

**TRIBAL PUBLIC SAFETY AND  
CRIMINAL JUSTICE SYSTEMS FUNDING  
CONSULTATION REPORT**



**U.S. DEPARTMENT OF JUSTICE  
OFFICE OF TRIBAL JUSTICE**

**JANUARY 2025**

## INTRODUCTION

The Department of Justice (“Department” or “DOJ”) hosted Tribal consultation on the Department’s consideration of certain legislative proposals on federal funding mechanisms for Tribal public safety and criminal justice purposes. Tribal consultation began on October 10, 2024, and concluded on November 25, 2024. During this period, the Office of Tribal Justice (OTJ), Office of Community Oriented Policing Services (COPS Office), Office on Violence Against Women (OVW), and Office of Justice Programs (OJP), hosted three in-person and two virtual consultation sessions as well as accepted written comments from Tribes. Hundreds of individuals attended the consultation sessions, with over seventy individuals providing oral comments, and over a dozen Tribes filed written comment submissions. The focus of this consultation was potential legislative proposals to allow the Department’s funding mechanisms to better meet the public safety and criminal justice needs of Tribes. The Department thanks Tribal leaders for their thoughtful feedback and careful consideration of the provided proposals. As further discussed below, DOJ will use the feedback from Tribes to inform legislative proposals and engage with congressional counterparts on legislative options for reforming the Department’s Tribal funding mechanisms and to continue efforts to address Tribal concerns, streamline DOJ’s funding opportunities, and reduce barriers Tribes may face in accessing fundings for public safety and criminal justice.

## BACKGROUND

For several years Tribes have asked that the Department support changes to the funding mechanisms that the federal government uses to support public safety programs for Tribes. Additionally, Executive Order 14112 calls on agencies to, among other things, revise and otherwise administer federal funding programs for Tribes, to achieve objectives to better fit the needs of Tribes and make it easier for Tribes to access and utilize federal funding, resources, and programs to the maximum extent practicable and consistent with applicable law. This Nation-to-Nation consultation was conducted in response to these requests and sought Tribal input on the development of legislative proposals to revise DOJ public safety funding for Tribes.

Both DOJ and the Department of the Interior’s (DOI) Bureau of Indian Affairs (BIA) support Tribal public safety and criminal justice programs. BIA provides this support by funding direct services and contracts and compacts authorized by the Indian Self-Determination and Education Assistance Act (ISDEAA). DOJ provides financial support through formula and competitive grants authorized by Congress, which are administered through the COPS Office, OJP, and OVW. OJP houses the Department’s criminal and juvenile justice-related science, statistics, and programmatic agencies: the Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, the Office for Victim of Crime (OVC), and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. OVW administers programs authorized by the Violence Against Women Act and subsequent legislation, including funding to assist Tribal communities in preventing and responding to domestic violence, dating violence, sexual assault, stalking, and sex trafficking. The COPS Office is the component of DOJ responsible for advancing the practice of community policing by the nation's state, local, territorial, and Tribal law enforcement agencies through information and grant resources.

The Department understands that the current federal funding levels and mechanisms do not adequately meet Tribes’ public safety and criminal justice needs. As we acknowledged in the framing materials, [BIA estimated](#) that “Tribal public safety and justice need for Indian country in 2021 was \$3.509 billion -- \$1.7 billion of which was for law enforcement, \$284.2 million for existing detention/corrections programs, and \$1.5 billion for Tribal courts.” According to the BIA, for 2021, under 13% of the total need for public safety and justice programs for Tribes was met through BIA-administered funds. We also acknowledged in the

Framing Paper released for this consultation that “BIA’s assessments may not account for all public safety and criminal justice needs Tribes currently face” and that “some Tribes do not receive funding from BIA for law enforcement, such as those Tribes located in states subject to mandatory Public Law 83-280 jurisdiction.”

The Department has worked to address Tribal concerns through implementing various changes to grant structures to increase access to DOJ’s funding sources. For example, the Department has advocated for and received Congressional approval for Tribal set-aside programs. DOJ’s grant components have also adopted mechanisms to streamline access to funding and administrative processes. The COPS Office, OJP, and OVW have worked directly with Tribes to make it easier for them to access grant funding tailored to their needs and to support them in developing and implementing grant-funded projects, including having DOJ grants staff based in or travel to Tribal communities, such as remote Alaska Native Villages. Examples include increasing the number of staff with experience working in Tribal communities, offering pre-application sessions and office hours for Tribal applicants, providing capacity-building and project implementation workshops in Indian country and Alaska, reducing application and reporting requirements, providing sample application templates, and issuing larger and longer grant awards to make funding more predictable.

Although improvements to the Department’s administration of grant funding have been well received by Tribes, the Department understands that legislation is necessary to fully address Tribes’ needs. The Department remains committed to continuing to explore additional ways to streamline funding and to help Tribes receive the funding they need to effectively operate their public safety and criminal justice systems. In particular, Tribes have raised concerns over certain statutorily-mandated aspects of the Department’s funding mechanisms, including, among others: the competitive nature of many grant opportunities; the temporary nature of DOJ awards; the administrative and reporting requirements; and restrictions on the use of DOJ awards. Tribes have also offered suggestions for how to improve funding opportunities, many of which would require action by Congress. The Department has explored and continues to explore ways to address these concerns. To that end, the Department assembled an internal working group that includes DOJ’s grantmaking offices (COPS, OVW, and OJP) and OTJ to examine options for improving funding opportunities for Tribes, including consideration of potential legislative proposals.

The working group identified three proposals for Department actions that reflect Tribes’ and advocates’ suggestions on potential pathways for improvement:

*Proposal 1: Seek Congressional Authorization for a New DOJ Formula Grant Program*

Advocate for Congress to authorize a new DOJ Tribal formula grant program that would fund Tribal public safety and justice systems through a single grant award to each Tribe that applies for funding, to be funded either by a new appropriation or a set aside from existing appropriations.

*Proposal 2: Seek New Statute Allowing Integration of DOJ Grants*

Advocate for Congress to enact a statute resembling PL 477<sup>1</sup> that authorizes a program under which Tribes receiving public safety and criminal justice funding can choose to integrate funding into one

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<sup>1</sup> Public Law 102-477 (477) is the Indian Employment, Training and Related Services Demonstration Act (25 U.S.C. 3401 et seq.). The Program allows for the consolidation of multiple funding streams and reporting requirements in order to reduce administrative time and costs for federally recognized Tribes and Tribal organizations. The goal of 477 is to improve the effectiveness of employment, training, and related services, reduce joblessness in Indian

DOJ-approved plan. Potential options for such a program have included integration of (1) all Tribal public safety and criminal justice funding sources across the federal government, (2) only DOJ-grant awards (both formula and discretionary, whether Tribal-specific or not), or (3) only victim-services funding sources. The program could potentially be structured as a pilot to provide the Department and Tribes an opportunity to assess results and report to Congress whether to continue and/or expand the pilot.

*Proposal 3: Advocate for Increased Base Funding for Public Safety Through BIA*

Partner with DOI to advocate for an increase in base funding available through BIA to meet Tribes' public safety and criminal justice needs. The Department could advocate on behalf of Tribes for increased appropriations and funding opportunities to be made available to Tribes for these purposes, and for these opportunities to be made available to all Tribes, whether or not they currently receive base funding.

This report details the comments and feedback received from the consultation process and provides the Department's initial responses.

## **TRIBAL CONSULTATION**

The working group comprised of the COPS Office, OJP, OTJ, and OVW worked collaboratively to identify the three legislative proposals described above. The working group also collaborated to develop the framing paper and to plan and prepare for the Tribal consultation.

On October 10, 2024, OTJ sent an invitation and the framing paper to the leaders of all 574 federally recognized Tribes, informing them of five opportunities to provide oral testimony. The consultation material was also posted on the Department's Tribal Justice and Safety website. The following consultation sessions were held: in Anchorage, Alaska on October 22, 2024, in conjunction with the Alaska Inter-Tribal Technical Assistance Working Group; in Las Vegas, Nevada on October 30, 2024, in conjunction with the National Congress of American Indians' Annual Convention, and two virtual sessions were conducted, one on November 4, 2024, and a second on November 6, 2024. Finally, Tribal leaders were given the option of addressing the framing paper in their oral testimony at the annual consultation under the Violence Against Women Act (VAWA), which took place on November 19-21, 2024, in Santa Fe, New Mexico.

Written comments were accepted through November 25, 2024. The Department received some comments after the deadline for written comments; this Report addresses those submissions as well.

