



**Summary
of Reports and Testimony
1997-2011**

Indian Country Criminal Justice

submitted to the

Indian Law and Order Commission

September, 2011

TABLE OF CONTENTS

Reports..... 1

1997..... 1

Kevin V. Di Gregory and Hilda A. Manuel. Report of the Executive Committee for Indian Country Law Enforcement Improvements: Final Report to the Attorney General and the Secretary of the Interior 1

2001..... 2

Stewart Wakeling, Miriam Jorgensen, Susan Michaelson, and Manley Begay. Policing on American Indian Reservations..... 2

2003..... 2

Margaret Severson M.S.W. and Christine W. Duclos Ph.D. Assessing Suicide and Risk Behaviors in an Incarcerated American Indian Population: Investigating Culturally Sensitive Risk Assessment Instruments and Procedures in a Border Jail, Final Report 2

Pamela Jumper Thurman Ph.D., Roe Bubar J.D., Barbara Plested, Ruth Edwards, Pamela LeMaster, Erica Bystrom, Marisa Hardy, DeWayne Tahe, Martha Burnside, and E. R. Oetting. Violence Against Indian Women, Final Revised Report..... 3

2004..... 4

Aline K. Major, Arlen Egley, Jr., James C. Howell, Barbara Mendenhall, and Troy Armstrong. Youth Gangs in Indian Country 4

Neither Safe Nor Secure: An Assessment of Indian Detention Facilities 4

Tribal Law and Policy Institute. Victim Services: Promising Practices in Indian Country. Office for Victims of Crime..... 5

2006..... 6

International Association for Chiefs of Police. Promising Practices for Improving Safety in Indian Country . 6

2007..... 7

Amnesty International. Maze of Injustice: The Failure to Protect Indian Women from Sexual Violence in the USA..... 7

Sarah Deer, Carole Goldberg, Heather Valdez Singleton, and Maureen White Eagle. Final Report: Focus Group on Public Law 280 and the Sexual Assault of Native Women..... 8

Steven W. Perry. Improving Criminal History Records in Indian Country, 2004-2006. Bureau of Justice Statistics, July 2007 9

Stewart Wakeling and Miriam Jorgensen. Strengthening and Rebuilding Tribal Justice Systems: A Participatory Outcomes Evaluation of the U.S. Department of Justice Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Project, Final Report 10

2008..... 11

Ronet Bachman, Heather Zaykowski, Rachel Kallmyer, Margarita Poteyeva, and Christina Lanier. Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What Is Known.. 11

Carole Goldberg, Duane Champagne, and Heather Valdez Singleton. Final Report: Law Enforcement and Criminal Justice Under Public Law 280 11

Indian Country Drug Threat Assessment 2008. National Drug Intelligence Center, U.S. Department of Justice
13

2009..... 14

Ada Pecos Melton, MPA and Michelle Chino, Ph.D. Final Report: Participatory Evaluation of the Tribal Victim Assistance Programs at the Lummi Nation and Passamaquoddy Tribe 14

2010..... 15

Tribal Justice Advisory Group: Final Report. Office of Justice Programs, Justice Programs Council on Native American Affairs..... 15

U.S. Department of Justice Declinations of Indian Country Criminal Matters..... 16

2011..... 16

Compendium of Tribal Crime Data. Bureau of Justice Statistics 16

Indian Country Criminal Justice: Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts 18

Congressional Testimonies..... 20

Law Enforcement in Indian Country (May 17, 2007).....20

 Scott Burns, Deputy Director for the Office of National Drug Control Policy (ONDCP)..... 20

Tribal Law Enforcement (June 1, 2007)..... 20

 Karen Artichoker, Director of Cangleska, Inc..... 21

 Georgia Little Shield, Director of Pretty Bird Woman House Shelter 21

Law Enforcement in Indian Country (June 21, 2007) 22

 Joseph Garcia, President of National Congress of Indians..... 22

Law and Order in Indian Country (March 17, 2008) 23

 Daniel Eddy, Jr., Tribal Chairman of the Colorado River Indian Tribes 23

Law and Order in Indian Country (June 19, 2008) 24

 Ron His Horse is Thunder, Chairman of Standing Rock Sioux Tribe 24

 Gretchen C.F. Shappert, United States Attorney, Western District of North Carolina United States
 Department of Justice..... 24

 Kelly Gaines Stoner, Director of Oklahoma City University School of Law 25

Tribal Courts (July 24, 2008)..... 26

 Roman J. Duran, 1st Vice President of the National American Court Judges Association..... 26

 Joseph Thomas Flies-Away, Chief Judge of Hualapai Judiciary 26

 Theresa M. Pouley, Judge of Tulalip Tribal Court 27

Declination to Prosecute Crime in Indian Country (September 18, 2008) 28

 M. Brent Leonhard, Deputy Attorney General of the Confederated Tribes of the Umatilla Indian
 Reservation 28

Examining S. 797, the Tribal Law and Order Act of 2009 (June 25, 2009)	28
Anthony J. Brandenburg, Chief Judge of Intertribal Court of Southern California	28
Larry Echo Hawk, Assistant Secretary for Indian Affairs, United States Department of the Interior.....	29
Lessons Learned from Operation Dakota Peacekeeper (July 1, 2009)	30
Ron His Horse is Thunder, Chairman of Standing Rock Sioux Tribe	30
Examining the Increase of Gang Activity in Indian Country (July 30, 2009)	30
Hermis John Mousseau, Chairman of the Tribal Judicial Council, Oglala Sioux Tribe.....	30
Brian Nissen, Council Member of the Confederated Tribes of the Colville Reservation	31
Carmen Smith, Chief of Police of Warm Springs Tribal Police Department.....	31
Examining Drug Smuggling and Gang Activity in Indian Country (Nov. 19, 2009)	32
Nancy Dooley, Educational Administrator of Department of Rehabilitation and Supervision	32
Matt Haney, Chief of Police of Colville Tribes	32
Martina Whelshula, Administrative Director of the Healing Lodge of the Seven Nations	33
Tribal Law and Order Act Overview.....	34
Department of Justice and Interior, Tribal Law and Order Act: Long Term Plan to Build and Enhance Tribal Justice Systems	34
Senate Committee Report.	36
Update on Tribal Law and Order Act.....	37
List of Key Terms	39

REPORTS

1997

- 1. Kevin V. Di Gregory and Hilda A. Manuel. Report of the Executive Committee for Indian Country Law Enforcement Improvements: Final Report to the Attorney General and the Secretary of the Interior. U.S. Department of Justice, October 1997. Available at <http://www.justice.gov/otj/icredact.htm>.**

Key Terms: Greater Police Presence, Trained Officers, Detention, Poor Jail Conditions, Cooperation with Other Agencies

Key Findings:

- Consultations held in September and early October of 1997, involving representatives from 205 tribes, indicated that serious and violent crime was rising significantly in Indian country, which was in sharp contrast to national trends indicating an overall decrease in crime.
- Main challenges facing Indian country criminal justice:
 - Far too few law enforcement officers are patrolling Indian communities.
 - Detention facilities do not meet minimum standards.
 - Law enforcement officers are inadequately trained and there is a general lack of sufficient resources in Indian country.
 - While it is problematic that tribal justice systems are currently fragmented, tribal governments do not consider the FBI to be an appropriate management structure for the possible consolidation of law enforcement services.

Key Recommendations:

- Consolidate the current law enforcement programs (criminal investigations, uniformed police, and detention services) under the authority of the Bureau of Indian Affairs in order to allow for uniformity across law enforcement in Indian country.
- Move the three major law enforcement programs in the BIA to the DOJ, allowing Indian country law enforcement access to all of the DOJ resources.

2. Stewart Wakeling, Miriam Jorgensen, Susan Michaelson, and Manley Begay. Policing on American Indian Reservations. National Institute of Justice, September 2001. Available at <https://www.ncjrs.gov/pdffiles1/nij/188095.pdf>.

Key Terms: Community Policing, Cultural Compatibility, Increased Tribal Authority, Trained Officers

Key Findings:

- The intensity and range of problems to which police departments in Indian country must respond appear to be increasing.
- Due to poor employee morale and high turnover rates of law enforcement personnel, police agencies currently employ under-qualified and inexperienced officers in Indian country.
- Basic departmental management is flawed; inadequate budgets, fiscal management, and even corruption create serious obstacles to effective delivery of important police services.
- Undue political interference in police operations inhibits the ability of police to perform their duties fairly and equitably and reduces the credibility of police in the eyes of the community.
- Effective law enforcement must be compatible with the tribal culture.
- Tribes with more control over their law enforcement had better outcomes than tribes that did not have much control.

Key Recommendations:

- Implement community policing methods to lower crime rates.
- Make departmental values mirror community values so that law enforcement is more responsive to the community.
- Increase accountability of tribal police institutions. Tribes should commit themselves to developing impartial police departments and providing adequate training for law enforcement.

3. Margaret Severson M.S.W. and Christine W. Duclos Ph.D. Assessing Suicide and Risk Behaviors in an Incarcerated American Indian Population: Investigating Culturally Sensitive Risk Assessment Instruments and Procedures in a Border Jail, Final Report. National Institute of Justice, June 2003. Available at <https://www.ncjrs.gov/pdffiles1/nij/grants/199363.pdf>.

