

A ROADMAP FOR MAKING NATIVE AMERICA SAFER

**REPORT TO THE PRESIDENT AND CONGRESS
OF THE UNITED STATES**

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**United States Sentencing Commission
Tribal Issues Advisory Committee**

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**Indian Law & Order
COMMISSION**

SHARED ASPIRATIONS

'The ultimate test of a moral society is the kind of world that it leaves to its children.'



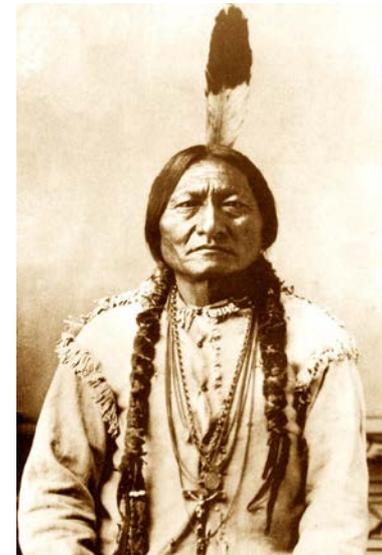
**Dietrich Bonhoeffer
(1906-1945)**

'If our American way of life fails the child, it fails us all.'



**Pearl S. Buck
(1892-1973)**

'Let us put our minds together and see what life we can make for our children.'



**Sitting Bull
(1831-1890)**



STUBBORN REALITIES

Among juveniles, Native Americans suffer Post-Traumatic Stress Disorder at a rate of 22 percent – roughly the same PTSD rates as returning military personal from Afghanistan and Iraq.



Source: Indian Law & Order Commission (2013)



STUBBORN REALITIES

The average violent crime rate among all Native Americans age 12 and older is 2.5 times the U.S. average



Source: U.S. Department of Justice (2012)

Native American and Alaska Native youth experience reported violent crime rates up to 10 times the national average

Source: Indian Law and Order Commission (2013)



STUBBORN REALITIES

**‘It’s not very often
when I tear up in the
Oval Office.’**

Source: *The Washington Post*
(December 3, 2014)



President Barack Obama



STUBBORN REALITIES

Native American women are 10 times as likely to be murdered than other U.S. citizens and sexually assaulted at 4 times the national average.

Source: U.S. Department of Justice (2012)

Alaska Native women are sexually assaulted at 12 times the U.S. average.

Source: Indian Law & Order Commission (2013)



The Tribal Law And Order Act (TLOA), Signed Into Law By President Obama In July 2010 With Bipartisan Support –

- **Makes federal agencies more accountable for serving Indian lands**
- **Provides greater freedom for tribes to design and run their own criminal justice systems**



TLOA's Reforms Include –

- **Enhanced sentencing options for tribal courts**
- **Expanded Indian Country law enforcement training**
- **Greater transparency for federal prosecutors who decline to file cases**



Yet Many Of The Greatest Challenges To Securing Equal Justice For Native Americans On Tribal Lands Are *Structural*

- **These challenges are rooted in federal institutions, laws and practices that pre-date the modern era of tribal sovereignty and self-determination**
- **TLOA does little or nothing to change this outmoded command-and-control framework**



Barriers To Equal Justice In Indian Country Include -

- **Systemic underfunding (roughly half the law enforcement patrol, investigations and correctional resources as in similarly situated communities off-reservation)**
- **Jurisdictional complexity that creates a ‘Maze of Injustice’**
- **Lack of federal judges and courts**



Barriers To Equal Justice In Indian Country Include -

- **Less directly accountable federal officials serving what would otherwise be local or community roles**
- **Lack of respect for Tribal sovereignty that leads to underreporting of crimes**
- **Criminal sentencing distortions real and perceived**



That's Why TLOA Created The Indian Law And Order Commission

Congress created this independent commission to recommend structural changes for making Indian Country safer and more just for all Americans



ABOUT THE COMMISSION

- **Created by the Tribal Law and Order Act of 2010 (TLOA) to advise the President and Congress on Federal, State and Tribal reforms to strengthen criminal justice for the 566 Federally recognized Indian Tribes and Nations.**
- **Extended by the Violence Against Women Act (VAWA) Reauthorization Act and sunset in January 2014.**
- **Consisted of nine volunteers appointed by the President and Majority and Minority leadership of Congress.**



ABOUT THE COMMISSION

- **Recruited three Federal experts to serve as its staff, who were “detailed” (loaned) to the Commission as provided by TLOA.**
- **Partnered with the UCLA American Indian Studies Center for independent directed research.**
- **Planned and executed one of the most comprehensive assessments of Native American and Alaska Native public safety and criminal justice ever undertaken.**