## **COMMENTS AND RESPONSES**

Through this consultation, the Department sought feedback on three legislative proposals the Department believes may address long-standing Tribal concerns about inadequate funding and cumbersome funding mechanisms for Tribal public safety and justice programming, each of which would require Congressional action. The Department also welcomed additional feedback and suggestions relevant to Tribes' public safety and criminal justice needs. The Department provides the summary below of the feedback received on each of the three proposals, as well as responses to comments received over the course of the consultation. The

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communities, and to serve Tribally determined goals consistent with the policy of self-determination. While Proposal 2 would serve a similar function as 477, it would focus on public safety funding rather than employment, training, and related services.

Department again expresses its heartfelt gratitude to Tribes and Tribal leaders for their robust engagement in the consultation process and their thoughtful feedback on this critical topic. The Department recognizes that Tribes are in the best position to determine the needs of their communities and further recognizes this consultation as an essential step towards identifying the best solutions for ensuring the safety and justice needs of Tribal communities are met.

We received additional comments on issues of Tribal public safety and criminal justice and funding generally which are included in the Appendix along with the Department's responses. As always, we remain open to continued dialogue on these issues, and you may contact OTJ at OTJ@usdoj.gov to continue these discussions.

#### **A. Public Safety and Criminal Justice Needs of Tribes**

Many Tribes provided comments that painted the picture of what Tribal public safety and criminal justice looks like for their communities under the current system. While it was clear that Tribes are doing what they can,<sup>2</sup> throughout the country, Tribes are experiencing a lack of sufficient funding and resources. And Tribes that do receive federal funding reported that onerous administrative and reporting requirements<sup>3</sup> and restrictions on use of funding inhibit their ability to provide the criminal justice and public safety services that their communities need. Many identified their experiences as a public safety crisis.

The Department heard comments from Tribes about the everyday challenges they face in providing for the safety of their members and in ensuring that when harm does occur within their sovereign territories, victims receive the justice, resources, and services that they need. Tribes raised the need for more law enforcement, dispatchers, jails, courts, and many other services and resources required to effectively address public safety and criminal justice within their communities.

- Tribes impacted by Public Law 83-280 or otherwise subject to statutes subjecting the Tribe to state jurisdiction<sup>4</sup> noted that these needs are further exacerbated by their ineligibility to receive BIA base funding for law enforcement services. This leaves Tribes to rely on competitive grants and other creative solutions in order fund their public safety and justice programs. For example, one commenter noted that for some Tribes, over 80% of their budget is funded through grants, which not only creates instability because grants are not guaranteed from year to year, but also results in significant reporting requirements, as each grant program's administrative requirements differ. Tribes subject to these statutes further explained that due to the relevant jurisdictional scheme, they do not have the opportunity to benefit from the BIA's Missing and Murdered Unit and similar federal programs to the same extent that other Tribes may benefit, increasing public safety burdens.
- Tribes whose land base was recognized as a result of the Supreme Court's decision in *McGirt v. Oklahoma*, commented on the exponential growth in public safety needs. These Tribes often have large territories and are facing increasing challenges in working effectively with state and local

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<sup>2</sup> Tribes mentioned various creative approaches they have been investigating to meet safety needs including bringing in public safety personnel from outside of the Tribe's jurisdiction to partner with the Tribe.

<sup>3</sup> Some Tribes indicated that in some instances the administrative expenses to secure and report on a specific funding opportunity are greater than the funds the grant would provide.

<sup>4</sup> The Department received a comment regarding the need to more clearly account for the fact that there are Tribes similarly subjected to state jurisdiction through a state specific statute, rather than PL-280. We acknowledge that PL-280 is not the only means by which the federal government transferred jurisdiction over Tribes to states. We endeavored to be clearer throughout this document and will similarly focus on this clarity moving forward.

partners, some of which are advancing efforts to increase their jurisdictional reach within Indian country, thereby undermining Tribal sovereignty.

- Several Tribal leaders from Alaska raised the unique challenges that rural Alaska Native Villages face. Many Alaska Native Villages are not on road systems and instead are accessible only by plane or boat. Many Villages do not have a regular law enforcement presence within their communities, and instead must rely on the State of Alaska to provide public safety resources and criminal justice. When an emergency occurs, they rely on the State to provide first response and dispatch services. The Department heard harrowing stories of it taking days for State troopers to respond to emergent domestic violence situations and even reports of homicide. Tribes suggested that these unique challenges require an Alaska-specific comprehensive solution, drawing on the model of the Tribal healthcare system in Alaska. Representatives of Alaska Native Villages also explained that without the means to account for basic infrastructure needs in Alaska, other grants cannot be used effectively to address their criminal justice needs.
- Multiple Tribes indicated that their Tribal court judges are unwilling to issue protective orders because the lack of law enforcement to enforce such orders has created circumstances where the order does more harm than good by angering the perpetrator without providing protection to the complainant.

Tribes also discussed the need not only to address the public safety issues in the community, but also to break the cycle of violence, including by addressing co-occurring issues associated with violence such as substance use, mental illnesses, childhood and intergenerational trauma, homelessness, and unemployment. Tribes accordingly advocated for a holistic approach that includes not only providing adequate law enforcement and first response services to Tribal communities, but also ensuring mental health services, housing, employment, education, and all other services necessary to improve the overall public health of those communities. Many Tribes focused on healing to wellness and the need for preventive, rather than purely reactive, models. Several Tribes discussed the need to prioritize Native language and culture as a means for prevention. They also discussed the need for funds to be available for administrative and government functions. Some Tribes further explained that the standard United States approach to criminal justice does not necessarily align with Tribal cultures. They explained that limitations on use of federal funding for criminal justice services often inhibit Tribes' abilities to meet the unique needs of their communities in a culturally-appropriate way.

Many Tribes emphasized that their populations have grown exponentially, significantly increasing their public safety and criminal justice needs, while funding has not increased comparably. The Tribes expressed a need for "bold and lasting investments" and that Tribes could use ten times the funding they are currently receiving.

## **B. Overview of Feedback**

The Department received overwhelming support for efforts to increase funding available to Tribes for their public safety and justice systems as well as support for increased flexibility on how to spend those funds. Although Tribes provided different perspectives on how to accomplish these two goals, the common feedback we received was that the United States needs to support public safety more effectively and fully fund Tribal public safety and justice programs. The specific feedback received for each proposal is outlined below.

In addition to comments on the three proposals, Tribes raised challenges that may require additional thought beyond increased federal funding and flexibilities:

- *Law enforcement retention issues:* We heard from many Tribes that they face significant challenges in hiring and retaining Tribal law enforcement officers because they are unable to provide a competitive salary or federal retirement and benefits. Many noted that increased funding alone will not fix these issues, and instead Tribes need access to federal benefits for their law enforcement officers.<sup>5</sup>
- *Jails.* Many commenters raised concerns about the lack of access to jails and detention services for their members, noting that efforts to work with State and local partners are not often successful and at times States charge exorbitant rates even when they do agree to house Tribal members who are under the jurisdiction of Tribal courts.

## 1. Proposal One

Proposal One asked Tribes whether the Department should advocate for legislation that would establish a new DOJ Tribal formula grant program that would fund Tribal public safety and justice systems broadly through a single grant award. The Department asked for Tribes' input on what such a grant program could look like, including on the following topics:

- Whether Tribes support a consolidated Tribal formal grant program.
- The source of funding for such a program and whether it should draw from the Department's existing Tribal funding sources or through seeking a new funding source altogether. To the extent Tribes supported drawing from existing funding sources, which existing Tribal funding programs should be included or excluded.
- What factors should be considered in determining the allocation formula for distribution, both in terms of allocation for specific public safety and criminal justice activities and allocation amongst Tribes.
- What minimum amount would be necessary for a formula program to be effective, and whether, in the absence of this minimum amount, the Department should continue to pursue this approach.

### a. *Whether Tribes Support a Consolidated Tribal Formula Grant Program*

Many Tribes expressed support for a Tribal formula grant program, noting that a streamlined, single grant award would reduce administrative burdens for Tribes, provide consistent funding and stability for Tribal public safety and justice initiatives, and create a more equitable structure for distribution of the Department's funding for Tribal public safety and criminal justice programs. Feedback received also recognized the potential such a program could have for strengthening Tribal control over their justice system priorities and in enhancing Tribal authority to develop culturally-appropriate solutions. Overwhelmingly, Tribes expressed opposition to having to compete with other Tribes for competitive-based funding opportunities and noted that a formula-based program could address this issue and if properly and consistently funded, enable Tribes to engage in long-term strategic planning and sustainable program development.

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<sup>5</sup> The [joint DOJ/DOI response](#) to the Not Invisible Act Commission's Recommendation provides responses to all of the recommendations on this topic.

With regard to the competitive nature of grant programs, Tribes provided the following specific feedback:

- Tribes should never be placed in a position to compete against each other to secure basic funding to protect the lives of Tribal members. Forcing Tribes to compete for funding is demeaning and divisive.
- The competitive nature of grants makes it clear that funding is insufficient, otherwise Tribes would not need to compete.
- If grants were non-competitive, Tribes would be better situated to work together. The need to compete against one another forces Tribes to consider the potential impact to their own funding should they choose to assist other Tribes in securing funds.
- Formula funding methods help reduce the need for Tribes to compete for funds.

