



INTERGOVERNMENTAL COOPERATION: ESTABLISHING WORKING RELATIONSHIPS THAT TRANSCEND JURISDICTIONAL LINES

Stronger coordination among Federal, State, and Tribal law enforcement can make Native nations safer and close the public safety gap with similarly situated communities. Enhanced coordination is also a proven way to combat off-reservation crime. The Federal government cannot and should not force Tribal and State leaders to work together. Local priorities and concerns ought to drive cooperation, and it needs to be voluntary. But the President and Congress can promote and support more positive forms of collaboration. This chapter focuses on how many Native officials are working with their State and Federal counterparts to share information, training, and services. Additionally, the chapter suggests steps that can be taken now to build on and accelerate that progress.

The Indian Law and Order Commission finds that whether in the form of law enforcement agreements between Tribes and State or local law enforcement agencies or by legislation giving Tribal police the full range of State police officer powers, cooperation among agencies at the local level works most effectively to ensure comparable responses to crimes in Indian country. When crimes involve non-Indians in Indian country, and as discussed elsewhere in this report, Tribal police have only been able to exercise authority to detain a suspect, not to make a full arrest. This lack of authority jeopardizes the potential for prosecution, the security of evidence and witnesses, and the Tribal community's confidence in effective law enforcement.

However, great promise has been shown in those States where intergovernmental recognition of arrest authority occurs. It is also true wherever intergovernmental cooperation has become the rule, not the exception, that arrests get made, interdiction of crime occurs, and confidence in public safety improves. Of equal importance, the cooperation of Federal agencies with Tribal public safety agencies is critical to success in Indian country. Such cooperation includes the prompt and efficient issuance of deputization agreements and Special Law Enforcement Commissions (SLECs).¹ Also important are the timely sharing of criminal justice information and the notification to Tribes of arrests, dispositions, and reentry of American Indian Federal prisoners.

These goals and principles are mandated by the Tribal Law and Order Act (TLOA). Through the Act's findings, Congress and the President acknowledged that Tribal police officers usually are the first responders to address crimes on Indian reservations.² More generally, TLOA aspires to create greater cooperation among Tribal, Federal, and State law enforcement departments and agencies. While acknowledging the limits of what Federal law can and should impose on State and Tribal governments, nonetheless the Act authorizes some Federal support and encouragement for intergovernmental agreements ranging from mutual aid agreements, to cross-jurisdictional training, to the deputization of Tribal and State officials and Federal peace officers for the enforcement of Federal criminal laws within Indian country.

For example, the U.S. Attorney General is empowered to “provide technical and other assistance to State, Tribal, and local governments that enter into cooperative agreements, including agreements relating to mutual aid, hot pursuit of suspects, and cross-deputization for the purposes of: (1) improving law enforcement effectiveness; (2) reducing crime in Indian country and nearby communities; and (3) developing successful cooperative relationships that effectively combat crime in Indian country and nearby communities.”³

The Commission heard extensive testimony from representatives of Tribes that operate under legal arrangements that recognize Tribal police authority on par with the State and local police and from those that employ Federal Bureau of Indian Affairs SLECs, (also discussed in Chapter 1). The Commission was encouraged by these reports, but believes more progress is needed, particularly with the approval of SLECs and with the recognition of Tribal police authority in P.L. 83-280 States. To facilitate this cooperation, more is needed to ensure tort liability coverage for Tribal police officers, with an expansion of the Federal Tort Claims Act (FTCA) as necessary. Public pension eligibility and portability are of particular importance to the hiring and retention of Tribal law enforcement personnel.

The Commission believes that ultimately more progress in public safety will come from voluntary efforts to improve cooperation and coordination among the sovereigns—Federal, State, and Tribal—and from

local efforts, such as State legislation and local agreements, than from the imposition of Federal preemptive authority and policies. As noted, the Federal government can and should provide incentives and assistance to facilitate local improvements.

Additionally, the Federal government has an independent obligation to improve its own coordination with Tribal law enforcement agencies. This includes reporting systems that “track” the offender and criminal information sharing.

