



Department of Justice

STATEMENT

OF

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BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ENTITLED

**“TRIBAL LAW AND ORDER ACT ONE YEAR LATER: HAVE WE
IMPROVED PUBLIC SAFETY AND JUSTICE THROUGHOUT INDIAN
COUNTRY?”**

SEPTEMBER 22, 2011

**Statement of Thomas J. Perrelli
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**Before the
Senate Committee on Indian Affairs**

**At a hearing entitled
“Tribal Law and Order Act One Year Later:
Have We Improved Public Safety and Justice Throughout Indian Country”**

**Presented on
September 22, 2011**

Chairman Akaka, 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 report on implementation of the Tribal Law and Order Act of 2010, Title II of Public Law 111-211 (“TLOA”). This landmark law includes important steps toward improving the delivery and administration of criminal-justice services in Indian country, which is a top priority for the Attorney General. The Department has worked hard to implement both the spirit and the letter of the law.

The Tribal Law and Order Act of 2010 covers an extraordinary range of important policies, organized into six subtitles: Federal accountability and coordination (Subtitle A, sections 211 to 214); State accountability and coordination (Subtitle B, sections 221 to 222); empowering tribal law-enforcement agencies and tribal governments (Subtitle C, sections 231 to 236); tribal justice systems (Subtitle D, sections 241 to 247); Indian country crime data collection and information sharing (Subtitle E, sections 251 to 252); and domestic violence and sexual assault prosecution and prevention (Subtitle F, sections 261 to 266). In my testimony this

afternoon, I will address the sections of the Act that have most directly involved the Department of Justice.

TLOA section 212, in Subtitle A, deals with disposition reports. Specifically, it requires Federal investigators and prosecutors to coordinate with tribal justice officials concerning decisions not to pursue investigations or prosecutions of alleged violations of Federal criminal law in Indian country, and to compile and report annually to Congress data concerning such decisions.

Throughout 2011, the first calendar year following enactment of the TLOA, the Department of Justice has been gathering data for its first set of disposition reports to Congress. Both the Executive Office for United States Attorneys (“EOUSA”) and the Federal Bureau of Investigation (“FBI”) have been working to improve the quality of the data they maintain on investigation and prosecution decisions regarding alleged crimes in Indian country. We expect to deliver the initial disposition reports in early 2012, to cover data from January to December 2011.

Moreover, the type of Federal-tribal coordination and communication that TLOA section 212 requires has been a focus of the Department’s for the last few years. In January 2010, the Deputy Attorney General issued a memorandum directing that every U.S. Attorney’s Office with Indian country in its district, in coordination with our law-enforcement partners, engage at least annually in consultation with the tribes in that district to develop operational plans for addressing public safety in Indian country and to work closely with law enforcement to prioritize combating violence against women in Indian country. Typically, these operational plans provide that U.S. Attorney’s Offices, upon declining to prosecute an alleged crime, must coordinate with tribal

justice officials about the status of the investigation and the use of potentially relevant evidence. This engagement has helped foster better communication about ongoing cases and matters in Indian country.

Increased consultation has been central to Attorney General Holder's approach to working with tribal nations. In October 2009, the Attorney General convened the Department's Tribal Nations Listening Session on Public Safety and Law Enforcement in St. Paul, Minnesota. Nearly 300 tribal leaders representing approximately 100 tribes attended the session. In addition to the three top leaders of the Department and representatives from nearly all the Department's components, representatives from the Departments of the Interior, Health and Human Services, Housing and Urban Development, Education, and Homeland Security also participated. In 2010, the Attorney General established the Tribal Nations Leadership Council, composed of tribal leaders selected by the tribes themselves and charged with advising the Attorney General on issues critical to tribal governments and communities, including public safety. The Department also has engaged in dozens of consultations with tribal leaders on specific issues affecting public safety.

TLOA section 213 deals with two key sets of players in prosecuting Indian-country crimes: Special Assistant U.S. Attorneys and Tribal Liaisons. Subsection 213(a) codifies the Attorney General's authority to appoint tribal prosecutors and other qualified attorneys as Special Assistant U.S. Attorneys ("SAUSAs") to assist in prosecuting Federal offenses committed in Indian country. While such appointments had been made occasionally in the past, U.S. Attorneys are now proactively recruiting tribal prosecutors for these assignments. Currently, there are eight tribal prosecutors serving as Special Assistant U.S. Attorneys. And at

least ten more tribal prosecutors have been selected by U.S. Attorneys, in consultation with tribes, to serve as SAUSAs; these individuals are presently undergoing background checks, and it is expected that they will be appointed to serve as SAUSAs by the end of the calendar year.