Some Tribes expressed general opposition to the use of grants as a mechanism for providing funding to Tribes, pointing to the fact that funding through grants is often competitive in nature, not guaranteed, may change from year to year, and to some, does not recognize Tribal sovereignty and the United States' treaty and trust obligations. Other comments raised objections to the use of formula-based grant programs, noting that formulas are not able to capture all needs for Tribes and cannot be equitable. Instead, some recommended using a need-based budget system that fully funds the needs of Tribes. Others noted that a full assessment of the needs of Tribes requires federal officials to visit each Tribe and ask what the unmet needs really are and what it would look like to be fully funded for law enforcement, courts, jails, and other Tribal public safety and criminal justice needs.

*b. The Source of Funding and Use Requirements for a New DOJ Consolidated Formula-Based Funding Program*

Many Tribes supported a consolidated formula-based funding program that would provide Tribes the flexibility they need to respond to the needs of their communities and the ability to shift funding priorities as needs change or new needs arise. The Department received comments in support of advocating for a new, mandatory appropriation with sufficient funds to provide meaningful public safety for all Tribes.

Other commenters recognized that there may be significant challenges in securing new appropriations, and instead advocated that the new program should be structured to leverage the Department's existing funding sources to the extent possible and that this could be done through additional set-asides from existing appropriations.

To the extent a consolidated formula grant program draws from set asides from existing Department funding sources, some commenters expressed concern over potential impacts to existing Tribal grant programs provided by the Department, especially those programs that provide funding for Tribal victim services programs. Some commenters expressed concerns over potential impacts to current grants and grantees and noted that any new program or formula created should not impact existing grants and should not result in current grantees receiving significantly less funding. Others stated that any new formula-based funding program should not replace OVW's Tribal Affairs Division grant programs under VAWA, such as the Grants to Tribal Governments, Tribal Sexual Assault Services, Special Tribal Criminal Jurisdiction programs, or OVC's Tribal Victim Services Set-Aside Program.

While many Tribes supported ending the competitive nature of grant programs within the Department, some opposed the inclusion of victim services in a single grant award in such a way that would allow those funds



to be diverted to other programs, services, or priorities of Tribes. Another noted that victim services and public safety should be separated to ensure that victims can receive services outside of the criminal justice system, to maintain victim confidentiality, and to ensure victim services are not left underfunded. The commenter recognized that concerns over impacts to Tribal victim services programs may be rectified by setting required minimum allocations for victim services within a formula-based program, but also noted that Tribes need to be able to award victim services funding to separate designees since many Tribal victim services programs are run separately from the Tribes' public safety offices. In addition to comments around protecting existing victim services programs and funding sources, the Department also received recommendations that the formula include dedicated funds or funding levels for training, retention, recruitment, and traditional justice programs.

*c. Factors for Determining the Allocation Formula for Distribution*

The Department received several comments around what a formula for distribution of a consolidated formula-based funding program should look like. One commenter noted that the development of a formula that works across the board will be difficult because population versus membership numbers may vary significantly for some Tribes. Multiple commenters highlighted that, in order to ensure the program's effectiveness, the formula should not be established in the legislation itself, but instead should be developed by the Department in close consultation with Tribes, including the development of program requirements, application processes, and grant management procedures. One commenter also suggested that a third party, such as the Government Accountability Office, should be included in the development of such a formula.

For the allocation formula itself, the Department asked whether factors such as service population, Tribal land base, the existence of services provided by state and local agencies, and whether a Tribe receives base-funding from BIA should be considered in the development of such a formula.

The following suggestions were provided on what factors *should* be considered in any formula developed for distribution of a consolidated grant program:

- *Land base.* Many Tribes raised the need to consider a Tribe's land base/sovereign territories in any distribution formula. One commenter highlighted that even where a Tribe may have a smaller population or number of enrolled members, if population is the only consideration, then that would result in fewer patrol officers available to surveil a large geographic area. Another commenter stated that a formula must consider the implications of shared lands between two or more Tribes and provide clarity as to how these overlapping lands will be addressed. One aspect of land base that was given particular focus was the distance between available law enforcement and the nearest holding facility or jail.
- *Service Population.* Many Tribes emphasized the need for consideration of Tribes' population size in a formula distribution plan. Some also noted that population should not be based on U.S. census data, but instead as provided by the Tribes themselves. Tribes explained that they are best situated to determine the service population due to their different circumstances, as some Tribal public safety offices provide services to those outside of their membership, as well as to determine other potential population measures appropriate to their circumstances.
- *Current staffing and resources levels versus need.* Several commenters advocated for a formula method that includes consideration of a Tribe's current funding and staffing levels versus the overall public safety and criminal justice needs of the Tribe, taking into account whether a Tribe is underfunded or receiving no funds at all for a particular program or service and the presence

and conditions of existing infrastructure. In addition to consideration of current staffing and resource levels to assess need, one commenter also noted that the Department should consider the current programs run by Tribes and ensure the funding for existing programs is sustained in any new formula.

- *Crime Rates.* Multiple Tribes advocated for consideration of relative crime rates for Tribes in any formula program.
- *Non-Tribal law enforcement presence.* Some commenters advocated for consideration of access to local, non-Tribal law enforcement services and intergovernmental collaboration, as these factors can impact the needs of Tribes.
- *Impacts to smaller Tribes.* The Department received feedback that formula funding often does not work for Tribes with small populations or small land bases because the funding levels end up too small to be impactful and may require multiple Tribes to pool resources. As such, any formula developed should not work against smaller Tribes.
- *Employment levels of Tribes.* Some commenters advocated for consideration of Tribes' employment levels in any formula developed. This could include unemployment rates and the number of public safety related vacancies.
- *Cost of Living Adjustments.* Commenters noted that some Tribes are located in areas where the cost of living is significantly higher than the United States' average and supported incorporation of cost-of-living adjustments to account for these differences.

We received mixed feedback on whether the following factors should or should not be considered in a distribution formula:

- *BIA Base-Funding.* A few commenters stated that because it is widely agreed upon that BIA base-funding levels do not meet current needs, BIA base-funding amounts should play no role in a formula for DOJ programs. Other commenters raised that the lack of available base funding for Tribes as a result of Public Law 83-280 or other federal statutes should be considered in a formula.
- *Support from State or Local Law Enforcement:* Most commenters to raise this issue stated that support or lack of support from states should not play a role in any distribution formula because there is no guarantee any state and local law enforcement support will continue. In addition, state and local funding and resource priorities are governed by the state and local governments; thus, Tribes do not have the authority to allocate those resources in a way that could better benefit their communities. One commenter, however, supported consideration of the resources provided by state and local authorities when they have jurisdiction pursuant to Public Law 83-280 or other federal statute as part of a formula calculation.

Multiple commenters advocated for establishing an initial formula and then regularly re-assessing the formula in the future and making changes, as needed, including to adjust for inflation each year. For example, one commenter suggested using the OVC formula as an initial formula to allow for a more immediate change, and once implemented, the formula can be re-evaluated in consultation with Tribes to ensure the funds are being distributed in a fair and equitable manner. Another commenter suggested the initial formula could be 70% population-based and 30% land base allocation.

Finally, the Department received comments that formula-based funds should be distributed automatically to Tribes, without Tribes having to apply for such funds each year.

*d. Amount of Funding Necessary for a New Consolidated Formula Grant Program*

Many Tribes raised the need to consider BIA's recent assessment of unmet needs for Tribal public safety and justice programs, which concluded that overall Tribal needs are at \$3.5 billion and that BIA is currently funded at under 13% of that total need.<sup>6</sup> Some commenters advocated for full federal funding to be at \$3.5 billion for Tribal public safety and justice, but some noted that regardless of the amount of funds available under Proposal One, a new manner in which funds are provided in a consolidated formula grant program would serve to benefit Tribes. However, the Department received comments that any new formula funding proposal without adequate and robust funding would be detrimental to existing programs, particularly Tribal victim services programs, including domestic violence shelters, and programs operated by small Tribes. Other comments advocated for minimum amounts to ensure that Tribes with smaller land bases or populations receive sufficient funds to be impactful and effective. One potential number offered was a minimum of \$400,000 per year for each Tribe or at least enough for a basic program.<sup>7</sup>

**Department's Response to Comments and Feedback Received for Proposal One:**

The Department appreciates the significant and thorough feedback that Tribes provided on whether the Department should seek authorization for a new consolidated formula grant program, including a new appropriation or increased use of Tribal set asides from existing appropriations to support the program. The majority of Tribes that provided input expressed support for the creation of such a program, although, as outlined above, Tribes offered different considerations and approaches for the manner in which the consolidated formula grant program could be structured and how it should be funded. Tribes provided two consistent views, however: (1) general opposition to a competitive-based grant funding model, and (2) that any formula grant program authorized by Congress should not include the formula in the statute itself but instead should provide the Department discretion to establish the formula, and make changes as necessary, in close consultation with Tribes.

