

**TESTIMONY  
OF  
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INDIAN AFFAIRS  
TO THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
ON  
LAW AND ORDER IN INDIAN COUNTRY**

**JUNE 19, 2008**

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

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

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

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

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

and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) also have responsibilities to investigate crimes in Indian country.

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

### **Strengthen Tribal Justice Systems and Recruitment/Retention Efforts**

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

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

Our training partnership has proven to be very cost-effective because we share trainers and facilities. The BIA and tribal criminal investigators receive specialized advanced training at the main FLETC facility in Glynco, Georgia. Select BIA and tribal law enforcement managers also participate in the FBI's National Academy in Quantico, Virginia. Many tribal communities choose to use respective state Peace Officer Standards and Training courses to supplement training of their police.

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

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

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

services as well as lending to a cohesive approach to program implementation that allows for unity and cooperation throughout programs.

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

### **Crime Rate Data Collection**

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

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

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

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

### **Special Law Enforcement Commission (SLEC) Training and Certification**

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

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

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

### **Tribal Sentencing Authority**

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

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

Tribal court penal authority to sentence offenders for longer terms and maybe choose alternate forms of incarceration may give rise to certain constitutional concerns and also federal policy concerns. Consistency in standards and staffing among the facilities would

need to be assured in order to alleviate these concerns. Such consistency among the choices of incarceration, presumably, would again be a significant monetary commitment on both the federal government and tribal governments.

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