Key Terms: Cultural Compatibility, Detention, Suicide

Key Findings:

- The prevalent suicide risk assessment tool used in jails is not as effective for Indian inmates as it is for non-Indian inmates.

- Indian detainees felt the risk assessment was too intrusive and direct. They were not as forthcoming with their answers as the non-Indian detainees.
- The detainees' reticence was attributed to historical trauma, cultural mores, spirituality, and the importance of relationship.

Key Recommendations:

- Develop a new screening tool that addresses the needs of Native detainees.
- Conduct studies to determine if the new tool is more effective than the existing one.
- Implement the new procedures into jail protocol.

4. Pamela Jumper Thurman Ph.D., Roe Bubar J.D., Barbara Plested, Ruth Edwards, Pamela LeMaster, Erica Bystrom, Marisa Hardy, DeWayne Tahe, Martha Burnside, and E. R. Oetting. Violence Against Indian Women, Final Revised Report. National Institute of Justice, January 2003. Available at <https://www.ncjrs.gov/pdffiles1/nij/grants/198828.pdf>.

Key Terms: Domestic Violence, Violent Crimes, Cultural Compatibility, Victim Services

Key Findings:

- Selected Native communities were evaluated to determine their level of “readiness” to address patterns of violence against women. Readiness consists of community awareness of the problem, available intervention and prevention programs, and the utilization of those programs.
- American Indian women have more readiness to deal with violence prevention than comparable rural communities of other ethnicities.
- American Indian and Alaska Native women suffer significantly higher rates of partner violence than women of other racial backgrounds.
- Tribal leaders are often perpetrators and this can result in political situations in which women are denied the services they need, fearful of using services, or reluctant to open themselves to the threats of the system.
- Historical and intergenerational trauma resulting from European colonization is often cited as a reason for higher incidence of domestic violence.

Key Recommendations:

- Enforcement techniques should be compatible with each tribal community's cultural values.
- Federal funding to tribal domestic violence or advocacy programs should not require a tribal letter of support from tribal leaders, who may be perpetrators themselves.
- Use the Community Readiness Model to facilitate this integration of community values with domestic violence prevention.

5. **Aline K. Major, Arlen Egley, Jr., James C. Howell, Barbara Mendenhall, and Troy Armstrong. Youth Gangs in Indian Country. Office of Juvenile Justice and Delinquency Prevention, March 2004. Available at <https://www.ncjrs.gov/pdffiles1/ojjdp/202714.pdf>.**

Key Terms: Juvenile Crime, More Funding/Programs, Community Compatibility, Gang-Related Activity

Key Findings:

- 23% of responding tribes reported having active youth gangs in their communities. Also, larger tribal communities are more likely to have gangs than smaller communities.
- Nearly three-quarters of reported gang members in Indian country were minors, and about 80% were male.

Key Recommendations:

- Develop community-specific programs that focus on prevention, intervention, and suppression.
- Create policies aimed at improving overall conditions in an Indian community because it would positively impact the community's gang problem.
- Create new or tailor existing school and community-based programs to focus on gang involvement, such as the Gang Resistance Education and Training (G.R.E.A.T.) program or the Boys and Girls Club of America.

6. **Neither Safe Nor Secure: An Assessment of Indian Detention Facilities. U.S. Department of the Interior Office of Inspector General, September 2004. Available at <http://www.doioig.gov/images/stories/reports/pdf//IndianCountryDetentionFinal%20Report.pdf>.**

Key Terms: Poor Jail Conditions, Detention, More Funding/Programs, Faster Investigations/Response Times, Cooperation with Other Agencies

Key Findings:

- From 2001 to 2004, the BIA was not aware of the prevalence of serious incidents occurring in BIA detention facilities, including at least 11 suicides, 236 attempted suicides, and 631 escapees.
- BIA detention facilities throughout Indian country were egregiously unsafe, unsanitary, and a hazard to inmates and staff alike for the following reasons:
 - low staffing levels;
 - poor to nonexistent record keeping;
 - poor administration procedures;
 - inmate neglect; and

- overall unsafe conditions.
- The BIA lacks the organizational will and infrastructure to maintain responsible oversight of jail facility operations or hold facilities accountable for standards.

Key Recommendations:

- A comprehensive and coordinated approach among federal agencies is needed to address the systemic safety, security, and maintenance issues facing Indian jails.
- Federal oversight offices should conduct scheduled and unscheduled compliance inspections.
- BIA should:
 - improve its reporting standards and procedures;
 - hire additional staff;
 - ensure that BIA-Law Enforcement Services criminal investigators immediately respond and conduct a preliminary inquiry to determine whether a full investigation on any reported serious incident is warranted;
 - coordinate with IHS to provide on-site medical assistance;
 - develop an effective system for prioritizing repairs of detention facilities; and
 - facilitate regular regional meetings for BIA and tribal detention administrators.

7. Tribal Law and Policy Institute. Victim Services: Promising Practices in Indian Country. Office for Victims of Crime, November 2004. Available at

http://www.ojp.usdoj.gov/ovc/publications/infores/victimsrvsindian_country2004/729404.pdf.

Key Terms: Domestic Violence, Sexual Offenses, Cultural Compatibility, Victim Services, More Funding/Programs

Key Findings:

- The report found many promising practices that would improve victim services. These include:
 - the use of technology, including especially web pages, to educate the public about pertinent issues relating to domestic violence;
 - the development of distance learning opportunities to educate victim services providers, who are often located in rural locations; and
 - the development of courses specifically aimed at increasing safety and providing support for domestic violence survivors.

Key Recommendations:

- Domestic violence support institutions should:
 - work closely with state and local law enforcement;
 - build on community values; and
 - ground treatment practices in a cultural framework.

2006

8. Promising Practices for Improving Safety in Indian Country. International Association for Chiefs of Police, May 2006. Available at

<http://www.theiacp.org/LinkClick.aspx?fileticket=zSnV0h%2bXvj0%3d&tabid=439>.

Key Terms: Increased Tribal Authority, Cooperation with Other Agencies, Cultural Compatibility, More Funding/Programs

Key Findings:

- This report provided examples of promising practices for improving safety in Indian country surrounding four different topics: jurisdiction, cooperation and coordination, resources, and training and education.
- Jurisdiction Examples:
 - Jurisdictional agreements or legislation authorized tribal police officers to have the same arrest authority as non-tribal peace officers; clarified tribes' willingness to main maintain liability insurance for tribal officers; and did not cause any additional fiscal impact on the state, county, or tribal government.
 - Tribal police authority was acknowledged and communication between non-tribal and tribal police departments drastically improved.
- Cooperation and Coordination Examples:
 - Tribal, federal, and state law enforcement, justice, health and public safety leadership organized to provide trainings for members and opportunities for members to develop and implement strategies to coordinate delivery of services.
 - Each organization was funded through in-kind contributions and grants, or directly funded through state or federal offices, and there was no direct tribal funding.
- Resources:
 - Health centers integrated Native healing methods into the services offered to clients and collaborated with Native and non-Native health institutions to secure resources.
 - Justice systems models addressed the underrepresentation of minorities in juries, state court system staff, state law schools, and state legal professions.

- State policy was developed and implemented to provide training and technical assistance for tribes; initiate partnerships with tribal and state governmental leadership to detect needs; and implement solutions to address those needs.
- Training and Education Examples:
 - Tribal and state organizations cooperated to enhance cross-agency collaboration, clarify law, offer trainings for members and the public, and develop programs such as cross agency data sharing systems.

Key Recommendations:

- State legislation or agreements between local law enforcement agencies and tribal police departments should be pursued to promote cooperation and solidify tribal policing authority by:
 - authorizing tribal police officers to have the same arrest authority as non-tribal peace officers;
 - clarifying liability procedures of the involved tribe(s) and state, where the tribes agree to maintain liability insurance for tribal officers; and
 - authorizing agreements that avoid any additional fiscal impact on the state, county, or tribal government.
- Dialogue between groups or coalitions of tribal, state and federal police department leadership should be organized to promote cooperation and problem solving; provide additional training opportunities for membership; and utilize web-based media and information sharing programs.
- Services agreements between tribal and state governments should take into consideration limited tribal resources.

2007

9. Amnesty International. Maze of Injustice: The Failure to Protect Indian Women from Sexual Violence in the USA. Amnesty International, 2007. Available at <http://www.amnestyusa.org/sites/default/files/pdfs/mazeofinjustice.pdf>.

Key Terms: Sexual Offenses, Victim Services, Jurisdictional Confusion, More Funding/Programs, Trained Officers, Increase Tribal Authority

Key Findings:

- Native women experience higher levels of sexual violence than other women.
- Native women are far more likely to be attacked by someone outside of their ethnic group.
- Native victims of sexual violence find it difficult to access legal redress.

