

A ROADMAP FOR MAKING NATIVE AMERICA SAFER

REPORT TO THE PRESIDENT AND CONGRESS
OF THE UNITED STATES

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Indian Law & Order
COMMISSION

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 sunsets in January 2014.



- Consists of nine volunteers appointed by the President and Majority and Minority leadership of Congress.
- Recruited three Federal experts to serve as its staff, who were “detailed” (loaned) to the Commission as provided by TLOA.
- Planned and executed one of the most comprehensive assessments of Native American and Alaska Native public safety and criminal justice ever undertaken.



- Held town halls and 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.



- 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.



THE COMMISSION'S GOAL

- **To end the public safety gap – the legacy of failed Federal laws and policies – that makes Native American and Alaska Native communities frequently less safe, and often dramatically more dangerous, than the rest of our country.**



KEY FINDINGS AND RECOMMENDATIONS

- The Federal government is largely to blame for the decades-old public safety gap in Native America.
- This is true directly, through outmoded Federal command-and-control laws, policies and institutions, and indirectly through Congressional authorized State criminal jurisdiction over Indian people and lands through Public Law 83-280 and Congressional Settlement Act tribes.



- 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.
- 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.



“When Congress and the Administration ask why the crime rate is so high in Indian country, they need look no further than the archaic system in place, in which Federal and State authority displaces Tribal authority and often makes Tribal law enforcement meaningless.”



KEY RECOMMENDATIONS

- By respecting and reinforcing the power of locally based Tribal criminal justice systems to protect all people and lands within Tribes' borders – while enforcing the Federal Constitutional rights of all U.S. citizens there – and by achieving parity in Tribal justice funding compared with comparable parts of our country, our nation can narrow and ultimately eliminate this public safety gap.



- The United States should set a bi-partisan national policy goal of eliminating the Indian country public safety gap by 2024 – the centennial of the Indian Citizenship Act, when all Native Americans could finally vote in Federal elections.



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 new Federal court – the U.S. Court of Indian Appeals – for all criminal defendants for alleged Federal Constitution rights violations.



- Apply the Federal Speedy Tribal Act, 18 U.S.C. Section 3161, to all Tribal court criminal proceedings.
- 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.
- 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 villages and no juvenile shelters at all.
- Alaska Native women are 19% of the total population but 47% of reported rape 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.”



It's time to recognize that Alaska's criminal justice crisis is a National problem, not just a State problem, that can be more effectively addressed if the Federal government and the State of Alaska strengthen rather than degrade Tribal sovereignty and local self-governance.

- Recognize and expand Indian country in Alaska to support Tribal concurrent jurisdiction.



- Respect Tribal court orders.
- Encourage locally based criminal justice systems.
- Stop exempting Alaska Natives from Federal public safety laws.



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.
- Enable 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.
- Develop a Federal judicial plan to enhance trials and court proceedings in Indian county.
- 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.



- 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.



- 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 Federal court sentencing to Tribal corrections and, as appropriate, alternative programs.
- Streamline Federal correctional programs within one agency (U.S. Department of Justice).



- 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.”



- Native American and Alaska Native juveniles have the highest per-capita rate of violent victimization.
- Among juveniles, Native juveniles suffer Post-Traumatic Stress Disorder (PTSD) at a rate of 22% - triple the general population and exceeding or matching PTSD rates in military personnel who served in Afghanistan and Iraq.



- Disproportionately high rates of Native juveniles dying from alcohol abuse, suicide, and violent crime contribute to an average life expectancy for Native American males in the United States of just 56 years – a rate that averages in the early 40s in many of the Native communities the Commission visited.
- Federal criminal law and judicial proceedings result in systematically 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.



- Parole is unavailable to juveniles in Federal detention; secondary education is not provided; opportunities for incentivized rehabilitation – wellness and diversion programs, for instance – are practically non-existent.



RECOMMENDATIONS

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



- 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.



- 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.



CONCLUSION

“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.”