The Department will engage with Congress on potential legislative options to establish a new consolidated formula grant program that takes into account these two priorities, and that is otherwise informed by the feedback received during this consultation, including the need for additional funds to achieve the public safety and justice goals of a formula program.

**2. Proposal Two**

Proposal Two asked whether the Department should advocate for Congress to enact a PL 477-like statute that authorizes a program where Tribes receiving public safety and criminal justice funding can choose to integrate funding into one DOJ-approved plan. The Department asked the following specific input from Tribes:

- Whether Tribes support a new statute that would authorize Tribes to integrate their public safety and criminal justice funding into one DOJ-approved plan
- Whether such a proposal should include DOJ-only funding sources or include public safety and justice funding from across the federal government

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<sup>6</sup> BIA, Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country (2021), [https://www.bia.gov/sites/default/files/media\\_document/2021\\_tloa\\_report\\_final\\_508\\_compliant.pdf](https://www.bia.gov/sites/default/files/media_document/2021_tloa_report_final_508_compliant.pdf).

<sup>7</sup> Tribes inquired about whether new or updated grants would account for contract support costs.

- Whether Tribes would support a proposal that was structured as a pilot program
- Whether plans/agreements similar to PL 477 would be an effective mechanism for DOJ to implement

*a. Whether Tribes Support Proposal Two*

Overall, the Department received significant support for a PL-477-like funding model (hereinafter “Resource Pooling Model”) for public safety and criminal justice programs due to the flexibility it provides to Tribes and the reduced administrative burdens that would result.

While many supported the Department’s consideration of Proposal Two, some acknowledged the limitations on what a Resource Pooling Model for public safety and criminal justice funding would accomplish in addressing the overall needs of Tribes. Notably, Tribes commented that allowing existing grants to be combined does not address the larger issue that some Tribes lack the resources, such as grant writers, to secure funding in the first place. Others noted that unless combined with other reforms, such as those provided in Proposal One, this approach will not address the ongoing challenges posed by the competitive nature of DOJ’s grant structures or the burdensome application processes. Some commenters recognized that while a Resource Pooling Model would be a helpful change, self-determination funding through ISDEAA would be a better approach. One commenter stated that the PL-477 funding integration structure is more beneficial for Alaska Native Villages than other Tribes and in fact may be harmful outside of Alaska.

*b. Whether the Proposal should apply to DOJ-only funding sources or include public safety and justice funding from across the federal government*

Feedback from Tribes was mixed on whether a Resource Pooling Model for public safety and criminal justice programing should authorize integration of only DOJ funding sources or funding sources from across the federal government.

Some commenters stated that Tribes should be permitted to integrate all applicable funds from across any relevant agency, including, but not limited to, funding available from the Department of the Interior. They noted that such an approach would aid in providing a comprehensive federal solution to addressing Tribal public safety and criminal justice needs. However, to the extent a government-wide approach is taken, multiple commenters recommended that the Department of the Interior take the lead on administering such a program.

Other commenters raised concerns about a government-wide integration model for Proposal Two and instead advocated for funds to remain contained within the awarding agency, recognizing that each federal agency has different missions and priorities. Other comments recognized that flexibilities already exist within BIA’s base funding model and as a result, integrating BIA base funding into a DOJ-administered integration program would cause more harm than good.

Finally, commenters noted that while integration of existing funding sources should be an option for Tribes, flexibility should remain such that Tribes have the choice whether or not to integrate their existing federal funding sources and the full sovereignty to determine which, if any, grants they want to integrate. In addition, the Department received feedback that Tribes should have full flexibility to determine allocations within the integrated plan.

*c. Whether the Proposal Should be Structured as a Pilot Program*

The Department received several comments in response to its questions around whether Proposal Two should be structured as a pilot program, and if so, what form the pilot should take. Several commenters expressed opposition to structuring a Resource Pooling Model as a pilot and instead advocated for full implementation at the outset. They stated that a pilot program approach would create more issues than benefits, pose a barrier to full implementation, and require additional congressional action to further open the program. They also advised that given the demonstrated success of the original PL-477 structure, there is no reason to use a pilot program to determine if a similar Resource Pooling Model focused on public safety would also be successful.

To the extent that a pilot program is advanced, commenters noted that the pilot should span multiple years in order to adequately determine the program's effectiveness and to assess the true impacts of such a program. Some suggested that the pilot program span a minimum of a three-year or five-year period. Other commenters advised a pilot should include Tribes of various land base and population sizes; another commenter suggested that consideration should be given to Tribes with greater public safety challenges. However, commenters indicated that any pilot must be small enough, such as 10 to 15 Tribes, to ensure DOJ staff is not stretched too thin and can give the program the focus it needs.

*d. Other Considerations*

Commenters raised several other considerations regarding Proposal Two:

- *Impacts to DOJ's existing victim services funding.* Several commenters expressed uncertainty over whether Proposal Two would benefit victims of domestic violence and sexual assault and noted that the program structure must ensure that victim services funds are protected. For instance, some commenters expressed concern that, should victim services funds be rolled into other public safety funding, those funds would be used for law enforcement purposes rather than to directly serve victims. Others also noted that Tribes should maintain the ability to designate nonprofit organizations to administer victim services funding on the Tribe's behalf. Another commenter advised that the program should be structured to ensure confidentiality of victims and families served by DOJ's funding sources, particularly in areas where victim service providers are not protected by Tribal codes.
- *Initial program implementation considerations.* One commenter recognized that while Proposal Two would reduce administrative burdens in the longer term, it is important that DOJ take into consideration that the transition period while such a program is initially implemented may cause far greater administrative burdens on Tribes.
- *Reporting requirements.* Several commenters provided feedback on reporting requirements associated with a Resource Pooling Model. One commenter noted that a major benefit of Proposal Two is the streamlined reporting requirements associated with the program and as a result, the program must not have multiple reporting requirements. Others cautioned that limited reporting requirements may have unintended consequences and provided two considerations: (1) Their need to be systems in place to monitor the effectiveness of funding and create accountability to ensure that funds will be used for their intended purposes; and (2) If DOJ does not have accurate numbers for crimes and services in Indian country, the Biennial Report to Congress could lack important information about unmet needs and therefore not justify additional appropriations or set-aside amounts for Tribes and Tribal programs.

- *Lack of Understanding of Proposal.* Other commenters expressed that they had a lack of understanding of how PL-477 works and advised that they would need additional information on the program to provide meaningful feedback on the Proposal.<sup>8</sup>
- *Impacts on existing PL-477 Program.* One commenter suggested that DOJ programs are already eligible for the existing PL-477 program and advocated that any new program should not be used to undermine the existing PL-477 program.

### **Department’s Response to Comments and Feedback Received for Proposal Two:**

The Department appreciates the feedback received from Tribes on whether the Department should seek authorization to establish a Resource Pooling Model that would allow integration of public safety and criminal justice funding sources into a single plan. A significant number of Tribes noted the success of the existing PL-477 program and offered support for establishing a similar program for Tribal public safety and justice purposes. Tribes provided additional thoughts on how to structure such a program, including whether the program should start with a pilot, how it intersects with existing funding, and how to both streamline and ensure the value of reporting requirements. The Department will work with Congress to consider legislative options, informed by this feedback, that allows the Department to develop such a program, while also considering the strong support discussed above for a non-competitive formula grant program. This proposal could consider whether a Resource Pooling Model could work as a complement to a new formula grant program. The Department hears the concerns about maintaining protections around victim services funding within the context of achieving public safety goals and will examine ways to include these types of protections in any proposals developed as a result of these consultations.

### **3. Proposal Three**

Proposal Three asked Tribes whether the Department should advocate for an increase in base funding available through BIA to meet the public safety and criminal justice needs of Tribes. Overall, Tribes expressed support for increased funding and several advised that both the Departments of Justice and the Interior should look to BIA’s unmet needs report to advocate for securing the amount of need the report indicates. As noted above, the most recent calculation from BIA estimates that the full Tribal public safety and justice needs are at \$3.5 billion.<sup>9</sup> With respect to BIA base-funding, specifically, Tribes provided the following comments:

- *Support for increased BIA base funding for Tribal public safety and justice.* Many Tribes advocated for BIA base-funding for public safety and justice services to be at levels that meet Tribes’ needs. Commenters noted that increased base funding would not only allow for improved Tribal public safety and criminal justice systems but would also allow Tribes to reallocate other funds currently being used to supplement these programs so that a more holistic approach to addressing the socioeconomic wellbeing of their communities can be realized. They also noted that this would help with healing and recidivism.
- *Impacts to Tribes not currently receiving BIA base funding.* Several commenters noted that without an associated change in BIA’s policy, advocating for increased BIA base funding would not help Tribes located in Public Law 83-280 states or otherwise subject to state-specific jurisdictional statutes. Most Tribes located in these states do not currently receive base funding

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<sup>8</sup> For more information on PL-477 and how it works, see <https://www.bia.gov/service/starting-business/477-economic-opportunities>.

