prevention Fund, in conjunction with the Indian Health Service (IHS) and the Administration for Children and Families, has been working to improve the response to victims of domestic violence and sexual abuse in Indian health facilities and tribal communities across the United States. Through this national initiative, annual routine screening for intimate partner violence increased from four percent in 2004 to nearly 40 percent in 2008. While progress has been made, a study issued earlier this year by the U.S. Centers for Disease Control and Prevention (CDC) found that American Indian and Alaska Native women experience the highest rates of domestic violence. The CDC's survey, conducted in 2005 and released last week, finds that two in five Native women (39 percent) have been victims of intimate partner violence, compared with one in four women overall.

As a result of these statistics and the work we've done through the IHS, FVPF supports the passage of the Tribal Law and Order Act of 2009 as a positive effort to enhance tribal law enforcement authority to combat crimes such as domestic violence, sexual assault and stalking of Native American and Alaskan Native women. The complex morass of competing state, federal and tribal authority in Indian country creates a safe haven for gender based violence. Sexual assault crimes routinely go unpunished due to lack of resources, jurisdictional confusion, geographical barriers, and communication failure. As a result, Indian women are disproportionately victimized and routinely left without access to justice.

Public Law 280, The Major Crimes Act, the Indian Civil Rights Act, and the opinion in the 1978 Supreme Court case *Oliphant v. Suquamish* collectively serve to handcuff tribal authority from holding sexual assault offenders accountable. The Major Crimes Act, which authorized the federal government to assume concurrent jurisdiction with tribes over major crimes such as rape and murder, has resulted in fewer major crimes prosecuted through the tribal justice system. At the same time, rates of arrest and prosecution by the federal government for sexual assaults are low. Public Law 280, seen to many Alaskan Native and Native American people as an affront to tribal sovereignty, transferred extensive civil and criminal jurisdiction over Indian country from the federal government to the state. This change supplanted responsibility for prosecution and for law enforcement resources from the federal

government to the states and rendered many tribes in PL-280 states severely under-resourced. In addition, many state law enforcement agencies and courts are reluctant to become involved in Indian country crimes.

The Indian Civil Rights Act provided that tribes can only sentence for up to one year in jail and a $5000 fine. This severely restricted tribal ability to hold offenders accountable for serious crimes and creates a windfall for sexual predators and domestic abusers. As a result, perpetrators of crime against Indian women face less penalties than for the same crime against non-Indian women.
Oliphant v. Suquamish eliminated tribal authority over non-Indian perpetrators on tribal land. As studies show that majority of sexual assault against Indian women is committed by non-Indian men, this decision further restricts tribes from protecting victims of crime.

The Tribal Law and Order Act of 2009 takes substantial steps towards rectifying some of the legal obstacles that prevent tribal law enforcement from creating safe and violence- free communities in Indian country . We strongly support the following provisions:

Section 102 of the bill would require federal prosecutors to notify tribal law enforcement when they decline to prosecute a case that impacts Native American and Alaskan Native people. This provision will provide tribal law enforcement the opportunity to hold offenders accountable where the federal government cannot or will not prosecute. Historically, federal prosecution rates of sexual assaults and other gender based violence has been low. Geography, lack of coordination, heavy U.S. attorney caseloads, low budgets and federal law enforcement priorities have contributed to the low prosecution rate. In addition, some Native American and Alaskan Native women do not see extra-tribal enforcement as an option, particularly in sexual assault cases. These declination reports will provide victims an alternative to federal prosecution.

While the tribes' sentencing authority is still extremely constrained, this bill takes positive steps to increase tribal authority to sentence from 1 to 3 years. Under this bill, sexual assault victims would have an increased opportunity for justice in the tribal courts.

Title II of the bill will provide PL 280 tribes with recourse from the federal government to ask for assistance with the prosecution of major crimes where the states have the authority, but lack the resources, to prosecute. This provision will further close the loophole in PL 280 states where crime victims routinely experience complete failure of justice due to jurisdictional confusion, geographical boundaries, and lack of resources.

Due to the limitations on tribal law enforcement authority, many tribes utilize civil protection orders to protect victims of domestic and sexual violence. In addition to state reticence to enforce tribal court issued orders, most tribes do not have the infrastructure to enter their orders in the NCIC Protection Order File. This results in a lack or delay in enforcement, jeopardizes the safety of Native women and effectuates yet another loophole for violent offenders in Indian country. Title III of the Tribal Law and Order Acts would increase tribal access to NCIC and improve law enforcement's ability to track and arrest violent offenders.

Cross-deputization of state and tribal law enforcement officers is essential where tribal lands are adjacent to non-tribal territories and gender based violent offenders can easily flee from Indian country to state land. Title II of the bill would encourage and provide financial support to states and tribes to engage in cooperative law enforcement agreements that would permit greater collaboration between

state and tribal law enforcement and facilitate the apprehension of sexual offenders that cross jurisdictions.

The Tribal Advisory Committee to the DOJ's Indian Law and Order Commission as proposed in this bill would enhance the federal government's ability to improve law enforcement in Indian country with the voice of the community it hopes to serve. The presence of tribal representatives is essential to ensure culturally appropriate practices and to begin to unravel the decades of legal disenfranchisement of tribal communities.

Title VI of the Tribal Law and Order Act of 2009 would require education programs for law enforcement and Indian Health Services personnel to improve the collection of forensic evidence in sexual assault cases and thereby improve the ability to prosecute sexual assaults in Indian country. FVPF supports this portion of the bill that would also implement standardized protocols for IHS personnel to respond to sexual assault victims.

We appreciate and thank Chairman Dorgan and the Senate Committee on Indian Affairs for the opportunity to submit this testimony and express our support for those sections of S. 797. We look forward to working with you to prevent intimate partner violence and improve the health and safety of Native American and Alaskan Native women victims.

PREPARED STATEMENT OF WILLIAM R. RHODES, GOVERNOR, GILA RIVER INDIAN COMMUNITY

The Gila River Indian Community (the "Community") hereby submits the following comments regarding S.797, the proposed Tribal Law and Order Act of 2009 (hereinafter the "Act"). The Community has been made aware that Senate Committee on Indian Affairs (SCIA) held a hearing on the Act on June 25, 2009. The Community respectfully offers these comments as part of the formal record of such hearing.

I. The Gila River Indian Community

The Community is a federally recognized Indian tribe composed of the Akimel O'Otham (Pima) and Pee-Posh (Maricopa) tribes. The total enrollment of the Community is approximately 19,000 members. The Gila River Indian Reservation (the "Reservation") is located in southern Arizona and encompasses nearly 600 square miles in Pinal and Maricopa counties. The Community is both an urban and rural Community and shares a border with the cities of Phoenix, Chandler, Coolidge, Casa Grande, Gilbert, Maricopa and Queen Creek.

The close proximity of the Reservation to the urban areas poses an array of problems for the Community from simple civil trespass to the influence of gangs and drugs. Illegal immigration problems brought on by the Reservation's closeness to the United States – Mexico border further tax the Community's resources. The frequency of illegal immigration problems force the Community to deal with these issues without the assistance of federal agencies. Not only does the Community deal with crime from activities on the Reservation, but we are also forced to deal with crimes that spill onto the Reservation from neighboring jurisdictions. These demands grow as the population of our neighbors rapidly increases.

The Community has already invested substantial resources in a comprehensive tribal criminal justice system which employs over 250 people and includes the Community Court, Law Office-

Criminal Division, Defense Services Office, Police Department, Probation Department and Detention Facilities. The Community has a state-of-the-art courthouse in which eight judges preside over criminal, civil and children's cases. Last year, the Community filed 1,343 criminal complaints and 261 juvenile offender petitions in the tribal court. These numbers continue to rise annually. The operating budget of the Community Court is over 5 million dollars annually, most of which is funded tribally. The court does not receive federal funding. Tribal cases are prosecuted by 9 licensed attorneys from the Law Office-Criminal Division and defended by 6 licensed attorneys from the Defense Services Office, as well as 2-3 defense conflict counsel. All prosecution and defense attorneys are tribally funded, except for one domestic violence prosecutor which is funded by a federal grant. In addition the Community is also served by a Probation Department which includes 19 probation officers who work with offenders in the adult, juvenile and diversion program divisions.

The Community Police Department employs over 89 police officers who, because of their certifications, may enforce tribal, federal and state laws on the Reservation. The operating budget for the Police Department is about 13 million dollars annually, which includes a 3 million federal contribution. The Community's adult detention facility can detain up to 224 inmates, while the Community's juvenile facility can house up to 106 juvenile offenders. The operating budget for the detention facilities is over 13 million dollars annually, with an approximately 3.1 million dollar federal contribution. The Community also recently opened a residential treatment facility which can offer services for up to 82 Community members.

As you can see, the Community has devoted a substantial amount of resources to improving our tribal justice systems. However, much work still needs to be done to compliment our efforts and meet the rising demands. With the aforementioned in mind, the Community respectfully offers the following comments on the Tribal Law and Order Act of 2009. In light of space and time considerations, the Community has focused its comments on five main issues: (1) Declination Reports; (2) Licensing; (3) Stacking of Offenses; (4) Funding and (5) Memorandum of Agreement with Bureau of Prisons.

II. The U.S. Attorney and Declination Reports under Section 102 of the Act

The Community Police Department and Law Office work closely with the U.S. Attorney's Office in Arizona. In 2008, the Community submitted 57 cases for federal prosecution. The Community regularly pursues cases in tribal court that have been declined by the federal government. Section 102 of the Act proposes to amend 25 U.S.C. § 2809 to require more detailed reporting by law enforcement and U.S. attorneys when cases are declined. While greater accountability is welcome, there exists a delicate balance between declination accountability and harm to a subsequent tribal case. The Act would require federal law enforcement and U.S. attorneys to submit reports to the Office of Indian Country Crime (a new office created under Department of Justice) on the facts of specific cases, including the type of crime alleged, the status of the victim and offender, and the reason for the declination. Too many specifics are cause for alarm. The concern arises from the potential access to detailed reports on a specific case which point out the weakness in a subsequent tribal case. For example, would defense attorneys be allowed access to reports upon request? While it is important to have accurate reporting, tribal prosecution may be better served by having federal law enforcement

and U.S. attorneys prepare less detailed reports on why cases were declined. Another suggestion would be to have a more generalized monthly or annual report. An example of generalized reporting could be as follows: "In the month of January X amount of cases were submitted by the Gila River Police Department, and X amount were declined for the following general reasons, i.e. insufficient evidence."

In sum, the Community welcomes greater accountability in law enforcement and U.S. attorney declinations, but cautions that too much information could harm a subsequent tribal case.

III. Tribal Court Sentencing Authority under Section 304 of the Act

Arguably, one of the most notable provisions of the Act is section 304 which increases tribal court sentencing authority and jurisdiction under federal law. Section 304 proposes to amend the Indian Civil Rights Act (ICRA) to allow tribes to impose punishment in tribal court for up to 3 years or $15,000 fine. Several issues are posed by this section, as detailed below.

A. Licensing and Stage of Proceedings

If a tribe chooses to exercise jurisdiction under the proposed amendment to ICRA (which would become 25 U.S.C. 1302(b)) the tribe must provide the defendant "the assistance of a defense attorney licensed to practice law in any jurisdiction in the United States." What is meant by this phrase is unclear. If the Community had its own licensing system, would that qualify as "any jurisdiction in the United States?" Similarly, a judge presiding over a criminal proceeding under Subsection (b) must be licensed as well. The same question applies. Would a judge licensed by the Gila River Indian Community qualify as licensed in any jurisdiction in the United States?

As discussed above, tribes exercising jurisdiction under Subsection (b) must provide licensed defense attorneys and licensed judges. Another issue is at what stage in the proceedings must appointment of licensed counsel or judge occur: arraignment, pre-trial, or trial? The Community's Code requires detained persons be brought before the Community Court within 24 hours of detention. This temporary detention period may be extended to 72 hours if a complaint is in the process of being filed. The decision to prosecute an offender under the existing ICRA or the proposed new Subsection (b) may not be made at the arraignment stage. It will be important to determine at what stage of the proceedings the new Subsection (b) requires a defendant be represented by a licensed attorney and that proceeding be presided over by a licensed judge.

