Tribal Law & Order Act: Implementation

National Association of Drug Court Professionals
National Harbor, Maryland
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Tribal Law & Order Act

- Signed into law by President Obama on July 29, 2010.
- Public Law 111-211.
Confirmation of Existing Practices

- Authorizes and mandates:
  - That tribal prosecutors are specifically eligible for SAUSA status,
  - That USAOs must designate tribal liaisons with statutorily specified duties, and
  - That DOJ Office of Tribal Justice become a permanent component at Main Justice.

Federal Declinations

- When federal investigation terminated or USAO declines prosecution, US “shall coordinate” with tribal law enforcement officials.

- EOUSA to submit annual reports to Congress.
Information Sharing

- Statutorily confirms existing FBI CJIS policy to allow tribal law enforcement access to “Federal criminal information databases” including NCIC (28 USC 534).

- Requires BIA OJS to report UCR crime data to FBI CJIS on a tribe-by-tribe basis.

Public Law 280 Jurisdictional Reform

- Amends “Public Law 280” (18 USC 1162).

- Prior to TLOA, retrocession required State concurrence and approval by the Secretary of the Interior.

- TLOA allows for re-assumption of concurrent federal jurisdiction by the Attorney General; no State concurrence is required.
Public Law 280
Jurisdictional Reform

- DOJ proposed rule published in Federal Register at 76 FR 29675 (May 23, 2011).
- Comments were due July 7, 2011.

Public Law 280
Jurisdictional Reform

- DOJ Proposed Rule highlights:
  - Tribe proposes re-assumption of federal criminal jurisdiction.
  - Extensive consultation with tribe, federal, & state/local agencies.
  - Factors: improved access to criminal justice resources.
  - Deputy AG decides after recommendation from FBI, EOUSA, & OTJ.
Felony Criminal Jurisdiction

- Amends Indian Civil Rights Act.
- Prior to TLOA: tribal courts limited to one year of imprisonment per count.
- Now: TLOA authorizes up to three years per count and nine years per case.

Felony Criminal Jurisdiction

Tribal courts that opt-in must provide:
- Bar-licensed indigent defense counsel,
- Judge with "sufficient training" to conduct criminal trial,
- Tribal criminal laws/rules be publicly available, and
- Court proceedings must be recorded.
Tribal Prisoner Pilot Program

- DOJ Bureau of Prisons Tribal Prisoner Pilot Program.
- Up to 100 prisoners at BOP expense.
- Must be sentenced under new tribal court felony sentencing authority.
- Must be for a violent crime.
- Sentence must be for at least two years.

Prisoner Re-entry

- BOP must notify tribe’s chief law enforcement officer when releasing to tribal jurisdiction a prisoner convicted of violent crime, drug trafficking, or sex offense.
- Authorizes Federal Pretrial & Probation Services to appoint officers in IC which can provide for substance abuse & other treatment services.
DOJ Grant Funding

- Prior to TLOA: DOJ jail construction grant program was limited to construction of facilities for incarceration; tribal matching funds required.

- Now: allows for construction of “tribal justice centers”; no match required.

Law and Order Commission

- Creates new Indian Law & Order Commission to conduct a comprehensive study of IC criminal justice system.

- Will submit report to President & Congress.
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