FINDINGS AND CONCLUSIONS: LAW ENFORCEMENT AGREEMENTS

A principal goal in intergovernmental cooperation is to find the right mechanisms to facilitate the entry into Tribal-State and Tribal-Federal law enforcement agreements and Memoranda of Agreement (MOAs) or Memoranda of Understanding (MOUs), including SLECs and local deputation and cross-deputation agreements. The Commission learned there are unconscionable administrative delays and impediments in the processing and approval of SLECs. With respect to Tribal-State-local MOUs, there are questions of (1) local reluctance to expose State-local to third-party liability without adequate insurance coverage, and (2) ensuring that Tribal police agencies and officers obtain respective State Peace Officer Standards and Training (POST)⁴ or equivalent certification as a prerequisite to recognition as peace officers under any agreement or legislative program.

As to tort liability, Congress should either extend the FTCA (discussed below) to qualified Tribal police forces or create a federally sponsored insurance pool for Tribal police forces to enter into as a means to facilitate the MOUs. To ensure that POST certification is an option, funding is needed to underwrite Tribal police officers obtaining POST certification unless the officers already have POST certificates. Most States require not only the officers, but also the police department to be POST certified, which triggers additional expenses and administrative work.

Full Tribal jurisdictional option. Of course, if a Tribal government opts for the Tribal jurisdiction plan as proposed in this report (Chapter 1), its Tribal justice agency will have clear arrest and prosecutorial authority over all suspects/defendants on the reservation. However, even under the proposed Tribal jurisdiction plan, Tribes will need to cooperate with Federal, State, local, and other Tribal authorities to share resources and training, enter into cooperative agreements, and develop mutually supporting justice programs to improve and sustain acceptable levels of public safety. Not all Tribal governments will want to pursue broader jurisdiction. Many Tribes are small in geography or population and lack resources to exercise justice authority. They likely will stay within Federal or P.L. 83-280 arrangements under which they currently do not have effective arrest authority, at least

People living on the reservation deserve all the resources available to them in a moment of crisis. To the woman facing assault, to the child who is being abused who is crying out for help, it doesn't matter what uniform the police officer is wearing or what decal is on the door of that police car. In that moment of fear, in that moment of crisis, people just want to be safe and secure.

*Leroy "J.R." LaPlante, Secretary of Tribal Relations, State of South Dakota
Testimony before the Indian Law and Order Commission, Hearing on the Rosebud Indian Reservation, SD
May 16, 2013*

without authorizing legislation, deputization agreements, or SLECs. Thus, the importance of intergovernmental cooperation is paramount—necessary for strengthening arrest powers and responding effectively to incidents, particularly those involving violence, and the victims involved.

SLECs. With a Special Law Enforcement Commission, a Tribal police officer, employed by a Tribal justice agency, can exercise essentially the same arrest powers as a Bureau of Indian Affairs (BIA) officer assigned to Indian country, without compensation by the Federal government.⁵ BIA policy states that SLECs are to be issued or renewed at the BIA's Office of Justice Services (OJS) discretion and only when a legitimate law enforcement need requires issuance.⁶ SLECs enable BIA to obtain active assistance in the enforcement of applicable Federal criminal statutes. The issuance of a SLEC requires an agreement with a Tribal government law enforcement agency, called a "deputization agreement." As the SLEC is to aid in the enforcement or carrying out applicable Federal laws in Indian country, it should enable a Tribal police officer to make an arrest for a violation of the General Crimes Act, 18 U.S.C. § 1152, or the Major Crimes Act, 18 U.S.C. § 1153, at least in the non-P.L. 85-280 States and Tribal jurisdictions.

While the SLEC appears to be precisely the kind of inter-governmental cooperation that would greatly enhance public safety in Indian country, the Commission heard testimony that BIA certification of the SLEC commissions is often delayed far too long. While SLEC training may involve 3 days of training (and renewal every 3 years), the BIA-run process for certification often takes 1 year or more. Some delays are attributable to the need for background investigations, which often are delayed for bureaucratic reasons. The Commission learned that over time, many non-Tribal jurisdictions fall away completely from the SLEC program, and even Tribal governments are sometimes forced to abandon or limit the number of participating officers. The limited geographic locations in which SLEC training typically is offered also limits the program's success and availability.