Another issue that arises under this section is whether a tribe must provide a licensed attorney to all defendants under the ICRA. As the proposed Subsection (b) reads, licensed defense attorneys are only required if a tribe chooses to exercise jurisdiction pursuant to that subsection. It does not purport to modify the existing ICRA which does not require tribes to appoint licensed counsel. Does this raise equal protection issues for tribal defendants, especially if "stacking" continues to occur (see below)?

B. Stacking of Offenses

The existing ICRA only allows tribes to punish up to one year for "any one offense." 25 U.S.C. §1302(7). This poses impediments to tribal justice for serious offenses declined by the U.S. Attorney. As a result, some tribes "stack" offenses so that tribal defendants can receive 1 year of imprisonment for each offense for which they are convicted. This often results in tribal defendants serving more than one year in tribal detention facilities. There is disagreement on whether such stacking is allowable under the ICRA.

Under current caselaw it is not clear what "any one offense" under ICRA means. One view is that separate crimes arising from a single criminal episode should all be treated as one single offense. Spears v. Red Lake, 363 F. Supp.2nd 1176 (D. Minn. 2005). Another view is that a tribe may charge for all criminal offenses arising from an incident and that imposing consecutive sentences is not cruel and unusual punishment. Ramos v. Pyramid Tribal Court, 621 F. Supp. 967 (D.Nev.1985). Still others have suggested the Blockburger Test "same offense" test should be applied to tribal criminal complaints and prosecutions. *See* Blockburger v. United States, 284 U.S. 299 (1932).

The new Act further complicates the stacking issue by modifying the existing language of ICRA. Under the existing ICRA, a tribe cannot:

> Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, *and in no event impose for conviction of any one offense* any penalty or punishment greater than imprisonment for a term of one year or a fine of $5, 000 or both.
>
> 25 U.S.C. §1302(7) (*emphasis added*).

The proposed amendment to ICRA states that tribes cannot:

> Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, *or impose for conviction of a single offense* any penalty or punishment greater than imprisonment for a term of three years or a fine of $15,000 or both.
>
> Proposed 25 U.S.C. §1302(b) (1) (A) (*emphasis added*).

First, is the change in language significant (any one versus a single)? Second, how does the proposed amendment to ICRA affect the stacking issue, if at all? Should a tribe choose not to exercise jurisdiction under the new ICRA, could they still stack offenses under the existing ICRA? Does this present any equal protection issues? Does the enactment of the new Subsection (b) imply that there is no stacking under the existing ICRA (new Subsection (a))?

C. Funding

The proposed amendments to the ICRA impose requirements on tribes that have not been present before, including the requirement of licensed defense attorneys and licenses judges. In reality, the new ICRA essentially forces tribes to create a "misdemeanor" court and a "felony" court if tribes want to exercise jurisdiction under the proposed Subsection (b). It also creates additional work for tribal probation departments to manage additional offenders and for longer periods of time. All of these requirements subject tribes to additional costs on already burdened tribal economies. As discussed above, the Community has invested substantial resources in our tribal criminal justice system, but our resources are already taxed. The new amendments to the ICRA would substantially impact an already burdened justice system and could harm more than help. Smaller tribes may not even be able to take advantage of the authority under the new ICRA due to cost considerations. It is imperative that the Tribal Law and Order Act provide funds for tribes to exercise jurisdiction under Section 304. This includes funds to hire licensed defense attorneys, hire licensed judges, establish new court procedures and increase resources/staff for tribal probation departments. Without funds, the section will be meaningless for many tribes.

D. Memorandums of Agreement and the Bureau of Prisons

Tribes exercising jurisdiction pursuant to the proposed 25 U.S.C. §1302(b) may require convicted offenders to serve their sentence at the nearest Federal facility under a Memorandum of Agreement (MOA) with the Bureau of Prisons (BOP). This is an excellent option, considering many tribes are not capable of housing long term offenders. Further, housing serious offenders with misdemeanor offenders poses additional problems because it facilitates criminal contact, increases crime and strains detention staff, facilities and resources. However, the procedure for such a transfer should be re-evaluated. Under the proposed Act, the transfer of prisoners is limited to those convicted of violent crimes, crimes involving sexual abuse and serious drug offenses, as determined by the Bureau of Prisons, in consultation with tribal governments by regulation. The determination of which prisoners can be transferred should be based on the needs of the Indian tribe and not strictly based on the qualifying offense because some tribal inmates have felony inmate behavior that strain tribal resources, although they may not be convicted of a BOP qualifying offense. Thus, tribes should be afforded more control over what crimes qualify for transfer and who they consider a serious offender. The tribe that tried and convicted the offender is in a better position to make this determination than the BOP. This provision infringes on tribal self-government because it removes the ultimate determination of who should be transferred from tribes and puts it in the hands of the BOP. Further, because the all costs of the transfer and care of the prisoner are borne by the BOP, there is almost a disincentive for BOP to accept transfer of a tribal court offender. Finally, the Act also provides that the MOA shall be executed and carried out no later than 180 days after a tribe first contacts BOP. The time limitation is helpful but there is no good faith negotiation provision, enforcement mechanism or a mandate that BOP is required to enter into an MOU with an Indian tribe. What is a tribe to do if BOP refuses to accept a prisoner or negotiate for a MOA?

IV. Conclusion

The Community welcomes and applauds the Senate Committee on Indian Affairs efforts to improve tribal justice in Indian Country. The Community will look to the future of the Tribal Law and Order Act with great interest. Should the Committee have any questions regarding the Community's comments, please contact our Law Office. Thank you for your time and consideration.

JOINT PREPARED STATEMENT OF KAREN ARTICHOKER AND JUANA MAJEL, CO-CHAIRS, NATIONAL CONGRESS OF AMERICAN INDIANS TASK FORCE ON VIOLENCE AGAINST WOMEN

The National Congress of American Indians (NCAI) Task Force on Violence Against Women was formed in 2003 and represents a national movement of tribal organizations dedicated to the mission of enhancing the safety of American Indian

and Alaska Native women. The NCAI Task Force works collaboratively with the National Task Force to End Sexual and Domestic Violence and other national organizations addressing implementation of the Violence Against Women Act (VAWA). The NCAI Task Force supports the various testimony submitted by these organizations and will focus on issues specific to American Indian tribes and women. The following recommendations have been made to the United States Department of Justice and the Obama administration.

The USDOJ estimates that 1 of 3 Indian women will be raped, that 6 of 10 will be physically assaulted and that Indian women are stalked at more than double the rate of any other population of women in the United States. This violence threatens the lives of Native women and the future of American Indian Tribes and Alaska Native Villages. Ending this historic pattern of violence requires that the institutional barriers that deny access to justice and related services for Native women are eliminated. No area of need is more pressing or compelling than the plight of American Indian women fleeing physical and sexual violence.

Congress, led by the tremendous efforts of Vice President Joseph Biden, set forth essential steps to address the systemic barriers denying access to justice in such cases through the enactment of the Safety for Indian Women Title contained within the VAWA of 2005. Dedicated tribal leaders, advocates and justice personnel are prepared to implement these amendments to federal code and programs established under this Title. Unfortunately since passage of this landmark legislation in 2005, implementation of key provisions has been stymied and federal departments charged with the responsibility of implementation have minimized the need for immediate action. The demonstrated lack of will on the part of federal departments is not only demoralizing, but life threatening to the women the statute was intended to protect.

A systemic change is needed to prevent violence in the lives of Native women. A complex set of social factors including federal/tribal jurisdictional issues, inadequate tribal resources and justice personnel, and poverty have resulted in the current level of danger that exist in the lives of American Indian women as a population. Perpetrators of domestic and sexual violence commit such violence because of the belief that no social consequences exist for their violent behavior. This perception stems from the reality that crimes of domestic and sexual violence are rarely prosecuted, and if prosecution occurs any sentence is so minimal that it is inconsequential to the life of the perpetrator. As one mother stated after the violent murder of her daughter, "The system is broken. It did not protect my daughter during her life and I fear it will fail her daughters, my grand daughters in their lives."

Federal Indian law, including treaties, supreme court cases, and federal code, places a unique legal responsibility upon the United States to assist Indian tribes in creating safe and stable communities and for the safety of Indian women. We have identified critical issues and recommendations to assist with the prevention and prosecution of violence against Indian women. We respectfully request that the Judiciary Committee request a report of activities to implement the amendments to federal code under the VAWA and also a plan of action from the Department of Justice for implementation of these provisions. We recommend that such implementation plans provide for collaboration with Indian tribes and increased coordination between federal agencies charged with the handling of domestic and sexual violence cases.

Given the urgent need to address the current epidemic level of violence committed against Native women we respectfully request that the Committee call for a joint hearing with the Senate Committee on Indian Affairs on the issue of violence against Native women. Reauthorization of VAWA is essential to the lives of American Indian and Alaska Native women. The outstanding concerns regarding implementation of VAWA and our recommendations are organized into the following three categories:

I. Failed or inadequate implementation of amendments to federal code enacted under the Violence Against Women Act of 2005;

II. Systemic barriers to the safety of Indian women that require immediate action by federal departments; and,

III. Issues addressing the epidemic levels of sexual violence committed against Indian women.

I. Implementation of the Safety of Indian Women Contained in the Violence Against Women Act of 2005

The provisions contained in the Safety for Indian Women Title require action by the Departments of Health and Human Services, Justice, and Interior. Since passage of VAWA, these departments have failed to fully implement critical provisions

of the Safety for Indian Women Title. The following is a section-by-section analysis of the most urgent issues—all of which need immediate action.

a) *Annual Consultation:* Section 903 directs the Attorney General and Secretary of Health and Human Services to each conduct annual consultations with Indian tribal governments concerning the federal administration of tribal funds and programs established under the Violence Against Women Acts of 1994 and 2000. It requires the Attorney General, during such consultations, to solicit recommendations from Indian tribes concerning: (1) the administration of tribal funds and programs; (2) the enhancement of the safety of Indian women, including the protection from domestic violence, dating violence, sexual assault, and stalking; and (3) the strengthening of federal response to such violent crimes.

The successful implementation of VAWA within tribal communities requires consultation and coordination between the respective federal departments and Indian tribes. Annual consultations were held in 2006, 2007, and 2008. Unfortunately, the USDOJ has not fulfilled the requirement of this statute. Specifically; the Attorney General has not attended, has failed to require attendance of USDOJ leadership, and, has delegated this requirement to the Office on Violence Against Women. USDOJ leadership includes key players such as the Attorneys General from districts containing significant numbers of Indian tribes, Attorney General's Native American Issues Sub-Committee, Federal Bureau of Investigation, and others. The USDOJ has not responded to the majority of concerns and recommendations made during the 2006, 2007 and 2008 consultations; and, in 2007 and 2008 the USDOJ scheduled consultations/meetings with Indian tribes that created a conflict with the attendance of some tribal leaders of the VAWA consultation.

We do commend specific components of the Department, the Office on Violence Against Women and the National Institute of Justice, for recognizing the importance of the annual consultation and their on-going commitment to the successful implementation of this section of VAWA.

Recommendation: The Attorney General immediately begin coordination with Indian tribes to schedule and establish the agenda for the 2009 consultation.

b) *Access to Federal Databases:* Section 905(a) amends the federal code to require the Attorney General to permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from, federal criminal information databases. For decades Indian tribes have been denied access to life-saving information contained in the national sex offender and order of protection registries. Indian women enter and leave tribal jurisdictions continuously and a woman's life may depend on her order of protection being given full faith and credit by another jurisdiction. Currently, many tribal orders of protection and information regarding convicted sex offenders are not listed on the national registries.

While the majority of Indian tribes lack access those having concurrent criminal jurisdiction with states (under Public 53–280 or similar federal law) experience additional barriers in that some states do not recognize tribal law enforcement authority. Submission of life-saving information from these tribal jurisdictions is blocked and endangers the lives of tribal women, law enforcement officers and members of tribal communities.

The federal amendment to permit Indian law enforcement agencies access to enter and obtain information from the federal crime data systems was a tremendous step forward in creating safety for Indian women. Unfortunately, this lifesaving amendment to federal law has not changed in reality. Tribal law enforcement still cannot access the national system without permission of the state in which the tribe is located. Many state governments refuse Indian tribes access to their state system. As a result, tribal law enforcement officers cannot access criminal information on suspects which places the lives of officers and women at risk. In addition, some state governments, in conflict with federal law, do not allow tribal court orders of protection to be entered into their state registry. The amendment to the federal code was intended to remedy the barrier of Indian tribes accessing critical criminal justice information required to manage crime and protect women. The ability for Indian tribes to access the national registry would enable tribes to protect their communities from transient habitual perpetrators that prey on Indian women.