<sup>9</sup> See *supra* note 6.

from BIA for law enforcement services. Some commenters advised that the Department should not only advocate for increased base funding but also for a policy change that would permit all Tribes to receive funding for the full panoply of law enforcement and criminal justice services needed to provide for their communities. They noted that this approach acknowledges the diverse needs of Tribes and promotes equity, ensuring that underserved communities have access to resources critical for public safety and justice. Without this policy change, several commenters noted that Proposal Three would be meaningless for Tribes subject to Public 83-280, including Alaska Native Villages, or otherwise currently not eligible to receive base funding for law enforcement and other services. Commenters specifically pointed to Alaska Federation of Natives Resolution 22-7, Calling For Annual, Non-Competitive, Base Tribal Justice Funding For PL-280 Tribes. Some commenters offered a potential alternative approach under which DOJ would provide base funding to those Tribes that DOI does not fund.

- *Interplay between DOJ and BIA funding.* While many commenters supported increased BIA base funding, several also noted that an increase in BIA funding should not supplant DOJ's funding opportunities for Tribes or otherwise negatively impact DOJ's Tribal funding programs. Commenters advised DOJ has historically been very attentive and timely with their funding opportunities, and some are concerned that if increased BIA funds negatively impacted DOJ's funding opportunities, this would be contrary to the best interest of Tribes. Instead, multiple commenters advocated for a dual agency approach that involves advocating for increased appropriations for Tribes at both BIA and DOJ.
- *Other considerations.* Commenters also provided feedback on Interior's budget requests to Congress for their base funding program, the need to update BIA's Tribal Priority System, and raised other concerns about the allocation of base funding for Tribal public safety and justice programs as well as restrictions on use of base funding.

### **Department's Response to Comments and Feedback Received for Proposal Three:**

The Department appreciates the feedback received from Tribes on whether the Department should advocate for an increase in BIA base funding for public safety and justice purposes. In response to requests from Tribes and feedback received in the course of this consultation, on November 20, 2024, OTJ Acting Director Daron Carreiro testified before the House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies during an oversight hearing on Investigating the Crisis of Missing and Murdered Indigenous Women. During that hearing, Acting Director Carreiro notified Congress that the Department supports increased funding to BIA for Tribal public safety and justice purposes.

Additionally, the Department agrees with commenters who advocated for a dual approach to addressing the unmet needs of Tribes that would result in increased funding available at both BIA and DOJ. As such, in addition to providing support for BIA base funding, the Department is committed to continuing to seek legislation that would increase funding amounts and flexibilities for DOJ's grants available to Tribes, as discussed above.

Finally, with respect to comments raising concerns regarding which Tribes are eligible to receive base funding for law enforcement and criminal justice purposes, as well as other concerns raised around Interior's budget, allocation formulas, and restrictions on use of funds, ultimately these are best addressed by DOI and BIA. We have forwarded this feedback and the concerns to them.

## **CONCLUSION**

The issues raised during the Tribal consultation process focused on potential legislative proposals to ensure Tribal public safety and criminal justice funding is provided to Tribes in a manner that is more effective in meeting the needs of Tribes. DOJ heard many concerns with the current system and suggestions on how the system could better meet Tribal needs. Generally, there was support across the board for the broad proposals provided in the consultation materials, and there were many suggestions on how these proposals can best achieve their aims. The Department understands the importance and magnitude of such a long-awaited major change. As such, the Department is committed to working with Congress, informed by the comments and feedback from Tribes, to develop legislative solutions. We are thankful for those who took the time to attend these consultations and provide oral and written comments.



**APPENDIX**  
**DETAILED SUMMARY OF COMMENTS RECEIVED AND DOJ RESPONSES<sup>10</sup>**

In addition to the comments below, we received some comments regarding the programs and actions of other federal agencies which we have provided to the applicable agencies.

**A. General Comments on the Proposals**

- 1) DOJ grants need to be made simpler to ensure fairness.  
*Response:* For many years the Department has worked to make our grant programs more accessible, from launching the Coordinated Tribal Assistance Solicitation to increasing the number of staff dedicated to assisting Tribal applicants and offering capacity-building workshops for potential and current grantees. In recent years, all three DOJ grantmaking components have simplified the application process, for example, by reducing the number of required documents and providing alternatives for submitting a description of the proposed project, including question and answer or table formats and in some cases interviews or video submissions in place of narratives. These efforts are intended to collect only the information necessary to make funding decisions, reduce the burden on applicants, and respond to concerns from Tribes that the process provides an unfair advantage to applicants with professional grant writing staff. The Department will continue to explore additional ways to make our grants simpler and more accessible.
- 2) Tribes need major block grants similar to the Edward Byrne Memorial Justice Assistance Grant. These block grants should be in addition to the current competitive grants.  
*Response:* Federally recognized Tribes are eligible for the Edward Byrne Memorial Justice Assistance Grant (JAG) Program—Local Solicitation. While this solicitation is separate from the state solicitation, there is a path for Tribes to secure some of funds in this funding program. Additionally, Proposal One in this report is intended to address this need through a new formula grant program, which would operate in a similar noncompetitive manner to a block grant program.
- 3) Some Tribes that bought into the previous block grant model ended up having to pay millions of dollars due to unallowable expenses. Previous block grants had severe limitations and disallowances. If doing block grants again, the previous model did not work.  
*Response:* We appreciate the sharing of challenges Tribes experienced with funding through block grant programs. We want to ensure the Tribes are aware of the limitations and restrictions on use of funds to aid in preventing negative financial impacts. The Department has hired additional grant management staff with the training and experience to work with Tribes to try to reduce these issues in the future.
- 4) While DOJ funding continues to be framed as supplemental funding to allow for innovation, that simply is not the reality and will not be the reality until the basic law enforcement needs of Tribes are fully funded. While it is understood that a supplemental funding approach was the goal, the system needs to be amended to address the reality Tribes are facing.  
*Response:* The Department has heard for some time that due to the substantial unmet public safety and criminal justice needs of Tribes; the Department's grants are for some Tribes the primary manner in which they fund their public safety and justice operations. We understand that our current funding model is not conducive to such a usage. The Department always endeavors to

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<sup>10</sup> The appendix is made up of comments provided by Tribes and Tribal advocates. Only the responses reflect the opinions of the Department.

respond to the realities that Tribes face and are working through the proposals outlined in this report to find solutions, in consultation with Tribes, to better address Tribes' needs.

- 5) For Tribes subjected to PL-280, block grant funding typically goes to the state and the Tribes never see the benefits of these funds. Tribes have greater sovereignty, and it should not go through the state.

*Response:* The formula grant program discussed in this report would go directly to the Tribes. It would not be routed through the states.

- 6) Reporting requirements should allow Tribes to submit one comprehensive report on federal funding to the entire federal government, rather than drafting so many overlapping reports.

*Response:* Reporting is tied to the funding sources and as a result cannot be rolled up in this way. However, the proposals discussed in this report could be drafted such that a single report would be required for the grant of funding mechanism selected by the Tribe.

- 7) It would be helpful if Tribal funding was provided by the federal government as one lumpsum that gets increased as new funds become available, rather than requiring applications and new funding agreements. Reporting requirements take more personnel time than the services they provide. Requiring multiple reports for the same program is too time consuming.

*Response:* The Department understands the reporting requirements for grant funding can create an administrative burden; however, each agency has its own obligations to ensure oversight over the funds appropriated by Congress. That being said, there are ways to consolidate requirements through either Proposal One's formula grant or Proposal Two's Resource Pooling Model.

- 8) Congressional changes take time, in the meantime DOJ should do everything within its authority to improve the situation. DOJ grantmaking components should exercise all flexibilities available without legislation to make funds as flexible to Tribes as possible. The Department should also advocate for more funding in the meantime.

*Response:* Over the last few years, the Department has been examining authorizing statutes and other authorities to identify areas where current funding programs and operations can be improved without the need for Congressional action. This process has resulted in longer award periods, greater flexibility in use of funds, less frequent and shorter reporting requirements, release of samples, templates, and other tools to simplify the application process, and in-person assistance with applying for and managing DOJ grants. The Department also has sought funding increases for some Tribal-specific programs and will continue to explore ways to do this as part of the proposals outlined in the report. We will continue to explore ways to improve DOJ's grant programs within existing authorities and welcome any recommendations Tribes may have.

