



PUBLIC SAFETY & JUSTICE

Among the fundamental components of the federal government’s trust responsibility to tribal nations is the obligation to protect public safety on tribal lands. Congress and the United States Supreme Court have long acknowledged this obligation, which Congress reaffirmed in the Tribal Law and Order Act (P.L. 111-211) (TLOA) expressly “acknowledging the federal nexus and distinct federal responsibility to address and prevent crime in Indian Country.”¹⁷

The inadequate funding for tribal criminal justice and public safety has resulted in staggering rates of violent crime and victimization on many Indian reservations. A Department of Justice (DOJ) study has found that more than four in five American Indian and Alaska Native adults have experienced some form of violence in their lifetime.¹⁸ Among American Indian and Alaska Native women, 55.5 percent have experienced physical violence by intimate partners in their lifetime, and 56.1 percent have experienced sexual violence.¹⁹ Over 90 percent of those committing such violent acts are non-Native. The lack of funding for justice and victims’ services in Indian Country contributes to the high rates of suicide, substance abuse, and other issues that plague many tribal communities.

In 2018, the U.S. Commission on Civil Rights found that there continues to be “systematic underfunding of tribal law enforcement and criminal justice systems, as well as structural barriers in the funding and operation of criminal justice systems in Indian Country” that undermine public safety.²⁰ Tribal justice systems simply need the resources to put their tools to work so they can protect women, children and families, address substance abuse, rehabilitate first-time offenders, and put serious criminals behind bars.

The underfunding of tribal law enforcement and justice systems is well-documented. Most recently, the Bureau of Indian Affairs (BIA) in 2017 submitted a report to Congress estimating that to provide a minimum base level of service to all federally recognized tribal nations: \$1 billion is needed for tribal law enforcement, \$1 billion is needed for tribal courts, and \$222.8 million is needed to adequately fund existing detention centers. Based on recent appropriation levels, The BIA is generally funding tribal law enforcement at about 20 percent of estimated need, tribal detention at about 40 percent of estimated need, and tribal courts at a dismal five percent of estimated need.

Due to the obvious inadequacy of the base funding provided by the BIA, tribal nations rely on short-term competitive grants in order to make up a portion of the shortfall. This is especially true with regard to funding for the non-incarceration aspects of justice systems, such as tribal courts, which as noted, are even more severely underfunded than policing and detention. The bulk of these grants are administered by DOJ. Tribal funding at DOJ has steadily declined in recent years, falling from approximately \$165 million in FY 2010 to \$115 million in FY 2017. Since FY 2018, the funding appeared to increase dramatically to \$246 million.³² This increase reflects the fact that Congress included tribal governments in the annual disbursements from the Crime Victims Fund (established under the Victims of Crime Act of 1984 (P.L. 98-473)) for the first time, and directed \$133.1 million to tribal governments to improve crime victim services on tribal lands. While this funding for crime victim services is sorely needed, it cannot be used for law enforcement, prosecution, or other criminal justice purposes, and it does not make up for cuts in those areas.

Increased and targeted funding in the following program areas will have a significant impact on safety in tribal communities for tribal citizens, residents, and visitors to tribal lands. Well-functioning criminal justice systems, basic police protection, and services for victims are fundamental priorities of any government; tribal nations are no different.

Key Recommendations

DEPARTMENT OF THE INTERIOR

Interior – Environment Appropriations Bill

Bureau of Indian Affairs (BIA)

- *Allocate \$83 million in additional funding to the BIA to increase base funding for tribal courts, including courts in P.L. 83-280 jurisdictions, and to incrementally move towards fully meeting the need for tribal court funding.*

The highest priority with regard to BIA funding is to increase base funding for tribal courts. The BIA estimates that full funding for tribal courts would cost \$1 billion. FY 2020 funding for tribal courts was \$37.5 million for tribal courts generally and \$14 million for tribal courts in P.L. 83-280 (“P.L. 280”) jurisdictions, or five percent of the estimated need.

Originally enacted in 1993, the Indian Tribal Justice Act (P.L. 103-176) (ITJA) authorized an additional \$50 million per year for each of seven years for tribal court base funding. In today’s dollars this would be \$83 million per year, which would still be less than 10 percent of the overall need estimated by BIA. Despite numerous Congressional reauthorizations of the ITJA over the past couple of decades – most recently in TLOA – funds have never been appropriated to implement the Act. The ITJA does not differentiate between tribal nations subject to P.L. 280 jurisdiction or not. The promise of this much-needed base funding must be fulfilled. We ask Congress to commit to fully funding tribal courts within the next five years by incrementally increasing funding each year.