Recommendation: The Attorney General direct the National Criminal Information Center to coordinate with all federally recognized Indian tribes to implement Section 905(a).

c) *Domestic Assault by an Habitual Offender.* Section 909 amends the federal criminal code to impose enhanced criminal penalties upon repeat offenders who: (1) commit a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country; and (2) has a final conviction on at least

two separate prior occasions in federal, state, or tribal court for offenses that would be, if subject to federal jurisdiction, an assault, sexual abuse, or a serious violent felony against a spouse or intimate partner, or a domestic violence offense.

Domestic violence is a pattern of violence that escalates over time in severity and frequency. To prevent future violence and end the pattern, perpetrators must be held accountable immediately. Due to the combined factors of the sentencing limitation placed on Indian tribes, not more than one year per offense, and the lack of prosecution of misdemeanor domestic violence cases by the United States Attorneys General and states sharing concurrent jurisdiction with Indian tribes, this section was enacted to permit federal prosecution of misdemeanor domestic violence crimes. Unfortunately, since passage of the statute in 2005 it has been used only twice.

Recommendation: The Attorney General mandate training on this statute for appropriate personnel handling cases of domestic and sexual violence and provide a report during the 2009 annual consultation of the number of cases prosecuted under Section 909.

II. Outstanding Issues Not Addressed by the Violence Against Women Act

The issues outlined below are not new and they were raised during the 2006, 2007 and 2008 consultation between the USDOJ and tribal leadership. These and other issues and recommendations are proposed in the Tribal Law and Order Act of 2009 (S. 797) authored by Senator Bryon Dorgan, Chairman of the Senate Committee on Indian Affairs. We provide the following issues and recommendations to inform the Committee of on-going gaps in the response of the criminal justice systems to domestic and sexual violence committed against American Indian women.

1) *Declination Reports:* USDOJ personnel, law enforcement and US Attorneys, should be required to submit declination reports to tribal justice officials to coordinate the prosecution of crimes on the reservation, and in Indian Country. The USDOJ should be required to maintain records of such declination and make them available to Congress on an annual basis. Often times when a woman reports a sexual assault, months or years may pass without her being informed of the status of the case. Women often fear retaliation by the perpetrator for reporting sexual assault or domestic violence. The failure to notify the victim that the U.S. Attorney has declined to prosecute the case creates barriers to the safety of women. The woman, unaware that the US Attorney declined the case, may not take the appropriate steps to protect herself from future violence. In addition, tribal justice personnel, also uninformed of the status of the case, may not take appropriate steps to charge the perpetrator in tribal court. Given the public myth that sexual assault and domestic violence cases are not serious crimes, transparency in the statistical reporting of prosecutorial and declination rates for such crimes should be mandated. For all the same reasons noted above states that share concurrent jurisdiction with Indian tribes should also be mandated to report the same information to Congress.

Recommendation: The Attorney General request United States Attorneys General and states to issue declination reports to tribal justice officials and victims of domestic and sexual violence. Further, during the annual consultation the Attorney General should provide an annual report of declinations and prosecution rates for cases of domestic and sexual assault cases committed against Indian women.

2) *State Accountability:* Tribes within Public Law 53–280 or similar jurisdictions should be able to call on the United States to maintain federal concurrent jurisdiction and assist tribal governments in the prosecution of major crimes where the states have the authority.

In 1953, during the termination era, Congress enacted laws that transferred federal criminal justice authority to particular state governments. The Department of Interior, as a policy interpretation, denied access to Indian tribes located within those states to federal funds to develop their respective tribal justice systems. Unfortunately, the state governments generally do not adequately respond to crimes of sexual assault and domestic violence within tribal communities. On a daily basis perpetrators of crimes of sexual and domestic violence are not held accountable for their crimes due to such jurisdictional barriers.

As a result, when a woman is raped within an Indian tribe located within such states sharing concurrent criminal jurisdiction, no tribal criminal justice agency may be available to assist her or hold the rapist accountable. This gaping hole in the federal/state/tribal justice systems often results in an injustice in the lives of women and permits perpetrators to continue committing horrific violence against the same or a different woman.

Recommendation: The Attorney General work in coordination with Indian tribes to address the unique jurisdictional barriers created by federal law and increase the accountability of state governments to coordinate with Indian tribes to enhance the

safety of Indian women living within tribal jurisdiction; in particular an increased awareness of the authority of federally recognized Indian tribes to maintain tribal law enforcement agencies and tribal courts to issue orders of protection.

3) *Sentencing Authority of Tribal Courts:* It is essential that the sentencing authority of tribal courts be increased beyond the current one year for any single offense. Between 2004 and 2007, the United States declined to prosecute 62 percent of Indian country criminal cases referred to federal prosecutors, including 75 percent of child and adult sex crimes. One the greatest barriers to the safety of Indian women is that in cases declined by the United States a perpetrator of rape, if prosecuted by the Indian tribe, only can receive a maximum of one year per offense. In every other jurisdiction in the United States rape is considered a felony offense with an average sentence of four years. It is also essential that federal law be enacted permitting Indian tribes to request the transfer of prisoners to the nearest appropriate federal facility at the expense of the United States. This would allow tribal courts to appropriately sentence perpetrators without the restraint of not having a facility or the budget to contract for bed space for prisoners convicted of domestic and sexual violence.

Recommendation: The Attorney General coordinate and support the efforts of Indian tribes to address the current inadequate sentencing authority of tribal courts in cases of sexual assault, domestic violence, dating violence and stalking.

4) *Prisoner Release and Reentry:* The USDOJ should be mandated to notify tribal justice officials when a sex offender is released from federal custody into Indian country. Every state and territory is required to provide notification when a sex offender is released and enters a community. Currently many Indian women receive no notification of the release of their convicted rapist from federal prison. This realization comes only at the moment when they see the offender in their grocery store, on their front porches, or when picking up their children at the school gate. It is a horrifying and frightening realization. The USDOJ should also be required to register sex offenders with the appropriate law enforcement agency including tribal registries.

Recommendation: The Attorney General direct the Bureau of Prisons to notify tribal justice officials and victims of sexual assault, domestic violence, dating violence and stalking of the release of such an offender.

5) *Mandate of Specialized Training in Domestic and Sexual Violence for Federal Prosecutors and Law Enforcement Personnel:* The Office on Violence Against Women has for the last thirteen years asserted the importance of specialized training for criminal justice personnel; yet, it has not applied this same standard to federal prosecutors and law enforcement personnel. Law enforcement personnel within departments such as the Federal Bureau of Investigation and the Bureau of Indian Affairs should be mandated to attend a minimum number of hours of training to enhance their expertise and skills in the handling of such investigations. Federal prosecutors should also be mandated to receive specialized training to enhance the prosecution of crimes of domestic and sexual violence. Lastly, resources and training should be provided to Indian law enforcement agencies to properly interview victims of domestic and sexual violence and to collect, preserve, and present evidence to federal and tribal prosecutors to increase the conviction rate for domestic and sexual violence offenses.

Recommendation: The Attorney General direct the appropriate departments to implement training in the handling and prosecution of sexual assault, domestic violence, dating violence and stalking cases committed against Indian women.

6) *Complex Federal Jurisdictional Barriers Preventing the Safety of Native Women.* The current rates of sexual and domestic violence have been linked to jurisdictional gaps that allow perpetrators to face little or most often no criminal consequence for their crimes. Federal law, United States Supreme Court cases, Executive Orders, and Treaties with Indian Nations comprise what is known as Federal Indian law that has resulted in a body of complex jurisdictional laws that often operate as barriers to safety.

One example of the concrete impact of current federal law upon the lives of Native women is the unique and difficult issues in Oklahoma Indian Country plaguing the 37 federally-recognized tribal governments in the state. Federal Indian policies of the past forced American Indians into Indian Territory prior to Oklahoma statehood. Under pressure from expansion of non-Indians into the west, the Federal Government opened up Indian Reservations for white settlement through passage of several allotment acts around the time of Oklahoma statehood. Oklahoma tribes today are left with a checker-boarded pattern of Indian lands commingled with non-Indian lands. Tribal courts have no criminal jurisdiction over non-Indians, and ac-

cording to recent studies, the vast majority of offenders in Native-victim domestic violence cases are non-Indian. State courts do not have jurisdiction to prosecute non-Indians for crimes committed against Indians in Indian Country. Only the federal court system has jurisdiction to prosecute these perpetrators who commit crimes of domestic violence against Indian women on Indian land. Most often cited as a lack of resources, the United States Attorneys Offices in Oklahoma frequently decline to prosecute these offenses.

Recommendation: It is of critical importance that the respective federal agencies coordinate with Indian Nations as governments to address these jurisdictional gaps and increase the safety of Native women.

III. Need to Address the Epidemic Level of Sexual Assault

Sexual violence committed against Native women is more than double that of any other population of women and the resources to respond to such violence are far less. On the Pine Ridge Reservation of the Oglala Sioux Tribe, the number of rapes for just one weekend can average 44 cases. At present, reporting has virtually stopped, reflecting the lack of federal response and prosecution. Further, in Alaska, sexual assault is rampant and the current criminal justice system is unresponsive, thus failing Native women and Alaska Native Villages. Anchorage is ranked No. 1 in the nation per capita on the sexual assault of Alaska Native women. In the rural Alaska Native Villages advocates for women report that 100 percent of the women at some point in time have been a victim of sexual violence.

The systemic response of the federal departments to sexual violence against Indian women is a failure and immediate corrective action is necessary. The tribal/federal and tribal/state response must be enhanced from the immediate response to the crime by first responders, including law enforcement and healthcare personnel, to post sentencing probation and reintegration of sexual offenders into tribal communities. No other crime better illuminates the disparate treatment between Native and non-Native women victimized by violence. In particular, the responses and availability of the Indian Healthcare Services providers to victims of sexual assault must be improved. The provision of the forensic sexual assault medical exams is insufficient and the refusal of personnel to testify in such cases due to understaffing is unacceptable. Further, the lack of rape crisis services and post-crisis services only increases the risk to Native women. The need for services does not end with the rape examination but only just begin. Current services for women victimized by rape are minimal or non-existent. The starting point for such reforms is the enhancement of community-based services available within tribal communities to assist Indian women and the authority of Indian tribes to hold perpetrators accountable.

Recommendations: The respective federal departments coordinate to address the above concerns with Indian tribes. The Secretary direct Indian Health Service personnel to develop, in coordination with Indian tribes, a protocol for sexual assault medical forensic examinations and cooperate in the prosecution of sexual assault cases by agreeing to testify in such cases.

IV. Summary

We deeply appreciate and thank the Members of the Senate Judiciary Committee for supporting the Violence Against Women Act and our testimony. The recommendations above complement the other recommendations submitted by national advocacy organizations for the safety of women. We respectfully urge you to consider these recommendations with attention and care. The complex set of legal and social issues that mire efforts to address violence against Native women are of the utmost importance and indicate the need for a reauthorized and strengthened Violence Against Women Act. Together we can reverse the current pattern of violence and the institutionalized barriers discussed that prevent safety in the lives of Indian women. Change has come to America and we cannot go back; we must continue our journey until the day that Native women are held sacred once again and live free from violence within their homes and communities.

PREPARED STATEMENT OF JOLANDA E. INGRAM-MARSHALL, ATTORNEY; EXECUTIVE DIRECTOR OF NIWHONGWH XW E:NA:WH STOP THE VIOLENCE COALITION, INC.

Dear Honorable Senate Committee Members & Chairman Dorgan: My 17 year old daughter moved to the Salish-Kootenai (Flathead) Indian Reservation in northwestern Montana to attend college at the Salish-Kootenai College in January, 2009. She was a victim of a hate crime on the Salish-Kootenai (Flathead) Indian Reservation in March, 2009. A non-Indian man, who she did not know, threw a full commodity soup can over a fence and struck her on the head. She received a concussion

and missed three days of school and had to have a CT scan. The Salish-Kootenai Tribal Police could not arrest the man because he was non-Indian. The Lake County Sheriff's Department refused to arrest him. A police report was sent to the Lake County District Attorney's Office and nothing was ever done. There were three witnesses and the victim present that evening. Each provided statements. The non-Indian suspect told the authorities that he did not mean to strike my daughter on the head and that it was an accident. The Lake County authorities decided to take the word of the non-Indian over my daughter and the three other witnesses.