- 9) DOJ should develop a Tribal technical assistance fund. As the proposals would remove the competitive nature of grants, there is no reason that agency personnel should not aid Tribes in completing any application or other administrative documents. An agency based technical assistance office for administrative needs would centralize these services and remove the burden from Tribes. This could include workshops, trainings, and one-on-one consultations with specialists. Furthermore, where there are training opportunities, virtual options should be made available whenever possible to reduce the time commitment and expenses involved in seeking training.

*Response:* Under the current system the Department does provide technical assistance in the form of applicant webinars, trainings on accessing grant funding, office hours, and other assistance in responding to Notices of Funding Opportunities. We also will examine how best to build a strategy for assisting Tribes in accessing and administering funds into the proposals discussed in this report.

- 10) An additional way to streamline grants is to have all grants to Tribes managed by a single office within DOJ to reduce administrative burdens as well as ensure stronger relationships between the Tribe and their grant servicer.

*Response:* The grantmaking components have already implemented this approach by creating Tribal divisions or dedicated grant managers with expertise working in Tribal communities within each component. Although further centralization could be part of the proposals in this report, such an approach does not always result in reduced burden, as the grant managers may be such generalists that they do not have the subject matter expertise to assist in a specific area and become an additional layer grantees must navigate to have their needs met.

## **B. Comments on Jurisdictional Issues**

- 1) *McGirt* was a win for Tribes, but *Castro-Huerta* was a setback, and we need DOJ's support in pushing for a fix for *Castro-Huerta*. Furthermore, the Department should help Tribes to push Congress to overturn *Oliphant* and fully restore the jurisdiction of Tribes.

*Response:* On December 9, 2024—in response to Tribal feedback—the Department announced that it would hold nation-to-nation consultations with Tribes regarding possible legislation to address the Supreme Court's decision in *Oklahoma v. Castro-Huerta*. The Department published a framing paper as well as two specific legislative proposals that would restore the balance of jurisdiction to what it was prior to *Castro-Huerta*. We heard significant feedback from Tribes during our previous joint DOI/DOJ [listening session](#), which assisted the Department in its consideration of this issue, and we look forward to integrating what we hear during the current consultation. The consultation material, including a framing paper, is available at:

<https://www.justice.gov/tribal>.

- 2) Tribes are the ones most impacted by what happens on their lands and have shown that they have the greatest desire to address public safety in their communities. As such, they need to have the authorities necessary to address these issues. DOJ needs to support restoration of full jurisdiction over non-Indians; the most recent VAWA expansion does not account for some critical cases such as elder abuse, drug crimes, and financial crimes.

*Response:* The Department agrees that Tribes know best what their communities need. The Department seeks to do what we can to aid in ensuring the public safety of those living in Tribal communities. The jurisdictional scheme discussed in this comment is one governed by Congress rather than the Department; however, we stand ready to continue to exercise federal jurisdiction, where appropriate, because the Department continues to believe that “every person living in the United States deserves to feel safe in their communities,” and keeping Americans safe is a DOJ priority. To the extent that Tribes have specific proposals or comments on the scope of Tribal jurisdiction over non-Indians, we welcome further discussions.

- 3) The Wilkinson Memo indicated that *Castro-Huerta* did not impact federal jurisdiction and should not impact decisions of FBI and USAOs. DOJ must ensure this is being done and an additional memo should be provided to FBI to clarify this issue.

*Response:* As indicated in the Wilkinson Memo, the Department understands that the decision in *Castro-Huerta* did not impact federal jurisdiction. The Wilkinson Memo was intended to provide clarity regarding the impacts of *Castro-Huerta*. To the extent issues continue to arise, we recommend bringing them to the attention of the local U.S. Attorney's Office and OTJ, [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov). We also welcome participation in our consultation on possible legislation to address the Supreme Court's decision in *Oklahoma v. Castro-Huerta*, where we will be focusing on these issues.

- 4) Tribes need the limitations on sentencing removed; due to declination rates on the federal level, the Tribes are left to take the case but without the ability to seek a sentence that allows the victim justice.

*Response:* The limitations on sentencing are set by Congress rather than the Department. That said, we understand our role in crimes occurring in Indian country and will continue to coordinate with Tribes to try to account for the unique jurisdictional schemes that exist for Tribes, in a way that best meets the public safety and criminal justice needs of Tribes.

### **C. Comments on Restrictions and Concerns with Current Funding**

- 1) Grant cycles must be at least five years. Five-year grant cycles would not only help with sustainability and reliability but helps with recruitment and retention when the Tribe can make those guarantees to the employee. This not only helps with staff continuity but helps ensure victims that the staff work with do not have to keep retelling their stories to everchanging staff.

*Response:* Most DOJ grant awards to Tribes have five-year project periods or give Tribes the flexibility to choose a five-year period. DOJ will take this into account in developing the formula grant program described in this report as well.

- 2) Federal grants to Tribes should be allowed to be used for Tribes to travel to Congress to advocate for the needs of Tribes. The advocacy of Tribal leaders to Congress should not be considered lobbying as this is a Nation-to-Nation discussion and required to ensure Congress is meeting the trust responsibility.

*Response:* Use of grant funds for this purpose is governed by statute and not within the discretion of DOJ to allow.

- 3) Extensions should be permitted to the extent allowed, regardless of the reasoning provided.

*Response:* Extensions generally are permitted across DOJ grant programs, in accordance with regulations published by the Office of Management and Budget.

- 4) Tribes should not be required to resubmit annual budget requests.

*Response:* This is not currently a requirement of DOJ grants, and the Department will take this comment into account in developing the proposal for a formula grant program discussed in this report.

- 5) Restrictions and current funding levels only allow for entry level positions. This does not allow for a strong law enforcement system.

*Response:* The Department will examine this issue with respect to both current grant programs that fund law enforcement and the proposed formula grant program discussed in this report.

- 6) Restrictions and requirements that infrastructure must be built on Tribal lands does not account for unique circumstances where Tribes are working to build justice systems despite limited availability of Tribal lands or Indian country.

*Response:* DOJ grants generally do not fund infrastructure, but we will take this comment into account in developing the proposal for a formula grant program discussed in this report.

### **D. Comments on Funding Levels**

- 1) President Biden indicated that to fight violent crime he wanted \$35 million; 10% should go to Tribes given the significant amount of federal jurisdiction.

*Response:* The [Safer America Plan](#) was a White House initiative which did provide funding for Tribal public safety. The Department continues to provide significant funding for Tribal public safety and justice needs [including \\$533 million in FY2023](#).

- 2) DOJ should advocate for an amendment to VOCA to provide a permanent 5-10% Tribal set aside.  
*Response:* The Department appreciates bringing this recommendation to our attention, which we will take under consideration.
- 3) DOJ should request the maximum amount of Tribal VAWA funds in their annual budget request.  
*Response:* By statute, many of OVW's Tribal-specific programs are funded through set asides from the direct appropriations for several OVW grant programs; the President's budget request for FY 2025 includes increases for these programs, resulting in increases in the funds set aside for Tribes. In addition, the FY 2025 President's budget requests the full authorized amount of \$25 million for OVW's two Special Tribal Criminal Jurisdiction Programs (grants and reimbursements).
- 4) There needs to be more transparency regarding appropriation levels versus how much money goes out to Tribes. Tribes and Congress need to see how much of the funds are going to administrative purposes and never make their way to the Tribes. When Tribes meet with Congress, the impression is that they are already funding significant salaries, but the funding is barely covering equipment needs and most does not go to salaries. Each officer needs over \$150,000 just for equipment.  
*Response:* Where appropriate, the Department aims to ensure transparency regarding our funds. For example, OVW publishes this information every year in an appendix to its annual [Update Report for Tribal consultation](#). (See, for example, Appendix B, page 46, of the [most recent Update Report](#).) To the extent there are questions regarding specific funds please contact the office which oversees the funds.

