

**TESTIMONY
OF
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ASSISTANT SECRETARY FOR INDIAN AFFAIRS
TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S. 797, TRIBAL LAW AND ORDER ACT OF 2009**

JUNE 25, 2009

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.