The Commission believes that management of SLECs should move from the BIA to the U.S. Department of Justice (DOJ) to speed up training and certification. DOJ should take inventory and report back to Congress every year. If deputization agreements and SLEC applications are not acted upon in 30 days, they should be deemed approved absent an affirmative showing to the contrary.

State and local agreements. The Commission believes the recognition of Tribal government and jurisdictional powers through agreements with State and local jurisdictions will develop partnerships, allow the sharing of knowledge and resources, and result in better chances to coordinate police enforcement, thereby strengthening public safety for Tribal reservations and nearby communities.⁷ Greater intergovernmental cooperation often results in better services for Indian country: more cost effective, culturally compatible, and with better arrest and prosecution rates.⁸

Nowhere has this been more promising than in the entering into of MOUs or other similar agreements between local law enforcement agencies and Tribal public safety agencies to permit or deputize the Tribal officers to enforce State criminal law. States have either authorized or countenanced different forms of such agreements, but in most cases MOUs have served to ease the burden of the non-Indian police forces that often cannot respond timely to the calls for assistance. Additionally these agreements have allowed a full arrest of a suspect, securing a crime scene, protecting evidence and witnesses, and ensuring appropriate arraignment and prosecution.

States such as Michigan have encouraged deputization agreements. Of the 10 Tribes that maintain Tribal law enforcement departments, 9 have agreements with a local jurisdiction or local police.⁹ These agreements take the form of deputization of Tribal officers by the county sheriff. While there is no statewide agreement for deputizing Tribal police, the local jurisdictions have entered into the agreements. Additionally, they allow for cross-deputization of Tribal and county officers to enforce each other's laws under certain limitations.¹⁰ MOUs in most other jurisdictions allow deputization of the Tribal police without deputizing the county officers to act as Tribal agents.

Arizona presents one positive example where Tribal police are encouraged to take State POST certification training and then enforce State law as Tribal police. Arizona's unique environment encourages and supports cross-deputization agreements. An Arizona statute allows Tribal police officers who meet Arizona State qualification and training standards to exercise all law enforcement powers of peace officers. When the designation expands jurisdiction, an MOA of mutual aid is necessary. Currently, 6 of the 22 Tribes in Arizona participate in this arrangement, and the number is expected to grow. A side benefit of the arrangement is that relationships between Native and non-Native officers form and grow because they attend the same academy and POST-education events.

Additionally, certified Tribal police in Arizona may qualify for the State's public safety retirement plan, provided that their Tribal employers have joined that plan. Because certified Tribal police are regularly attracted to better pay and benefits found in local and State police departments, the importance of Tribal officers being included in the State's retirement plan cannot be overstated. Intergovernmental agreements are working well for improving Tribal law enforcement and arrest powers on reservations in Arizona. When a sheriff's deputy is trained with the Tribal officer, everyone benefits and professionalism is enhanced.

Oregon is another State where, by legislation, peace officer powers are granted to qualifying Tribal police officers. Oregon Senate Bill 412 was signed into law in July 2011, and has worked well to allow arrests by Tribal police of both non-P.L. 83-280 Tribes (e.g., Warm Springs and Umatilla), and P.L. 83-280 Tribes that develop a Tribal police force.

Multiple safeguards were enacted to allay fears that Tribes would abuse the powers granted. Among them are the requirements that to qualify an officer, the Tribe must be bound by an approved deadly physical force plan, retain and allow inspection of relevant records, preserve biological evidence in the same manner as other police agencies, and waive sovereign immunity as to tort claims asserted in the Tribal government's court that arise from the conduct of an authorized Tribal police officer. These requirements arguably impose restrictions on the sovereign prerogatives of the Tribe participating, but the public safety benefits are indisputable. And keeping communities safe lies at the very heart of any sovereign's duty to its citizens.

Significantly, Oregon Senate Bill 412 addressed the issue of liability insurance. It requires a participating Tribal police agency to demonstrate it is self-insured for both public liability and property damage for vehicles operated by authorized Tribal police officers and that it carries police professional liability insurance. The policy must be sufficient to satisfy settlements and judgments arising from the tortious conduct of authorized Tribal police officers in an amount equal to or greater than comparable amounts applicable to a local public body.