I want to ask each and every one of you listening to this testimony whether you would want your daughter to attend an Indian college on an Indian reservation where nothing would happen to the perpetrator of a crime against her. I have to ask myself this question each and every day now that my daughter and I have been personally affected by the senseless and lawless state of affairs on Indian reservations in this great country.

Unfortunately, my story continues. In May, 2009, my daughter was in her dormitory room at the Salish-Kootenai College when she was attacked and raped by an acquaintance, who was attending college and residing on campus as well. This time her attacker was an Indian male. The crime rose to the level of a felony, so the Lake County Sheriff's Department arrested him. The next day the suspect was released from jail. My daughter and I received a phone call, during the second week of June, from a Lake County Sheriff's Detective who informed us that the suspect would not be prosecuted because there was not sufficient evidence. He stated that there were other witnesses who stated that my daughter had been observed earlier that evening hugging the suspect and having a beer with him.

This situation presents a very sad state of affairs in this country on the issue of violence against women. God forbid a woman ever have a beer with someone or hug him, otherwise she is consenting to the act of rape!

I am asking that the United States Congress recognize the danger facing Native women and act to strengthen the response to such crimes. More particularly in PL 280 states, Tribes have no control over whether the local county district attorney prosecutes a case. I believe that if a study were to be conducted, that the declination rates of cases coming from PL 280 Indian Tribes is at a very high rate. Native women living under concurrent state jurisdiction are at high risk because perpetrators have learned over many decades that county sheriffs and prosecutors will not believe or protect Native women.

Proposed amendments to federal law contained in the Tribal Law and Order Act are critical to the safety of Native women. In particular Title II State Accountability that provides Indian tribes the option of requesting that federal concurrent jurisdiction be restored over such crimes as rape. If the county sheriffs refuse to hold perpetrators accountable for their violent crimes the United States must. Currently the failure of state governments to hold serial rapist accountable for their acts sends a green light that such conduct holds no legal consequence.

Further, Indian Tribes as governments must be given the authority and resources needed to fully develop their justice systems to protect women and be comparable to the American justice systems. The average sentence for rape is four years in all jurisdictions of the United States except that of an Indian tribe. I strongly support the proposed amendment to increase the sentencing authority of tribal courts from one year to three years. Sentencing a rapist to one year is dangerous to the woman that survives this heinous crime but also an insult to all Native women.

Lastly, I respectfully ask that the Senate Committee on Indian Affairs co-sponsor a hearing with the Senate Judiciary Committee to review the complicated issues preventing safety in the lives of Native women. The current epidemic of violence in the lives of American Indian and Alaska Native women requires immediate action by Congress.

My daughter is not safe, and neither is anyone's daughter in Indian country! Please act now.

Thank you very much.

PREPARED STATEMENT OF THE PUYALLUP TRIBE OF INDIANS

Mr. Chairman, Ranking Member Barrasso, the Puyallup Tribe thanks you and the Committee for its support of many tribal issues and for your interest in tribal law enforcement issues. We support the Tribal Law and Order Act and the bill's goal to bring greater local control to tribal law enforcement agencies to combat reservation crime and to establish accountability measures for federal agencies responsible for providing public safety in Indian Country. We submit this testimony to offer recommendations for improving the legislation.

I. FUNDING

The lack of financial resources for law enforcement is a significant barrier to the provision of effective public safety services in Indian Country. For example, the Puyallup Nation Law Enforcement Division currently has a Chief of Police, twenty-eight (28) commissioned officers and one (1) reserve officer to cover 40 square miles of reservation, in addition to the Tribe's usual and accustomed areas. The officers are charged with the service and protection of the Puyallup Reservation seven days a week, twenty-four hours a day. The Puyallup Reservation is located in the urbanized Seattle-Tacoma area of the State of Washington. The 18,061 acre reservation encompasses most of the City of Tacoma, but the area is a "checkerboard" of tribal lands, Indian-owned fee land and non-Indian owned fee land. Our reservation land includes parts of six different municipalities (Tacoma, Fife, Milton, Puyallup, Edgewood and Federal Way). The Puyallup Tribe also provides services for 4,004 tribal members and over 25,000 additional Native Americans from over 355 federally recognized Tribes and Alaskan Villages.

A major concern of our urban Tribe is the impact of gang activity on the Puyallup Reservation. Currently, there are forty (40) active gangs on the Reservation. Gang activities include drug trafficking, weapons sales and turf wars, which result in drive-by shootings, serious assaults and homicides. Interstate 5 runs through the Puyallup Reservation and is known as a drug corridor. With the continuing population growth in our area, the increase in gang-related activities on the Puyallup Reservation and the impact of the increase in the manufacture of methamphetamine in the region, the services of the Puyallup Nation Law Enforcement Division are exceeding maximum levels.

Due to limited federal funding for law enforcement in Indian Country, only two (2) officers are funded with P.L. 93-638 funds. The remaining twenty-six (26) officer and nine (9)

detention officer positions are funded by the Tribe. The total cost of justice services, including facilities operations and maintenance, exceeds $5.7 million per year. These costs are also paid for by the Tribe.

Recognizing the importance of adequate financial resources, the bill contains several provisions that authorize new or increased funding for tribal courts, detention facilities, treatment facilities, emergency shelters, and police. We support including these provisions in the bill, but the effort cannot end with passage of authorizing legislation. Each of these provisions will require a significant commitment of federal funding if they are to succeed. The bill's new grant programs will mean little if they are never funded. Larger initiatives, such as the construction of new detention facilities, must be funded at the full authorized level to accomplish the bill's objectives.

We also ask that you consider including the initiatives we describe below in your bill. Based on our experiences, we believe these changes would greatly improve tribes' ability to ensure that effective public safety services are provided for their members.

A. Pilot program for detention projects

The bill should create a pilot program within the Department of Justice in which a tribe could elect to receive all detention-related funding through the DOJ. A major contributing factor to the detention crises in Indian Country has been the lack of communication and coordination between the BIA and the DOJ. The DOJ provides grants to construct detention facilities and the BIA is responsible for licensing, operating, maintaining, and staffing those facilities, yet the two agencies seem to have different priorities and conflicting policies. Some detention facilities are built but never opened; others remain unfinished. Tribes are sometimes told that DOJ-funded facilities do not meet BIA standards. The DOJ currently requires a commitment of operational funding before it will provide a construction grant, but the BIA is reluctant to provide such a commitment.

The Puyallup Tribe has faced significant barriers because of this lack of communication and coordination. The Puyallup Tribe had been operating its regional detention facility out of a modular/temporary facility since our detention center was damaged in the February 2001 Nisqually earthquake. This temporary facility was recently inspected by the BIA OLESEM Division of Professional Standards and the inspection resulted in a failing grade for not meeting BIA standards. Prior to this, the Tribe had initiated the design and construction of a 28,000 square foot "Justice Center" to be located on the Puyallup Indian Reservation, but has run into procedural barriers for years. Tribes should have the option to work through a single agency to avoid these complications.

B. Streamlined Department of Justice grant program

In order to facilitate tribal participation in DOJ grant programs and to maximize efficiency, the bill should authorize tribes to enter into streamlined agreements with the Department of Justice through which they could apply for, receive, and administer funding from DOJ's various tribal grant programs, regardless of the agency through which the funds are

administered. This option would simplify application requirements and could also allow tribes greater flexibility in how funding can be used. This is important because tribes must now expend significant resources simply tracking down the available DOJ grant programs and determining whether the funded activities fit within the tribe's current justice system needs. We have experienced this frustration firsthand, as we have expended innumerable resources trying to secure a grant to build our Justice Center. A model for this streamlined process can be found in the Education and Labor 477 Program.

This type of streamlined grant process was previously available through the DOJ's Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Project. Evaluators found that streamlined funding created incentives and opportunities for system-wide improvements. We suggest reviving a similar program. Such a program should include at least the COPS grant program, the Tribal Courts Assistance Program, the Drug Court Discretionary Grant Program, the Correctional Facilities on Tribal Lands Program, the Tribal Youth Program, the Juvenile Accountability Block Grant Program, the Indian Alcohol and Substance Abuse Program, the Comprehensive Approaches to Sex Offender Management Program, and the OVW Tribal Grants Program. It should incorporate a single set of requirements and a single application procedure for all included grants, and it should require the DOJ to notify participating tribes of all included funding opportunities as they become available.

C. Direct eligibility for DOJ grant

The bill should amend authorizing statutes to make tribes directly eligible for local law enforcement assistance programs and similar block grant programs from the Department of Justice. In particular, the Edward Byrne Memorial Justice Assistance Grant program, Public Law No. 109-162, Title XI, Section 1111, does not provide for direct grants to tribes. However, block grant programs provide substantial law enforcement assistance to state and local governments. While some tribes receive pass-through funding from states, many states impose restrictions or matching requirements and other states do not pass funding through to tribes at all. If tribes are made directly eligible for these grants, tribal governments would be able to benefit from those programs that provide critical support for law enforcement departments across America.

D. Negotiated rulemaking

The bill requires agencies to review and update existing regulations relating to tribal law enforcement and justice programs. We believe this process would be most effective if these agencies were required to engage in a negotiated rulemaking process with tribes for each of the major new regulations or programs authorized in the bill. The negotiated rulemaking process would provide an important way to bring tribes and agencies together to work through some of the most significant issues that have plagued tribal justice systems in recent years.
Specific issues that could be addressed through negotiated rulemaking are the responsibility of various agencies to provide construction, operational, educational and health services in detention and correctional facilities and how all these elements will be addressed for each new facility.

E. Police officer hiring and retention

We support the efforts in the bill to address problems relating to police officer training, such as requiring the BIA to permit tribes to train at alternative locations more convenient to the tribes and strengthening the SLEC program. We strongly support these provisions and believe they will help tribes fill some of the gaps in law enforcement. We would urge that the bill be clarified so that its provisions regarding training flexibility include not only police officers but other law enforcement personnel as well, including detention officers.

Moreover, a lack of adequate and accessible training is not the only reason there are not enough officers in Indian country. The BIA and tribes have found it difficult to hire and retain enough qualified officers, especially on very remote reservations. This difficulty is compounded by the fact that funding is insufficient to pay officers an adequate salary or provide them with competitive benefits. The bill should also address and authorize funding for the hiring and retention of law enforcement officers, including pay increases, adequate housing, access to additional benefits and retention bonuses.

To assist tribes in addressing the short-term need for more officers, the bill could authorize a pilot project to support on-the-job training programs, which would permit officers-in-training to ride along with certified officers. The pay and training requirements for these officers-in-training would be less than for certified officers, helping tribes to supplement understaffed police departments and cultivate future officers with less expense to the tribes.

In closing, the Puyallup Tribe of Indians would like to thank you for introducing S.797 and for the opportunity to provide testimony on this important subject. We look forward to working with this Committee, the Administration and Tribal leaders to continue the development of legislation to address the serious law enforcement issues facing Indian Country today.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO HON. THOMAS J. PERRELLI

1. **The Justice Department opposes the proposal that would permit Tribes to transfer prisoners convicted in tribal court to the nearest Bureau of Prisons facility. The Bureau of Indian Affairs has testified on several occasions to the fact that tribal jails are simply not equipped to handle these serious offenders. The Bureau of Prisons has an agreement with the District of Columbia to house prisoners convicted in D.C. courts. BOP also routinely houses State prisoners. How would you improve on the proposal in S. 797 to make something similar work for Indian Country?**

RESPONSE:

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions. Our responsibility to preserve public safety for Indian Country derives from the government to government relationship between the federal government and tribal governments, as well as specific statutes, such as the Major Crimes Act and the Indian Country Crimes Act, that provide for federal jurisdiction for certain serious felonies. Tribal governments, often assisted by the Bureau of Indian Affairs (BIA), investigate and often prosecute misdemeanors and assist the Department of Justice as first responders to felony crimes.

