

Bureau of Indian Affairs – Office of Justice Services FY 2016 Additional Tribal Justice Support Funding Plan

The Department of Interior (DOI), after consultation with tribes, has finalized a plan to distribute the FY 2016 Budget appropriation increase of \$10.0 million for tribal justice support. The December 17, 2016 Congressional Record at H10218 identified the parameters for a new funding source and states the Department of the Interior will receive through appropriations:

“10 Million dollars to work with Indian Tribes and tribal organizations to assess needs, consider options, and design, develop, and pilot tribal court systems for tribal communities including those communities subject to full or partial State jurisdiction under Public Law 83-280.”

In January 2016, DOI formulated a draft plan to distribute the funding. The draft plan was influenced by visits made by the Bureau of Indian Affairs, Office of Justice Services, Tribal Justice Support (OJS/TJS) personnel to Alaska, which included discussions with Alaska consortia, Alaska Legal Services, and justice personnel located in several Alaska villages, as well as other organizations involved in the creation and sustainability of Alaska tribal courts. On March 15, 2016, DOI announced that consultation on the overall plan was forthcoming. A tribal leader letter was distributed advising that telephonic consultations would take place on April 19, 2016 and April 26, 2016. In April, OJS/TJS personnel traveled to California to work specifically with those tribal courts subject to the mandatory Public Law 83-280 (P.L. 280) jurisdiction and held the first telephonic consultation.

After the consultations were completed, written comments were due by April 29, 2016. However, as of May 30, 2016 OJS/TJS was still receiving written comments and decided to delay any change to the draft plan until all parties had ample opportunity to respond. As a result of the consultations and comments, the final overall plan includes specific funding for Alaska, California, and other mandatory P.L. 280 jurisdictions, as well as others. The plan also incorporates a similar strategy (basic needs assessment, strategic planning assistance, and funding distribution process) used by OJS/TJS for all tribal justice systems. Once the consultations were completed and all comments received, OJS/TJS incorporated changes to the original draft plan based on the input received from tribes.

At first glance, it is clear the plan favors tribes in Alaska and California in terms of resource allocation. This resulted because these two states contain 338 (60%) of the 567 federally recognized tribes. Accordingly, despite their smaller average populations compared to other states, each tribal government still represents a sovereign entity that needs a court in order to function and serve its community effectively.

Plan Details:

1. \$1.6 Million – Tribal Court Assessments in Alaska and California

This funding will be used to award four commercial contracts in accordance with the Federal Acquisition Regulation and the Buy Indian Act, to conduct independent tribal court assessments. In accordance with 25 U.S.C. § 3612 the independent assessments document the conditions of the tribal justice system and determine resources and funding needed to provide effective administration of justice. The independent tribal court assessments will identify and document both immediate and long-term needs of the court and provide viable recommendations for improvement. This includes developing a strategic plan for the court in conjunction with the tribe and providing suggested resources. The contracting requirements include the completion of 10 court assessments by each vendor. Additionally, under a separate funding source, a contract was awarded to complete tribal court assessments for villages in the Association of Village Council Presidents (AVCP). Thus, a total of 50 tribal court assessments (30 in Alaska and 20 in California) will be completed.

In order to be eligible to receive funding under a number of the remaining plan components, a tribe must have a current court assessment completed through the Office of Justice Services Tribal Court Assessment Program. To request a court assessment, interested tribes should contact Mr. Bennie Francisco, Court Assessment Director, Office of Justice Services, Bureau of Indian Affairs, at 505-563-3419, or via email at bennie.francisco@bia.gov. The selection of tribes to receive a court assessment will follow the order in which the requests were received, while making sure all regional areas within California and Alaska are appropriately represented. Additionally, based on comments from consultation, the contracts awarded will utilize tribal court personnel, including individuals from or near the actual site assessed, or at least very familiar with the judicial systems in the area.

Reasoning: During consultation, concerns were voiced regarding the scope of the assessments and how the assessments may or may not reflect the varied needs of each of the tribal justice systems, presenting in different stages. Some participants discussed tribes without justice systems, in both Alaska and California, and queried whether funding would be available to those tribes. Moreover, participants from intertribal justice systems, as well as representatives from tribal justice systems operating on a volunteer basis, indicated a need to address those specific scenarios. As a result, assessment efforts will be spread into the following four categories to ensure equitable coverage regardless of existing court structures: (1) Villages and Rancherias with no tribal courts; (2) Villages and Rancherias with a tribal court operating on volunteer basis; (3) Consortia or intertribal courts; and (4) Fully operational tribal courts, along with recognition of traditional courts, such as Kake Circle Sentencing and other types of healing to wellness courts.

Additionally, there was concern regarding the lack of opportunity for non-profits to participate in the solicitation process for court assessment vendors. In accordance with the FAR and Department of the Interior Acquisition Regulation 1480 (applying the Buy Indian Act), BIA is required to adhere to the following order of preference in all acquisitions: Indian Small Business, Indian Large Business, GSA small business, GSA large business, and all sources (open market). Generally, non-profit entities do not meet the definition of an Indian economic enterprise under the Buy Indian Act, and therefore are not eligible to compete until a procurement is advertised to all sources. In reality, most BIA procurement actions are satisfied at a previous stage.

