



Department of Justice

STATEMENT

OF

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DIRECTOR
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BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

HEARING ENTITLED

"TRIBAL LAW AND ORDER ACT (TLOA) - FIVE YEARS LATER: HOW HAVE THE
JUSTICE SYSTEMS IN INDIAN COUNTRY IMPROVED?"

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**Statement of Tracy Toulou
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U.S. Department of Justice**

Before the Senate Committee on Indian Affairs

**At a Hearing Entitled,
*Tribal Law and Order Act (TLOA) Five Years Later:
How Have the Justice Systems in Indian Country Improved?***

December 2, 2015

Chairman Barrasso, Vice-Chairman Tester, and Members of the Committee:

I am honored to appear before you to discuss the implementation efforts of the Department of Justice (the Department, or DOJ) to fulfill our responsibilities as established in the Tribal Law and Order Act of 2010 (TLOA) and, ultimately, to improve public safety in Indian country. In introducing this Act in April 2009, Chairman Dorgan illuminated some of the hard realities faced by tribes in modern times, including: astonishingly high rates of violence, criminal exploitation of complex and sometimes confusing jurisdiction, and crippling limitations on the legal authorities of tribal governments to ensure safety on their lands. The introduction of TLOA included a charge to the federal government to provide tribal governments with the tools they need to better protect their communities, to live up to our treaty and trust obligations, and to be more accountable for our efforts to enhance public safety in Indian country. Thank you for the opportunity to provide an overview of the Department's efforts over the past five years to fulfill our responsibilities under this Act and honor our broader obligations to Indian country.

In October 2009, the Department held a listening session with tribal leaders to help guide and inform the Department's policies, programs, and activities affecting Indian country going forward. Our leadership recognized the need to swiftly and meaningfully improve our contributions to public safety in Indian country, and as a result of this listening session, launched a Department-wide initiative to enhance public safety in Indian country, which is ongoing. With the passage of TLOA in July 2010, the Department's initiative expanded to absorb new responsibilities and assumed a renewed sense of urgency. Our work to enhance public safety has been, and continues to be, shaped by our commitment to empower tribal governments; to improve coordination and collaboration at the federal, tribal, state, and local levels; and to be appropriately accountable for the work we do.

Empowering Tribal Governments

The Department views tribes as partners in ensuring public safety in Indian country and is committed to maximizing tribal control over tribal affairs. It is our belief, informed by experience, that challenges faced by tribes are generally best met by tribal solutions. In support of this commitment, and the government-to-government nature of our relationships with tribes, the Department has worked to fulfill its responsibilities under TLOA in a way that will ultimately empower tribes to operate with more autonomy.

In order to support law enforcement activity by tribal officials in Indian country, tribes require access to law enforcement databases. Under TLOA, the Department must ensure that tribal law enforcement officials have access to national crime information databases. The ability of tribes to fully engage in national criminal justice information sharing via state networks, which are the long-time conduit for such activities, has been dependent upon regulations, statutes, and policies of the states that may not consistently enable tribal participation. In order to improve access for tribes, the Department has established two new programs and partnered on a third.

First, the Justice Telecommunications System (JUST) program, which was launched in 2010, provided participating tribes with access to the National Crime Information Center (NCIC). This program is ongoing and currently serves 23 tribes. This program, as well as the other two programs to improve data base access, were the result of on-going, substantive dialog with tribal governments and law enforcement.

Second, the Department recently launched a more comprehensive access program based on feedback from tribes and lessons learned from the JUST program: the DOJ Tribal Access Program for National Crime Information (TAP). The TAP program, first announced in August 2015, is designed to provide access to CJIS services, including: Next Generation Identification (NGI); National Data Exchange (N-DEx); Law Enforcement Enterprise Portal (LEEP); National Crime Information Center (NCIC); National Instant Criminal Background Check System (NICS); and Nlets, the International Justice and Public Safety Network. Nlets is an interstate public safety network for the exchange of law enforcement, criminal justice, and public safety information owned by the states. Nlets supports inquiry into state databases, such as motor vehicle, driver's license, and criminal history, as well as inquiry into several federal databases, such as DEA's Drug Pointer Index, ICE's Law Enforcement Support Center, and FAA's Aircraft Registration, and Canada's Canadian Police Information Center. With funding from the Office of Justice Programs' (OJP) Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), the TAP program has selected ten tribal participants to help provide user feedback on the training, technical assistance, equipment, and maintenance of this program. Early feedback has been very positive, and it is our intention to eventually make

this program available to any interested tribe. We will continue to work with Congress for additional funding to more broadly deploy the program.

The TAP Program was the result of a 2014 working group, which consisted of representatives from the Departments of Justice and the Interior. From this same close collaboration, the Department partnered with Interior's Bureau of Indian Affairs Office of Justice Services (BIA-OJS) in a third program known as "BIA Purpose Code X," which gives tribes the ability through BIA-OJS to perform emergency name-based background checks for child placement purposes. This is a crucial capability for tribal social service agencies seeking emergency placement of children in Indian country.