- *Increase funding for BIA law enforcement and detention by at least \$200 million over the combined FY 2020 funding level of \$216 million for criminal investigations and police services and \$105 million for detention/corrections.*

More than 200 tribal police departments, ranging from small departments with only two officers to those with more than 200 officers, help to maintain public safety on over 50 million acres of tribal lands within 48 contiguous states. Tribal law enforcement officers are usually the first responders to crime scenes on tribal lands, but their current funding lags well behind that of their non-tribal counterparts. The U.S. Commission on Civil Rights recently noted that tribal nations have “less officers per capita than law enforcement agencies nationwide, leaving residents of Indian Country less safe and subject to higher rates of crime.”³³

The BIA recently conducted an analysis of law enforcement and detention needs pursuant to TLOA, and found that the total need for basic law enforcement and detention services in Indian country is \$1.2 billion. This estimate includes tribal nations without regard to whether or not they are located in a P.L. 280 jurisdiction. Given the gross inadequacy of current funding levels, the BIA

has had a policy for many years to generally provide law enforcement and detention funding only to tribal nations in non-P.L. 280 jurisdictions. This has left tribal nations in many areas completely without BIA support for tribal police and detention needs.³⁴ We ask Congress to commit to fully funding tribal law enforcement and detention within the next five years by incrementally increasing funding each year, starting with a \$200 million increase for FY 2021.

DEPARTMENT OF JUSTICE

Commerce, Justice, Science Appropriations Bill

Tribal Grants across the Department of Justice

- *Eliminate competitive grant funding process and utilize DOJ appropriations as base funding so tribal nations can determine their own priorities.*

One of the most significant challenges faced by Indian Country with DOJ funding is that it is competitive funding awarded at the DOJ's discretion. To obtain this funding, tribal nations – on behalf of their justice systems – must compete against each other under DOJ's priorities and guidelines. In the end, this cannibalistic funding system unfairly disadvantages tribal nations with substantial need that may lack the financial and human resources to employ experienced grant writers. Moreover, tribal nations cannot count on funding continuing beyond the often very limited current grant period. Indian Country has numerous stories of successful programs disappearing at the end of a two- or three-year grant cycle, and the short lifetime of these programs makes it nearly impossible for researchers to identify and document evidence-based best practices for Indian Country.

Tribal nations have been asking for reforms to the DOJ grant-making process for years to reduce administrative inefficiencies, improve program effectiveness, and increase the ability of tribal nations to leverage available Department of the Interior (DOI) and DOJ funding to best address the comprehensive public safety and justice needs in their communities. Beginning in 2012, Congress has responded to this request from tribal leaders by appropriating a fixed amount for “tribal assistance” rather than appropriating funds for specifically authorized tribal programs at the Office of Justice Programs (OJP). This approach gives DOJ considerable flexibility to work with tribal nations to determine how best to administer the appropriated funds. In FY 2017, Congress shifted from a lump sum for tribal assistance to a percentage set-aside model for the first time, creating a seven percent tribal set-aside from some Office of Community Oriented Policing Services (COPS) and OJP programs. However, Appropriators carved out several of the largest appropriation lines from the tribal allocation, resulting in an overall tribal funding decrease from FY 2016 levels. In FY 2018, Congress went back to the funding model used in FY 2016. The Administration's budget request for FY 2020 included a seven percent tribal allocation from across a wider range of OJP and COPS programs; however, this was not ultimately adopted. If enacted, this would help restore funding levels for DOJ tribal justice programs to a more appropriate level.

OFFICE OF JUSTICE PROGRAMS (OJP)

- *Create a 10 percent tribal set-aside from funding for all discretionary OJP programs, ensure that those funds, along with tribal funds outside of OJP, are allocated as flexible base funding.*

A flexible tribal set-aside from across OJP programs would allow for a more effective and logical funding structure at DOJ. In 2010, the Department of Justice launched its Coordinated Tribal Assistance Solicitation (CTAS). CTAS attempts to streamline the grant application process for tribal nations, enabling them to submit a single application for multiple DOJ programs, as opposed to previous years in which they were required to submit multiple grant applications. However, this streamlined application model still results in multiple grant awards with separate reporting requirements, award periods, and grant managers. Given this, CTAS will not achieve its intended purpose of streamlining tribal grants until it is accompanied by a streamlined funding mechanism.

A 10 percent OJP tribal set-aside would streamline the federal funding process by which tribal nations receive resources to establish tribal courts; assist in developing detention facilities; provide legal assistance; develop and maintain juvenile delinquency

prevention programs; and provide substance abuse prevention programs. Further, the tribal set-aside gives tribal nations the flexibility to develop a comprehensive strategy on how best to spend those resources. It also would create new possibilities for coordinating BIA and DOJ funding to reduce inefficiencies and unnecessary administrative costs.