#### **E. Comments on Training Needs**

- 1) There needs to be more options for training facilities for officers. Currently, officers need to travel pretty far to be trained, which may discourage individuals from becoming officers, or they may end up deciding to stay near the training facility and not return.  
*Response:* Thank you for bringing to our attention concerns regarding access to the United States Indian Police Academy. We acknowledge that attendance requires significant travel in some instances. The Indian Country Police Officer Training Program is a BIA program, and we will bring this concern to their attention.
- 2) It would be helpful to have DOJ work on ensuring local non-Indian law enforcement agencies understand the validity of Tribal law enforcement because it would make it easier for Tribes to work with their local law enforcement and share resources. DOJ should conduct multijurisdictional training regarding the legal rights and capabilities of Tribes including the right of exclusion. DOJ should offer joint training on VAWA to Tribal, state, and federal law enforcement.  
*Response:* The Department's National Indian Country Training Initiative (NICTI) has hosted many trainings on law enforcement topics. State, Tribal, and federal law enforcement officers were invited to attend these free trainings, many of which were conducted virtually to minimize work schedule disruptions and incentivize attendance. Examples of these free, virtual trainings include the following summits, all of which incorporated training on the National Missing & Unidentified Persons System (NamUs):
  - Strategies for Developing a Coordinated Response to the Issue of Missing or Murdered Indigenous Persons (February 10-11, 2021)
  - Symposium: Missing or Murdered American Indians and Alaska Natives (September 14-16, 2021)

- DOJ/DOI Tribal Justice, Safety, and Wellness Summit (July 9-11, 2024)

Additionally, NICTI sponsored a webinar on full faith and credit for protection orders issued by Tribal courts in July 2023. NICTI remains ready to partner with federal agencies, the MMIP Regional Outreach Program, USAOs, and state and Tribal law enforcement partners on training. Through the COPS Office Training Portal the COPS Office offers the course “Effective Multi-Jurisdictional Collaboration in Missing or Murdered Indigenous Persons (MMIP) Cases”, an eLearning course, that explores how partnerships between Tribal law enforcement and local, state, federal, and private sector agencies can strengthen the prevention and response to MMIP cases using a fair, victim-centered and trauma-informed approach. In addition, the COPS Office website houses a “Tribal MOU/MOA Sample Resource Library” that is designed to provide users with the resources they need to research and successfully draft memorandums of understanding (MOU) and memorandums of agreement (MOA). MOUs and MOAs will help agencies develop and solidify partnerships to address missing or murdered Indigenous persons cases and provide a wide range of other related opportunities for collaboration.

## **F. Comments Specific to Alaska**

- 1) DOJ must provide full and adequate funding for the Alaska Pilot Program to succeed. Alaska Native Villages need funding to develop legal systems to exercise this jurisdiction, otherwise it is a symbolic gesture, not a real change.

*Response:* The Violence Against Women Act Reauthorization Act of 2022 established the Alaska Pilot Program, but did not provide any funding for its implementation. DOJ also believes that the Program could be more efficacious with additional funding. The Pilot Program, however, does include assistance to Tribes in developing a readiness plan for exercising the jurisdiction and identifying potential funding sources for implementation of this plan.

- 2) DOJ should conduct media and public outreach campaigns to explain the changes to jurisdiction in Alaska under VAWA 2022 and demonstrate the ways in which this will increase safety for communities. Alaska is remote and waiting until Alaska Native Villages are approved will be too late.

*Response:* DOJ recognizes that the prospect of Tribes in Alaska exercising special Tribal criminal jurisdiction is novel, and that more outreach and education are needed. Regardless of their level of interest, Alaska Native Tribes are encouraged to join Track One of the Alaska Pilot Program, through which they can receive technical assistance and peer-to-peer support to enhance their criminal justice systems. DOJ efforts to support the pilot include active engagement by several DOJ components, including the Office for Access to Justice, EOUSA’s NICTI, the Office of Tribal Justice, and the grantmaking components (the COPS Office, OJP, and OVW), as well as coordination with other federal agencies, including DOI and the U.S. Census Bureau, Alaska Tribes, and Alaska-based technical assistance providers. To that end, OVW funded a new training and technical assistance project through the Alaska Native Justice Center – which in turn is partnering with multiple Alaska-based Tribal organizations – to assist Alaska Tribes in planning for, implementing, and exercising STCJ, including support for an Alaska-specific ITWG created by DOJ. The next meeting of the Alaska Intertribal Working Group is currently scheduled to occur in Fairbanks, Alaska in April 2025. DOJ will continue its efforts to publicize the Alaska Pilot Program and explore other methods of reaching out to Tribes in Alaska regarding the changes in VAWA 2022.

- 3) Alaska Native Villages need a multi-agency, multi-year, and sustainable funding model to ensure that the VAWA 2022 jurisdiction can be exercised successfully.

*Response:* The Department acknowledges the limitations created by funding through individual grants. The Department also recognizes that current grant funding amounts and their temporal limitations do not meet the full needs of Alaska Native Tribes. DOJ's objective is that any legislative changes enacted following this consultation will result in sustainable, multi-year public safety funding for Tribes in Alaska and the rest of the United States.

- 4) There should be an Alaska Tribal Police Commission.

*Response:* As with the Lower 48, DOJ believes that Alaska Native Tribes are in the best position to determine the most appropriate solutions for their members. DOJ therefore welcomes further discussion on creative ways to address the public safety crisis that exists in many Alaska Native communities. We note that through the Alaska Pilot Program established by VAWA 2022, two or more Tribes (or a Tribal organization exercising delegated authority from a participating Tribe) may elect to participate jointly by providing shared resources to carry out the purposes of the Pilot Program. In addition, VAWA 2022 established the Alaska Tribal Public Safety Advisory Committee, which includes representatives from Alaska Tribes, federal, Tribal, State, and local law enforcement, and Tribal nonprofit organizations and is designed to take an intergovernmental approach to exploring ways to improve the justice systems, crime prevention, and victim services for Alaska Native Tribes and Alaska Native people.

- 5) The U.S. Attorney General should go to Alaska and speak to the local and state systems to explain VAWA and the Alaska Pilot Program because they continue to fail to understand it and the burden should not be on Tribes to educate; additionally hearing it from the Attorney General would have greater weight.

*Response:* DOJ agrees that it is important for the Attorney General to visit Alaska. In August 2023, Attorney General Merrick Garland went on a rural and public safety tour in Alaska. He also had the opportunity to meet with Alaska Tribal leaders and organizations and participate in a community roundtable in Anchorage, Alaska. DOJ will continue its efforts to perform outreach and education concerning VAWA 2022 and the Alaska Pilot Program.

- 6) Alaska needs Alaska specific investigators who understand the landscape and can effectively search for those in Alaska who go missing.

*Response:* DOJ likewise believes that it is important for Alaska Native Tribes to implement public safety strategies that are tailored to their individual needs. We expect that any legislative solutions resulting from this consultation will assist Tribes in addressing their unique needs.

#### **G. Comments Focused on Tribes Located in Public Law 83-280 States or Otherwise Subject to State-Specific Jurisdictional Statutes**

- 1) State law enforcement agencies need to be at the table to understand what they are mandated to do. This lack of understanding continues the issue of lack of response, especially for states subject to PL-280 or similar statutes.

*Response:* DOJ recognizes that the enactment of PL-280 and other similar statutes has created unique and at times complicated jurisdiction schemes in Indian country and for Tribal communities. The FBI and the U.S. Attorneys' Offices will continue to work with their Tribal, state, and local partners to explore ways to improve the response to reports of crimes committed in Tribal communities. The COPS Office is currently supporting the development of an e-learning course to be available on COPS' Training Portal on PL 280 to increase understanding and collaboration among state, local, and tribal law enforcement agencies.

- 2) The states exercising jurisdiction under PL-280 and other similar statutes consistently fail to meet the responsibilities that come along with that, and the federal government must step in to ensure its responsibilities are being met.

*Response:* The federal government has limited jurisdiction over certain crimes committed in Tribal communities in states subject to the mandatory jurisdiction provisions contained in PL-280. Nonetheless, DOJ will continue to promote effective cooperation and communication between all law enforcement agencies with jurisdiction on Tribal lands and within Tribal communities. We will continue to investigate and prosecute crimes over which we have jurisdiction, such as federal crimes of general applicability, to the best of our abilities.

## **H. Comments on Tribal Economic Development**

- 1) Tribal leaders are placed in a position where they must balance capitalism and the need to raise our own funding with the need to preserve our culture; this impacts the economic development decisions Tribes make when generating their own funds. In addition, these forms of economic development often bring in outside influences and non-Indians which increases the public safety and justice needs.

*Response:* The Department will continue to examine ways to make its funding opportunities more accessible to Tribes to help mitigate this need and in turn the impacts on the community from Tribes needing to find ways to independently fund their government operations and community needs. The Department will continue to coordinate on public safety concerns including those arising from economic development decisions.

- 2) The federal government should support an expansion of Tribal taxation authority and Tribes' ability to use bonds. Tribes should be allowed to collect income taxes and sales taxes. This is how municipalities fund first responders. If Tribes were allowed to collect taxes similarly to states and municipalities, Tribes would be able to be more self-sufficient. In addition, one commenter noted that Tribes cannot use bonds the way that other jurisdictions are able to. This should be considered when accounting for funding for Tribes.

*Response:* The Department appreciates the efforts to develop new solutions to address the funding needs of Tribes, particular in the realm of public safety, first response, and criminal justice systems. To the extent that Tribes have specific ideas on how to address Tribal taxation authority and the use of bonds, the Department welcomes further discussion and encourages Tribes to reach out to OTJ, [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov).

## **I. Comments on DOJ Staffing**

- 1) DOJ should be sufficiently staffed with individuals who understand Tribal communities.