Key Recommendations:

- Gather and publish comprehensive data on sexual violence against indigenous women.
- Congress should recognize tribal courts' jurisdiction over any offender who commits crimes on tribal land, regardless of whether the person is Indian or not.
- Achieve quicker response times to reports of sexual violence by increasing the police force; and providing better services for women that ensure rape victims have access to sexual assault forensic examinations free of charge.
- Provide sufficient resources to prosecutors so that they may vigorously pursue cases of sexual violence.
- Provide more effective training for law enforcement employees.

10. Sarah Deer, Carole Goldberg, Heather Valdez Singleton, and Maureen White Eagle. Final Report: Focus Group on Public Law 280 and the Sexual Assault of Native Women. Sponsored by the Office on Violence Against Women, December 2007. Available at <http://www.ovw.usdoj.gov/280-fg-finalreport.pdf>.

Key Terms: Sexual Offenses, More Funding/Programs, Criminal History Databases/Information Sharing, Trained Officers, Cooperation with Other Agencies

Key Findings:

- Sexual assault crimes are underreported by victims due to shame, fear, and the expectation that no punishment will follow an accusation.
- Not enough use of Sexual Assault Nurse Examiners (SANE) or Sexual Assault Response Teams (SART) and sexual assault protocols.
- Lack of understanding at the state level of tribal culture and Public Law 280.
- Problems with policies within the Indian Health Service (IHS).
- Limited tribal control and sentencing authority hinder tribes' ability to address sexual assault issues in their communities.
- Currently, many tribes do not have tribal codes that apply to sexual assault cases.

Key Recommendations:

- Expand data collection; establish crime data collection systems that include Indian country.
- If the state is not providing appropriate interventions, tribes should:
 - use concurrent jurisdiction to take greater responsibility of sexual assault cases;
 - increase the presence and responsiveness of tribal police, including offering competitive salaries for tribal law enforcement to insure retention of qualified officers; and

- offer additional trainings for tribal judges, law enforcement, and justice system personnel regarding sexual assault issues.
- Create a better justice system by:
 - increasing the federal government's role in sexual assault investigations;
 - improving resource provisions, including providing earmarked funding in police departments and prosecutors' offices for sexual assault specialists;
 - increasing education and training opportunities for attorneys, law enforcement, SARTs, SANEs, and prosecutors on Public Law 280 and reservation needs; and
 - improving relationships between tribes and states, including informing county employees of available tribal services and encouraging them to refer Native sexual assault victims to those services.

11. Steven W. Perry. Improving Criminal History Records in Indian Country, 2004-2006. Bureau of Justice Statistics, July 2007. Available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ichric06.pdf>.

Key Terms: Criminal History Databases/Information Sharing

Key Findings:

- Less than 25% of tribes submitted basic criminal records to state and federal information systems.
- The Tribal Criminal History Records Improvement Program (T-CHRIP) supports tribal criminal data sharing across tribal, state, and national records systems, which allows justice agencies to be better equipped to identify individuals for criminal and noncriminal justice purposes.
 - Noncriminal justice purposes include identifying persons subject to protection orders, ineligible to be employed or licensed for specific occupations, subject to sex offender registration, and ineligible to purchase firearms.

Key Recommendations:

- Funding T-CHRIP should be maintained because it supports the needed automation of information collection systems for tribal justice system operations.
- A small portion of funds should also be used to facilitate trainings for tribal justice system staff to use the information collection systems.

12. Stewart Wakeling and Miriam Jorgensen. Strengthening and Rebuilding Tribal Justice Systems: A Participatory Outcomes Evaluation of the U.S. Department of Justice Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Project, Final Report. National Institute of Justice, September 2007. Available at <https://www.ncjrs.gov/pdffiles1/nij/grants/221081.pdf>.

Key Terms: More Funding/Programs, Cultural Compatibility, Increased Tribal Authority

Key Findings:

- In the right environment, such as communities with a “stable political environment” and strong “traditional cultural beliefs and practices,” communities were able to develop and implement comprehensive improvements to criminal justice systems that successfully addressed pressing crime problems and helped reduce crime taking place in reservation communities.
- Where circumstances were not ideal for justice systems investments to have a lasting effect, practical and short-term strategies were utilized to improve system performance and addresses crime to help build support for more wide-sweeping reform in the future.
- Sustainability is needed for comprehensive changes, but without sustainability, short-term investments can amount to little more than short-term jobs programs.

Key Recommendations:

- Tribe should develop criminal justice systems that are more accountable to the tribe and promote overall stability of the system.
- Tribes should use strategies to define a common vision, such as planning meetings, ad hoc brainstorming sessions, trainings, and other interactions.
- Tribal criminal justice system development should be grounded in cultural norms and values to be effective over the long-term.
- The scope of tribal criminal justice resources can be expanded by cooperating with outside groups and institutions, such as elders, community organizations, religious and spiritual groups, and Boys and Girls Clubs.
- Tribal criminal justice system development should be positioned within a tribe’s efforts to become more independent and resourceful and, at the same time, to seek active and ongoing support from longstanding tribal norms and values.

13. Ronet Bachman, Heather Zaykowski, Rachel Kallmyer, Margarita Poteyeva, and Christina Lanier. Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What Is Known. National Institute of Justice, August 2008. Available at <https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>.

Key Terms: Sexual Offenses, More Funding/Programs, Cultural Compatibility, Violent Crimes, Jurisdictional Confusion, Domestic Violence

Key Findings:

- American Indian women victims of violent crimes are impeded by issues such as:
 - jurisdictional problems, especially when a non-Indian is accused of a crime on tribal land;
 - social and physical isolation; and
 - cultural barriers.
- It is difficult to collect reliable information about victimization of Native women since less than half of all violent victimizations of American Indian and Alaska Native women are never reported to police.
- Surveys provide the most accurate estimates of victimization compared to estimates based on police reports; however, small rural American Indian and Alaska Native tribes struggled to provide random sample surveys because of their high cost.

Key Recommendations:

- Access to official databases at the tribal level to track violent crimes against Native women should be improved.
- Limited funds available for protecting American Indian and Alaska Native women from violence should be utilized to develop interventions and prevention programs, scientifically evaluate the effectiveness of those programs in protecting American Indian and Alaska Native women, and provide shelter for female victims.
- Future research to evaluate the efficacy of programs and policies, which are created to protect Native women, must employ scientifically rigorous standards.

14. Carole Goldberg, Duane Champagne, and Heather Valdez Singleton. Final Report: Law Enforcement and Criminal Justice Under Public Law 280. National Institute of Justice, May 2008. Available at <https://www.ncjrs.gov/pdffiles1/nij/grants/222585.pdf>.

Key Terms: More Funding/Programs, Criminal History Databases/Information Sharing, Cooperation with Other Agencies, Increased Tribal Authority

Key Findings:

- Both Public Law 280 and non-Public Law 280 tribes operate on inadequate levels of funding; though, Public Law 280 tribes receive significantly less federal funding.
- Residents of Public Law 280 tribes reported:
 - Criminal justice problems should be attributed to the lack of county law enforcement accountability.
 - The state and county justice systems are unfair and have poor understandings of tribal cultures.
 - State and county police are less available, slower in response time, more likely to decline services owing to remoteness, located farther away than federal-BIA and tribal police on non-Public Law 280 reservations, and do not provide beneficial patrolling services.
- Residents of non-Public Law 280 tribes reported:
 - Inadequacies in justice service delivery should be attributed to underfunding.
 - The federal-BIA system is unfair and has a poor understanding of tribal cultures.
 - Federal courts do not communicate well with tribal communities, and have difficulty with large caseloads, reliability, speed, and prioritization of cases.
 - There are problems with physical buildings, such as police department buildings and jails.

Key Recommendations:

- Provide training for police and court personnel serving Public Law 280 jurisdictions.
- Provide public information for tribal community members in Public Law 280 jurisdictions through the use of public media, public meetings, and education.
- Enhance communication between state law enforcement agencies and courts with tribal communities.
- Bring state/county law enforcement and criminal justice systems closer to tribal communities, through the improved use of police substations, and court meeting locations.
- In Public Law 280 jurisdictions, there should be designated mechanisms for increased accountability of county police and justice systems to tribal communities, possibly through the use of special complaint agencies and state audit services.
- Improve federal crime-data collection standards by allowing data inputters to specify Indian country as a location when reporting offenses.
- Law enforcement should rely on community based policing methods and improve responsiveness to the most serious and frequently occurring crimes in Indian country.

- Provide additional funding, not dollars redistributed from currently funded tribes, and other support for concurrent tribal criminal jurisdiction under Public Law 280.
- Provide incentives for tribal-state cooperative law enforcement agreements.
- State law should be revised to provide greater access for tribal law enforcement to qualify for state peace officer status.
- Congress should enact legislation, which enables tribes to initiate retrocession of Public Law 280 jurisdiction and return to the tribal/federal-BIA arrangement.
- More research should be conducted on policing and justice administration in Indian country.

15. Indian Country Drug Threat Assessment 2008. National Drug Intelligence Center, U.S. Department of Justice, June 2008. Available at <http://www.justice.gov/ndic/pubs28/29239/index.htm>.

Key Terms: Drug Crimes, Criminal History Databases/Information Sharing, Gang-Related Activity.