- *Provide a five percent set-aside for tribal nations from Crime Victims Fund disbursements.*

The Victims of Crime Act (P.L. 98-473) (VOCA) is the largest source of federal funding for crime victims. For the past three years, Congress has directed a portion of the overall disbursements from the Crime Victims Fund (CVF) to tribal nations. The five percent tribal set-aside included in the FY 2020 appropriations bill will direct \$132 million to support and improve crime victim services on tribal lands. This funding has the potential to transform the crime victims services infrastructure on tribal lands, and it is imperative that it be appropriated on an annual basis to sustain the programs and services that will be developed. NCAI recommends that five percent of CVF distributions continue to be directed to tribal nations each year to ensure that tribal crime victims are able to access victim services and victim compensation. Further, NCAI has called upon the DOJ to do away with the competitive grant-making approach entirely for CVF tribal funding, and instead make distributions directly to tribal nations based on criteria developed in consultation with tribal nations.

- *If Congress declines to adopt the flexible 10 percent set-aside across OJP programs, restore FY 2010 levels of \$25 million in funding for the Tribal Youth Program under the Juvenile Accountability Block Grants Program.*

American Indian and Alaska Native children are often overrepresented in juvenile justice systems.²² Once in the system, they are disproportionately detained, removed from their homes, and placed in secure confinement, often for non-violent offenses.²³ Currently, there is little financial support for tribal youth programs, justice systems, and prevention programs. In particular, even though the statistics show that Native children are entering the juvenile justice system as a result of substance abuse and trauma, and that incarceration may not be the best option for them, tribal nations are left to cobble together funding for alternative, non-incarceration programs. The Tribal Youth Program (TYP) under the Juvenile Accountability Block Grants (JABG) program was one of the few programs through which tribal governments could regularly receive juvenile justice funding for all functions including prevention and diversion. NCAI urges Congress to restore the TYP to its FY 2010 level of \$25 million.

- *Provide funding for the Tribal Civil and Criminal Legal Assistance, Training, and Technical Assistance (TCCLA) grant program at a level of \$3 million.*

In 2000, Congress enacted the Indian Tribal Justice Technical and Legal Assistance Act of 2000 (P.L. 106-559). Sections 102 and 103 of this statute authorized DOJ, subject to available appropriations, to award grants to non-profit entities that provide civil and criminal legal assistance services pursuant to federal poverty guidelines to both tribal governments and their justice systems, and to indigent tribal citizens in need of legal representation. Among the entities authorized to receive grants under this statute are the Indian Legal Services programs connected with the Legal Services Corporation (LSC).

Since P.L. 106-559 was enacted, DOJ has awarded funding in a number of years to address one of the Act's findings that "the provision of adequate technical assistance to tribal courts and legal assistance to both individuals and tribal courts is an essential element in the development of strong tribal court systems"²⁴ by awarding grant funding under the Tribal Civil and Criminal Legal Assistance, Training, and Technical Assistance (TCCLA) program to the National Association of Indian Legal Services programs and their administering agent, the Native American Rights Fund (NARF). TCCLA has always been funded separately from DOJ's CTAS program with a portion of the overall amount of funding Congress appropriates for assistance to tribal nations through DOJ.

The established Indian Legal Services programs, of which there are 24 programs that operate in 23 states, have been serving American Indian reservation and Alaska Native tribal communities for decades. These programs are an integral part of the legal

structure of the tribal communities they serve, with their attorneys well-versed in the uniqueness and complexities of Indian law, who are specialized legal practitioners, and who are familiar with arguing cases in tribal courts. Through both assistance to tribal judicial systems and individual representation, Indian Legal Services programs work to insure a sound legal infrastructure that provides the assurances of solid law and codes and legal representation to the tribal governments which operate a host of programs and services to all the residents of their homelands, to individual tribal citizens, and to non-Indians who do business, attend school, collaborate with tribal enterprises, and/or live in these tribal communities.

The Indian Legal Services programs have shared this TCCLA funding among themselves to provide civil and/or criminal legal assistance to thousands of individual American Indian and Alaska Native clients who meet the Act's required federal poverty guidelines, as well as to assist more than 160 tribal nations and/or tribal judicial systems. In at least 46 tribal courts, these programs provide the only public defender service available. These Indian Legal Services programs assist tribal nations and their justice systems by providing such assistance as tribal court development, restructuring and improvement; development of tribal dispute resolution and peacemaker/mediation systems; drafting of tribal civil and criminal codes, including children's codes, and tribal court desk books; implementation of TLOA and VAWA 2013; drafting of policies and rules of procedure; and training of law enforcement and tribal court and justice systems personnel, guardians *ad litem*, and locally based, culturally integrated lay tribal court advocates.