ABOUT THE COMMISSION

- **Held more than 100 field hearings, took testimony, appointed and consulted with an Advisory Board in all 12 regions of the Bureau of Indian Affairs, and worked entirely in the field – from Alaska to the East Coast.**
- **Unanimously prepared and approved THE ROADMAP – a 324-page report, with 40 unanimous major recommendations for making Native America safer and more just for all U.S. citizens.**



ABOUT THE COMMISSION

- **Some recommendations require new Federal laws; others need executive branch policy changes; some warrant action by the Federal judiciary; others are State-level reforms; and still others are matters for Tribal citizens and their elected leaders.**
- **Several of the Commission's recommendations have already been enacted into law or adopted through regulatory and policy changes.**
- **All recommendations have been endorsed by the American Bar Association (March 2015).**



Commissioners Appointed by the President and Congress

- **FORMER U.S. REPRESENTATIVES STEPHANIE HERSETH-SANDLIN (SD) and EARL POMEROY (ND)**, who were instrumental in writing and enacting TLOA
- **AFFIE ELLIS (Navajo)**, Ellis Public Affairs, former U.S. Senate aide and assistant attorney general for Wyoming
- **TOM GEDE**, attorney, public policy expert and former head of the Conference of Western Attorneys General
- **UCLA VICE CHANCELLOR CAROLE GOLDBERG**, Indian law scholar and a Justice of the Hualapai Appellate Court
- **JEFFERSON KEEL**, Lieutenant Governor of the Chickasaw Nation, former President of the National Congress of American Indians, and a Vietnam veteran
- **CHIEF JUDGE THERESA POULEY (Colville)** of the Tulalip Tribal Court
- **TED QUASULA (Hualapai)**, former Police Chief and Director of the BIA – Office of Justice Services





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KEY FINDINGS AND RECOMMENDATIONS

- 1 The Federal government is largely to blame for the decades-old public safety gap in Native America.
- 2 This is also true indirectly through Congressional authorized State criminal jurisdiction under Public Law 83-280.



KEY FINDINGS AND RECOMMENDATIONS

- 3 Whereas the rest of the United States relies primarily on locally and regionally based criminal justice systems – local police, prosecutors, defenders, judges and juries, corrections and wrap-around services – Federal law forces Native communities to do precisely the opposite.**



KEY FINDINGS AND RECOMMENDATIONS

- 4 Tribes typically must depend on Federal and/or State laws and agencies dispensing justice from outside their communities, with comparatively fewer resources and less accountability to local citizens, making Tribal nations less safe.
- 5 The system's funding mechanisms, including Federal grant-making programs, are broken and should be replaced by Tribal base funding.



JURISDICTIONAL REFORM: BRINGING CLARITY OUT OF CHAOS

- **Give Tribes freedom to exit the Federal criminal justice system entirely, except for laws of general application, and guarantee that same freedom to Tribes in P.L. 83-280 States.**
- **Ensure a direct appeal from Tribal court to Federal court for all criminal defendants, Native American and non-Indian alike, for alleged Federal Constitution rights violations.**



JURISDICTIONAL REFORM: BRINGING CLARITY OUT OF CHAOS

- **Apply the Federal Speedy Tribal Act, 18 U.S.C. Section 3161, to all Tribal court criminal proceedings, so that Tribal remedies are exhausted expeditiously.**
- **Amend the Indian Civil Rights Act to permit Tribal governments to define their own criminal laws and sentences.**



MAKING ALASKA SAFER

Most Alaska Native communities lack regular access to police, courts and related services.

- **Services are based in regional hubs that are usually remote from the communities they serve.**



MAKING ALASKA SAFER

- **Village Public Safety Officers, who provide some basic services, cannot carry firearms – although most offenders do.**
- **At least 75 communities lack any law enforcement presence at all.**
- **There is just one woman's shelter located in Alaska's 229 Federally recognized Native nations and no juvenile shelters at all.**



MAKING ALASKA SAFER

- **Alaska Native women are 19% of the total population but 47% of reported sexual assault victims.**
- **Domestic violence rates for reported crimes are up to 10 times higher than the rest of the United States.**



As one Alaska Native Tribal leader told the Commission during one of our many field visits across the state:

“Every woman you’ve met today has been raped. All of us... we all know each other. Please tell Congress and President Obama before it’s too late.”



ADOPTING THE COMMISSION'S RECOMMENDATIONS FOR ALASKA

- **June 2014**: U.S. Department of the Interior issues new regulations, based on the Commission's report, allowing non-tribal lands to be taken into federal trust status
- **September 2014**: State of Alaska moves forward with legislative pilot project allowing Village Public Safety Officers (VPSOS) to carry firearms
- **December 2014**: Congress approves VAWA Amendments' extension to Alaska; President signs into law



STRENGTHENING TRIBAL JUSTICE

- **Ensure that Tribal prosecutors Federally deputized as SAUSAs – Special Assistant U.S. Attorneys – should be presumptively entitled to Federal criminal justice information, including evidence and case files, so Tribes may effectively assert concurrent jurisdiction.**



STRENGTHENING TRIBAL JUSTICE

- Streamline the process for Federal agents to serve as witnesses in Tribal court proceedings.
- Monitor and improve Federal law enforcement training and performance within the Bureau of Indian Affairs – Office of Justice Services.