Subsection 213(b) requires the U.S. Attorney for each district that includes Indian country to appoint at least one Assistant U.S. Attorney to serve as a Tribal Liaison in the district. While the appointment of Tribal Liaisons has been a long-standing practice for many U.S. Attorneys, now every United States Attorney's Office whose district includes Indian country or a federally recognized tribe has at least one Tribal Liaison, and some districts have more than one.

TLOA section 214 focuses on two key administrative entities in the Department: the Office of Tribal Justice ("OTJ") and the Native American Issues Coordinator. Subsection 214(a) requires the Attorney General to establish the Office of Tribal Justice as a component of the Department. OTJ was created in 1995 by then-Attorney General Janet Reno and has operated continuously since then, but was not made permanent until 2010. Even before enactment of the TLOA, the Attorney General had begun the process of making OTJ permanent. And on November 17, 2010, less than four months after TLOA's enactment, the Department published in the *Federal Register* a final rule fully implementing subsection 214(a). The Office of Tribal Justice is now on the Department's organizational chart and is one of a half-dozen Department components that report directly to both the Deputy Attorney General and the Associate Attorney General. OTJ serves as the principal point of contact in the Department for federally recognized tribes, promotes internal uniformity of Department policies and litigation positions relating to Indian country, and coordinates with other Federal agencies and with State and local governments on their initiatives in Indian country.

Subsection 214(b) codifies the position of Native American Issues Coordinator in the Executive Office for United States Attorneys. The Coordinator assists both the United States Attorney's Offices whose districts include Indian country and the Attorney General's Advisory Committee's Native American Issues Subcommittee, which is currently chaired by the U.S. Attorney for the District of South Dakota, Brendan Johnson.

Turning to Subtitle B, on State accountability and coordination, TLOA section 221 provides that, at the request of an Indian tribe whose Indian country is subject to mandatory State criminal jurisdiction under Public Law 280 (18 U.S.C. 1162(a)), the United States may accept concurrent jurisdiction to prosecute violations of the General Crimes Act (also known as the Indian Country Crimes Act), 18 U.S.C. 1152, and the Major Crimes Act (also known as the Indian Major Crimes Act), 18 U.S.C. 1153. Here, too, the Department has made great strides in TLOA's first year. After participating in six consultation sessions with tribal leaders, the Department published proposed procedures for such requests in the *Federal Register* on May 23, 2011 (76 Fed. Reg. 29675), with a public comment period through July 7, 2011. A draft final rule establishing those procedures is currently under interagency review at the Office of Management and Budget.

The next three TLOA sections that I will discuss are all found in Subtitle C, which deals with empowering tribal law-enforcement agencies and tribal governments. Section 233 requires the Attorney General to permit qualified tribal law-enforcement officials access to Federal criminal information databases, such as the FBI's National Crime Information Center ("NCIC") databases, so that these tribal officials can both enter and obtain information. In addition, the Attorney General is required to ensure that qualified tribal law-enforcement officials are

permitted such access to other national criminal databases. Currently, qualified tribal law-enforcement officials are permitted access to NCIC, as well as law-enforcement information-sharing resources such as the National Law Enforcement Data Exchange (“N-DEx”), the DOJ-supported Regional Information Sharing Systems (“RISS”), and Law Enforcement Online’s Tribal Public Safety Network (“T-Net”), to name a few. We know that some tribal law-enforcement agencies face technical and other challenges in using the databases, and the Department has been actively assisting tribal law-enforcement agencies to trouble-shoot and overcome challenges to access that may lie outside the Department.

Section 234(c) requires the Director of the Department’s Bureau of Prisons to establish a pilot program for accepting offenders convicted in tribal court under the TLOA’s enhanced sentencing provisions. In November 2010, the Bureau of Prisons launched the four-year pilot program that allows any federally recognized tribe to request that the Bureau incarcerate a person convicted of a violent crime and sentenced to two or more years of imprisonment. Under TLOA section 234(c), the Bureau is authorized to house up to 100 tribal offenders at a time, nationwide. However, as of today, no tribe has made such a request.

TLOA section 235 establishes the Indian Law and Order Commission, with members appointed by the President, the Majority and Minority Leaders of the Senate, and the Speaker and Minority Leader of the House of Representatives. Pursuant to section 235, the Attorney General provided recommendations to the White House for the Presidential appointees. Because of certain restrictions in the Continuing Resolutions enacted last year and earlier this year that restricted our ability to start new activities, the Departments of Justice and the Interior were prohibited until this spring from providing funding to the Commission as specified in the TLOA.