The Department of Justice has increased its efforts to support tribal governments that are exercising expanded sentencing authority rooted in TLOA. While TLOA properly does not require the Department to review or certify a tribe's use of enhanced felony sentencing authority or the status of a tribe's efforts to amend its codes and court processes to provide defendants with the due process protections described in TLOA, we have taken steps to help ensure that tribes interested in exercising enhanced sentencing authority have knowledge of and access to relevant resources. For example, OJP's Bureau of Justice Assistance's Tribal Civil and Criminal Legal Assistance Program has provided training and technical services to support tribal civil and criminal legal procedures, legal infrastructure enhancements, public education, and the development and enhancement of tribal justice systems. More specifically, training and technical services have included the following: indigent legal defense services; civil legal assistance; public defender services; and strategies for the development and enhancement of tribal court policies, procedures, and codes.

The provision of high-quality training to tribal representatives has been an area of increased activity within the Department since the passage of TLOA. The Department believes that ensuring access to quality training is a necessary element to bolstering tribal autonomy. In July 2010, the Executive Office of U.S. Attorneys (EOUSA) launched the National Indian Country Training Initiative (NICTI) to ensure that federal prosecutors and agents, as well as state and tribal criminal justice personnel, receive the training and support needed to address the particular challenges relevant to Indian country prosecutions. Importantly, the Department covers the costs of travel and lodging for tribal attendees at classes sponsored by the NICTI. This allows many tribal criminal justice officials to receive cutting-edge training from national experts at no cost to the student or tribe. The NICTI has sponsored approximately 75 training courses, and reached over 200 tribal, federal, and state agencies.

Additionally, the Federal Bureau of Investigation (FBI) announced a forthcoming training course to be held at the FLETC campus in Artesia, New Mexico. Jointly taught by FBI and BIA "mentors" and FLETC common core instructors, the course will include instruction in

forensic evidence collection and preparatory instruction on investigations common to Indian country, such as domestic violence, child abuse, violent crimes, human trafficking, and drug trafficking. This course will be held four times each year, with a total of 24 students in each session. This course, the result of collaboration between FBI, BIA, and FLETC, was developed out of a recognized need to train federal and tribal law enforcement officers together. Another recent training was held by DOJ's Drug Enforcement Administration (DEA). In September 2015, the National Native American Law Enforcement Association held a collaborative training event where the DEA provided on-site training on clandestine lab awareness for first responders, emerging technologies, and money laundering. The training included federal, state, local, and tribal partners with Indian country responsibility.

One of the most meaningful displays of the Department's commitment to a government-to-government relationship with tribes is in our efforts to cross-deputize tribal law enforcement officials. In doing so, we not only expand their authorities, but we send an important message that we are partners and allies with tribes in our collective efforts to enhance public safety in Indian country. The Special Assistant U.S. Attorney (SAUSA) Program was developed prior to the passage of TLOA to train tribal prosecutors in federal criminal law, procedure, and investigative techniques to increase prosecutions in federal court, tribal court, or both. The program enables tribal prosecutors to bring cases in federal court and to serve as co-counsel with federal prosecutors on felony investigations and prosecutions of offenses originating in tribal communities. The program has grown considerably since the passage of TLOA. To date, there are 25 SAUSAs representing 23 tribes. In addition to the SAUSA program, DOJ investigative agencies have cross-deputized tribal law enforcement officers through joint task forces. For example, the FBI has deputized 85 tribal law enforcement officers as part of the Safe Trails Task Forces. There are currently 15 active Safe Trails Task Forces located around the country, working to combat violent crime, drugs, gangs, and gaming violations.

In 2014, the Bureau of Prisons (BOP) fulfilled a key provision of TLOA by accepting certain tribal offenders sentenced in tribal courts for placement in BOP institutions. The pilot program allowed any federally-recognized tribe to request that the BOP incarcerate a tribal member convicted of a violent crime under the terms of Section 234 of TLOA and authorized the BOP to house up to 100 tribal offenders at a time, nationwide.

A fundamental goal of the BOP is to reduce future criminal activity by encouraging inmates to participate in a range of programs that have been proven to help them adopt a crime-free lifestyle upon their return to the community. Through the pilot program, tribal offenders have access to the BOP's many self-improvement programs, including work in prison industries and other institution jobs, vocational training, education, treatment for substance use disorders, classes on parenting and anger management, counseling, religious observance opportunities and other programs that teach essential life skills. BOP has also ensured that there are culturally-appropriate offerings for native inmates. In addition to increasing access to critical programs and

treatments, the pilot program facilitated tribes' ability to exercise enhanced sentencing authority under TLOA, which is an important indication of support for tribal sovereignty. The pilot program was, by all accounts, a success, and both tribes and the Department would be supportive of necessary Congressional action to reauthorize this program.