Key Findings:

- Marijuana is the most readily available drug on reservations throughout Indian country. Other available drugs include ice, methamphetamine, powder and crack cocaine, diverted pharmaceuticals, heroin, and MDMA. Diverted pharmaceuticals are an increasing concern of law enforcement.
- Mexican Drug Trafficking Organizations (DTO) supply much of the illicit drugs available on reservations. Mexican and Canadian DTOs use border reservations to smuggle drugs into the United States.
- National and local street gangs are increasingly distributing retail-level quantities of illicit drugs on reservations; they are also committing a host of gang-related crimes in tribal communities to solidify their distribution operations, including intimidation, assault, and burglary.
- Gang members who distribute illicit drugs on reservations expose tribal community members to gang culture. Emulation of urban-based gang behavior by tribal members is occurring in many tribal communities, including style of dress and body markings.

Key Recommendations:

- Improve criminal data collection methods across Indian country.
- Implement a national strategy targeted specifically at drug trafficking in Indian country.
- Implement anti-gang strategies to avoid anticipated increases in gang-related criminal activity in Indian country.
- Continue research on the following:
 - drug mortality statistics;

- extent of drug trafficking and usage rates on reservations outside of the 48 contiguous states; and
- drug trafficking and abuse problems in off-reservation trust lands.

2009

16. Ada Pecos Melton, MPA and Michelle Chino, Ph.D. Final Report: Participatory Evaluation of the Tribal Victim Assistance Programs at the Lummi Nation and Passamaquoddy Tribe. Sponsored by the National Institute of Justice, August 2009. Available at <https://www.ncjrs.gov/pdffiles1/nij/grants/228190.pdf>.

Key Terms: Cultural Compatibility, Domestic Violence, Violent Crime, More Funding/Programs, Increased Tribal Authority, Cooperation with Other Agencies, Gang-Related Activity

Key Findings:

- Tribal Victim Assistance Programs (TVA) are more effective when the community is involved with the planning and implementation of those programs.
- Tribes face some of the same issues:
 - lack of safe houses for victims;
 - lack of community awareness education efforts, which results in a decreased likelihood that community members will get involved, report crimes, access resources and services, or help solve the problem;
 - lack of anonymity in close-knit communities; and
 - intra-family violence, which causes conflict between family members and requires outside resources to quell these problems.
- Young children and elders are reported as susceptible targets of gang violence.
- Many tribes lack public policies, including codes that address domestic violence and partner violence, teen violence, elder abuse, and sexual assault; as a result, these tribes are ill-equipped to effectively respond to such reports.
- Victim assistance programs are more effective when they are integrated into the tribe's own methods of medicine and healing.

Key Recommendations:

- Continue research and evaluation on an annual basis to track TVA programs and their effectiveness.
- Lead interagency working groups to develop public laws and policy aimed at increasing offender accountability and enabling better prosecution and sentencing outcomes.
- Creating community awareness campaigns and mobilizations, including strategies to obtain

community input and volunteers.

- Establish and maintain ongoing tribal political and financial support for shelters located on tribal lands, including improved programmatic services and staffing of those programs and others.
- Improve system response through formalized interagency and intergovernmental agreements to ensure services coordination and program collaboration.

2010

17. Tribal Justice Advisory Group: Final Report. Office of Justice Programs, Justice Programs Council on Native American Affairs, August 27, 2010. Available at <http://www.ojp.usdoj.gov/programs/pdfs/tiagreport.pdf>.

Key Terms: Cooperation with Other Agencies, Cultural Compatibility, More Funding/Programs

Key Findings:

- The Tribal Justice Advisory Group fulfills the role of communicating the needs and expectations of tribal communities to federal government entities capable of addressing those needs and expectations.
- The federal government can more effectively combat the challenges facing tribes by organizing individual federal positions or creating permanent federal commissions to provide needed oversight and advocacy for tribal issues.

Key Recommendations:

- The Office of Justice Programs should:
 - provide training for tribal leadership and employees, including grant writing training and program development;
 - adjust OJP grant applications to not include matching requirements, since many tribes in the greatest need for resources do not have available funds to satisfy matching requirements;
 - provide cultural training for federal employees interacting with tribes; and
 - act as an informational support to the Tribal Nations Leadership Council (TNLC) and monitor its progress.
- The Tribal Nations Leadership Council (TNLC) should:
 - be made permanent through legislation; and
 - should be given the authority to act as a monitoring office for matters relating to Sex Offender Registry and Notification Act (SORNA) and Sex Offender Monitoring,

Apprehending, Registering and Tracking Office (SMART).

- Two new positions should be created:
 - Assistant Attorney General for Indian Affairs, as a Senate-confirmed political appointee, should facilitate all program dealings with tribal affairs and Indian country.
 - Deputy Assistant Attorney General for Tribal Affairs, within the Office of Justice Programs, should oversee projects involving federally recognized tribes.

18. U.S. Department of Justice Declinations of Indian Country Criminal Matters. U.S. Government Accountability Office, December 2010. Available at <http://www.gao.gov/new.items/d11167r.pdf>.

Key Terms: Declination Rates, Violent Crimes

Key Findings:

- Federal declination rates are higher for violent crimes (declined 52% of the time) than non-violent crimes (declined 40% of the time), probably due to the fact that there is less available evidence for violent crimes.
- “Weak or admissible evidence” accounted for 42% of the reasons for declination to prosecute.
- Assault and sexual abuse charges were the leading types of charges in Indian country and accounted for 55% of Indian country matters in the DOJ’s case management system.

Key Recommendations:

- Not Applicable

2011

19. Compendium of Tribal Crime Data. Bureau of Justice Statistics, June 2011. Available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ctcd11.pdf>.

Key Terms: Criminal History Databases/Information Sharing

Key Findings:

- First Bureau of Justice Statistics report on the status of tribal data collections activities as required by the TLOA. It contains:
 - Data on tribal law enforcement agencies from the 2008 Census of State and Local Law Enforcement Agencies.
 - An examination of the activities of prosecutors’ offices in states affected by P.L. 280 through either mandatory or optional jurisdiction.

- Data from 2009 based on an enumeration of 80 jails, confinement facilities, detention centers, and other facilities operated by tribal authorities or the Bureau of Indian Affairs (BIA) reported to the annual Survey of Jails in Indian Country.
- Findings on tribal youth processed through the federal criminal justice system between 1999 and 2008.
- Tribal Crime Data Collection Activities, 2010-2011:
 - For the first time, the Bureau of Indian Affairs' (BIA) submissions to UCR were disaggregated *by tribe* and reported in the FBI's *Crime in the U.S., 2009*.
 - The BJS established new and enhanced current programs for tribal crime data collection, including plans to:
 - conduct a survey that investigates the nature and operation of tribal court systems in 2011/2012 and publish the related report in 2013;
 - publish a report in 2011 that explores a 2010 survey of jails in Indian country; and
 - develop research projects to examine American Indian defendants who are processed in the federal justice system.
 - Federally recognized tribes were included as eligible entities to receive grant funding to participate in regional and national criminal statistics databases.
 - The BJS Native American Crime Information Website is currently being developed and is expected to be available to the public in late 2011, which will provide users with easy-to-access and current information from existing and new data collection programs.
- Law Enforcement:
 - Tribal police departments employed 2.3 full-time officers per 1,000 residents, which was the national average for all local police departments as of 2007.
 - The most common functions of tribal officers were executing arrest warrants (95%), enforcing protection orders (92%), serving process (89%), and providing court security (75%).
 - About 4 in 5 (78%) tribal agencies partnered with federal, state, and local agencies in multiagency task forces to combat crime problems in Indian country during 2008: 66% to combat drug trafficking; 41%, gang related issues; and 31%, violent crime.
- State prosecutors' offices with jurisdiction in Indian country:
 - 93% of state court prosecutors' offices in the 19 P.L. 280 states reported jurisdiction for felonies committed in Indian country under P.L. 280.
 - Most offices in P.L. 280 states prosecuted at least one offense involving drugs (63%), domestic violence (60%), or aggravated assault (58%).
 - Most offices in mandatory P.L. 280 states with jurisdiction for felony offenses in Indian

country also reported prosecuting at least one drug-related crime (42 out of 56 offices), domestic violence offense (40), aggravated assault (38), parole or probation violation (31), or a crime involving sexual assault or sexual abuse (30).

- Jails in Indian country:
 - The percentage of certified correctional officers working in Indian country jails increased steadily from 63% in 2007 to 79% in 2009.
 - From 2008 to 2009, the percentage of rated capacity occupied in Indian country jails increased from 64% to 73%.
 - Indian country jail authorities reported no deaths in custody between July 1, 2008, and June 30, 2009, down from 4 reported deaths during the 12-month period ending June 30, 2008. Attempted suicides by inmates declined from 78 in 2008 to 56 in 2009.
- Tribal Youth in the Federal Justice System:
 - In 2008, the number of tribal (72) and non-tribal youth (84) admitted to the jurisdiction of federal prison authorities was the lowest in the period from 1994 to 2008.
 - Tribal youth served a sentence in federal facilities that was twice as long as the maximum sentence tribal facilities can impose.
 - In 2008, about 72% of tribal youth were investigated for violent offenses, including sexual abuse (35%), assault (20%), and murder (17%).
 - Federal prosecutors declined about 40% of matters involving tribal youth in 2008 due to weak evidence (77%), witness problems (13%), stale case (8%), and jurisdiction or venue problems (2%).