California is an example of a State where Tribal-local law enforcement agreements have not flourished. In 1999, a State bill very similar to Oregon's Senate Bill 412 almost passed; it would have recognized Tribal police officers from certified Tribal police departments as "peace officers" under the State penal code, with full powers of arrest over any individual suspect. At the last minute, the bill failed because of reported concerns by legislators and local officials that Tribes exercising sovereign immunity would be shielded and instead parties would be directed toward the deeper pockets of the county government's coffers.

To facilitate MOUs, the liability question must be addressed. Oregon has provided a statutory scheme that requires the Tribe to self-insure, but not every Tribe can afford or is willing to do so, nor will States uniformly adopt the same policy approach as Oregon.

In non-P.L. 83-280 States, the use of SLECs calls for expanding the FTCA to be made unequivocally applicable to qualifying Tribal police departments. In instances of deputization agreements in both P.L. 83-280 and non-P.L. 83-280 States, an affordable insurance pool mechanism should be made available. Otherwise this impediment to reaching MOUs or legislative parity will remain elusive in many jurisdictions.

Finally, to facilitate MOUs for deputization arrangements, Tribes need the financial resources to participate in the requisite POST training in the State where they are located. The Federal government can facilitate this training without imposing preemptive standards or policies. Public safety is best accomplished at the local level, and providing the resources for training is a simple and straightforward step in the right direction.

Probably one of the biggest supporters [of Oregon peace officer status for Tribal police] that helped us ... was the Oregon Chiefs of Police Association, which I am a member of, and my fellow chiefs are all members of it. They understand the sheriffs' argument, but they thought, "Okay, well, it's an impediment to public safety; so what's the big deal?"

*Tim Addleman, Chief of Police, Confederated Tribes of the Umatilla Reservation
Testimony before the Indian Law and Order Commission, Portland, OR
November 2, 2011*

Most of our Indian lands are not identifiable by signs, particularly the allotted areas. Generally people know if they see a casino that it's Indian country, (whether they're) the public or law enforcement. I can tell you that with many of our casinos, it does become confusing at times. We have casinos that have adjoining motels. The motel is not Indian country, yet it's all one building. And so you can move into and out of Indian country without even leaving a building. Obviously our parking lots are very similar. And we work in partnership with our local law enforcement to address a lot of these crimes.

*Jason O'Neal, Chief of Police, Chickasaw Nation Lighthorse Police Department
Testimony before the Indian Law and Order Commission, Oklahoma City, OK
June 14, 2012*

So when we realized how big of a problem we had, we had to attack it from both sides. We had to educate the Tribal community about us as service providers, but we also had to educate our department about the communities we were serving.

*Ray Wood, Lieutenant & Tribal Liaison, Riverside County Sheriff's Department
Testimony before the Indian Law and Order Commission, Hearing on the Agua Caliente Reservation, CA
February 16, 2013*

Sharing resources, training, and meetings. The Commission also notes that intergovernmental cooperation, with or without MOUs for Tribal law enforcement, should include regular meetings between Tribal, State, county, city leaders, and administrators. The Ute Mountain Ute Law Enforcement Working Group discussed below demonstrates the advantages when strategies and resources are pooled, when advice and training are shared, and, in particular, when each other's history and culture are imparted. The Commission learned of several success stories, notably in Riverside and San Diego Counties in California, in which local law enforcement agencies engendered a significantly improved relationship with Tribal communities as the result of such meetings.

Another significant need is for ongoing criminal jurisdiction training for all concerned; indeed, failure of law enforcement to fully appreciate the relevant law creates obstacles for effective joint law enforcement. California instituted training for all officers on the subject of Tribal jurisdiction in its basic POST training, which has proven helpful in changing the basic understanding of the officers joining the force. This training is needed to build trust so that Tribal community members welcome county, State, and Federal police as supporters of public safety and community well-being. Additionally, county and State officials and policy makers would benefit from a greater understanding about Tribal culture, history, justice institutions, and expectations, which would lead to greater consensus and cooperation, mutual support, and co-governance and co-management regarding justice issues.