STRENGTHENING TRIBAL JUSTICE

- **Encourage the Federal judiciary to develop and implement a plan to further enhance trials and court proceedings in Indian country.**
- **Establish a “Special Assistant Federal Public Defender Program” to deputize Tribal defenders to receive law-enforcement sensitive Federal criminal justice information in cases involving concurrent Tribal jurisdiction.**



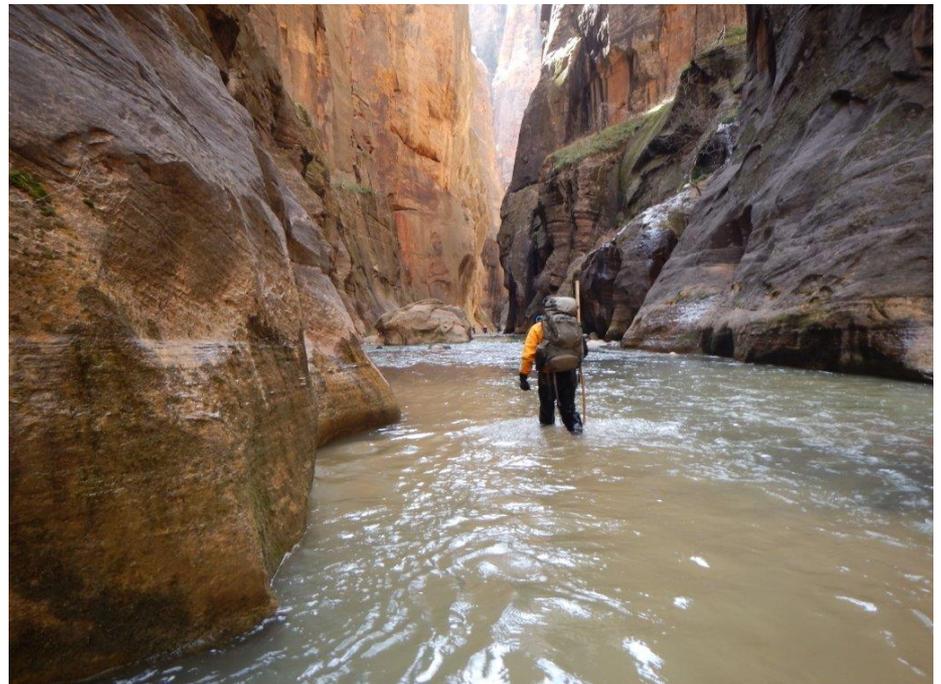
STRENGTHENING TRIBAL JUSTICE

- **Move to Federal base funding to achieve parity in Tribal criminal justice systems with comparable off-reservation jurisdictions.**
- **Recognize that the current Federal grant-funding system servicing Indian country is broken and should be replaced by a base-funding program for Tribes that reduces costs to U.S. taxpayers over the longer run.**
- **Reform Federal criminal justice data reporting and information systems.**



STRENGTHENING TRIBAL JUSTICE

- **Consolidate all Federal criminal justice services for Tribes in the U.S. Department of Justice to enhance performance and accountability – and keep things from falling between the inter-departmental cracks.**



INTERGOVERNMENTAL COOPERATION

- **Improve Federal law enforcement deputization programs and incentivize cross-deputation among Federal, State and Tribal agencies.**
- **This includes model Tribal-State agreements along with enhanced insurance coverage/risk management programs to enable cross-jurisdictional cooperation.**
- **Provide Federal and State notification to Tribes at each stage of criminal justice proceedings to protect victims and enhance offender services, and vice-versa.**



DETENTION

- **Mandate notification to Tribes when offenders enter and leave the Federal Bureau of Prisons to facilitate consideration of offender placement, community supervision, and re-entry programs.**
- **Enable and encourage Federal court sentencing to Tribal corrections and, as appropriate, alternative programs.**
- **Streamline Federal correctional programs within one agency (U.S. Department of Justice).**



DETENTION

- **Codify TLOA's BOP pilot program so Tribal courts have the permanent option of sentencing Tribal offenders to Federal detention.**
- **Incentivize effective alternatives to detention where appropriate.**



JUVENILE JUSTICE

- **The Commission’s report is one of the first comprehensive policy assessments of juvenile justice in Native America:**

“Indian country juvenile justice exposes the worst consequences of our broken Indian country justice system.... Federal and State juvenile justice systems take Indian children, who are the least well, and make them the most incarcerated.”



