



# Department of Justice

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STATEMENT OF TRACY TOULOU  
DIRECTOR OF THE OFFICE OF TRIBAL JUSTICE  
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE  
INDIAN LAW AND ORDER COMMISSION

PRESENTED ON  
MARCH 8, 2012

**Remarks of Tracy Toulou**  
**Director of the Office of Tribal Justice**  
**before the Indian Law and Order Commission**

**March 8, 2012**

My name is Tracy Toulou, and I am the Director of the Office of Tribal Justice (OTJ). OTJ serves as the central point of contact with Indian tribes for the Department of Justice (the Department); advises the Department on issues important to American Indians and Alaska Natives; and works within the Department and with other federal agencies to promote consistent, informed policy on issues important to tribal nations. Thank you for the opportunity to discuss the work of the Department of Justice to improve public safety and justice in tribal nations. My testimony will provide an overview of that work, particularly the Department's implementation of the Tribal Law and Order Act.

The Department is deeply committed to working with tribal governments to improve public safety in Indian Country. In June 2009, Attorney General Eric Holder launched a Department-wide initiative to enhance public safety in Indian Country. Under this initiative, the Department has worked to reaffirm its commitment to building and sustaining healthy and safe native communities, renewing our nation's enduring promise to American Indians and Alaska Natives, respecting the sovereignty and self-determination of tribal governments; and continuing the progress we have achieved in recent years. Tribal justice and safety remain key priorities for the Administration and the Department.

Implementation of the Tribal Law and Order Act of 2010 (TLOA), legislation which the Administration and this Department strongly supported, has resulted in numerous opportunities to make progress on Departmental goals in Indian Country. Achievements in this area are spread throughout the Department and are indicative of the agency's broad commitment to improving tribal public safety. On November 17, 2010, consistent with the Act, Attorney General Holder announced OTJ's formal establishment as a separate component within the organizational structure of the Department. Although OTJ had long played a key role in the Department's work on tribal justice and public safety, serving as an important resource on matters of Indian law, this step formally recognized that role and provided OTJ a more prominent position within the institution. Also under the TLOA, the Department was able to support the creation of this important Commission and to contribute both fiscal and personnel resources to help ensure the Commission is able to realize its mission.

Implementation of the TLOA has also renewed the Department's focus on tribal justice systems. One of the first goals realized under this Act was the launch of a Bureau of Prisons (BOP) four-year pilot program to accept certain tribal offenders sentenced in tribal courts for placement in BOP institutions. The pilot program allows any federally recognized tribe to request that BOP incarcerate a person convicted of a violent crime under the terms of the TLOA and authorizes BOP to house up to 100 tribal offenders at a time, nationwide. The Departments of Justice and the Interior, working in close coordination with other federal agency partners, also developed a long-term plan to build and sustain tribal justice systems. Formal consultation sessions and focus groups were held to develop the plan. The plan, delivered in August of 2011, identified eight short-term and eleven longer-term findings and recommendations, ranging from

funding and information-sharing strategies to exploring new strategic directions in addressing incarceration and alternatives to incarceration in Indian Country.

The TLOA also codified several established programs and practices that support the Department's work in Indian Country. For example, the Department has maintained the position of Native American Issues Coordinator (Coordinator) within the Executive Office for U.S. Attorneys (EOUSA). The Coordinator provides advice and assistance to U.S. Attorneys on legal and policy issues pertaining to Native Americans and Indian Country, and serves as a liaison between the U.S. Attorneys and other Department components and law enforcement agencies.

The TLOA has not been the sole mechanism through which the Department supports healthy and safe Native communities; the Department has achieved progress in improving public safety in Indian Country independent of the TLOA over the past several years, as described more fully in U.S. Attorney Brendan Johnson's earlier testimony.

In July 2011, the Department of Justice 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' power to exercise concurrent criminal jurisdiction over domestic violence cases, 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. In a related effort, 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 in 2011 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.

The FBI has increased resources dedicated to Indian Country in recent years, adding nine positions, including six agents to work on Indian Country investigations. In FY 2010, the FBI Office for Victim Assistance (OVA) added 12 additional Victim Specialist positions to provide victim assistance in Indian Country. The victim specialists have an invaluable role providing essential services and support in Indian Country investigations, particularly in cases of domestic violence and child abuse, providing essential services and support. With regards to information sharing, since 2009, the FBI's Uniform Crime Reporting (UCR) Program Office has coordinated with the Department of the Interior's Bureau of Indian Affairs and the Department of Justice's Office of Justice Programs to increase the number of tribes that qualify for Justice Assistance Grants (JAG). This has been accomplished primarily through liaison efforts and presentations to increase awareness at tribal law enforcement conferences.