RECOMMENDATIONS

4.1: Federal policy should provide incentives for States and Tribes to increase participation in deputization agreements and other recognition agreements between State and Tribal law enforcement agencies.

Without limitation, Congress should:

a) Support the development of a model Tribal-State law enforcement agreement program that addresses the concerns of States and Tribes equally, to help State legislatures and governors to formulate uniform laws to enable such MOUs and agreements in both P.L. 83-280 and non-P.L. 83-280 States;

b) Support the training costs and requirements for Tribes seeking to certify under State POST agencies to qualify for peace officer status in a State in a deputization agreement;

c) Create a federally subsidized insurance pool or similar affordable arrangement for tort liability for Tribes seeking to enter into a deputization agreement for the enforcement of State law by Tribal police;

d) For Tribal officers using a SLEC, amend the Federal Tort Claims Act¹¹ to include unequivocal coverage (subject to all other legally established guidelines concerning allowable claims under the Act), not subject to the discretion of a U.S. Attorney or other Federal official; and

e) Improve the SLEC process by shifting its management to the U.S. Department of Justice and directing DOJ to streamline the commissioning process while retaining the requirements necessary to ensure that only qualified officers are provided with SLECs. (Also see Recommendation 4.8.)

FINDINGS AND CONCLUSIONS: TRIBAL NOTIFICATION OF ARREST, COURT PROCEEDINGS, AND REENTRY

The need for notification. On the Federal side, the Commission heard ample testimony that U. S. Attorneys' Offices sometimes do not communicate effectively, or at all, with Tribal jurisdictions when declining a case for Federal prosecution, notwithstanding TLOA's declination reporting requirement. Because the local Tribal courts are almost never notified, they often do not exercise their concurrent jurisdiction and address the matter in Tribal court.

Overlooking Tribal courts in this manner, as State and Federal officials tend to do, is tragic and unnecessary. By ignoring the communities where offenders and their families live, needless cost and expense are borne by State and Federal taxpayers.

Tribal government notification at the time of a Tribal citizen's arrest, coupled with appropriate Tribal government involvement from that point forward (during trial, detention, and reentry), can be expected to improve outcomes for the offender, for the offender's family and Tribe, and improve law enforcement outcomes overall.¹² Yet at present, Tribal governments have inadequate involvement when their citizens are arrested, prosecuted, and incarcerated by the Federal and State governments.

Native offenders are sometimes incarcerated hundreds of miles away from their families and communities.¹⁵ To illustrate the scope of the problem, in 2011, 3,500 self-identified American Indians were in custody in Federal prisons, and 14,600 Indians were housed in State prisons. During the same year, local non-Indian jails held 9,400 Indians, while jails in Indian country had jurisdiction over 2,239 Indians.¹⁴ It is virtually impossible to track from reported data where these Native Americans and Alaska Natives are being held. This can and must change.

The Commission strongly supports the reporting and compiling of individual offender data so that Tribal courts can be informed on a timely basis to be able to assert their own concurrent jurisdiction. The use of

Tribal courts gives Tribes more local control and accountability, while relieving State and Federal jurisdictions of much of these costs.

RECOMMENDATIONS

4.2: Federal or State authorities should notify the relevant Tribal government when they arrest Tribal citizens who reside in Indian country.

4.3: When any Tribal citizen resident in Indian country is involved as a criminal defendant in a State or Federal proceeding, the Tribal government should be notified at all steps of the process and be invited to have representatives present at any hearing. Tribes should similarly keep the Federal or State authorities informed of the appropriate point of contact within the Tribe. These mutual reporting requirements will help ensure the effective exercise of concurrent jurisdiction, when applicable, and the provision of wrap-around and other governmental services to assist the offender, his or her family, as well as the victims of crime.

4.4: All three sovereigns—Federal, State, and Tribal—should enter into voluntary agreements to provide written notice regarding any Tribal citizens who are reentering Tribal lands from jail or prison. This requirement should apply regardless if that citizen formerly resided on the reservation. This policy will allow the Tribe to determine if it has services of use to the offender, and to alert victims about the offender’s current status and location.