The Department of Justice (the Department) is committed to assisting tribal governments with the incarceration of tribal prisoners in tribal jails and detention facilities that meet each tribe's needs in terms of programs, space, staffing, and management. We understand the need for improvements in Bureau of Indian Affairs (BIA) and tribal detention facilities, and the Department supports an upgrade and expansion of those facilities to meet the current shortfall. In fact, the Department is administering $225 million provided under the American Recovery and Reinvestment Act of 2009 for the construction or renovation of tribal correctional and detention facilities. In the meantime, the Department is exploring whether the Bureau of Prisons (BOP) could accept placement of a limited number of tribal prisoners, subject to a number of conditions that would ensure the safety, security, and proper management of these prisoners.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO HON. THOMAS J. PERRELLI

1. **Last year, the U.S. Attorney from North Dakota testified before the Committee to the effect that providing "declination reports" to a tribal justice official would be problematic and cited several reasons including the potential for undermining investigations and compromising the privacy of both witnesses and victims. Yet, he also testified that, "There is an exchange of information that occurs between Assistant US Attorneys and federal or tribal law endorsement [which] often effectively renders a declination report a mere formality in the end anyway." If this is so, it seems that on many occasions this requirement would pose no problem to the Department of Justice. Can you describe the situations when this information is" exchanged" and those when it is not exchanged?**

RESPONSE:

Declination information is regularly communicated to Tribal Law Enforcement through the United States Attorney's Office Tribal Liaison and consistent with current federal law, 25 U.S.C. § 2809(b). It is within the discretion of the U.S. Attorney to determine, based on the facts and circumstances of an individual case, whether such information is communicated to Tribal Law Enforcement verbally or in writing. In making this determination, U.S. Attorneys must balance the need to provide appropriate information to Tribal Law Enforcement with the need to protect the safety and privacy of victims and witnesses. They also must consider whether the creation of discoverable documents might jeopardize future tribal, state, or federal prosecutions. This is a particular concern for districts with small tribal populations, where such documents might contain private information about victims and witnesses. The Department agrees with the Committee that coordination with tribal law enforcement is important and appreciates the Committee's efforts to revise section 102 of S. 797.

2. **Your testimony indicated that the Department of Justice is interested in building tribal courts capacity so that enhanced sentencing authority for tribal court systems is possible. What is the Department currently doing to build tribal capacity?**

RESPONSE:

The Department is committed to strengthening tribal courts systems to improve public safety on Indian lands. The Department acknowledges that some tribal court may have the capacity to impose sentences greater than one year for one offense, in accord with the required protections included in section 304 of S. 797. That provision serves as an acknowledgement of inherent tribal court authority.

The Department is working closely with tribes, training and technical assistance partners, and other federal and state agencies to promote tribal justice capacity building within tribal nations. The Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA) has a Tribal Court Assistance Program (TCAP), which provides support for the development of new tribal courts; improves the operations of existing tribal courts; provides assistance with the development, enhancement, and continuing operation of tribal justice systems; and provides funding for training and technical assistance of tribal court staff. The program's goals are to (1) provide planning grants to develop a comprehensive strategy and implementation plan to establish a court; (2) provide grants for an existing tribal court system to enhance tribal court services; and (3) provide planning grants for tribal justice system strategies.

In addition to TCAP, BJA also administers the Correctional Facilities on Tribal Lands Program, which provides assistance to tribes that wish to explore an array of detention and correctional building options including prototypical or quasi-prototypical concepts/designs for local correctional facilities, multiservice centers, and regional facilities, and that are interested in learning about/applying community-based alternatives to help control and prevent jail overcrowding due to problems involving alcohol and substance abuse. We are also working to provide better coordination with DOI to ensure these programs are coordinated to develop and support tribal court capacity.

3. **Your written testimony recommended that retrocession of state criminal jurisdiction under Public Law 280 be subject to the consent of the Attorney General. If such consent were required, what factors does the Department contend should be used to determine whether the consent should be given?**

RESPONSE:

The Department supports the objective of Section 201, which purports to clarify and streamline the process by which concurrent criminal jurisdiction in PL 280 states may be retroceded to the United States. However, the decision whether and on what time frame the United States would accept concurrent criminal jurisdiction in a PL 280 state is likely to raise a number of difficult resource and policy issues. To ensure that retrocessions are accomplished methodically, and in the best interests of public safety, tribes should be allowed to request a jurisdictional retrocession, but it should only be effective upon the consent of the Attorney General. This is not a new concept given that Executive Order 11435 (November 21, 1968) provided "acceptance of such retrocession of criminal jurisdiction shall be effected only after consultation by the Secretary with the Attorney General." For every tribe seeking concurrent federal jurisdiction, there will be the need for a concomitant increase in federal law enforcement resources such as agents, prosecutors, and judicial staff for tribal lands. Any retrocession of jurisdiction to the federal government should be conditioned on the prior identification of such resources.

4. **Cross deputization agreements exist in many Indian communities. However, sometimes they may only deputize state or local police officers to enforce Federal law, but not deputize tribal officers to enforce state or local laws. Your written testimony recommends increasing funding for the Community Oriented Policing Services Tribal Resources Grant Program rather than developing a program plan to enhance cooperation between state, tribal, and local governments. How would the COPS Tribal Resources grant program provide incentives to state and local governments to enter cross-deputization agreements with tribal governments?**

RESPONSE:

There are improvements that can be made to enhance cooperation and improve law enforcement. The Community Oriented Policing Services (COPS) Tribal Resources Grant Program

(TRGP), which funds law enforcement personnel, equipment, training, and technology and personnel costs – all of which increase the capacity of the Tribal law enforcement agency – is one useful option. This increased capacity to perform more law enforcement functions makes it more likely that state and local law enforcement agencies would seek to work in cooperation with the Tribal agency. Additionally, COPS grants come with a community policing requirement that emphasizes partnerships with other law enforcement agencies and other state and local entities. These grants will increase the likelihood that Tribal law enforcement agencies will work in cooperation with federal, state and local law enforcement agencies to improve public safety in their communities.

5. **Your written testimony discussed the N-DEx system and its availability to tribal law enforcement agencies. One of the major obstacles Indian tribes continue to face in being able to utilize national crime databases is funding for start-up and continuing costs. What types of resources does the Department of Justice provide to cover the reasonable start-up costs referenced in your testimony?**

RESPONSE:

The TRGP provides funds for a wide range of costs associated with providing law enforcement services. This includes start-up and continuing costs on law enforcement personnel, vehicles, uniforms, service weapons, equipment, communications systems, computers and computer systems and training. These grants pay for 100% of these costs with no local match incurred by the Tribe. Tribes were eligible to apply for funding through several grants posted by the Office of Justice Programs in 2009, such as the Recovery Act: Assistance to Rural Law Enforcement to Combat Crime and Drugs Program (Category IV -- Facilitating Rural Justice Information Sharing) as well as National Initiatives: Enhancing Law Enforcement and the National Justice Information Sharing (JIS) Initiative. These grant awards could be used to enhance tribal resources and allow them to access and participate in N-DEx where security and privacy requirements are met. Additionally, Justice Assistance Grant (JAG) Program funds could also be used for this purpose. JAG purpose areas include law enforcement programs and technology improvement programs.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO HON. THOMAS J. PERRELLI

1. **In the Department's June 3 letter to the Committee expressing DOJ's concerns with S. 797, quite a few areas of the bill are highlighted, including the Department's opposition to transferring offenders convicted in tribal courts to Bureau of Prisons facilities. I find this statement troubling as one of the issues we are discussing today is the very shortage of beds and adequate penal facilities on tribal lands; with nowhere to go, these criminals will be released back into their tribal community. Until adequate facilities are built and staffed, where does the Department see housing these convicted criminals? What other options should the Committee explore?**

RESPONSE:

The Department is committed to assisting tribal governments with the incarceration of tribal prisoners in tribal jails and detention facilities that meet each tribe's needs in terms of programs, space, staffing, and management. We understand the need for improvements in BIA and tribal detention facilities, and the Department supports an upgrade and expansion of those facilities to meet the current shortfall. In fact, the Department is administering $225 million provided under the American Recovery and Reinvestment Act of 2009 for the construction or renovation of tribal correctional and detention facilities. In the meantime, the Department is exploring whether the BOP could accept placement of a limited number of tribal prisoners, subject to a number of conditions that would ensure the safety, security, and proper management of these prisoners.

2. **As New Mexico's former Attorney General, I understand the complexities involved in navigating the jurisdictional maze arising from prosecuting crimes in Indian country and I commend EOUSA's innovative efforts to address this issue. Could you expand on the purposes and outcomes of the Project Safe Neighborhoods Indian Country Pilot Project currently ongoing in the Eastern Navajo Nation?**

RESPONSE:

In the past, Project Safe Neighborhoods funding has been used to hire new federal and state prosecutors, support investigators, provide training, distribute gun lock safety kits, deter juvenile gun crime, and develop and promote community outreach efforts as well as to support other gun and gang violence reduction strategies.

In early 2009, a violent crime initiative targeting gang-related crime and domestic violence in Indian Country was launched in the Eastern Navajo Nation Dlo'ayazhi community located in western New Mexico. The grant amount is $150,000 for this Indian Country pilot project.

The Navajo Nation Pilot Project will allow the community, in partnership with the New Mexico USAO, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the BIA and the Federal Bureau of Investigation (FBI), to develop interdiction and prevention programs that will specifically address the problems experienced in that community.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO HON. THOMAS J. PERRELLI

1. **In Washington State, Mexican and Canadian Drug Trafficking Organization (DTOs) are using reservations as "safe havens" for the production and distribution of drugs. In 2007 over 119,000 of the 295,000 cannabis plants eradicated in Washington State were found on Indian reservations. As the 2009 growing season gets underway, what actions are you taking to assist tribes in locating and destroying "cannabis gardens?"**

RESPONSE:

Although the Department cannot confirm the particular numbers referred to here, the Domestic Cannabis Eradication and Suppression Program (DCE/SP) sponsors a variety of training programs each year at locations throughout the United States. Among other things, these programs provide specialized training for law enforcement officials in the investigation and eradication of marijuana. These training programs are open to all federal, state, local, and tribal law enforcement involved in the eradication efforts. DCE/SP also provides funding to the Drug Enforcement Administration (DEA) in Washington and the Washington State Patrol for eradication operations.

2. **In the Northwest we have several tribes that are organizing a sort of mutual aid society, whereby neighboring tribes provide logistical and personal support to each other on an emergency basis. These tribes are organizing because some of them have as little as 1 officer for every 48,000 acres of land and average 1.8 officers per 1,000 inhabitants. Would you support the creation of a Federal program to assist such an organization with coordination and technical support? The program could be modeled after the High Intensity Drug Trafficking Area (HIDTA) program, a highly successful mutual aid and intergovernmental coordinating program.**

RESPONSE:

The Department is very supportive of tribes working together to strengthen criminal justice and improve public safety through a number of different efforts. For example, the solicitation for the Recovery Act Construction of Tribal Facilities on Tribal Lands Program specifically allowed tribes to use funds to build regional detention and multi-purpose justice facilities, thereby emphasizing the use of regional facilities to better utilize limited resources. The regionalization could be inter-tribal or could occur between tribes and state or local governments. Additionally, OJP also specifically allows tribes to work together in implementing the Sex Offender Registration and Notification Act, Title I of the Adam Walsh Child Protection and Safety Act of 2006. The Department would be happy to explore ways to further support tribal regional coordination efforts.

3. **In your written testimony you indicate that the DOJ opposes some of the Tribal Law and Order Act's provisions relating to declination letters because you do not believe that keeping records of declinations is helpful. What kinds of statistics would be helpful for ensuring that cases that should be prosecuted are prosecuted? Are the reservation declination rates of 62% for violent crimes and 76.5% of adult rapes in line with those rates for nonreservation crimes? What are the declination rates for non-reservation crimes?**

RESPONSE:

Federal prosecutors take seriously their obligation to pursue justice for Native Americans and Alaska Natives and work diligently to improve the lives of Indians. Indian country prosecutions, particularly violent crime prosecutions falling under either the Major Crimes Act or the General Crimes Act, are an important part of the Department's mission and the Department

continually works to improve efforts in this area. These cases are a specific district priority for the 25+ Federal districts with non-PL 280 tribes. The majority of Federal districts with significant Indian Country responsibility have dedicated Assistant U.S. Attorneys assigned to these critical cases.