Key Recommendations:

- Not Applicable

20. Indian Country Criminal Justice: Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts. U.S. Government Accountability Office, February 2011. Available at <http://www.gao.gov/new.items/d11252.pdf>.

Key Terms: Increased Tribal Authority, Faster Investigations/Response Times, Cooperation with Other Agencies, Declination Rates, Criminal History Databases/Information Sharing, Gang-Related Activity

Key Findings:

- Tribes struggled to adjudicate crimes in Indian country for the following reasons:
 - limited jurisdictional and sentencing authority;
 - limited detention space or limited viable alternatives to incarceration;

- lack of timely notification from federal officials about the status of certain crimes;
 - lack of adequate detention space for offenders convicted in tribal court;

 - perceived encroachment upon judicial independence by other branches of the tribal government; and
 - limited resources for day-to-day court operations.
- Main problem faced by tribes was the lack of communication between the tribe and officials from the BIA or the FBI.
 - Tribal employees stated that when criminal cases were declined, “federal entities generally do not share evidence and other pertinent information that will allow the tribe to build its case for prosecution in tribal court.”
 - Tribes also felt that U.S. Attorneys were not adequately responding to small-scale drug and gang operations in Indian country, which are at times prevalent in Indian country and contribute to the sense of lawlessness.

Key Recommendations:

- The BIA and DOJ should work together to develop mechanisms to effectively identify and share information and resources related to tribal courts.
- The BIA and DOJ should reflect on the shared information to more efficiently and effectively fund and develop trainings and technical assistance for tribes.

CONGRESSIONAL TESTIMONIES

Tribal Law Enforcement (June 1, 2007)

1. **Scott Burns, Deputy Director for the Office of National Drug Control Policy (ONDCP).** Available at <http://indian.senate.gov/public/files/Burns051707.pdf>.

Key Terms: Drug Crimes, Cooperation with Other Agencies

Key Findings:

- ONDCP identified the following federal and tribal agency collaborative programs that reach Native communities:
 - National Youth Anti-Drug Media Campaign that uses culturally relevant and appropriate drug prevention messages.
 - Drug Free Communities (DFC) Support Program, which provides the necessary funding for communities to identify and respond to local substance abuse problems.
 - Screening, Brief Intervention, Referral and Treatment (SBIRT) program for states, territories, and tribal organizations, which provides effective, early identification and intervention in general medical settings.
 - Access to Recovery Program (ATR), which provides clients with a voucher for treatment and recovery support services and expands treatment options so that clients can choose their own path to recovery.
 - The High Intensity Drug Trafficking Areas Program (HIDTA), which is trying to increase tribal involvement in its system, but is hindered by problems including a lack of manpower, insufficient funding, and sovereignty issues.

Key Recommendations:

- Tribal, state, local, and federal law enforcement need to overcome historical barriers of communication and begin collaborating.
- Develop and implement flexible programs that can be tailored to the unique needs of individual tribal communities.

2. Karen Artichoker, Director of Cangleska, Inc. Available at

<http://naturalresources.house.gov/uploadedfiles/artichokertestimony06.01.07.pdf>.

Key Terms: Sexual Offenses, Domestic Violence, Violent Crimes, Jurisdictional Confusion, Increased Tribal Authority, Expand Tribal Sentencing Authority

Key Findings:

- Native women are more likely to be assaulted, raped, or stalked than women of any other ethnic group.
- Three-quarters of attacks on Native women are committed by a member from a different ethnic group taking advantage of jurisdictional confusion.
 - Indian courts do not have jurisdiction over non-Indian perpetrators and are further hindered by sentencing limitations.

Key Recommendations:

- Solve the jurisdictional gap that disallows courts from having jurisdiction over non-Indian perpetrators.
- Expand tribal courts' sentencing authority by increasing the maximum sentences courts are allowed to give.

3. Georgia Little Shield, Director of Pretty Bird Woman House Shelter. Available at

<http://naturalresources.house.gov/uploadedfiles/shieldtestimony06.01.07.pdf>.

Key Terms: Sexual Offenses, Domestic Violence, More Funding/Programs, Greater Police Presence, Trained Officers

Key Findings:

- The insufficient number of police officers leads to these problems:
 - low response rates to calls of domestic violence; and
 - insufficient training for officers.
- Low response rates lead women believe that they have no recourse, and influence them to not report domestic violence crimes when they occur.

Key Recommendations:

- Increase funding toward women's shelters to allow for more advocates and better training.
- Increase the number of police officers available to patrol reservations and respond to domestic violence calls.

Law Enforcement in Indian Country (June 21, 2007)

4. Joseph Garcia, President of National Congress of Indians. Available at <http://www.indian.senate.gov/public/ files/June212007.pdf>, pp. 43-53.

Key Terms: Jurisdictional Confusion, Cooperation with Other Agencies, Criminal History Databases/Information Sharing, Expand Tribal Authority, More Funding/Programs, Expand Tribal Sentencing Authority

Key Findings:

- The law enforcement problems in Indian country can be distilled down to four different challenges.
 - Jurisdictional confusion.
 - The low accountability of federal and state law enforcement to Indian communities.
 - Indian country law enforcement suffers from a lack of resources and funding.
 - Criminal activity is “encouraged” because of the strain on resources; crimes such as drug use and domestic violence often go unaddressed.

Key Recommendations:

- Have a more organized system for collecting crime data in Indian country.
- Congress should create a better relationship between tribal, state, and federal law enforcement by offering incentives to them.
- Allow tribes to prosecute non-Indians who commit crimes, especially domestic violence crimes, on reservations.
- Expand tribal sentencing authority.

5. Kevin Washburn, Associate Professor from the University of Minnesota Law School. Available at <http://www.indian.senate.gov/public/ files/June212007.pdf>, pp. 54-62.

Key Terms: Cooperation with Other Agencies, Increased Tribal Authority, Jurisdictional Confusion

Key Findings:

- As long as tribal governments are not playing a central role in law enforcement, there will continue to be public safety problems on reservations.
 - Some tribal governments are reluctant to ask for more power because they lack resources to effectively address crime problems.
 - Federal, state, and municipal governments are not sufficiently accountability to Indian communities.

- Cooperation between law enforcement agencies is necessary for law enforcement to be effective in Indian country; even the appearance of cooperation is helpful.

Key Recommendations:

- Tribal law enforcement agencies should be the primary providers of law enforcement services.
- Law enforcement agencies must formally and informally coordinate with each other to ensure constancy in service delivery in Indian country.
 - Congress must work to provide incentives for cooperation among state, federal and tribal law enforcement agencies.
 - State-wide or local agreements should be reached to recognize tribal police as law enforcement officers. Additionally, mutual aid efforts, cross-deputization agreements, extradition, and other cooperative action agreements should be supported.
 - When necessary, agreements should define liability processes and tribal immunity.
- Congress should provide fail-safe alternatives for tribes struggling with law enforcement in P.L. 280 jurisdictions. For instance, tribes should have the ability to opt out of P.L. 280 state jurisdiction.
- Congress should support the more robust exercise of existing tribal criminal jurisdiction over misdemeanor offenses committed by Indians.
- Congress should allow tribal criminal misdemeanor authority over non-Indians who commit crimes involving Indians, by first authorizing this authority for selected tribes on a pilot basis.

Law and Order in Indian Country (March 17, 2008)

6. Daniel Eddy, Jr., Tribal Chairman of the Colorado River Indian Tribes. Available at <http://www.indian.senate.gov/public/files/March172008.pdf>, pp. 57-59.

Key Terms: More Funding/Programs, Detention, Poor Jail Conditions, Juvenile Crime

Key Findings:

- A severe lack of funding is the major challenge for the three branches of the Colorado River Indian Tribes' law enforcement: juvenile detention, adult detention, and uniformed police.
 - The BIA funds approximately 30% of the cost needed to operate law enforcement and detention and reimbursed only \$250,000 of the \$680,000 it owes to the Tribes.
- The BIA juvenile facility currently being used is 250 miles away from the Tribes, which violates the federal mandated maximum distance of 200 miles. The distance makes it extremely difficult for the Tribes to provide needed mental health and substance abuse treatment to detained juveniles or for families to visit their loved ones at the facility.

Key Recommendations:

- The BIA should fulfill its fiduciary responsibility and other legal obligations to the Tribes.
- The BIA should provide adequate funding for justice system operations and fully pay its outstanding balance to the Tribes.

Law and Order in Indian Country (June 19, 2008)

7. Ron His Horse is Thunder, Chairman of Standing Rock Sioux Tribe. Available at <http://www.indian.senate.gov/public/files/HisHorseIsThunderTestimony.pdf>.

Key Terms: Poor Jail Conditions, Detention, Trained Officers, Greater Police Presence, Declination Rates, Increased Tribal Authority

Key Findings:

- The Standing Rock Sioux Tribe suffered from an insufficient number of police officers. The BIA estimated that the tribe would need 28 officers to meet requirements, and it only had 10.
- Even with a surge of police officers, problems arose. The Standing Rock Sioux Tribe's court was not equipped to effectively process all of the arrests. Thus, the tribe needs more manpower in all aspects rather than just police force.
- The reservation lacks sufficient detention facilities for youth due to budget shortfalls.

