

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

TLOA Background

- 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

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

Local Control: Expanding Tribal Court Authority

- *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