As a result, the Commission was not able to begin its work as quickly as the Department or the Commissioners would have liked. But under the most recent appropriations acts, the Departments of Justice and the Interior have now moved forward with the Commission not only on funding matters, but also on issues of office space, administrative assistance, and personnel. The Commission held its first in-person meeting in New Mexico on April 6 and its first field hearing earlier this month on September 7 on the Tulalip Indian Reservation in Washington. The Department looks forward to continuing to work closely with the Commission in the months ahead.

Subtitle D of the Tribal Law and Order Act deals with tribal justice systems. TLOA section 241 adds the Department of Justice to the list of Federal agencies responsible for coordinating resources and programs to prevent and treat Indian alcohol and substance abuse. Under section 241(a)(1)(A) and after extensive consultation with tribal leaders, Indian organizations, and professionals in the treatment of alcohol and substance abuse, in July 2011, the Departments of Justice, the Interior, and Health and Human Services entered into a Memorandum of Agreement. Under that agreement, the agencies will collectively determine the scope of the alcohol and substance-abuse problems faced by American Indians and Alaska Natives, identify the resources each agency can bring to bear on the problem, and set minimum standards for applying those resources. Also under TLOA section 241, the Justice Department's Office of Justice Programs joins the Bureau of Indian Affairs, the Indian Health Service, and the Substance Abuse and Mental Health Services Administration as a Federal agency partner to assist, in coordination with Indian tribes, in developing and implementing Tribal Action Plans to combat alcohol and substance abuse on a tribe-by-tribe basis.

Sections 241(g), 244(b)(3), and 211(b)(5), collectively, require the Attorney General, in coordination with the Secretary of the Interior, acting through the Bureau of Indian Affairs, and in consultation with tribal leaders, tribal courts, tribal law-enforcement officers, and tribal corrections officials, to submit to Congress a long-term plan to address incarceration, as well as juvenile detention and treatment, in Indian country, including alternatives to incarceration and juvenile detention. After extensive tribal consultation, the Departments of Justice and the Interior, with other Federal partners, developed the plan entitled, “Tribal Law and Order Act (TLOA) Long-Term Plan to Build and Enhance Tribal Justice Systems.” This Tribal Justice Plan provides short-, medium-, and long-term action steps and recommendations to address incarceration, as well as juvenile detention and treatment, and alternatives to incarceration in Indian country, as well as the reentry of tribal members from Federal, State, and tribal jails and prisons to tribal communities. Central themes of the Tribal Justice Plan include the need to prioritize alternatives to incarceration, to implement the Plan in consultation with tribal leaders, and to support further coordination of Federal, State, and tribal resources. The Departments of Justice and the Interior are working with other Federal agencies and with tribal leaders, tribal justice practitioners, and community residents to implement these action steps and recommendations.

TLOA section 243 reauthorizes and amends the Tribal Resources Grant Program within the Justice Department’s Community Oriented Policing Services (“COPS”) Office. This program provides long-term funding to hire and retain tribal law-enforcement officers, and it removes matching requirements. Section 243 also requires the Department to report to Congress on the extent and effectiveness of the COPS program in Indian country, which the COPS Office

did in December 2010, with a report entitled, “COPS Office Report to Congress as required by the Tribal Law and Order Act of 2010.” The report described and analyzed (1) the problem of intermittent funding; (2) the integration of COPS personnel with existing law-enforcement authorities; and (3) how the practice of community policing and the broken-windows theory can most effectively be applied in remote tribal locations.

TLOA’s Subtitle E concerns Indian country crime-data collection and information sharing. Section 251(b) requires the Department’s Bureau of Justice Statistics (“BJS”), together with the FBI and the Department of the Interior’s Bureau of Indian Affairs Office of Justice Services, to work with Indian tribes and tribal law-enforcement agencies to establish and implement tribal data-collection systems that will enable BJS to effectively collect and analyze statistical information about crime in Indian country. Section 251(b) then requires the Director of BJS to submit to Congress an annual report describing the data collected and analyzed relating to crimes in Indian country.

In June 2011, BJS issued a compendium of crime data for Indian country entitled, “Tribal Crime Data Collection Activities, 2011.” The following are among the compendium’s key findings:

- Tribally operated law-enforcement agencies in 2008 employed nearly 4,600 full-time personnel, including about 3,000 sworn officers. Eleven of the 25 largest tribal law-enforcement agencies served jurisdictions covering more than 1,000 square miles.
- In 2007, ninety-three State-court prosecutors’ offices in mandatory or optional Public Law 280 States prosecuted felonies committed in Indian country under Public Law 280. Most of these offices prosecuted at least one offense involving drugs (63%), domestic violence (60%), or aggravated assault (58%). Seventy percent of these State prosecutors’ offices served judicial districts with fewer than 100,000 residents.