Key Recommendations:

- Raise officer salaries so that they are more competitive.
- Permit tribes to use Native American Housing Assistance and Self-Determination Act funding to provide housing for tribal and BIA law enforcement officers.
- Permit tribes to designate officers who would be eligible to receive additional training and be deputized as BIA police officers. Also, authorize an apprenticeship program, in which officers in training could serve alongside full police officers before and during their training.
- Make it mandatory that federal officials provide tribal prosecutors case files of declined cases.
- Empower tribal prosecutors to bring federal charges in federal courts, like the SLEC tribal police program.
- Increase the sentencing authority of tribal courts.

8. Gretchen C.F. Shappert, United States Attorney, Western District of North Carolina United States Department of Justice. Available at <http://www.indian.senate.gov/public/files/Shappert.pdf>.

Key Terms: Cooperation with Other Agencies, Declination Rates

Key Findings:

- Detailed declination reports could create discoverable material that can be later used in trial, to the detriment of the prosecution.

Key Recommendations:

- Declination statistics should not be made public because they do not accurately reflect the landscape of Indian justice.
- Do not establish an Office of Indian Crime within the Criminal Division at the Department of Justice.
- Do not require written record of reasons for declination.
- Do not codify U.S. Attorney's Offices' tribal liaison's responsibilities.

9. Kelly Gaines Stoner, Director of Oklahoma City University School of Law. Available at <http://www.indian.senate.gov/public/files/61908draft1.pdf>, pp. 32-37.

Key Terms: Cooperation with Other Agencies, Jurisdictional Confusion, Expand Tribal Sentencing Authority, Criminal History Databases/Information Sharing, More Funding/Programs

Key Findings:

- There is insufficient communication between federal prosecutors and tribal prosecutors, especially when a federal prosecutor is declining to prosecute.
- Tribes have insufficient access to national crime databases, and there should be data collection systems that specifically track tribal crimes.
- There is insufficient training for law enforcement officers to respond to certain crimes, including domestic violence and sexual offenses.

Key Recommendations:

- Strengthen the accountability of federal investigators and prosecutors to tribes through the use of an annual reporting process or scorecard that allows tribes to give meaningful input regarding the effectiveness of United States Attorneys' efforts in their areas.
- Tribes should receive the entire file when a federal official declines a case occurring in their communities regardless of the Indian status of the perpetrator.
- Allow tribes to access and input data into the National Crime Information Center (NCIC) and other federal criminal databases.
- Tribes interested in expanded sentencing authority should receive that authority as well as federal funding or access to resources so that those tribes can employ public defenders.
- Funding should be provided for tribal and local non-tribal law enforcement to receive training to address complex jurisdictional issues and cultural norms, including sexual assault training.

- Implement a comprehensive tribal data gathering process or system to track crimes committed in Indian country.

Tribal Courts (July 24, 2008)

10. Roman J. Duran, 1st Vice President of the National American Court Judges Association. Available at <http://www.indian.senate.gov/public/files/July242008.pdf>, pp. 7-14.

Key Terms: More Funding/Programs, Tribal Courts

Key Findings:

- If tribal courts were adequately funded, the amount of filed federal and state court appeal cases would decrease.
- Without adequate correctional facility resources, tribes struggle to house serious criminals when the federal government fails to prosecute those cases.

Key Recommendations:

- Support the Tribal Law and Order Act of 2008 and provide appropriations to ensure the integrity of the base funding for tribal courts, which is essential to successfully carry out the intent of the bill.
- Congress must ensure equitable funding of all tribal justice systems, including P.L. 280 tribes.

11. Joseph Thomas Flies-Away, Chief Judge of Hualapai Judiciary. Available at <http://www.indian.senate.gov/public/files/July242008.pdf>, pp. 20-26.

Key Terms: More Funding/Programs, Expand Tribal Sentencing Authority, Cultural Compatibility, Jurisdictional Confusion

Key Findings:

- Tribal courts support an environment of impartiality, which gives corporations confidence that they can freely engage in commerce on reservations.
- Tribal judicial systems can reflect the values of the tribe's history and culture to become more effective.

Key Recommendations:

- Tribes should be allowed to create a tribal court that reflects their tribe's values.
- Increase funding for tribes so that they have the resources to create adequate facilities and space for law enforcement, courts, incarceration, and rehabilitation.

- Flies-Away offers suggestions for the following sections of the Tribal Law and Order Act:
 - Sec. 303 allows for access to criminal information databases, which is viewed as potentially threatening to tribal leaders who are weary of information sharing. Tribal leaders should be able to retain control over tribal information.
 - Sec. 304 expands sentencing authority for tribal courts. Funding is needed to accommodate these extra criminals in already-full tribal jails.
 - Sec. 603 allows federal employees in rape and sexual assault cases to testify in tribal court. While this change is needed, it conflicts with another law, which requires Director approval for any such testimony, which needs to be resolved.

12. Theresa M. Pouley, Judge of Tulalip Tribal Court. Available at <http://indian.senate.gov/public/files/TeresaPouleytestimony.pdf>.

Key Terms: More Funding/Programs, Expand Tribal Sentencing Authority, Cross-Deputization, Jurisdictional Confusion, Trained Officers

Key Findings:

- Lack of federal support forces tribes to struggle to meet basic public safety standards.
- Under Public Law 280 state criminal jurisdiction, the Tulalip Reservation did not receive adequate police resources to effectively address the public safety needs of the community.
- The Tulalip Tribes' recent successes in its criminal justice efforts can be attributed to:
 - retrocession of state criminal jurisdiction under P.L. 280;
 - new economic development on the reservation, which generated revenue and jobs;
 - the Tribes' control over law enforcement responsibilities, including maintaining primary law enforcement authority on the reservation; and
 - the State of Washington's cross-commissioning legislation for tribal officers, which enables Tulalip officers to be cross-commissioned by the state and, as a result, provides more seamless law enforcement arrest authority over crimes committed by all persons on the Tulalip Reservation.

Key Recommendations:

- The federal government should increase funding to tribal law enforcement and court operations.
- The federal government should provide funding or funding mechanisms for tribal courts to offer criminal defense counsel to indigent defendants.
- Congress should authorize an expansion of tribal taxing authority to raise revenues for tribal justice systems, which benefit both Indians and non-Indians who reside in and around

reservation communities.

- Expand tribal sentencing authority from one to three years per offense.
- Strengthen the Tribal Law and Order Act by requiring the timely transmission of evidence and case files to tribal justice officials when a federal investigation is closed or case declined.

Declination to Prosecute Crime in Indian Country (September 18, 2008)

13. M. Brent Leonhard, Deputy Attorney General of the Confederated Tribes of the Umatilla Indian Reservation. Available at <http://www.indian.senate.gov/public/files/September182008.pdf>, pp. 40-45.

Key Terms: Declination Rates, Expand Tribal Sentencing Authority, Cooperation with Other Agencies

Key Findings:

- Records outlining why a case was declined would not be discoverable if they were classified as “work product.”

Key Recommendations:

- Tribal sentencing jurisdiction should be expanded to five years (not three), because the majority of states define their lowest-level felony as having a maximum sentence of five years.
- Federal prosecutors need to coordinate and communicate with tribal law enforcement in a timely manner.
- Federal prosecutors need to submit relevant information regarding a declination and reasons for the declination to the Office of Indian Country Crime.
- Special Assistance United States Attorneys should be trained to become more effective prosecutors of tribal cases. This could potentially ease the burden on federal prosecutors.

Examining S. 797, the Tribal Law and Order Act of 2009 (June 25, 2009)

14. Anthony J. Brandenburg, Chief Judge of Intertribal Court of Southern California. Available at <http://www.indian.senate.gov/public/files/June252009.pdf>, pp. 49-53.

Key Terms: Jurisdictional Confusion, More Funding/Programs, Cross-Deputization, Cooperation with Agencies, Expand Tribal Sentencing Authority

Key Findings:

- In Southern California (P.L. 280), state prosecutors knew very little to nothing about P.L. 280 and were ill-equipped to take on Indian country cases. Moreover, local law enforcement “very often” refused to come onto Indian reservations.
- Public Law 280 created a jurisdictional and funding gap in Indian country that has not been

sufficiently addressed by the states.

Key Recommendations:

- Provide the resources for tribal custodial facilities in California.
- Pass S. 797 in order to accomplish the following goals:
 - repeal P.L. 280 provisions that remove federal jurisdiction;
 - authorize and encourage cross-deputization;
 - expand tribal sentencing authority; and
 - provide resources for detention centers.

15. Larry Echo Hawk, Assistant Secretary for Indian Affairs, United States Department of the Interior. Available at <http://www.indian.senate.gov/public/files/June252009.pdf>, pp. 14-20.