The Office of Tribal Justice 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 (JMD) 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.

The Department has also worked in recent years to expand its outreach and consultation with tribal partners. The Tribal Nations Leadership Council (TNLC), composed of tribal leaders selected by the tribes themselves and charged with advising the Attorney General on issues critical to tribal governments and communities, has met in person with the Attorney General and senior leaders of the Department three times since 2010. The TNLC meets remotely with the Office of Tribal Justice on a monthly basis, and has dedicated web-based resources in place to ensure regular information sharing with this important advisory council. The Department has benefitted from their insights and recommendations across many program areas. The Department has also engaged in outreach and dozens of consultations with tribes on issues important to public safety, justice and law enforcement, including violence against American Indian and Alaska Native women, implementation of the Sex Offender Registration and Notification Act, the Prevent All Cigarette Trafficking Act, and the TLOA.

Currently, the Department is particularly focused on the processing and evaluation of tribal requests that the federal government accept concurrent criminal jurisdiction within the Indian Country of tribes subject to mandatory Public Law 280. Several departmental components that play a significant role in Indian Country have been involved in the development of a fair, efficient, and transparent system of review for these requests. TLOA provides that the United States may accept concurrent federal criminal jurisdiction to prosecute violations of 18 U.S.C. § 1152 (Indian Country Crimes Act) and 18 U.S.C. § 1153 (the Major Crimes Act) within areas of Indian Country that are subject to State criminal jurisdiction under Public Law 280, 18 U.S.C. 1162(a) in the States of Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin. The regulations governing a request for assumption of concurrent federal criminal jurisdiction are provided at 28 CFR § 50.25, copies of which I have provided today.

In short, the procedure is as follows. The chief executive officer of a tribe formally submits a request for concurrent federal criminal jurisdiction to OTJ. That request must explain why the assumption of concurrent federal criminal jurisdiction will improve public safety and criminal law enforcement and reduce crime in the Indian Country of the requesting tribe. OTJ provides notice of that request in the Federal Register. OTJ will also seek comments on the request from federal law enforcement. In addition, notice of the request will be provided directly to state and local government and law enforcement. After receiving the request, OTJ will hold a formal consultation with the Tribe.

The decision whether to consent to a tribal request for assumption of concurrent federal criminal jurisdiction shall be made by the Deputy Attorney General after receiving written recommendations from the Office of Tribal Justice, the Executive Office for United States Attorneys, and the Federal Bureau of Investigation, with input from other Department components and the Department of the Interior.

A tribe may submit a request at any time. However, requests received by February 28 of each calendar year will be prioritized for decision by July 31 of the same calendar year, if feasible; and requests received by August 31 of each calendar year will be prioritized for decision by January 31 of the following calendar year, if feasible. The Department received three requests before February 28<sup>th</sup> of this year. The requests were from: 1) the White Earth Nation in Minnesota; 2) the Hoopa Valley Tribe in California, and 3) the Los Coyotes Band of Cahuilla and Cupeno Indians, also in California.

Some confusion has arisen as we developed these procedures. Briefly, I want to make a couple of points about what assumption of jurisdiction does, and doesn't do:

What it does do, is allow the federal government to prosecute crimes under 18 U.S.C. § 1152 (Indian Country Crimes Act) and 18 U.S.C. § 1153 (the Major Crimes Act). This jurisdiction is concurrent with existing tribal and state jurisdiction. This means, as appropriate, that the federal government may prosecute serious felonies committed by Indians and non-Indians, and may also prosecute lesser crimes committed by non-Indians.

What it doesn't do is alter in any way existing tribal and state jurisdiction, including authority to investigate or prosecute crime. This means that state authorities continue to have Indian Country law enforcement responsibilities. Tribes also continue to have law enforcement authority over Indians within their jurisdiction. Federal assumption of jurisdiction also does not provide additional law enforcement resources to any entity.

The Department recognizes that there is significant work still to be done in Indian Country, and that recent efforts are only the first steps in what must be a prolonged commitment to ensuring Indian communities are safe and thriving. We look forward to reviewing the findings of this Commission in the final report, and welcome any additional requests for testimony or information. I am happy to try to answer any questions you have today.