NADCP Drug Court Training Conference
TLOA: Opportunities and Challenges for Tribal Healing to Wellness Courts

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TLOA Background

- Senate Committee held 15 hearings (‘07–’10) confirmed longstanding crisis of violence in Indian Country:
  - Epidemic domestic and sexual violence
  - Non-Indian gangs/DTOs target reservations for drug smuggling and other crimes
  - Low police presence, limited training
  - High declination rates & inadequate federal response and coordination with local tribal justice officials
Primary Causes of Indian Country Violence:
- Underfunded tribal justice systems
- Broken and Divided System
  - Handcuffed tribal justice systems
  - Lack of federal accountability
  - Jurisdictional maze
- TLO sought to address system and funding

TLOA Background

Improve Data to Improve Funding for Tribal Court Systems

- Tribal court judges testimony confirmed significant unmet needs, huge caseloads, shoestring budgets
- Anecdotal information is helpful, but Congress, Administration, and tribes have no consistent source of data to argue for funding increases
- TLOA section 211 requires BIA to report annually on tribal court spending and unmet needs of tribal court personnel, technology, and facilities
Funding Tribal Court Systems

- Prior to TLOA, existing federal programs to fund tribal courts had been expired 6+ years
- Gave appropriators excuse to not fund or under-fund
- Section 242 reauthorized the Indian Tribal Justice Support Act and Tribal Justice Technical & Legal Assistance Acts (BIA and DOJ tribal court programs)
- Section 244 reauthorize/expanded DOJ Tribal Jails program to include “Justice Center” construction
- Little opposition to funding, with some exceptions

Local Control: Expanding Tribal Court Authority

- Federal laws and Supreme Court rulings hamper tribal justice systems and force tribal communities to rely on federal and state justice systems
- Despite reliance: GAO reports in Dec. 2010 that between 2005-09, U.S. Attorneys declined to prosecute 52% of reservation violent crimes, including 67% of crimes of sexual violence
- RESULT: Tribal courts are overseeing more violent cases, but remained subject to ICRA limit on sentencing
### Local Control: Expanding Tribal Court Authority

- Where there was little opposition to funding, there was significant OPPOSITION to increased authority.
- House Judiciary Committee, December 2009 hearing: questioned tribal court fairness, capacity, and constitutionality of sentencing indigent suspect to one day in jail without licensed legal counsel.

### Result: Sec. 234. Tribal Court Sentencing (25 U.S.C. 1302)

- Enhanced tribal court sentencing authority
  - 1-3 years imprisonment, $15,000 fine, or both
  - 9-year cap on stacked sentencing
- Tribal courts can stack sentences
- Protections for accused where D is subject to 1+ year
  - Licensed counsel for indigent defendants
  - Licensed / law trained judges
  - Trial must be recorded (audio or video)
  - Must publish laws, rules of evidence/procedure
  - Sentencing options: tribal, BOP, state, alternatives
Sentencing Options for Tribal Judges: Improving Tribal Detention Programs

- **Sec. 234. BOP Pilot, alternatives to incarceration**
- **Sec. 211. BIA-OJS Responsibilities**
  - BIA-OJS long-term plan for incarceration in Indian Country
    - Coordinate with DOJ
    - Consult with tribal leaders and tribal justice officials
- **Sec. 241. IASA Reauthorization**
  - DOI (OJS/BIE)-DOJ-HHS (IHS) long-term plan for juvenile centers
    - Consult with tribal and BIA juvenile detention centers
- **Sec. 244. Tribal Jails Program Reauthorization / Expansion**
  - DOJ long-term plan to for incarceration in Indian Country
    - Coordinate with BIA-OJS, IHS, BIE
    - Consult with tribal leaders and tribal justice officials
  *DEADLINE OF PLAN SUBMISSION TO CONGRESS: JULY 29, 2011*

Addressing Jurisdictional Gaps: non-Indian crime in Indian Country

- **Section 213. Tribal Prosecutors as SAUSA**
  - AG may deputize tribal prosecutors as SAUSAs
- **Sec. 221. PL 280 amendment**
  - Provide outlet for tribes to call on U.S., DOJ may reassume federal jurisdiction
- **Sec. 231. Enhanced SLECs**
  - Improve authority of tribal police to arrest all offenders, while protecting tribal sovereign immunity, providing FTCA protection
CONCLUSION

- Tribal participation is critical to effective implementation
- TLOA is clearly imperfect = does not mandate funding or overturn Oliphant
- But it does provide tribal court with added tools to combat crime, and lays building blocks for greater local tribal control through stronger tribal courts