

**Violence Against Women Reauthorization Act of 2022**  
**Bureau of Prisons Tribal Prisoner Program**  
**U.S. Department of Justice Consultation Framing Paper**

**BACKGROUND**

The Tribal Law and Order Act of 2010 (TLOA) was signed into law on July 29, 2010. TLOA created a number of useful programs, including the Bureau of Prisons (BOP) Pilot Program.<sup>1</sup>

The Pilot Program authorized BOP to accept, pay for, and house in BOP custody certain offenders convicted in Tribal court. The Pilot Program was authorized for four years, beginning November 26, 2010, and concluding November 26, 2014. BOP housed six offenders during the Pilot Program. As required by TLOA, at the end of the program, the Attorney General submitted a report to Congress describing the Pilot Program, and recommending that it be made permanent, thus remaining available as a resource for Tribes.

The Violence Against Women Reauthorization Act of 2022 (VAWA 2022) amended this statute, effective March 15, 2022. VAWA 2022 authorized a permanent BOP Tribal Prisoner Program (Permanent Program) which authorizes BOP to accept, pay for, and house in BOP custody certain offenders convicted in Tribal court. The amended statute reads:

- (1) BUREAU OF PRISONS TRIBAL PRISONER PROGRAM. -- Not later than 120 days after the date of enactment of the VAWA Reauthorization Act of 2022, the Director of the Bureau of Prisons shall establish a program under which the Bureau of Prisons shall accept offenders convicted in tribal court pursuant to section 202 of the Indian Civil Rights Act of 1968 (25 U.S. Section 1302) (as amended by this section), subject to the conditions described in paragraph (2).
- (2) CONDITIONS. –
  - (A) IN GENERAL.--As a condition of participation in the program described in paragraph (1), the tribal court shall submit to the Attorney General a request for confinement of the offender, for approval by the Attorney General (or a designee) by not later than 30 days after the date of submission.
  - (B) LIMITATIONS.—Requests for confinement shall be limited to offenders convicted of a violent crime (comparable to the violent crimes described in section 1153(a) of title 18<sup>2</sup>, United States Code) for which the sentence includes a term of imprisonment of 1 or more years.
  - (C) CUSTODY CONDITIONS.—The imprisonment by the Bureau of Prisons shall be subject to the conditions described in section 5003 of title 18<sup>3</sup>, United State Code, regarding the custody of State offenders, except that the offender shall be placed in the nearest available and appropriate Federal facility, and imprisoned at the expense of the United States.
  - (D) CAP.—The Bureau of Prisons shall confine not more than 100 tribal offenders at any time.
- (3) RESCINDING REQUESTS.—
  - (A) IN GENERAL.—The applicable tribal government shall retain the authority to rescind the

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<sup>1</sup> Pub. L. No. 111-211, sections 211 and 244 (codified in scattered sections of 25 U.S.C. and 18 U.S.C.)

<sup>2</sup> Examples of violent crimes in 18 U.S.C. Section 1153(a) include: murder, manslaughter, kidnapping, maiming, sexual abuse, incest, felony assault (assault with a weapon, with the intent to commit murder, resulting in serious bodily injury, or assault of any person under 16 years of age), felony child abuse or neglect, arson, or robbery.

<sup>3</sup> Section 5003 of title 18 states: The Director of the Bureau of Prisons, when proper and adequate facilities and personnel are available, may contract with proper officials of a State or territory, for the custody, care, subsistence, education, treatment, and training of persons convicted of criminal offenses in the courts of such State or territory.

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request for confinement of a tribal offender by the Bureau of Prisons under this paragraph at any time during the sentence of the offender.

(B) RETURN TO TRIBAL CUSTODY.—On rescission of a request under subparagraph (A), a tribal offender shall be returned to tribal custody.

(4) REASSESSMENT.—If tribal court demand for participation in this pilot program exceeds 100 tribal offenders, a representative of the Bureau of Prisons shall notify Congress.

The only substantive changes made to the original Pilot Program by VAWA 2022 were:

- making the Pilot Program permanent
- including a larger population of potentially eligible tribal prisoners by lessening the required sentence to one or more years, rather than two or more years

During the Pilot Program, BOP utilized a “Case Summary and Referral” document that is hereby included as Attachment 1. That document described eligibility requirements, required information for the referral process, as well as the necessary forms for Pilot Program participation. The purpose of the “Case Summary and Referral” document was to gain all information necessary for appropriate placement of a Tribal prisoner in the correct BOP institution.

The Bureau operates institutions at four security levels (minimum, low, medium, and high). The graduated security and medical classification systems allow staff to assign an inmate to an institution in accordance with the inmate’s individual security and health care needs. The goal is for inmates to function with the least amount of supervision, without disrupting institution operations or threatening the safety of staff, other inmates, or the public.

The BOP utilizes a validated classification tool to determine the appropriate security level of a federal offender during the initial designation process. The classification tool utilizes information contained in a presentence investigation report, including details regarding the offender’s criminal history, current conviction, social, educational, medical and mental health information. The “Case Summary and Referral” form was created as a means to collect necessary information for Tribal offenders who do not have a presentence report. Absent sufficient information, the Bureau overclassifies an offender until an assessment is made regarding his/her adjustment to incarceration.

The Bureau will work closely with Tribal Courts to obtain detailed classification information to ensure Tribal offenders are designated to appropriate institutions without overclassifying them.

## **QUESTIONS**

1. Did your Tribe use, or attempt to use, the original Pilot Program? If so, what was your experience with the Pilot Program, both positive and negative?
2. If your Tribe did not use the original Pilot Program, could you discuss why you chose not to? Do you expect to utilize the Permanent Program going forward?
3. In reviewing Attachment 1, the “Case Summary and Referral” form that was used in the former Pilot Program:
  - Should BOP utilize the same form and criteria for the Permanent Program?

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- Are there any concerns or comments about the items that were required in the form?
  - Are there any other items that should be included for BOP consideration during the Permanent Program?
  - Are there any suggestions about changes to the criteria, form or administrative process?
4. What challenges did Tribes experience regarding moving accepted offenders from the jail in which they were housed during Tribal court proceeding to the BOP designated institution?
  5. Once in a BOP institution, what types of programs would you like Tribally-convicted offenders to have available to them?
  6. What type of communication regarding Tribally-convicted offenders would the Tribe like to receive from the BOP, and how often?
  7. Would the Tribe wish to be notified of transfers within the BOP (ex: discipline, programming, mental/medical treatment, nearer to residence)? Are you aware of how to locate a Tribally-convicted offender on the BOP public website at any time?
  8. In the event of an emergency or death of a Tribally-convicted offender in BOP custody, will the Tribe provide guidance on how to handle the situation in accordance with cultural norms and expectations? If so, how would that guidance be provided?
  9. How and with whom in the Tribal court system will releasing planning occur when the Tribally-convicted offender approaches their release date? Will Tribes provide a point of contact for assisting with the release planning process?