FINDINGS AND CONCLUSIONS: INTERGOVERNMENTAL DATA COLLECTION AND SHARING

Data are hard to find and access. Accurate data is an important tool for supporting effective law enforcement and prosecutions. Unfortunately, the BIA, the Federal Bureau of Investigation (FBI), and virtually all other Federal law enforcement agencies serving Indian country have collected and analyzed very little data on Indian people and communities. For instance, it was not until 2009, when prompted by complaints from U.S. Attorneys, did the FBI begin to separate out certain Indian country crimes in its annual Crime in America reports. Labor reports, jail statistics, and census data tend to be the main forms of data collected, with little data on Tribal crime and related issues.

The many ways in which Tribal governments form justice courts, police departments, jails, and rehabilitation services, through a patchwork of grants and other limited funding sources, tends to limit focus on data, especially if Federal funds make up only a portion of resources. Furthermore, Tribes’ capacity to capture and catalogue data can be extremely limited.

[Getting numbers] is still an issue. The data collection, for instance, here in Oklahoma, and I'm sure it's the same everywhere, BIA doesn't have a data collection system. We're working on getting one . . . A lot of those folks . . . have the sophisticated systems that you punch a button and it will tell you everything you need to know. How did we get the numbers to send in? On a piece of paper.

*Dave Johnson, Special Agent in Charge for District,
Bureau of Indian Affairs, Office of Law Enforcement Services
Testimony before the Indian Law and Order Commission, Hearing in Oklahoma City, OK
June 14, 2012*

Issues that have arisen are Tribes may lack the infrastructure to access data through State systems. Indian communities are often not interested in participating in data sharing, seeing it as a tool to arrest Tribal citizens. States like California, (have) only recognized Tribes that had the backing of the Federal government for a pilot program, and New York, which only works with one Tribe, are examples of poor relations in sharing information. Some states such as Washington, Arizona, and Oklahoma allow for Tribal sharing in their fusion centers. Others block it. Tribes do sit on the U.S. borders and deal with security and crime. The National Law Enforcement Telecommunications System (NLETS) is one system that is highly dependent on gaining access from the States. The Federal government was able to grant backdoor access for the FBI's National Crime Information Center.

*Joe LaPorte, Senior Tribal Advisor, Office of the Program Manager, Information Sharing Environment,
Office of the Director of National Intelligence
Written testimony for the Indian Law and Order Commission, Hearing in Oklahoma City, OK
June 14, 2012¹⁶*

Why an Indian country fusion center? We found it's necessary for several reasons: First, the State does not have data or criminal information on our offenders, and second Indian country is viewed by criminal offenders as a lawless gap in the system, because of the jurisdictional issues and the generally low number of police officers working in Indian country. Also Tribal offenders realize that they can travel from one Tribal community to another to hide, commit crime link with other offender's without being concerned about being identified as a criminal offender. Also because of sovereignty and jurisdictional concerns Tribal governments are more likely to participate if the fusion center is specifically, controlled and staffed by officers and personnel from Indian country.

*Edward Reina, retired law enforcement executive and member of the Salt River Pima-Maricopa Community
Written testimony for the Indian Law and Order Commission, Hearing at Salt River Indian Reservation, AZ,
January 13, 2012¹⁷*

Issues regarding who is empowered to collect and report criminal justice data must be resolved. Many States, such as California, generally do not recognize Tribal police as State peace officers. Consequently, as a rule, without special arrangements and the approval of the state Attorney General, Tribal police in California do not have access to the California Criminal Telecommunications System (CLETS) and its National Crime Information System (NCIS) source.¹⁵

Collaboration in data gathering and access. Given the difficulty of finding good data, some justice officers are looking for innovative ways to collect and distribute data.

For instance, the Arizona Counter Terrorism and Information Center (ACTIC) runs the multijurisdictional State fusion center, an “all crimes, all hazards and terrorism information and intelligence center,” that includes several federally recognized Indian Tribes. The Tohono O’odham Nation, for example, is collaborating with ACTIC to create the Tohono O’odham Nation Information Center (TONIC). The long-term goal is to create an Indian country fusion center within ACTIC that is specifically controlled by Native nations. The Inter Tribal Council of Arizona unanimously approved this long-term goal. In testimony before the Commission, law enforcement leaders emphasized the genesis of these efforts to create and expand fusion centers is the lack of data collection and sharing across jurisdictional lines, which offenders exploit.