- From 2008 to 2009, the average daily jail population in Indian country increased by 12%, as the average length of stay increased from 5.1 days to 5.6 days. The percentage of occupied bed space increased from 64% to 74%.
- In 2008, juveniles constituted a relatively small fraction of the suspects referred to Federal prosecutors (315 out of 178,570 suspects) or of the offenders admitted to Federal prisons (156 out of 71,663 offenders). Tribal youth constituted nearly half of all juveniles (70 out of 152) handled by the Federal courts in 2008. About 72% of these tribal youth were investigated for violent offenses, including sexual abuse (35%), assault (20%), and murder (17%). Ninety-one percent of Federal district-court cases involving tribal youth resulted in a conviction. Admissions to Federal prison among tribal youth declined 10% per year from 1999 to 2008, while non-tribal youth admissions declined 12% per year.

The final subtitle of the Tribal Law and Order Act is directed to domestic-violence and sexual-assault prosecution and prevention. In accordance with Section 265, the FBI's Office of Victim Assistance is partnering with the Indian Health Service to expand and support Sexual Assault Nurse Examiner ("SANE") and Sexual Assault Response Team programs in Indian country. The Department of Justice recognizes that simply funding services for victims of sexual assault does not adequately address the multidisciplinary and multijurisdictional challenges that complicate responses to victims of sexual assault in Indian country. Consequently, in 2011 the Office for Victims of Crime ("OVC") implemented the American Indian/Alaska Native Sexual Assault Nurse Examiner–Sexual Assault Response Team Initiative, to enhance Native American communities' capacity to provide high-quality multidisciplinary, coordinated services and support for both adult and child victims of sexual assault. To date, OVC has evaluated potential demonstration sites, has funded a technical-assistance service provider and two Federal coordinating positions — one in FBI, the other in IHS — and has established a Federal advisory committee to ensure that the Initiative develops effective, culturally relevant services and programs that can serve as models for other Native American communities.

As noted above, public safety in Indian country is a top priority of this Department of Justice, especially with respect to violence against women. In July 2011, the Department proposed legislation that would significantly improve the safety of Native women and allow Federal and tribal law enforcement agencies to hold more perpetrators of domestic violence accountable for their crimes. The proposed legislation would address three legal gaps by (1) recognizing certain tribes' authority to exercise concurrent jurisdiction over crimes of domestic violence, regardless of whether the defendant is Indian or non-Indian; (2) clarifying that tribal courts have full civil jurisdiction to issue and enforce protection orders involving any persons, Indian or non-Indian; and (3) providing more robust Federal sentences for certain acts of domestic violence in Indian country.

Furthermore, in June 2010, the Attorney General launched a Violence Against Women Federal and Tribal Prosecution Task Force composed of Federal and tribal prosecutors. The Task Force was created to facilitate dialogue and coordinate efforts between the Department and tribal governments regarding the prosecution of violent crimes against women in Indian country, and to develop best-practices recommendations for both Federal and tribal prosecutors.

In July 2010, the Executive Office for United States Attorneys launched the National Indian Country Training Initiative to ensure that Department prosecutors, as well as State and tribal criminal-justice personnel, receive the training and support needed to address the particular challenges relevant to Indian-country prosecutions. The training effort is led by the Department's new National Indian Country Training Coordinator.

Thanks in large part to the Chairman, Vice Chair, and members of this Committee, the Department has added significant new resources to address public safety in Indian country.

Twenty-eight new Assistant U.S. Attorneys dedicated to prosecuting crime in Indian country have been added in nearly two dozen districts, and nine new FBI positions have been added to work on Indian-country investigations. And FBI's Office for Victim Assistance added 11 Indian Country Victim Specialists and one Forensic Child Interview Specialist for Indian Country, all of whom play an invaluable role in Indian-country investigations, particularly in cases of domestic violence and child abuse.

Chairman Akaka, Vice Chair Barrasso, members of the Committee, we at the Department of Justice fully recognize that public safety in Indian country still is not what it should be, and that we bear a deep responsibility for ensuring that Native Americans can live in safer communities in the months, years, and decades ahead. But significant progress has been made in the less than fourteen months since Congress passed the Tribal Law and Order Act of 2010, and we at the U.S. Department of Justice look forward to working with the Congress to continue improving our efforts to fulfill our trust responsibility to tribal nations.

On behalf of the Department, I personally want to thank you for everything you have done to combat violent crime and to foster public safety in tribal communities across our Nation. I look forward to continuing to work with you on these vitally important issues.

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