An important part of our support to tribes is necessarily tied to funds. The Department launched the Coordinated Tribal Assistance Solicitation (CTAS) in 2010, as a response to tribes' request for increased flexibility. Through CTAS, tribes and tribal consortia are able to submit a single application to apply for a broad range of DOJ tribal grant programs. Through CTAS, the Department has awarded over 1,400 grants totaling more than \$620 million. Over time, we have refined this solicitation to enable tribes to take a truly comprehensive approach to improving public safety in tribal communities. Under TLOA, the Department was required to offer specific grants for delinquency prevention and response, and to include dedicated funding for regional information sharing. To date, we have awarded more than \$44 million in support of tribal youth programs and more than \$108 million to support regional information sharing systems. The Department continually seeks feedback from tribes on ways to improve CTAS, and each year with our solicitation announcement we also communicate steps we have taken during the previous year to improve the process. The most recent solicitation was released on November 19, 2015, with an application deadline of February 23, 2016. It incorporates a number of changes, including the elimination of certain eligibility requirements, broadening allowable activities, and extending the award period for certain grants. Each year, the intention is to increase the accessibility and usefulness of CTAS grants.

In parallel to our outward-facing efforts, the Department has made a number of internal structural changes to ensure our revamped presence in Indian country is long-lived.

Evolution of Agency Infrastructure

To ensure that the day-to-day operations at the Department are supportive of the policy and programmatic changes we have made since the passage of TLOA, we have made a number of internal adjustments across the Department, from headquarters to field offices. The intent in making these changes was to absorb the principles that drive the TLOA and our response to that Act, thus integrating them into the way we do business at the Department. Indeed, although not a direct response to TLOA, the Department issued Attorney General Guidelines Stating Principles for Working with Federally Recognized Tribes (Statement of Principles) in December 2014 to guide and inform all of the Department's interactions with federally-recognized tribes. This Statement of Principles serves as a point of reference for Department employees and, importantly, a standard to which tribes can hold the Department accountable.

In 1995, then-Attorney General Janet Reno established the Office of Tribal Justice (OTJ). OTJ has operated continuously since then, although it was not made permanent until the passage

of TLOA. On November 17, 2010, less than four months after TLOA's enactment, the Department published in the *Federal Register* a final rule that established OTJ as a permanent, standalone component of the Department. My office serves as a principal point of contact in the Department for federally-recognized tribes, provides legal, policy, and programmatic advice to the Attorney General with respect to the treaty and trust relationship between the United States and Indian tribes, promotes internal uniformity of Department policies and litigation positions relating to Indian country, and coordinates with other Federal agencies and with State and local governments on their initiatives in Indian country.

The U.S. Attorneys' Offices with Indian country in their districts play a primary role in our interactions with tribes. U.S. Attorneys' Offices often are the nexus of activity when federal involvement on reservations is necessary, from investigations to prosecutions to providing services to victims. Every U.S. Attorney's Office, whose district includes Indian country or a federally-recognized tribe, has at least one Tribal Liaison, and some districts have more than one. Along with the TLOA-driven requirement that each relevant office appoint a Tribal Liaison, the U.S. Attorneys are required to hold annual consultations with tribes in their districts. In order to assist the U.S. Attorney's Offices and the Attorney General's Advisory Committee's Native American Issues Subcommittee, as well as to serve as a liaison to other DOJ components, the Executive Office for U.S. Attorneys formally established the position of Native American Issues Coordinator.

These changes to the structure of the Department were driven by the Department's support for and fulfillment of its responsibilities under TLOA. There have been a series of policy shifts that are not a direct response to the Act but are in keeping with the spirit of that legislation. For example, the issuance of the DOJ Statement of Principles, discussed earlier, marks an important shift in our approach at all levels of the Department to interacting with tribes. Similarly, the DOJ Consultation Policy is based on three guiding principles: that the Department must engage with tribal nations on a government-to-government basis; that tribal sovereignty and Indian self-determination are now, and must always be, the foundations of every policy or program; and that communication and coordination with our tribal partners, among federal agencies, and with our state and local counterparts are essential to accountability and to success.

Greater Accountability

Accountability is a critical element in a true partnership, and the Department has taken a number of steps to increase our accountability to tribes. The TLOA-mandated reports were intended to promote greater transparency of Department activities in Indian country, and the process of responding has been a useful exercise for our agency to scrutinize trends and patterns of activity. In some cases, the reports have revealed a need to expand our agency response to meet specific needs and organize our resources more effectively, such as those related to long-

term detention. In other cases, the reporting process highlighted positive impacts that Department activity has had in Indian country over time and a need to perpetuate beneficial initiatives, such as the BOP pilot program report and the Office of Community Oriented Policing Services (COPS) Report. In tracking prosecutions and crime data, the Department has benefitted from taking a focused look at our response to trends in Indian country, and as a result is in a better position to adjust our resources internally to address emerging trends and issues.

The Department has made progress over the past five years in bolstering our government-to-government relationship with tribes and in honoring our treaty and trust obligations. We are all fully cognizant that there is significant work still to be done to live up to our responsibilities in Indian country, and we are committed to seeing this work through. We appreciate Congress' efforts to foster public safety, and look forward to working closely with our partners in Indian country to fully honor our responsibilities. I will be happy to answer any questions you may have.