Decisions by U.S. Attorney's Office to decline cases are made carefully. Declinations are driven by the evidence, applicable law, and circumstances of each case. But a decision to decline one or many cases does not suggest a lack of commitment to the enforcement of the law or an unwillingness to do so. In some cases it may be simply because the U.S. Attorney's Office has no authority to proceed. Indeed, where Indian Country enforcement may be at issue, a declination may reflect a determination that no federal crime was committed (e.g., that the act was not sufficient to satisfy the Major Crimes Act), that there was no federal jurisdiction (e.g., because the locus of the crime was not on reservation land), that the evidence or witnesses were unlikely to support a conviction, that a state or tribe was proceeding with a prosecution, or that a federal prosecution was inappropriate for some other reason. The Department of Justice's case management system, which was originally designed to manage attorney workloads, was not originally designed to track information in this manner and thus does not reflect the full extent of the Department's commitment to law enforcement efforts in Indian Country. As I indicated in my oral testimony, the Department has now begun working to improve the manner in which it tracks Indian Country case statistics so that we will be able to provide more meaningful information.

The total number of declinations recorded as Indian Country matters fell from 899 in FY 2007, to 814 in FY 2008; the number of referrals received increased slightly from 1,721 matters in FY 2007, to 1,735 matters in FY 2008. Federal case referrals from outside Indian Country in FY 2007 were 118,220 with 24,436 declinations.[1] In FY 2008, Federal case referrals from outside Indian Country numbered 155,774 with 24,321 matters declined for prosecution.

4. **Tribes have repeatedly told me that they once they refer a case to Federal Prosecutors they hear nothing back about whether a case will be prosecuted or not. Can you commit to ensuring that under your watch there will be better communication between Federal Prosecutors and tribes about declinations?**

RESPONSE:

Communication with the Tribes is very important, especially regarding law enforcement concerns. The Department is committed to continuing to improve our communications.

[1] The question refers to a declination rate of 62% for violent crimes and 76.5% of adult rapes occurring in Indian Country. These are not numbers provided by DOJ's case management system, the Legal Information Office Network System (LIONS). We understand the numbers may have been provided by the Transactional Records Access Clearinghouse, or TRAC, a private organization that obtains data from Executive Office of United States Attorney's case management system through the Freedom of Information Act and re-sorts and re-configures it in ways that are not apparent to EOUSA or to the public at large. As a result, there is no way to confirm the accuracy of figures provided by TRAC.

5. **As an example, it is my understanding that in general there are minimums for the amount of drugs that must be present before a U.S. attorney will prosecute an offender. Do these kinds of "minimums" apply to reservation prosecutions given that on a reservation a crime may not be prosecuted unless it is done at the Federal Level? Does the Department of Justice have written guidelines for deciding what cases to prosecute and not prosecute? Are these guidelines different for reservation based and non-reservation based prosecutions?**

RESPONSE:

In considering a case for prosecution, every United States Attorney follows the Principles of Federal Prosecution, which apply to all Department of Justice Prosecutions. In addition, United States Attorneys are entrusted with assessing and responding to the needs and priorities of their individual districts. United States Attorney's Offices work closely with their tribal law enforcement partners in evaluating and responding to the needs of the communities in which they serve. In many cases, United States Attorney's Offices have committed to reviewing the facts and circumstances of all crimes that occur in Indian Country, independently of limitations that might apply to other cases in their districts.

6. **I have been told that the Bureau of Indian Affairs Law Enforcement office in Washington D.C. has intervened to prevent the U.S. Marshalls Service from issuing deputations BIA police officers. Without these deputations multi-tribe taskforces are unable carry out enforcement of federal firearm and anti-gang laws. The tribes taking part in these operations are taking it upon themselves to coordinate with each other and attack the problems of gangs and drugs on their reservations. The BIA should not be inhibiting these actions on parochial grounds; it should be doing everything in its power to help tribes fight crime on their reservations. Can you explain why the BIA is intervening to prevent the Marshall's Service from deputizing tribal police officers, an action they appear perfectly willing to take?**

RESPONSE:

The Department's United States Marshalls Service (USMS) is willing to process, and in the past has approved, requests from the Department of Interior's Bureau of Indian Affairs for special deputations of police officers. There are currently 85 active BIA-sponsored special deputations on record with the USMS.

As the sponsoring agency, it is BIA's responsibility to review and forward requests for special deputation to the USMS Special Deputations Unit, after they are vetted through the recognized BIA headquarters office. The BIA usually cross-deputizes law enforcement officials pursuant to a memorandum of understanding with a tribal government.

ADDITIONAL WRITTEN QUESTIONS SUBMITTED TO HON. THOMAS J. PERRELLI

1. **Access to criminal information databases is a vital tool for law enforcement. Does the Department of Justice support tribal law enforcement agency access to federally funded databases such as the Western States Information Network (WSIN)?**

RESPONSE:

The Department supports tribal law enforcement agency access to federally funded databases such as the Western States Information Network, as well as access to the systems maintained by the FBI's Criminal Justice Information Services (CJIS) Division such as the National Crime Information Center (NCIC) database. Currently, 182 Indian Country law enforcement agencies from 29 states, representing both tribal nations' police departments and Bureau of Indian Affairs police departments, have been authorized access to NCIC data.

Although authorized tribal law enforcement agencies may pursue access to CJIS systems through existing CJIS Systems Agencies, not all state agencies provide such access because of legal, policy, and other restrictions. Assuming privacy and security requirements are met, the Department supports tribal law enforcement access to these critical systems, and is working with the FBI to identify tribal agencies that may benefit from access to the NCIC though the Department's communications system.

2. **Would it improve law enforcement coordination and effectiveness to include tribal representation on HIDTA boards in states where the HIDTA area includes reservations with significant drug manufacturing, trafficking or sales?**

RESPONSE:

The Department would be open to working with the Office of National Drug Control Policy to develop the most effective ways to utilize HIDTA to combat drug trafficking in those areas that include reservations.

3. **Are there any reasons why ONDCP funding to address "Indian Country" drug problems should not be sent directly to tribal enforcement agencies, rather than going through state or local law enforcement agencies?**

RESPONSE:

The Department would work with the Office of National Drug Control Policy in developing a proper approach.

4. **The Drug Enforcement Administration (DEA) has indicated that it does not consider tribal law enforcement officers to be proper "Peace Officers" for the purpose of participating in the Domestic Cannabis Eradication Program (DCEP). What steps need to be taken for tribes to be allowed to participate in this program?**

RESPONSE:

Tribal law enforcement officers can and do participate in federal cannabis eradication and other DEA-led or funded narcotics enforcement activities, through the well-established mechanisms administered by the BIA rather than by entering into an individual Memorandum of Understanding (MOU) with DEA. Tribal law enforcement agencies that are not already receiving funding for cannabis eradication through the BIA and which seek to participate in the DCE/SP may do so by becoming sub-grantees under existing letters of agreement between DEA and lead state agency in the state in which they are located. By this means, the states can confirm the eligibility of tribal agencies, pass through DCE/SP funding to them, and administer grants extended to them. In order to do so, the tribal law enforcement agencies must either enter into agreements with the state entity or otherwise be given peace officer status under state law.

5. **Would the Department support amending Title 25 of the Code of Federal Regulation (CFR) to give tribes the authority to issue misdemeanor and petty offense citations to non-Tribal members for offenses on Indian Reservations?**

RESPONSE:

Title 25 of the Code of Federal Regulations does not need to be amended in order to give tribes authority to issue citations to non-Tribal members. Current law allows tribal law enforcement officers who have federal law enforcement commissions from the BIA, Office of Justice Services, to issue federal petty offense citations to any person including tribal members, non-member Indians, and non-Indians. Class A misdemeanors are charged either by an Information filed by the United States Attorneys' Office or by Grand Jury Indictment.

6. **Does the Department support the recognition of tribal police departments and officers as "Police Departments and Officers" as that term is used in federal law?**

RESPONSE:

Police Departments and Officers of federally recognized Indian tribes have lawful authority to enforce tribal laws and with appropriate commissions can also enforce federal and/or state/local laws. We are unclear which provisions of federal law using the term "Police Departments and Officers" is referred to in this question.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO TROY A. EID*

1. As you mention in your testimony, the "maze of injustice" on Indian lands hampers law enforcement and delays the process of investigating and prosecuting violent crimes, especially crimes of domestic and sexual violence. Compounding this injustice is the fact that non-Indians commit at least 70% of the violent victimizations of Indians, according to the Bureau of Justice Statistics. Special Law Enforcement Commission (SLEC) Cards for tribal law enforcement officers are an important first step to addressing this issue. However, crimes against Indian women and children strike at the very heart of tribal sovereignty as the nature of these crimes attack the political integrity of tribal governments. **In your estimation, what other areas should the committee explore to further enhance ideas such as the SLEC initiative? Should we also be examining the situation from a tribal courts perspective?**

A critical first step to clarifying criminal jurisdiction in Indian country is for the Congress to pass S. 797 and for President Obama to sign it into law. There are at least two reasons for this.

First, Section 305 of the bill addresses the "maze of injustice" by creating an Indian Law and Order Commission ("the Commission"). This nine-member Commission would undertake a comprehensive study of law enforcement and criminal justice in Indian communities and report back to Congress within two years of the date of the bill's enactment. This includes an analysis of jurisdiction over offenses committed in Indian country and how the current rules affect criminal investigations and prosecutions. The Commission is expressly charged in Section 305(e)(1) with making recommendations to Congress for "simplifying jurisdiction in Indian country[.]"

Second, another part of the bill, Section 301, takes direct aim at the maze of injustice by helping ensure that more tribal, state and local law enforcement officers are commissioned as federal officers – that is, federally deputized – to fight Indian country crime. This needs to be done on site, within or close to Indian country, so that these mostly rural law enforcement agencies can take full advantage of the training without depleting their field strength. Simply put, encouraging U.S. Attorney's Offices and the Bureau of Indian Affairs to provide expanded federal deputation training

*The report, entitled Improving Law Enforcement Services for the Crow Nation and Big Horn County, attached to Mr. Eid's responses has been retained in Committee files.

and commissioning, in full partnership with the Indian nations they serve, can increase law enforcement cooperation, strengthen prosecution, and save lives.

In addition to my previous testimony involving Colorado's "Criminal Justice in Indian Country" pilot program with the Southern Ute Indian Tribe during my own service as a United States Attorney, I commend the Committee's attention to an outstanding report, "Improving Law Enforcement Services for the Crow Nation and Bighorn County," prepared last May for the Crow Nation by Ms. Hanseul Kang, a student in the Native American Program at Harvard University. Ms. Kang's report is reproduced here in its entirety following my own remarks with permission from her and the Harvard University Native American Program.

Importantly, Ms. Kang has undertaken a much-needed review of federal and state deputation and mutual-aid agreements with several Indian tribes and nations. Links to these agreements are included as appendices to her report. Ms. Kang's stated purpose in compiling this information was to preserve and extend the vision of the late chairman of the Honorable Carl Venne, the late Chairman of the Crow Nation who passed away last February. Chairman Venne sought to create more seamless law enforcement relationships, based on mutual respect and shared interests, among the Crow Nation, the federal government, and Big Horn County, Montana. In terms of a model, such an approach might include both federal deputation of tribal and state officers, such as Janelle Doughty of the Southern Ute Indian Tribe and my office piloted with the BIA Indian Police Academy in Colorado, and "cross-commissioning" agreements between tribes and neighboring state and local governments. The latter are a type of reciprocity arrangement whereby tribal officers may be state deputized to enforce state law and vice-versa. Such arrangements typically include a mutual aid component.

Federal deputation and cross-commissioning is especially important in domestic violence cases. Without first earning and obtaining the required commissions, tribal law enforcement officers

cannot legally arrest non-Indian defendants who commit crimes against Native American victims. Last fall, Director Doughty, who leads the Justice Department at Southern Ute, testified in support of an earlier version of Chairman Dorgan's bill. She described how in far too many instances, domestic violence laws on the reservation were under-enforced to the point that many victims failed to report crimes.

In her testimony, Director Doughty gave a specific case example involving a domestic violence case that bears repeating. She described how a Southern Ute tribal officer had responded to a crime scene in a domestic-violence case on the reservation. The officer had received on-site training to renew his SLEC card, which otherwise would have expired long before he could have left his job to attend a week-long refresher course a full days' drive away at the Indian Police Academy in Artesia, New Mexico. "Because he was federally deputized," Doughty told the Committee, that officer "could arrest the non-Indian suspect who had allegedly victimized one of our Tribal members in that case, which is now being prosecuted by the U.S. Attorney's Office." A conviction was later secured in that case by Colorado's U.S. Attorney's Office.

This is the kind of case that might have fallen through the cracks just a few short years ago prior to Director Doughty, the Tribe's former Victims' Advocate, deciding that enough was enough. The matter would never have been "declined" for prosecution because the investigation itself might not ever have materialized.

