

Tribal Law and Order Act
(TLOA)
Opportunities and Challenges for
Tribal Healing to Wellness Courts

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Opportunities and Challenges for Tribal
Healing to Wellness Courts

- Opportunities
- Challenges
- Effectively addressing these opportunities and challenges

Overall TLOA Opportunity:

TLOA has focused federal government attention on:

- American Indian/Alaska Native Criminal Justice Issues
- Tribal Law Enforcement
- Tribal Justice Systems
- Tribal Healing to Wellness Courts

Some Overall Challenges

- TLOA was not able to effectively address some of the most important issues due to political limitations (See Oliphant in the room)
- TLOA was only able to provide funding authorization (virtual \$) rather than appropriations (real \$)
- Ongoing need to hold Congress and Administration accountable to fully fund and fully implement TLOA – while fully consulting with tribes
- So many moving parts – TLOA provisions, reports consultations, webinars, trainings, etc.

Illustration of Specific Current Challenge:

- Draft DOI/DOJ Long Term Plan for Tribal Detention Programs released for comment on 7/14/2011 (last Thursday)
- Comment Period is only one week. Due by 7/21/2011 (this Thursday)
- Due to Congress no later than one year from TLOA enactment 7/29/2010
- Very important for Tribal Wellness Courts

TLOA Overall Intent

- Enhanced Funding for Tribal Justice Systems
- Enhanced Authority for Tribal Justice Systems
- Enhanced Federal Cooperation and Accountability

One Way to Look at TLOA

- Which provisions can Tribal governments take advantage of NOW?
- Which provisions require Federal action first?
- Which provisions require funding?

Reauthorize/Expand Existing Programs for Funding Tribal Justice Systems

- Provides 5 more years of authorizations (“virtual funding”) thru FY2015 – for series of tribal justice funding acts
 - TLOA Section 241: Indian Alcohol and Substance Abuse Act (1986)
 - TLOS Section 242: Indian Tribal Justice Act (1993)

Reauthorizations (continued)

- TLOA Section 242: Indian Tribal Justice Technical and Legal Assistance Act (PL 106-559) which includes TCAP authorization
- TLOA Section 243: Tribal COPS
- TLOA Section 244: DOJ Tribal Jails Program
- TLOA Section 246: OJJDP Tribal Youth Program (TYP)

TLOA Provisions

- Evidence sharing and declination data:
 - Requires federal prosecutors to maintain data on criminal declinations in Indian Country, and to share evidence to support prosecutions in tribal court
- Tribal Police Access to Criminal History Records
 - Many tribal police have no access to criminal history records. TLOA provides tribal police greater access to criminal history databases that provide them with essential information when detaining or arresting a suspect

TLOA Provisions

- Federal Testimony: Requires Federal Officials who work in Indian country to testify about information gained in the scope of their duties to support a prosecution in tribal court
- Authorizes Deputization of Special Assistant U.S. Attorneys to prosecute reservation crimes in Federal courts and encourages Federal courts to hold cases in Indian country

TLOA Provisions

- Increases Deputization of Tribal and State Police to Enforce Federal Law:
 - Enhances Special Law Enforcement Commission program to deputize officers to enforce federal laws on Indian lands
- Authorizes the Drug Enforcement Agency to deputize tribal police to assist on reservation drug raids
- Increases recruitment and retention efforts for BIA and Tribal police
- Expands training opportunities for BIA and Tribal police to receive training at state police academies and tribal, state, and local colleges – where Federal law enforcement training standards are met

TLOA Section 221 (PL 280)

- Amends mandatory “Public Law 280” (18 USC 1162 & 25 USC 1321(a))
- Prior to TLOA:
 - Retrocession required state concurrence; Secretary of Interior decided
- Now:
 - Allows for re-assumption to concurrent federal jurisdiction; no state concurrence; AG decides
- DOJ proposed rule

TLOA Section 234 (a)-(b)

- Amends Indian Civil Rights Act (25 USC 1302)
- Prior to TLOA:
 - Tribal courts limited to 1 year per count
- Now:
 - Tribal courts limited to 3 years per count and 9 years per case

TLOA Section 234 (a)-(b) cont.

- Amends Indian Civil Rights Act (25 USC 1302)
 - Tribal courts that exercise felony jurisdiction must provide:
 - Bar licensed indigent defense counsel
 - Bar licensed judge
 - Tribal criminal laws must be publicly available

TLOA Section 211(b)

- Amends ILERA (25 USC 2802)
- DOI, in coordination with DOJ, must develop a long term tribal detention plan
- Report must be submitted to Congress within 1 year

*TLPI provides Tribal Healing
and Wellness Courts Training
and Technical Assistance*

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