2. \$5.0 Million – Tribal Justice Support in Alaska and California

As needs are identified through the 50 tribal court assessments, funding will be distributed to correct deficiencies identified using the Trial Court Performance Standards, with modifications as necessary. Funding will be awarded through self-determination agreements either directly to a tribe or tribal association. Generally, an assessment does not need to be complete before funding is available. For example, if an assessment team arrives on location and identifies fundamental infrastructure or emergency needs (ex. lack of a computer or filing cabinets) funding can be immediately distributed to address the problem. Other longer-term needs identified through the assessment for supplies, training, additional infrastructure, etc. will be prioritized by the tribe and funded accordingly during or upon completion of the assessment.

3. \$1.2 Million – Alaska Village Tribal Court Support

Apart from funds received through other components of this plan, each Alaska village will be provided \$5,000 to support training, travel, and basic equipment and supplies. This funding will be awarded directly to each village or provided through a consortium based upon village preference.

Reasoning: This component resulted as a response to specific requests from Alaska tribes and consortia presented during consultation. It seeks to address the higher cost associated with administering court (or any other government function) in the midst of the unique geographic challenges that are prevalent in Alaska, in comparison to the lower 48 states.

4. \$500,000 – Training for Tribal Court Personnel

The majority of this funding will be awarded to tribes in the mandatory P.L. 280 states to host training sessions in their regions. The training events will include a section focused on issues unique to P.L. 280 jurisdictions, but will be available for any tribe to attend. In addition, funds will be available to the Alaska regional consortia to assist the villages in the best practices and efficient utilization of the direct funding for Alaska villages noted above. Indian Affairs will also be available to assist villages directly if they so choose and will look at ways to combine informational training with other gatherings.

Reasoning: While training is needed, the feedback from tribes during consultation was consistent. They felt the \$1.0 million originally proposed for training would be better served in direct funding to the tribes. Thus, the original plan changed based on consultation.

5. \$1.2 Million – Justice Support for P.L. 280 jurisdictions outside of Alaska and California

Funds will be used to address needs identified through either completed or new tribal court assessments. Approximately \$900,000 (75%) will be allocated for tribes in other mandatory P.L. 280 jurisdictions (Wisconsin, Minnesota, Nebraska, Oregon), and \$300,000 (25%) will be for tribes in optional P.L. 280 jurisdictions (Nevada, Idaho, Iowa, Washington (special focus), South Dakota,

Montana, and Arizona) or “like” P.L. 280 jurisdictions (Texas and Maine). Example uses for this funding are similar to those noted above under number 2.

6. \$500,000 – Tribal Justice Support for non-P.L. 280 jurisdictions

Funds will be used to address needs identified through either completed or new tribal court assessments for those courts not in P.L. 280 jurisdictions. Funds will be used in a similar manner to number 2 and 5 above.

Reasoning: Based on the wording in the Congressional Record, IA was to also consider tribes located in the other four mandatory P.L. 280 jurisdictions and optional or “like” P.L. 280 jurisdictions (number 5 above), as well as tribes located in non-P.L. 280 jurisdictions.

Table I

FY 2016 \$10.0 Million Appropriated Increase:

	FY 2016	FY 2017				Current Plan Total	Approx. State Breakout				
	Q4	Q1	Q2	Q3	Q4		Alaska	California	Other PL 280	Opt. PL 280	Non-PL 280
1	Tribal Court Assessments in Alaska and California					1,600,000	1,000,000	600,000			
2	Tribal Justice Support in Alaska and California (Direct funding)					5,000,000	3,000,000	2,000,000			
3	Alaska Village Tribal Court Support (Direct funding)					1,200,000	1,200,000				
4		Training for Tribal Court Personnel				500,000	300,000	100,000	100,000		
5		Justice Support for P.L. 280 jurisdictions outside of AK and CA (Direct funding)				1,200,000			900,000	300,000	
6		Tribal Justice Support for non-P.L. 280 jurisdictions (Direct funding)				500,000					500,000
*Green Indicates direct funds to tribes/consortia (84% of total).					TOTALS	10,000,000	5,500,000	2,700,000	1,000,000	300,000	500,000
							55%	27%	10%	3%	5%

FY 2016 Existing BIA Budget for Tribal Courts:

		Alaska	California	Other PL 280	Opt. PL 280	Non-PL 280
Existing BIA budget amount for Tribal Courts (TPA) funding. FY 2016 President's Budget Appendix 4 (TPA Base Funding by Location), Appendix 5 (CTGP Funding by Location), and Appendix 6 (Self-Governance Compacts).	35,904,833	274,631	18,660	3,930,834	31,680,708	
		1%	0%	11%	88%	