

Testimony of Lummi Nation on the Tribal Law and Order Act of 2010

Now ‘ Siam. Hy’Shqe Siam.

The Lummi Nation appreciates the opportunity to present our concerns about the Tribal Law and Orders Act and its implementation.

My Name is Ronald Tso. I am the Police Chief for the Lummi Nation. Lummi Nation is located on a 25,000 acre reservation featuring twelve (12) miles of coastline which is also the International Border of the United States of America. We have a population of nearly seven thousand persons who live in the reservation. The overwhelming majority are members of the Lummi Nation.

Our location on the water and along Interstate Highway 5 is attractive to International smugglers who use our people as mules for marijuana and pharmaceuticals from Canada. Our people are also used as street dealers and next tier suppliers for Mexican drug cartels for cocaine, crack heroin and meth from Mexico.

At Lummi we know that incarceration makes better criminals not healthier people. We do recognize that sometimes there is no alternative to incarceration to protect vulnerable members of our community. However, incarceration is rarely the best method to help anyone and especially our tribal people to function in a healthy manner in our communities when they are released. We have learned the hard way that for successful re-entry into our communities that our people need a comprehensive continuum of care that includes addiction treatment, job related education and training, housing and employment supported by traditional ceremony, language and spirituality. While we need to support the re-entry of the physical person there is a need to support the re-entry of their spirit as well.

If our members need to be incarcerated we need them to be in Tribally-designed and operated facilities that can begin treatment education work training and cultural teachings before they are allowed to return to freedom. We need the financial support and flexibility to help ourselves. Providing for only 50 grants for 550 tribes is not enough.

At Lummi and throughout Indian Country, we need to recover and restore Tribal strength; this is our “Tribal Community”. The best way for our tribal families to achieve “Wellness” is to use our traditional disciplines and spiritual practices in conjunction with the non-Indian mental health best practices to heal ourselves and our people. We need to restore resources to the reservation to facilitate this process. The resources that remain are not sufficient to support the restoration process. We look to the federal government to facilitate the restoration process with

the same vigor that was used to facilitate the destruction of our way of life, which it also facilitated.

Now we have a few comments about the act itself.

Using Law Enforcement Problems to Increase Federal Government Control of Indian Country

Section 245 amends another law and “**SEC. 203. ASSISTANT PROBATION OFFICERS** provides enhancement for the Federal Probation system, not the Tribal probation system. This is another example of using legislations directed at a problem that has widespread support and then actually taking care of your own problems. This legislation is an example of the “Bait and Switch” approach to consumers which has been widely criticized and discarded by most private companies. Addressing the needs of Indian Country Law Enforcement does not mandate the expansion of the federal government’s role in the provision of Law Enforcement Services on the reservation. This act repeatedly avoids direct enhancement of the tribal programs, services, functions and activities but has not missed an opportunity to enhance the authorities and resources available to federal law enforcement.

Insertion of the US Constitution - The Act enhanced many of the authorities of Tribal government but also places them under the US Constitution in a way that had never been done before. Using the standards of the protections required under the US Constitution is not a neutral statement and sets a standard that is foreign to many Tribal communities, only experienced through television or movies. This provision will quiet the fears of some and accentuate the fears of others. The problem is that those whose fears are reduced are non-Indians familiar with the standards of the constitution and those whose fears will be increased will be those Tribal members who are unfamiliar with any system other than ones based on accessible traditional values. Clearly, the comfort of others, distant from the reservation, was considered paramount over the concerns of those who will actually be impacted. Concurrent Jurisdiction of a set of crimes on the reservation with the Federal government could have been easily corrected by simply substituting Tribal for US Constitutions which have been reviewed and approved by highly knowledgeable and uniquely qualified individuals. All reservation residents now live under the jurisdiction of these constitutions and should remain under their own laws.

Tribal Justice Commission – The Commission insures tribal input by requiring that a Tribal Advisory Committee is created composed of two (2) tribal representatives from each region of the Bureau of Indian Affairs. The nine (9) Commission members are appointed for the life of the commission and they are appointed through circuitous recommendations and consultation route described in the legislation. This stands the well established process of tribal consultation on its head. Consultation is usually done with the membership for the Tribal Advisory Committee alone.

Assistance provided to Border Tribes - Since 2001 and the development of Homeland Security Department, Tribes have sought to define a role within the National security structure consistent with their vulnerability. The act includes funding for the Blackfeet Nation of Montana to support the costs of investigation and control of illegal narcotics traffic. The Blackfeet Nation is not the only tribe whose reservation abuts the Canadian border. **“(D) the Blackfeet Nation of Montana for the investigation and control of illegal narcotics traffic on the Blackfeet Indian Reservation along the border with Canada.”** Those tribes whose border coincides with the international border of the United States (both land and water boundaries) have identified their added costs and responsibilities in the “age of terror,” International Terrorism and Community Terrorism. The Department must take this authority and expand it through the development of regulations that provide funding to all tribes who have similar enforcement situations.

Tribal Juvenile Detention Facilities -“(3) DEVELOPMENT OF PLAN— Throughout the act there are many federal plans done in consultation with Tribal Leaders and Organizations but ultimately plans produced by entities of the federal government. The development of a plan describing these programs, services, functions and activities is a good thing for Tribes, if and only if tribal plans are developed and included in the final submission.

Mechanism for Transfer of Funds - Grant mechanisms are repeatedly specified in the Act rather than remaining silent on the transfer mechanism or specifying the transfers of funds based on and annually services plan as authorized under Title IV and Title V of PL 93-638 as amended. Identification of the grant mechanism shows that the real goal is to enhance our federal government grant administrators and others who are not elected in a system that is managed by our elected official for the benefit of their constituencies. The insertion of a layer of bureaucracy will reduce the funding that is available to Tribal government without one compensating service or function. The costs of preparing grant applications and negotiation of grant agreements is not covered by grant funds and becomes a tribal government cost.

The grant mechanism enhances the operation of the federal agency in charge of making the grant awards, not the grantee. The Grant making unit is a unit of the federal government, while the grantees are not. This unit of government has automatic increases in operational costs while grant funds remain fixed as appropriated level become less and less as the bureaucracy created to manage the grant awards consistently award themselves a greater and greater amount of the grant funds.

Funding through the Bureau of Indian Affairs Branch of Law Enforcement – The Act does not provide an effective operational and developmental connection between the DOJ and the DOI funded portions of the Tribal Law Enforcement Systems Programs. The operational and

development funding for Tribal Law enforcement systems are included in the DOI not the DOJ budget. The 2012 budget includes an increase of \$2million to account for the additional authorizations and responsibilities of Tribe under this new act.