Key Terms: Poor Jail Conditions, Detention. Cooperation with Other Agencies, More Funding/Programs, Greater Police Presence

Key Findings:

- Many reservations suffer from low numbers of law enforcement officers and corrections programs staff.
- Detention facilities are not up to standard, and some areas lack detention facilities altogether.

Key Recommendations:

- Provide incentives to recruit and retain law enforcement officers and correctional personnel, including matching or exceeding salaries in surrounding jurisdictions, providing law enforcement pension plans, and providing safe, affordable and well constructed housing for officers.
- All types of detention facilities should be constructed and maintained, including a holding facility in most communities, regional detention facilities for incarceration pending adjudication, and longer-term incarceration facilities.
- Cross-agency communication and cooperation between tribal, federal, state, and local partners is essential to keep reservations safe. This includes:
 - coordination regarding funding for law enforcement police staffing;
 - consultation regarding construction of detention facilities; and
 - day-to-day coordination with the FBI and United States Attorneys' offices.

Lessons Learned from Operation Dakota Peacekeeper (July 1, 2009)

16. Ron His Horse is Thunder, Chairman of Standing Rock Sioux Tribe. Available at <http://indian.senate.gov/public/ files/SRSTtestimonyJuly12009publicsafety2.pdf>.

Key Terms: Greater Police Presence, Tribal Courts, Cooperation with Other Agencies, More Funding/Programs

Key Findings:

- A temporary surge of officers to 37 in response to a public safety tragedy in the Standing Rock Sioux Tribe community increased the number of arrests, and temporarily maintained a level of safety on the reservation. After this temporary increase ended, the BIA approved for the tribe to have 25 officers but has only filled 13 of the positions.
- An increase of police officers was not matched with an increase in court personnel, so the tribal court became backlogged.
- Since the surge in officers, crime began to rise and suicide rates have risen dramatically.
- Individuals seeking BIA law enforcement training must relocate to Artesia, New Mexico for 16 weeks. This has deterred many prospective officers from pursuing BIA officer positions.

Key Recommendations:

- The BIA should fill all 25 police officer positions it has approved for the tribe.
- The BIA should develop a plan to recruit and retain BIA officers in tribal communities, including offering regional training, so officers would not be required to relocate for 16 weeks.
- The BIA should produce a report detailing the various types of law enforcement officers it currently employs in Indian country as well as their levels of training, assigned community, requests for reassignment, and frequency of relocation.
- Provide funding for public safety prevention, including counselors and after school programs.

Examining the Increase of Gang Activity in Indian Country (July 30, 2009)

17. Hermis John Mousseau, Chairman of the Tribal Judicial Council, Oglala Sioux Tribe. Available at <http://www.indian.senate.gov/public/ files/July302009.pdf>, pp. 9-13.

Key Terms: More Funding/Programs, Greater Police Presence, Gang-Related Activity

Key Findings:

- Because Oglala Sioux Tribe's police department is severely understaffed, a timely response time is impossible. All officers must work alone and backup is generally 40 minutes away.
- There is a high rate of gang activity on the reservation, and officers have been severely injured while attempting arrests alone.

- Tribal youth feel unsafe: 72% reported having been threatened personally by a gang or gang member, only 65% felt safe from gang activity while at school, and only 35% felt safe at home.
- Several major gangs are operating and recruiting out of the reservation, and convincing tribal women to support drug trafficking.

Key Recommendations:

- Significantly increase funding levels to the tribe in order to allay the problems with public safety, including funding for law enforcement, investigators, administrative staff to process complaints, and personnel to provide prevention programs for tribal youth.

18. Brian Nissen, Council Member of the Confederated Tribes of the Colville Reservation. Available at <http://www.indian.senate.gov/public/files/July302009.pdf>, pp. 41-46.

Key Terms: Juvenile Crime, More Funding/Programs, Greater Police Presence, Cultural Compatibility, Cooperation with Other Agencies, Gang-Related Activity

Key Findings:

- Because of the large size of the reservation and the low staffing levels, maintaining a timely response time to complaints is impossible. Funding levels only permit the tribe to keep three officers patrolling at a time.
- The tribe has education and intervention activities in place to address the gang problem that include an emphasis on tribal culture and values; even with such programs, there is a high incidence of tribal youth rape by gang members.

Key Recommendations:

- Increase funding for BIA law enforcement services and Indian schools facing gang violence.
- Emphasize the need for better communication between federal prosecutors and tribal courts, including the expectation for U.S. Attorneys to perform their jobs in a timely manor.
- Make existing gang prevention programs and training available to BIA law enforcement.
- Eliminate barriers that keep tribes from effectively enforcing laws on their reservations, such as adjusting the Tribal Law and Order Act to define the status of certified law enforcement as federal law enforcement officers for liability purposes when enforcing tribal law.

19. Carmen Smith, Chief of Police of Warm Springs Tribal Police Department. Available at <http://www.indian.senate.gov/public/files/July302009.pdf>, pp. 50-55.

Key Terms: Drug Crimes, Criminal History Databases/Information Sharing, Gang-Related Activity

Key Findings:

- Tribal law enforcement do not have access to High Intensity Drug Trafficking Area (HIDTA) programs; bureaucracy issues such as these make it difficult for tribes to effectively respond to drug trafficking and gang-related activity.

Key Recommendations:

- Create a comprehensive database that would track drug trafficking in Indian country.
- Allow tribal access to HIDTA and other criminal activity databases.
- Ability for tribal prosecutors to submit cases directly to U.S. Attorneys' Offices, and the ability to receive federal commissions for tribal law enforcement.

Examining Drug Smuggling and Gang Activity in Indian Country (Nov. 19, 2009)

20. Nancy Dooley, Educational Administrator of Department of Rehabilitation and Supervision.

Available at <http://www.indian.senate.gov/public/files/November192009.pdf>, pp. 12-16.

Key Terms: Juvenile Crime, More Funding/Programs, Gang-Related Activity

Key Findings:

- Currently, 20 documented gangs operate within the Gila River Reservation.
- The Gila River Department of Rehabilitation and Supervision – Juvenile Division (DRSJR) operates an inpatient juvenile facility that provides mental and physical health education, counseling, technical training, job skills trainings, and a safe environment to call home. Attendees can receive a high school diploma or GED while attending DRSJR.
- The DRSJD program currently has a 21% recidivism rate, which is a drastic improvement. In 2003, the recidivism rate was 73%.

Key Recommendations:

- Preventative and intervention measures are needed to effectively address gang activity.
- Mimicking the methods of the DRSJD program, including providing effective shelter for attendees, education, and training, could be promising for other communities.

21. Matt Haney, Chief of Police of Colville Tribes. Available at

<http://www.indian.senate.gov/public/files/November192009.pdf>, pp. 16-20.

Key Terms: Drug Crimes, Criminal History Databases/Information Sharing, More Funding/Programs, Gang-Related Activity

Key Findings:

- Many drug smuggling rings that have a presence in Indian country originate from Canada or Mexico. They frequently use planes to remove drugs that were produced on the reservation.
- The Colville Reservation attracts drug smugglers due to its remote location, size, and inadequate law enforcement. The Tribes can only afford to keep two officers patrolling during the day and three at night.

- The Colville Tribal Police Department has identified at least 19 drug cultivation operations and has seized more than 45,000 marijuana plants.

Key Recommendations:

- Allow tribes' access to High Intensity Drug Trafficking Areas programs (HIDTA), which is funded through the Office of National Drug Control Policy (ONDCP).
- Increase tribal funding so that they can secure air support, which is the only practical method of identifying marijuana grow operations.

22. Martina Whelshula, Administrative Director of the Healing Lodge of the Seven Nations.

Available at http://www.indian.senate.gov/public_files/November192009.pdf, pp. 3-6.

Key Terms: Juvenile Crime, Cultural Compatibility, More Funding/Programs, Gang-Related Activity

Key Findings:

- The Healing Lodge is a youth residential treatment program that serves predominately tribal youth from the Western Region of the U.S. (Alaska to Arizona). Roughly 150 youth are treated a year, two-thirds of whom are gang-involved.
- The Lodge's programs are focused on educating youth about their cultural heritage to give them a foundation and a feeling of belonging.
- Many of the youth that come to the Healing Lodge come from families where drug use is intergenerational, and either one or both of the participants' parents are incarcerated or deceased.

Key Recommendations:

- Authorize new programs or improve existing ones so that they provide culturally appropriate education, intervention, and prevention activities.

TRIBAL LAW AND ORDER ACT OVERVIEW

Tribal Law and Order Act: Long Term Plan to Build and Enhance Tribal Justice Systems.
Available at <http://www.bja.gov/pdf/FinalTLOATribalJusticePlan.pdf>.

Background:

Sections 211 and 244 of the Tribal Law and Order Act direct the DOJ and DOI to create “a long-term plan to address incarceration in Indian Country.” The document was submitted by the DOJ and DOI to Congress on July 29, 2011. To create the report, the DOJ and DOI worked closely with a Work Group, whose members included individuals representing several federal agencies, such as the Office of Tribal Justice, the Bureau of Prisons, the Office of Civil Rights, Indian Health Services, the Bureau of Indian Affairs, and the Executive Office for U.S. Attorneys. Additionally, outside information was solicited through the use of seven consultations with tribal leaders, webinar education and dialogue sessions, focus groups of tribal justice officials, and written comments from the public. According to the document, “The Work Group is committed to implementing these Action Steps and Recommendations, and helping tribal justice systems to improve public safety.”