JUVENILE JUSTICE

- **Violent crime rates result in an average life expectancy of less than 50 years for Native American men on some Indian reservations.**



JUVENILE JUSTICE

- **Federal criminal law and judicial proceedings may result in longer and more severe sentences of incarceration for Native juveniles for offenses on Tribal lands as compared to the same or similar crimes off-Reservation.**



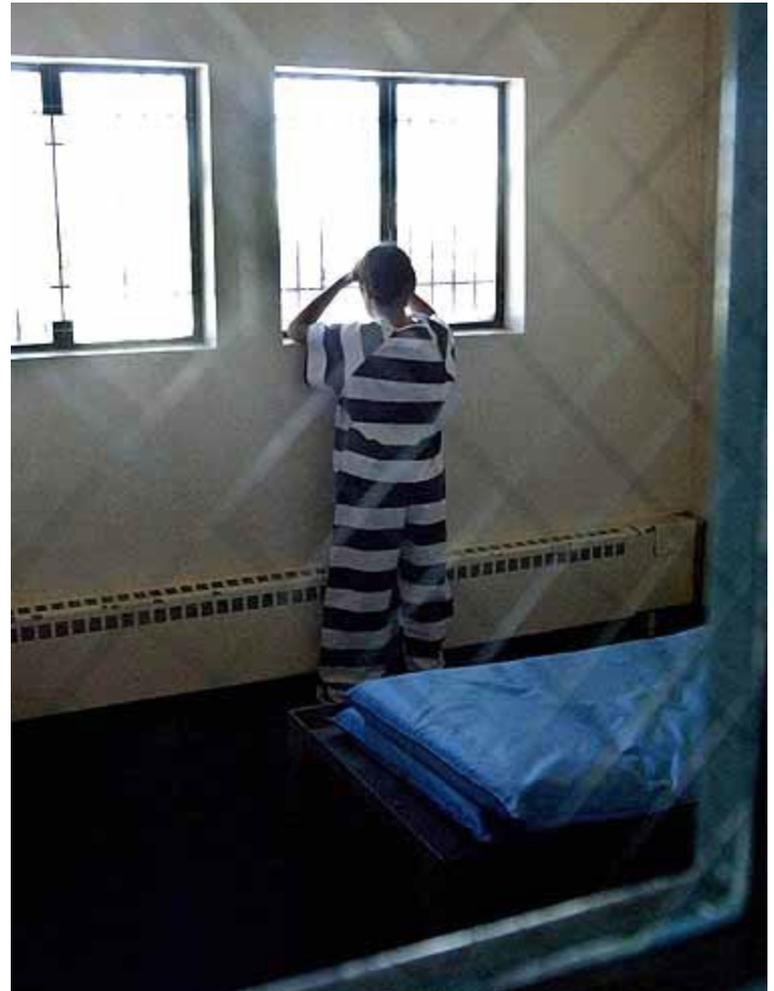
REFORMING JUVENILE JUSTICE

- **Instead of automatically transferring Native juveniles to Federal custody in cases involving felonies, as has been mandated since 1938, Tribes should be free to assert jurisdiction over juvenile offenders so long as they respect the Federal Constitutional rights.**
- **Tribes that choose to exit P.L. 83-280 State criminal jurisdiction should have this same freedom to develop and enforce their own juvenile justice laws, institutions and programs, just as State and local governments do elsewhere in our country.**



REFORMING JUVENILE JUSTICE

- **Parole is unavailable to juveniles in Federal detention; secondary education is typically not provided in BIA-OJS detention centers; opportunities for incentivized rehabilitation – wellness and diversion programs, for instance – are limited.**



RECOMMENDATIONS

- **The Commission recommends requiring Tribal consent to Federal prosecutions of juveniles, including whether to charge younger Native offenders as a adults.**
- **Federal funding should follow victims and offenders, so that Tribes can more effectively address local priorities.**



RECOMMENDATIONS

- **The Federal government and States should notify Tribes at all key stages of juvenile justice proceedings involving Tribal citizens, and data/information systems should be configured accordingly.**
- **Federal courts hearing Indian country juvenile matters ought to be required to establish pretrial diversion programs for such cases that allow sentencing in Tribal courts.**



RECOMMENDATIONS

- **The Indian Child Welfare Act should be amended to provide that when a State court initiates any delinquency proceeding involving an Indian child for acts that took place on the reservation, all the notice, intervention and transfer provisions of ICWA will apply. For all other Native children in State delinquency proceedings, ICWA should be expanded to require notice to the Tribe and a right to intervene.**



THE ROAD AHEAD –

“The Commission finds that the public safety crisis in Native America is emphatically not an intractable problem.... We see breathtaking possibilities for safer, strong Native communities achieved through home-grown, Tribally based systems that respect the civil rights of all U.S. citizens and reject outmoded Federal command-and-control policies in favor of increased local control, accountability and transparency.”



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