S. 797 has the potential to build on such successes and increase SLEC training exponentially. Section 301(b) of the bill directs the Secretary of the Interior to develop a plan within 180 days of the bill's enactment "to enhance the certification and provision of special law enforcement commissions to tribal law enforcement officials." This expressly includes regional SLEC training sessions such as those we developed in Colorado and later conducted in other states. As this plan takes shape, there would be minimal additional cost to enabling U.S. Attorney's Offices to offer such training in

partnership with BIA and with the approval and support of the affected Indian tribes. This training should not be limited to tribal officials, but should include neighboring border communities for effective interagency collaboration, back-up and emergency response. In this way, law enforcement officers on and near reservations can have the tools to help navigate the jurisdictional maze.

A third way to prevent and punish domestic violence would be for Congress to explore a carefully targeted repeal of the U.S. Supreme Court's decision in *Oliphant*, the 1978 ruling that prevents Indian tribes and nations from exercising criminal jurisdiction over non-Indians. My previous written testimony to the Committee deals with this issue and what I personally think a post-*Oliphant* world might look like, so I won't repeat that discussion here. Instead, let me suggest that the Committee consider a pilot repeal of *Oliphant* that is limited only to domestic violence cases and restricted, say, to a certain geographical area such as a federally recognized Indian tribe headquartered in Colorado. That would permit the Southern Ute Indian Tribe, if its Tribal Council voluntarily chooses to do so at an appropriate time, to "opt in" to a pilot program whereby the Southern Ute Tribal Court agrees to respect and enforce defendants' full rights under the U.S. Constitution. This might be achieved through a certification process, with standards perhaps identified in part through the work of the Law and Order Commission created by Section 305 of S. 797. An appeal of the Southern Ute Tribal Court's decision might then lie directly to the federal courts.

Again, this would be an entirely voluntary opt-in program; the Tribe would only participate if and when it chose to do so. Southern Ute Tribal law would apply to the underlying domestic violence offense allegedly committed by the non-Indian suspect. Actual prosecutions would be handled by the Southern Ute Tribal Prosecutor's Office. Sentencing would be done in the Tribal Court and might well include traditional sentencing concepts and norms in addition to or in lieu of incarceration. Because the Tribe and the federal government are separate sovereigns, the U.S. Attorney's Office could still prosecute the offender under the federal criminal code, specifically 18 U.S.C. Section 1152, without violating the Constitutional prohibition against double jeopardy. Over time, the results of a pilot program such as this would give the Congress a more informed opportunity to revisit the *Oliphant* decision as a means of strengthening criminal justice for domestic violence victims in other parts of Indian country.

Thank you again. Please let me know if I can provide further information.

WRITTEN QUESTIONS SUBMITTED TO
HON. LARRY ECHO HAWK *

From Senator Dorgan:

1. Public Law 280 vests State governments with an obligation to investigate and prosecute reservation crimes. The law, however, does not provide the States with resources to meet their obligation. S. 797 would authorize tribal governments to call upon the Justice Department to investigate and prosecute major crimes where a State doesn't have the resources to pursue such serious crimes. The Department of Justice suggests that we make some technical corrections to the proposal contained in the bill, but generally supports the concept. **In your previous experience as Attorney General, what are your views on this proposed change to Public Law 280?**

From Senator Barrasso:

2. The BIA reports for FY 2008 indicate that the Wind River Indian Reservation needs 22 additional officers just to reach the minimum appropriate number of officers for the community. The President's FY 2010 budget request proposes an additional $10.5 million for 55 law enforcement officers. **Please explain how the Secretary intends to allocate that additional funding among Indian reservations around the country.**

3. Your written testimony recommends cooperation with Indian tribes and other federal agencies in providing affordable, safe, well constructed housing for law enforcement officers. **Would you incorporate this recommendation into the long term plan for addressing law enforcement personnel needs required under the *Tribal Law and Order Act of 2009*? If so, how?**

4. Your written testimony recommends that incarceration should be addressed through a comprehensive approach to achieve effective and efficient detention. You also identified one approach which would be to provide a holding facility in most communities and regional detention facilities for other needs. On the Wind River Indian Reservation, there is no juvenile detention facility so that often, when a juvenile is detained, a police officer must stay with the juvenile until a parent or guardian is found, effectively taking the officer off patrol. When this happens, with only two officers on patrol at any given shift, there may be only one officer to patrol the entire reservation. That situation places the community and officers at a much greater risk. **How would your proposed approach take into consideration the residual effects of the lack of facilities and staffing, such as forcing police officers to be taken off patrol to stay with juveniles?**

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

5. Your testimony highlighted concerns with the enhanced tribal sentencing authority under the *Tribal Law and Order Act of 2009*. **Please describe types of assistance that the Department is willing to provide to ensure tribal court systems can meet the constitutional challenges raised in the testimony before the Committee.**

From Senator Udall:

6. My staff spoke with the Director of Navajo Department of Corrections, and I am very disappointed to know that on Navajo, we have only 59 beds that are to serve as holding spots for over 50,000 arrests annually. These 50,000 arrests are a reduction from about 80,000 arrests made annually, right now about 30,000 arrests are let go on the spot because there is nowhere to take them. The need for adequate facilities, in the case of Navajo, would be an increase of about 400 beds. **Where are we with addressing the lack of beds and inadequate facilities on the Navajo reservation? Do you feel this bill addresses the needs of facilities effectively?**

7. Tribal leaders have told us about the lack of responsiveness from the BIA law enforcement to the local tribal community needs. **How is the BIA going to open communication with tribal communities and are there current steps being taken to address this?**

From Senator Cantwell:

8. In Washington State, Mexican and Canadian Drug Trafficking Organizations (DTOs) are using reservations as "safe havens" for the production and distribution of drugs. In 2007 over 119,000 of the 295,000 cannabis plants eradicated in Washington State were found on Indian reservations. **As the 2009 growing season gets underway, what actions are you taking to assist tribes in locating and destroying "cannabis gardens?"**

9. In the Northwest we have several tribes that are organizing a sort of mutual aid society, whereby neighboring tribes provide logistical and personal support to each other on an emergency basis. These tribes are organizing because some of them have as little as 1 officer for every 48,000 acres of land and average 1.8 officers per 1,000 inhabitants. The program could be modeled after the High Intensity Drug Trafficking Area (HIDTA) program, a highly successful mutual aid and intergovernmental coordinating program. **Would you support the creation of a Federal program to assist such an organization with coordination and technical support?**

10. I have been told that the Bureau of Indian Affairs Law Enforcement office in Washington D.C. has intervened to prevent the U.S. Marshalls Service from issuing deputations BIA police officers. Without these deputations multi-tribe taskforces are unable carry out enforcement of federal firearm and anti-gang laws. The tribes taking part in these operations are taking it upon themselves to coordinate with each other and attack the problems of gangs and drugs on their reservations. The BIA should not be inhibiting these actions on parochial grounds; it should be doing everything in its power to help tribes fight crime on their reservations. **Can you explain why the BIA is intervening to prevent the Marshall's service from deputizing tribal police officers, an action they appear perfectly willing to take?**

11. **Does the Department of the Interior support giving the tribes greater autonomy over funds that are designated for their law enforcement efforts?**

12. Joint task forces have proven to be an effective law enforcement tool for fighting a range of crimes including drugs, gangs, and terrorism. **Does the Department support the inclusion of tribal law enforcement agencies on joint task forces with federal, state, and local law enforcement agencies? Will the Department support the tribes in establishing inter-tribal task forces?**

Other Member Questions:

13. Within Oregon, Washington, and Idaho, tribal police departments have worked together to create an Inter-Tribal Law Enforcement Mutual Aid Program. Could this program be used as a demonstration project, and does the Department support allocating funding to expand this approach?

14. Each tribe has unique needs based on differences in size, geography, location, and other factors. What methods does the BIA use to determine law enforcement needs? Would the BIA consider conducting a survey of tribal police departments to gather information?

15. Complex bureaucratic requirements often hinder tribal police department's ability to participate in information sharing or to access funding. Will the BIA work on developing proposals to streamline access to resources and implement more efficient bureaucratic oversight?

NYSCASA

New York State Coalition Against Sexual Assault

Support for S.797: Tribal Law and Order Act of 2009

NYSCASA, New York State Coalition Against Sexual Assault and the 78 Rape Crisis Programs we represent in every region of New York State support the Tribal Law and Order Act of 2009 (S.797).

As a nonprofit organization established to advocate for appropriate responses to all victims of sexual violence, this law will help us to achieve our stated goals. Section 602 of the Tribal Law and Order Act (TLO) will ensure that service professionals such as law enforcement officers and prosecutors who respond to and prosecute cases of sexual violence in Indian Country will receive specialized training. This training will allow for more successful prosecution of sexually violent offenses, and may offer the survivor justice and empowerment.

Sexual Violence can not only destroy the life of individual women, but the community at large suffers when such violence goes unpunished. The creation of a Sexual Assault Protocol by the Indian Health Service under this new law can help to foster a community free of violence against women and sexual assault.

Sincerely,

A. Jane McEwen
Executive Director

Qualla Women's Justice Alliance
PO Box 1630
Cherokee, NC 28719
Qualla Indian Boundary

June 24, 2009

Senator Byron Dorgan, Chairman
United States Senate Committee on Indian Affairs
322 Hart Senate Office Bldg
Washington, DC 20510

RE: Tribal Law & Order Act (S.797)

Dear Senator Dorgan:

In 2007, the Qualla Women's Justice Alliance (hereinafter "the Alliance") submitted written testimony to the "Oversight Hearing on Law Enforcement in Indian Country" conducted by the Senate Committee on Indian Affairs (hereinafter "the Committee"). We are pleased to see that under your leadership, the Committee has continued to champion the "long standing and life threatening public safety crisis that exists on many of our Nation's American Indian reservations."[1]

For almost a decade the Alliance has advocated for the safety of women. We are a grassroots, community based organization of Cherokee women dedicated to ending domestic violence, sexual assault and other forms of violence against women. The purpose of the QWJA is to increase the safety of Cherokee women through increased awareness and an enhanced response to domestic violence and sexual assault within the reservation boundaries of the Eastern Band of Cherokee Indians, properly known as Qualla Boundary. The Alliance does not receive funding from any federal or state governmental agency. The Eastern Band of Cherokee Indians is a federally recognized Indian tribe located within North Carolina.

As introduced, the Tribal Law and Order Act of 2009 (S. 797) will make significant steps to mend the broken system of justice within our communities, while recognizing the importance of providing the tools and resources necessary for **us** to protect **our** tribal communities. As you know, the bill is an initial step in addressing the critical gaps in the tribal and Federal justice systems. We are optimistic that it will begin to provide tribal crime victims a sense of justice.

Given the unmet obligation to provide for the public safety of tribal communities, the promise of this bill to improve tribal and federal law enforcement and prosecutorial services demonstrates a commitment to meet the legal obligations of the United States to American Indians and Alaska Natives. We respectfully request your consideration of conducting a joint hearing with the Senate Judiciary Committee on violence committed against Native women and increasing the response to these crimes.

Thank you for your leadership and attention to this important matter.

Sincerely,

Marieanne Canales, Member

[1] Congressional Record, April 2, 2009, S4333.

Strong Hearted Native Women's Coalition, Inc.

June 23, 2009

Senator Byron Dorgan
Chairman, Senate Committee on Indian Affairs
838 Hart Senate Office Bldg
Washington, DC 20510

RE: Tribal Law & Order Act (S.797)

Dear Senator Dorgan:

American Indian and Alaska Native women are under the trust responsibility of the U.S. Government and should have equal protection from violent crimes committed against their persons. Yet access to protection by the criminal justice system, whether it lay in the hands of state, federal, or tribal authority is profoundly lacking. Our coalition is a consortium of Native women from nine reservations in the North parts of San Diego County, California, a PL-280 State. Justice can begin to address the lack of accountability by the passage of the Tribal Law & Order Act.