Services to individuals include domestic violence, *pro se assistance*, family member prisoner visitation, re-entry and expungements of certain criminal charges, child welfare, guardianship and adoption, free legal clinics and toll-free legal advice hotlines, alternatives to incarceration, reduced sentences for juvenile delinquents, and recruitment of volunteer attorneys to provide *pro bono* representation to tribal citizens. The work on behalf of Native juveniles served includes assistance in adoptions, Indian Child Welfare Act proceedings, delinquency proceedings, and birth certificate changes for tribal enrollment purposes.

In addition to FY 2020 funding of \$3 million for TCCLA grant program, we request (1) bill language that provides that a specified tribal amount or set-aside of funding under various Office of Justice Program accounts shall be for "assistance to Indian tribes," and (2) report language that states that one purpose of such funding is for tribal civil and criminal assistance.

OFFICE OF COMMUNITY ORIENTED POLICING SERVICES

- Increase funding of tribal law enforcement programs under DOJ's Community Oriented Policing Services (COPS) Grants to \$52 million.

Since the creation of the COPS Office under the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322), the COPS Office has awarded over 2,000 grants totaling more than \$400 million to tribal nations to hire more than 1,700 new or redeployed law enforcement officers. It has also helped tribal nations obtain necessary law enforcement training, equipment, vehicles, and technology. Through its Tribal Resources Grant Program and Tribal Methamphetamine Program and historical programs and funding initiatives such as the Tribal Hiring Renewal Grant Program (THRGP), Tribal Mental Health and Community Safety Initiative, and the Tribal Court Pilot Program, the COPS Office has taken a proactive approach to addressing the needs of tribal nations, and has become one of the primary resources available to tribal law enforcement agencies for developing a policing infrastructure and upgrading outdated equipment. Yet, there is still a tremendous unmet need within tribal justice systems for more COPS funding.

The COPS Office has acknowledged that due to limited resources, it has not been able to adequately fund tribal justice systems, particularly in the area of hiring and retaining tribal law enforcement officers. In a report required by the TLOA, the COPS Office described its practice of intermittent funding as "problematic," especially "when referring to hiring of officers."³⁵ Hiring more tribal police officers is a top public safety priority. In FY 2020, COPS Office tribal funding was \$27 million. Indian Country urges Congress to significantly increase funding for tribal law enforcement programs under the COPS program.

DEPARTMENT OF JUSTICE**Commerce, Justice, Science Appropriations Bill****Office on Violence Against Women**

- *Fully fund the programs authorized in VAWA 2013, including the \$5 million authorized for tribal implementation of VAWA special domestic violence criminal jurisdiction.*

It is estimated that over 85 percent of American Indians and Alaska Natives will experience intimate partner violence, stalking, or sexual violence in their lifetime.³⁶ Over 90 percent of these crimes are committed by non-Natives. This violence threatens the lives of Native women and children and the future of American Indian tribal nations and Alaska Native villages.

OVW provides funding to tribal nations to address violence against women in their communities. OVW's largest source of funding for tribal nations is the Grants to Tribal Governments Program, which is funded via statutory allocations from other OVW programs. Fully-funding these OVW programs results in full funding for the Grants to Tribal Governments Program.

In 2013, Congress passed the Violence Against Women Reauthorization Act (VAWA 2013), which recognizes and affirms the inherent sovereign authority of tribal nations to exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ) over all persons – Indian and non-Indian – who commit crimes of dating violence, domestic violence, and violations of protection orders within Indian country. The bill authorized \$5 million for tribal nations to implement the new VAWA provisions and otherwise strengthen tribal justice systems. In FY 2020, \$4 million was appropriated for these purposes. NCAI strongly urges Congress to refund VAWA provisions at a level of at least \$5 million,

Tribal justice systems need additional resources to exercise this jurisdictional authority.

- *Continue to fund the Indian Country Sexual Assault Clearinghouse at \$500,000.*

The Office on Violence Against Women has funded a national clearinghouse on the sexual assault of Native women, which provides a place where tribal nations can request free on-site training and technical assistance on a host of sexual assault-related topics, including development of tribal sexual assault and domestic violence codes, sexual assault forensic evidence collection training, and more. This clearinghouse is an important resource for tribal nations, law enforcement officials, medical professionals, and victim advocates and should continue to be funded at \$500,000.