In 1994, the Inter Tribal Council of Arizona created the Indian Country Intelligence Network (ICIN). ICIN established a forum for a better understanding of various Native nations and government agencies’ roles in Indian country and law enforcement. Partners include the FBI, the U.S. Attorney’s Office for the District of Arizona, and various other Tribal, Federal, and State officials. One example of ICIN’s work involves State agencies that did not follow Tribal extraditing processes for pursuing Indian suspects onto Tribal lands. ICIN created a training video and distributed it to State and local agencies.

Good criminal justice information and appropriate sharing are key to effective criminal justice programs. Even if an offender commits a crime on the reservation and it is documented, it is unlikely other jurisdictions, including other Tribal communities, will be aware of the crime. Conversely, if an offender who lives off reservation commits a crime on the reservation, the Tribal law enforcement would not be able to gain access to information about the offender from State and local authorities. Accurate and shared data would allow greater local control and ability to increase public safety. Criminals will always exploit data gap weaknesses. Many of the gaps can be closed by communicating and collaborating across jurisdictional lines. At the Federal level, the Office of Tribal Justice (OTJ), which was codified as a DOJ component by TLOA, has been involved in a number of efforts to improve the sharing of criminal intelligence and other information to improve public safety in Indian country.

For example, we recently partnered with the Department’s Community Oriented Policing Services (COPS) office and Justice Management Division to provide 17 Tribal police departments with access to the FBI’s National Crime Information Center (NCIC). OTJ provides the moderator for the Tribal Public Safety Network (T-Net) located within the Law Enforcement Online (LEO) secure web portal. OTJ staff also serve on the FBI’s Criminal Justice Information Service Disposition Task Force to explore ways to enhance the inclusion of Tribal court orders and dispositions in national databases.

*Tracy Toulou, Director, Office of Tribal Justice, U.S. Department of Justice
Written Testimony for the Indian Law and Order Commission, Hearing in Arlington, VA
March 8, 2012²⁴*

RECOMMENDATION

These considerations lead to the following recommendation to improve data collection and data sharing:

4.5: Congress should provide specific Edward J. Byrne Memorial Justice Assistance Grants (Byrne grants) or COPS grants for data-sharing ventures to local and State governments, conditioned on the State or local government entering into agreements to provide criminal offenders' history records with federally recognized Indian Tribes with operating law enforcement agencies that request to share data about offenders' criminal records; any local, State, or Tribal entity that fails to comply will be ineligible for COPS and Byrne grants.

CONCLUSION

Even the most basic forms of interjurisdictional cooperation can save money and lives. For example, on the Ute Mountain Ute Reservation in Colorado, the late Chairman Ernest House, Sr. fought back when violence threatened to overwhelm his community. In 2005-06, reported homicide rates on the Ute Mountain Ute Reservation ranged between 250 and 300 per 100,000 people, as compared to a statewide rate of 4 out of 100,000. Stated another way, had the city of Denver experienced the same homicide rates as the Ute Mountain Indian Reservation, Denver would have had more than 1,900 murders instead of the 144 that actually occurred.²⁵

In response, Chairman House convened the Ute Mountain Ute Law Enforcement Working Group, chaired by Gary Hayes, who was then Tribal Council vice chair. The working group met at least monthly to prevent and combat crime. This group quickly gained momentum and began focusing on better coordination across jurisdictional lines. It has since grown to include Federal, State, and local law enforcement, prosecutors, and social services officials from surrounding areas. According to Mr. Hayes, who is now chairman, violent crimes rates have fallen in virtually every major category, and the reservation experienced just one homicide in the past two years. “Working together is saving our people,” he said.²⁶

Without question, cooperation works. While the Federal government cannot force people to work together, taking the steps outlined above can help encourage the growing movement among all three sovereigns—Federal, State, and Tribal—to join together for mutual benefit.

ENDNOTES

¹ See Chapter 1 (Jurisdiction: Bringing Clarity Out of Crisis) and Chapter 3 (Strengthening Tribal Justice: Law Enforcement, Prosecution, and Courts) and discussion below in this chapter.