As Native women from our communities, we understand the experiences that our Native women have. We have witnessed and have stories of our own. As Native women and survivors, we strongly support the provisions included in this legislation; to permit PL-280 Tribes to call in the United States to assist State governments in the prosecution of major crimes where the States have authority, but lack the resources to address reservation crimes; to establish and provide technical and financial assistance to encourage Tribal-State cooperative law enforcement agreements; increase in tribal court sentencing authority from 1 to 3 years; the ability for Indian tribes to incarcerate offenders convicted in tribal court in federal prisons; mandate that the U.S. Department of Justice maintain a record of cases declined on tribal lands and issue declination notices to Indian tribes; requirement that federal employees testify in rape and sexual assault cases; requirement that a Sexual Assault Protocol be developed by Indian Health Service, and finally and most importantly increase the authority for tribal police to arrest non-Indians who commit federal crimes on tribal lands including sexual assault.

We strongly encourage your efforts in passing this comprehensive bill that will provide a measure of justice for American Indian and Alaska Native women.

Thank you for your time.

Sincerely,

Germaine Omish-Guachena, Executive Director
Strong Hearted Native Women's Coalition, Inc.

Defending Liberty
Pursuing Justice

Thomas M. Susman
Director
Governmental Affairs Office

AMERICAN BAR ASSOCIATION
740 Fifteenth Street, NW
Washington, DC 20005-1022

July 17, 2009

The Honorable Byron L. Dorgan, Chairman
The Honorable John Barraso, Ranking Member
United State Senate
Committee on Indian Affairs
Washington, DC 20510

Re: Support for S. 797, Tribal Law and Order Act of 2009

Dear Chairman Dorgan and Ranking Member Barraso:

I write on behalf of the American Bar Association, the national representative of the legal profession with more than 400,000 members worldwide, to thank you for introducing S. 797, the Tribal Law and Order Act of 2009, and for holding the June 25, 2009 Committee hearing. This legislation would address the violent crime rate in Indian country that is nearly twice the national average, and more than 20 times the national average on some reservations.

The ABA strongly supports many of the provisions of S. 797, which: (1) authorizes funding for the development and continued operation of tribal justice systems; (2) addresses critical barriers preventing the safety of American Indian and Alaska Native women by boosting law enforcement efforts; (3) provides tools to tribal justice officials to fight crime in their own communities; (4) improves coordination between law enforcement agencies; and (5) increases accountability standards.

The ABA strongly supports legislation and appropriate funding to strengthen protection and assistance for victims of gender-based violence including American Indian and Alaska Native women. The ABA also specifically urges Congress to enact and fund legislation that (1) supports funding for legal assistance for victims of gender-based violence; (2) supports funding to provide training and education about gender-based violence and the needs of victims; (3) supports efforts to foster a multidisciplinary and community approach to serving victims and ending gender-based violence; and (4) supports efforts to ensure that perpetrators of gender-based violence are held accountable.

Finally, earlier this year, I communicated the ABA's support for adequate, stable, long-term funding for tribal justice systems. (See February 23, 2009 letter, attached.) In that letter, we specifically encouraged your Committee, as an initial step, to enact legislation this year reauthorizing the Indian Tribal Justice Technical and Legal Assistance Act of 2000 and the Indian Tribal Justice Act of 1993. We are very pleased to see that these reauthorizations are also included in S. 797.

Thank you for your consideration of the ABA's views. We again urge your Committee to make enactment of this legislation a priority this year and we stand ready to assist you in whatever way we can.

Sincerely,

Thomas M. Susman

Defending Liberty
Pursuing Justice

AMERICAN BAR ASSOCIATION

Governmental Affairs Office
740 Fifteenth Street, NW
Washington, DC 20005-1022

February 23, 2009

Honorable Byron L. Dorgan
Chairman
Committee on Indian Affairs
United States Senate
Washington, DC 20510

Honorable John Barrasso
Ranking Member
Committee on Indian Affairs
United States Senate
Washington, DC 20510

Re: Support for Long-term Funding for Tribal Justice Systems through Reauthorization of the Indian Tribal Justice Technical and Legal Assistance Act of 2000 and the Indian Tribal Justice Act of 1993

Dear Chairman Dorgan and Senator Barrasso:

I write to express the American Bar Association's strong support for adequate, stable, long-term funding for tribal justice systems. As an initial step, we would like to encourage your Committee to consider legislation to reauthorize the Indian Tribal Justice Technical and Legal Assistance Act of 2000 and the Indian Tribal Justice Act of 1993. These statutes authorize funding through the Department of Justice and the Department of the Interior for criminal and legal assistance, and for the development and continuing operation of tribal justice systems.

As you well know, legislation to reauthorize these programs was introduced last Congress as S. 2087, a stand-alone bill, and as part of S. 3320, the Tribal Law and Order Act of 2008. Both bills received consideration but were not enacted. We appreciate your past efforts to provide for long-term funding for tribal justice system programs and hope that the Committee will bring those efforts to fruition this session of Congress.

More than 350 tribal justice systems play an important role in Native American communities, handling a wide range of difficult criminal and civil justice problems with far fewer resources than are available to their state and federal counterparts. In fact, tribal courts are the keystone to tribal economic development and self-sufficiency.

Federal resources made available to tribal judicial systems over recent years through the Bureau of Justice Assistance in the Department of Justice and the Bureau of Indian Affairs in the Department of the Interior have been modest. Nonetheless, these funds have enabled tribal courts and governments to draft and review environmental, domestic violence and other regulatory codes; apply traditional and alternative methods and processes to address conflict or wrongdoing within their communities; hire and train judicial personnel; and receive technical assistance services. Additional funds are sorely needed to fund Indian Legal Services programs, address additional pressing administration of justice issues, and to otherwise develop, enhance, and continue the operation of tribal justice systems.

In August 2008, the ABA adopted policy affirming that tribal justice systems are the primary and most appropriate institutions for maintaining order in tribal communities and urging increased funding for, and enhancement of, tribal justice systems. Reauthorization of the Indian Tribal Justice Technical and Legal Assistance Act of 2000 and the Indian Tribal Justice Act of 1993 is an important step in this direction. We urge your Committee to make enactment of the reauthorization of these laws a priority this year, and we stand ready to assist you in whatever way we can.

Thank you for your consideration of this request.

Sincerely,

Thomas M. Susman
Director

Mending the Sacred Hoop

202 East Superior Street • Duluth, Minnesota 55802

June 17, 2009

Senator Byron Dorgan
Chairman, Senate Committee on Indian Affairs
322 Hart Senate Office Bldg
Washington, DC 20510

RE: Tribal Law & Order Act (S.797)

Dear Senator Dorgan:

American Indian and Alaska Native women deserve equal protection from violent crimes committed against their persons. Although, the statement is simple and clear enough yet access to protection by the criminal justice system, whether it lay in the hands of state, federal, or tribal authority is profoundly lacking. Justice can begin to address the lack of accountability by the passage of the Tribal Law & Order Act.

As an organization who primarily works with Native women for over 25 years, we understand firsthand the experiences of Native women survivors and their victimization by perpetrators and again by the criminal justice system, we strongly support the provisions included in this legislation; increase in tribal court sentencing authority from 1 to 3 years; the ability for Indian tribes to incarcerate offenders convicted in tribal court in federal prisons; mandate that the U.S. Department of Justice maintain a record of cases declined on tribal lands and issue declination notices to Indian tribes; requirement that federal employees testify in rape and sexual assault cases; requirement that a Sexual Assault Protocol be developed by Indian Health Service, and finally and most importantly increase the authority for tribal police to arrest non-Indians who commit federal crimes on tribal lands including sexual assault.

With unyielding conviction, we strongly encourage your efforts in passing this comprehensive bill that will provide a measure of justice for American Indian and Alaska Native women.

From all my relations,

Tina Olson
Co-Director
Mending the Sacred Hoop

National Task Force
to End Sexual and
Domestic Violence Against Women

PASSAGE OF THE TRIBAL LAW AND ORDER ACT
TO INCREASE SAFETY FOR INDIAN WOMEN

June 24, 2009

RE: SUPPORT FOR THE TRIBAL LAW AND ORDER ACT OF 2009

Dear Chairman Dorgan and Members of the Senate Committee on Indian Affairs:

Today we write to thank you and members of the Committee for your support of the Tribal Law and Order Act of 2009 (S. 797). This legislation addresses critical barriers preventing the safety of American Indian and Alaska Native women and builds upon the successes of the Violence Against Women Act. For the last 15 years, VAWA programs have enhanced federal, state, tribal and local responses to domestic violence, dating violence, sexual assault and stalking. These programs represent hope in the lives of women across the United States.

We are grateful for your continued support of these proven and life-saving programs. Recognizing the government-to-government relationship of the United States to Indian tribes VAWA provided the first dedicated funding stream to enhance the response of Indian tribes to crimes of domestic violence and sexual assault and create programs for tribal women where none existed. It also provided funding for non-profit tribal organizations providing services to Native women such as the White Buffalo Calf Women Society Shelter located in Rosebud South Dakota. While gains have been made, unfortunately outstanding jurisdictional issues, lack of resources, lack of training, inadequate federal and state coordination with Indian tribes prevent many Indian women from accessing justice to live safe from violent perpetrators. We write today because we recognize that the benefits of VAWA have not fully reached tribal communities. The Tribal Law and Order Act (TLO) contains solutions to many of these barriers to safety and justice in the lives of American Indian women.

The inequity between the response to and services available for Native women living within tribal jurisdictions and other women is reflected in the context of the crime of rape. The average court sentence for rape across the United States is 4 years except in the instance of the sentencing authority of tribal courts. In cases of rape, and other crimes, tribal courts are restricted to a one-year maximum sentencing limitation per offense. The TLO would increase the sentencing authority of tribal courts to a three-year maximum per offense. One of the primary barriers to the successful prosecution of sexual assault cases of Native women is the lack of cooperation and failure to testify of federal agencies such as Indian Health Service during the case. The TLO will require that federal employees cooperate and testify in rape and sexual assault cases and that the Indian Health Service develop a sexual assault protocol. Further, the TLO will expand the programs that authorize tribal police to make arrests for all crimes committed on tribal lands, and provide direct access to national crime databases that will provide vital criminal history information about suspects, as well as the reauthorization of many existing tribal programs.

The Department of Justice estimate that more than 1 in 3 Indian women will be raped, 6 in 10 will be physically assaulted, and that American Indian women are stalked at more than twice the rate of any

other population of women. While the violent crime rate has decreased nationally, violence against Indian women has not. One example of this pattern of increased violence is the report from the Navajo Nation Division of Public Safety that domestic violence cases doubled in 2008 and rape is the most frequent violent crime on the reservation. Despite the efforts under VAWA less than five rape crisis program exist on tribal lands and many of the over 560 Indian tribes lack services for women seeking safety.

While this epidemic of violence against Native women has been well documented, it has gone unaddressed. Between 2004 and 2007, the United States declined to prosecute 62 percent of Indian Country criminal cases referred to federal prosecutors, including 72 percent of child sexual crimes, and 75 percent of adult rape cases. While these statistics are daunting, even less is known about violence against Indian women living in states sharing concurrent criminal authority with Indian tribes. For example, Alaska Native women living in rural Alaska Native Villages report that every woman has been assaulted and fears for her safety. In many of these Alaska Native Villages no services or law enforcement officers are available. We strongly support increased accountability of states sharing concurrent criminal authority with Indian tribes and ask that it apply to all federally recognized Indian tribes and not exclude Alaska.

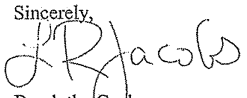
As organizations committed to ending domestic and sexual violence, we represent battered women's shelters, rape crisis centers, victim service providers, legal advocates, children's and youth service providers, judges and court personnel, and other state, tribal and local programs addressing the needs of victims. On behalf of the millions of individual victims that our organizations serve, we urge you to please continue your support for and pass into law the Tribal Law and Order Act. This Act will help break the cycle of intergenerational violence, strengthen tribal law enforcement in under-resourced communities, and enhance the ability of tribal court to keep victims safe and hold offenders accountable. These amendments are essential to the continued success of the Violence Against Women Act, will save lives and increase the safety of American Indian and Alaska Native women.

For more information, please contact the Lisalyn Jacobs, Chairperson of the National Task Force to End Sexual and Domestic Violence and V.P., Government Relations, Legal Momentum.

Until the first women of this land are safe, all women are in danger.

Thank you for your consideration.

Sincerely,



Break the Cycle
Family Violence Prevention Fund
Legal Momentum
National Coalition Against Domestic Violence
National Alliance to End Sexual Violence
National Congress of American Indians Task Force on Violence Against Women
National Center for Victims of Crime
National Network to End Domestic Violence
The National Organization of Sisters of Color Ending Sexual Assault

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