Work Group’s Recommendations for Key Considerations Underlying the Plan:

- Develop a system of alternatives to incarceration.
- Make alternative interventions culturally specific to individual Nations.
- Include after school and summer programs for tribal youth as part of crime prevention strategy.
- Ensure that tribal jails comply with standards.
- Include juvenile detention and treatment.
- Support regional partnerships with state and local entities to contract for bed space to improve capacity and sustainability.
- Develop data-driven, comprehensive programming.
- Apply jail standards to facility funding, construction and maintenance.
- Develop and implement evidence-based reentry programs that include risk assessment tools and individual case management plans.
- Locate more federal halfway houses on tribal lands to keep members connected to community and family.

Six-Month Goals:

- DOJ will use resources from DOJ's Tribal Courts Assistance Programs (TCAP), Indian Alcohol and Substance Abuse Assistance (IASAP), Drug Courts Programs, and Tribal Youth Programs to support alternatives to incarceration programming.
- Share information with tribal courts about electronic alcohol monitoring bracelets (BIA).
- Offer funding, training, and technical assistance for detention facility planning, renovation, and construction (DOJ).
- Explore potential resources to promote comprehensive programming (the Work Group).
- DOJ will support reentry activities through DOJ's Second Chance Act's Demonstration, Mentoring, Correctional Technology Jobs, Co-Occurring Substance Abuse and Mental Health Disorder grant programs, and the Tribal Juvenile Detention and Reentry Green Demonstration Program. Explore strategies to facilitate and streamline tribal justice hiring, basic competency training, and securing clearance processes.
- Explore strategies to facilitate and streamline tribal justice hiring, basic competency training, and securing clearing processes (DOI and the Work Group).
- Add other critical federal partners to support implementation of the Tribal Justice Plan, including agencies representing law enforcement, civil rights, victims, youth issues, family violence and defense (the Work Group).
- Continue to coordinate across federal agencies after the Report is submitted to Congress.

Twelve-Month Goals:

- Explore the feasibility of creating a work release program for tribal members returning from federal incarceration and the potential impact of such a program on crime victims.
- Fund Tribal Probation Academies and explore assistance such as training for probation supervisors and training on planning and managing a tribal probation agency (DOJ).
- Expand the Juvenile Detention Alternatives Initiative (JDAI) to Indian country (DOJ/OJJDP).
- Enhance coordination of current federal funding for tribal corrections facility and multi-purpose justice center planning, construction, transition, maintenance, operations, and programming.
- Coordinate funding of new construction to maximize success of these projects (DOI and DOJ).
- Create a peer advocate training program (DOJ/OJJDP, BIA, and IHS).
- Explore potential resources to assist high-risk offenders or those needing specialized services (BOP, BIA and Federal Probation).
- Explore resources of BIE to address offender educational requirements.
- Coordinate federal reentry services in Indian country with the U.S. Probation and Pretrial

Services Indian Country Steering Committee with other federal, tribal, and state agencies. Develop a collaborative strategy to enhance accessibility of federal funding and resources in the areas of alternatives, detention, and reentry for Tribal Nations.

- Create an online consolidated database on funding opportunities, resources, training and technical assistance (the Work Group).
- Provide cross-agency training to emphasize the importance of multidisciplinary strategies to achieve best results from the Tribal Justice Plan.

Senate Committee Report. Available at <http://www.gpo.gov/fdsys/pkg/CRPT-111srpt93/pdf/CRPT-111srpt93.pdf>.

Problems Addressed

- Justice system lacks coordination, accountability, and adequate funding.
- Indian country violent crime rates are more than twice the national average.
 - Domestic and sexual violence rates are much higher in Indian country.
- Low police presence allows for larger proliferation of crime.
- There are significant limits on tribal authority.
 - Tribal courts lack jurisdiction over non-Indians who commit crimes on reservations.
 - The maximum sentence a tribal court can give is one year imprisonment for any offense, including violent crimes.
 - Limits often lead to confusion as to which authority, tribal or federal, holds jurisdiction, which causes delays during the crucial beginning of an investigation.
- Federal prosecutors decline to prosecute many cases from Indian country, and then fail to notify tribal authorities in a timely manner.

Legislative History

- Nov. 7, 2007: Senator Dorgan released a paper recommending changes that would improve the criminal justice system in Indian country.
- July 28, 2008: Senator Dorgan and 12 co-sponsors introduced S. 3320, the Tribal Law and Order Act of 2008.
- Apr. 2, 2009: Senator Dorgan introduced S. 797, the Tribal Law and Order Act of 2009.
- June 25, 2009: Senate Committee held hearing on S. 797.
 - After hearing, Committee offered a substitute amendment.

- Sept. 10, 2009: The Committee approved S. 797 by unanimous vote with four substitutions that were also approved.

Funding

- S. 797 would not impose any costs on state, local, or tribal governments. “The costs...fall within budget functions 450 (community and regional development) and 750 (administration of justice).”
- S. 797 “would authorize the appropriation of \$566 million over the 2010-2014 period for BIA and DOJ programs.” The following would be authorized over that time span:
 - \$50 million annually over the 2010-2014 period for the BIA to support the development, enhancement, and operations of tribal justice systems;
 - \$35 million annually over the 2010-2014 period for the DOJ to make grants to Indian tribes for the construction and maintenance of detention facilities and tribal justice centers;
 - \$10 million annually over the 2010-2014 period for the BIA to operate emergency shelters for Indian youth who abuse drugs and alcohol;
 - \$10 million annually from 2011-2015 period for the DOJ to make grants to Indian tribes to improve public safety in Alaskan Native villages; and
 - \$10 million annually over the 2010-2014 period for other BIA programs to enhance tribal law enforcement, combat substance abuse on Indian lands, and support tribal courts.
- S. 797 authorizes the appropriation of whatever sums are necessary over the 2010-2014 period to operate and support tribal justice systems.

Update on Tribal Law and Order Act

Important Changes

- Sec. 211: New responsibilities for the BIA that include aggregating criminal data for national crime databases and reporting to Congress on needs of Indian country.
- Sec. 212: Requires federal investigators and prosecutors to report declination of cases and to coordinate with Indian country law enforcement officials.
- Sec. 213: Allows tribal prosecutors to work as special federal prosecutors; requires US Attorneys to appoint a Tribal Liaison if their district includes Indian country.
- Sec 214: Office of Tribal Justice is given a more permanent status within the Department of Justice.
- Sec. 221: Tribes can ask the US to reassume jurisdiction in Public 280 states.
- Sec. 222: Attorney General can now provide “technical and other assistance” in order to help tribes and states enter into cross-deputization and mutual assistance agreements.

- Sec. 231: Enhances training and training standards for law enforcement officials and raises the age limit for tribal law enforcement.
- Sec. 232: Includes tribes in drug enforcement provisions that were once reserved for states.
- Sec. 233: Expands access to national crime information databases.
- Sec. 234: Increases tribal sentencing authority.
- Secs. 241, 242, 243: Expands funding authorization for justice services, which includes training for law enforcement personnel.
- Sec. 244: Creates a Tribal Jail Program, which includes construction of jails and alternative detention facilities.
- Sec. 245: Supports the hiring of Indian country residents as federal probation officers; also supports the “provision of rehabilitation services to Indian country defendants.”
- Sec. 246: Authorizes grants to tribes specifically targeted at tribal juvenile delinquency prevention.
- Sec. 247: Allows state-appointed Village Public Safety Officers in rural Alaska to access funds normally reserved for tribal and federal officials only.
- Sec. 251, 252: Outlines requirements to improve crime data collection in Indian country.
- Sec. 261: Requires tribal officials to be notified when “certain federal prisoners and sex offenders are released or sentenced to probation.”
- Sec. 262: Authorizes training in proper interviewing and evidence collection in cases of sexual assault and domestic violence.
- Sec. 263: Meant to promote response by the Indian Health Service to requests or subpoenas from tribal or state courts to provide evidence, particularly in sexual assault cases.
- Sec. 265: Requires IHS, BIA, and DOJ to create “standardized sexual assault policies and protocol” for IHS facilities.
- Sec. 266: Requires the Comptroller of the United States to conduct a study to determine whether the Indian Health Service is able to effectively collect, maintain, and secure evidence in sexual assault and domestic violence; additionally, he is required to make recommendations on how IHS can improve in these capacities.

LIST OF KEY TERMS

Community Policing
Cooperation with Other Agencies
Criminal History Databases/Information Sharing
Cross-Deputization
Cultural Compatibility
Declination Rates
Detention
Domestic Violence
Drug Crimes
Expand Tribal Sentencing Authority
Faster Investigations/Response Times
Gang-Related Activity
Greater Police Presence
Increased Tribal Authority
Jurisdictional Confusion
Juvenile Crime
More Funding/Programs
Poor Jail Conditions
Sexual Offenses
Suicide
Trained Officers
Tribal Courts
Victim Services
Violent Crimes