² Tribal Law and Order Act of 2010, § 202. Findings and Purposes.

³ *Id.* at § 222.

⁴ Peace Officer Standards and Training (POST) agencies are generally the principal police training and certification agencies in each state. The International Association of Directors of Law Enforcement Standards and Training (IADLEST) serves as the national forum of POST agencies, boards, and commissions as well as statewide training academies throughout the United States.

⁵ Authority for the issuance of SLECs is based upon 25 U.S.C. § 2804, 25 C.F.R. Part 12, and the Tribal Law and Order Act (P. L. 111-211).

⁶ See Special Law Enforcement Commission Policy (Department of Interior, BIA-OJS) 4-04.

⁷ See Nicholas C. Zaferatos, *Tribal Nations, Local Governments and Regional Pluralism in Washington State: The Swinomish Approach to the Skagit Valley*, 70 J. OF THE AM. PLANNING ASS'N 81 (2004).

⁸ Nicholas C. Zaferatos, *Tribal Planning as Strategic Political Action: A Case Study of the Swinomish Indian Tribal Community* (presented at the Native American Conference Series: American Planning Association National Conference, 1999); BUREAU OF INDIAN AFFAIRS, OFFICE OF JUSTICE SERVICES, CRIME-REDUCTION BEST PRACTICES HANDBOOK: MAKING INDIAN COMMUNITIES SAFE 2012 at 4, 15, 49-57.

⁹ See Hannah Bobee et al., *Criminal Jurisdiction in Indian Country: The Solution of Cross Deputization*, Indigenous Law & Policy Center Working Paper 2008-01 (2008) at 18-19, available at www.law.msu.edu/indigenous/papers/2008-01.pdf.

¹⁰ *Id.* at 19.

¹¹ 28 U.S.C. § 1346(b)

¹² Testimony of Carrie Garrow, Hearing of the Indian Law and Order Commission, Nashville TN, July 13, 2012, on file with the Commission.

¹³ Kevin K. Washburn, *American Indians, Crime, and the Law*, 104 MICH. L. REV. 709 (2006).

¹⁴ Todd Minton, *Jails in Indian Country*, 2011 at 2, Bureau of Justice Statistics, U.S. Department of Justice (2012).

¹⁵ For additional information, see Written Testimony of Bill Denke, Hearing of the Indian Law and Order Commission, Agua Caliente Indian Reservation, CA, February 16, 2012, available at <https://www.indianlawandordercommission.com/resources/documents/bd-testimony-inidan-lando-commision-final.pdf>

¹⁶ Available at, <https://www.indianlawandordercommission.com/resources/documents/Joe%20LaPorte%20Testimony%20for%20Indian%20Law%20and%20Order%20Commission%20Public%20Hearing%20June%202014%202012.pdf>

¹⁷ Testimony of Ed Reina, Hearing of the Indian Law and Order Commission, Salt River Indian Reservation, AZ, January 13, 2012, at 2, available at https://www.indianlawandordercommission.com/resources/documents/ILOCFH_PhxAZ_Testimony_EReina.pdf.

¹⁸ Arizona Counter Terrorism and Information Center (ACTIC), Before the Indian Law and Order Commission (written presentation of Michael Orose) (January 13, 2012) at 1, available at https://www.indianlawandordercommission.com/resources/documents/ILOCFH_PhxAZ_Testimony_MOrose.pdf

¹⁹ *Id.*

²⁰ Reina, *supra* note 16.

²¹ *Id.* at 1.

²² *Id.* at 2.

²⁵ *Id.* at 3.

²⁴ Testimony of Tracy Toulou, Hearing of the Indian Law and Order Commission, Arlington, VA, March 8, 2012, at 5, available at https://www.indianlawandordercommission.com/resources/documents/ILOC%20FH_WashDC_Testimony_Toulou.pdf.

²⁵ Electra Draper, *Ute Murder Rate 'A Disgrace,'* THE DENVER POST, February 12, 2007.

²⁶ Interview with Chairman Gary Hayes, University of Colorado Law School, Boulder, April 4, 2013, on file with the Commission.