*Response:* The Department is proud to have multiple offices focused on Tribal interests and issues, including the OTJ, Tribal Resources Section of the Environment and Natural Resources Division, and Tribal divisions at both OVW and OVC, with OVW's headed by a statutorily mandated Deputy Director for Tribal Affairs. Not only do we have multiple such offices, but these offices have staff with experience with Tribal communities, many of whom themselves are part of these communities. In addition, all offices that interact with Tribes including the Department's grantmaking components, FBI, U.S. Attorneys Offices, and litigating components have staff dedicated to working on the Tribal interests and issues that intersect with their missions. In addition, our grantmaking components have been increasing their staff levels of remote workers who are local for Tribes to ensure they better understand the concerns of Tribes.



- 2) Technical assistance providers must be familiar with the area in which they are providing assistance.  
*Response:* DOJ grantmaking components all fund Tribal-specific technical assistance (TA), which requires that the funded organizations demonstrate experience working with Tribes (including Alaska Native Villages if providing TA in Alaska) and specific knowledge of relevant laws, systems, policies, cultures, and customs for the types of TA funded under the project.
- 3) Grant program managers must maintain communication and they must be held accountable. When a grant manager leaves the agency, they should ensure a smooth transition and that others are familiar with the Tribe's needs, so Tribes do not have to repeatedly provide information. Often grant managers treat the relationship as a parent child relationship which is an inappropriate dynamic and staff should be trained on a proper relationship dynamic.  
*Response:* DOJ agrees that the dynamic described is inappropriate. DOJ grant managers who work with Tribes are trained on the federal trust responsibility, respect for Tribal sovereignty, and culturally appropriate interaction with Tribal officials. As the three grantmaking components continue to develop policies and procedures to ensure consistent approaches to supporting Tribal grantees, they will examine ways to ensure staff are trained consistently and that smooth transitions take place when staffing changes.
- 4) In addition to funding for Tribal public safety and criminal justice, we need our federal partners properly staffed. We need more FBI in Indian country and focused on cartels.  
*Response:* DOJ appreciates this recognition of the beneficial impact of properly staffed federal law enforcement agencies. The FBI has increased their investigative resources in 2023 in some of the Indian country field offices that were in the most need of personnel including Oklahoma City, Salt Lake City, Minneapolis, Phoenix, Albuquerque, Denver, Seattle, and Portland. Addressing illegal drug trafficking and cartel activity is a priority for DOJ. Through the 27 Safe Trails Task Forces, the FBI partners with local, state, Tribal and other federal partners to address both violent crime and conduct proactive drug investigations. For the past 2 years, FBI has undertaken [Operation Not Forgotten](#), surging personnel including agents, intelligence analysts, tactical specialists, and victim specialists to address unresolved investigations of missing or murdered indigenous persons.
- 5) Improvement has been seen where those who understand Native issues are within offices they were not previously. However, this has yet to be done within DOJ leadership offices. As such, DOJ needs a position with leadership authority advocating on behalf of Tribes. This position must be at least at the Office of the Associate Attorney General, but preferably the Office of the Deputy Attorney General level.  
*Response:* DOJ's OTJ was initially formed in 1995 in response to similar requests from Tribal leaders for a dedicated point of contact at a leadership level for Indian country-specific legal and policy matters. OTJ leadership continues to serve as DOJ's primary point of contact for Tribal matters. The office was made permanent on July 29, 2010, with the passage of the Tribal Law and Order Act (TLOA). OTJ's responsibilities are established in 28 CFR 0.134 Subpart W-1. OTJ will continue to serve in this capacity, coordinating directly with DOJ leadership offices, component leadership, and other agencies as necessary.
- 6) Tribes should get to meet with the DOJ budget staff to better understand the process and to ensure that budget staff truly understand the needs.  
*Response:* We appreciate this suggestion and will take it under consideration. Additional information on the Department's budget is [available online](#). To the extent Tribes are interested in learning more about the Department's budget process, we encourage Tribes to reach out to the OTJ, [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov).

## J. Comments on Investigations

- 1) Crime statistics have gone down because the FBI is failing to investigate crimes, and DOJ is failing to prosecute the crimes. If you choose not to investigate a crime then it will look like crime has gone down, but it has not. The crime statistics according to BIA and FBI are not accurate and do not account for all of the crime. Due to lack of law enforcement sometimes, no one responds to a crime, thus it is not accounted for in statistics. Accuracy is important not only to truthfully tell the story, but these statistics impact access to grant funding levels and impact the story being told to Congress.

*Response:* The Department agrees that accurate data is important in addressing these issues. The Department has been working to address data-related issues and concerns for several years. Each year, the Executive Office for United States Attorneys (EOUSA) prepares a statutorily mandated report entitled, [United States Department of Justice Indian Country Investigations and Prosecutions Report](#). This report details the FBI's investigative efforts and the disposition of matters received by USAOs with Indian Country responsibilities. Because DOJ does not have data on state or Tribal prosecutions in Indian Country, the report is limited to federal investigations and prosecutions.

- 2) Long response times when crimes occur makes it hard for these crimes to be prosecuted as the crime scene cannot be secured for hours to weeks, leaving little to no evidence. Without sufficient investigators and proper investigations, deaths that may be murders are left looking like suicides and families are unable to find the justice that they need to move forward.

*Response:* The Department understands the importance of securing evidence and protecting crime scenes in the investigative and prosecution processes. We will continue to coordinate with Tribal, state, and local law enforcement on investigations, as applicable. In addition, we hope that future changes to our funding programs facilitate an increase in Tribal law enforcement workforces to meet these needs and reduce the potential evidentiary impacts.

- 3) While Tribes understand the reasons FBI does not want to talk about an ongoing investigation, when situations involve a missing person, the Tribe needs enough information to allow the community to search for the missing individual to hopefully find them, rather than waiting for a community recovery effort of the remains after FBI has closed the investigation.

*Response:* The FBI lacks the federal legal jurisdiction to investigate missing persons absent the reasonable suspicion of the occurrence of a federal crime (i.e., murder in Indian country or other special jurisdiction, kidnapping, etc.). Oftentimes, the FBI is able to provide certain investigative assets to assist state, local, Tribal, and other federal law enforcement agencies who themselves have the appropriate legal jurisdiction to investigate reports of missing persons. Outreach to family would generally occur through those law enforcement agencies. If a family member makes an inquiry to the FBI about a matter outside the FBI's legal jurisdiction, the FBI will refer the family to the appropriate investigative agency.

- 4) Federal partners often do not get involved in juvenile cases. When these perpetrators are not given the rehabilitation assistance needed, they are left to eventually become adult perpetrators committing crimes which may have been avoided had federal partners intervened when the perpetrator first committed a juvenile offense. When a child is not held accountable, a future perpetrator is created.

*Response:* The Department has multiple juvenile justice programs, which include rehabilitation services, and has prosecuted juveniles in the past where appropriate given the evidence and other factors considered by the prosecutor. More information about DOJ's youth-oriented efforts may be found on [OJJDP's website](#).

## **K. Comments on Respecting Tribal Courts and Justice Systems**

- 1) Tribal domestic violence convictions must be utilized for habitual offender cases to increase sentencing. To not include them implies that Tribal convictions and the Tribal justice system are lesser than that of the state and federal systems.

*Response:* The Department respects Tribal sovereignty and Tribal justice systems. The Department supported the use of Tribal court domestic assault convictions for habitual offender cases in the Supreme Court in *United States v. Bryant*, 579 U.S. 140 (2016), and has successfully prosecuted many such cases since that decision. The Department continues to support the principles of full faith and credit, including hosting a NICTI sponsored webinar on full faith and credit for protection orders issued by Tribal courts in July 2023. To the extent specific concerns arise on this issue, please feel free to reach out to OTJ at [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov).

- 2) Federal, state, and maritime courts can subpoena online companies such as Snap Chat, Facebook, and others, but Tribes cannot. This not only signals that Tribal courts are viewed as lesser than other court systems, but it limits the investigative tools of Tribes in criminal investigations.

*Response:* The limitations on Tribal court authority in the Stored Wire and Electronic Communications Act has been identified by OTJ as a significant problem. This situation limits the scope of criminal investigations and negatively impacts public safety in Indian country. A possible solution would be to amend 18 U.S.C. 2711 of the Stored Wire and Electronic Communications Act. The Stored Wire and Electronic Communications Act provides authority for federal and state courts to issue search warrants for electronically stored data. The amendment would include Tribal courts in the statute to allow them to exercise this authority.

## **L. Comments to the Consultation Process Generally**

- 1) The inclusion of a framing paper with so much background on how things currently work, and the proposals was very helpful, and it is recommended that other consultations include similar framing papers so we can have more productive and informed conversations.

*Response:* We are glad to hear that the framing paper and appendix were helpful in understanding the current system as well as the proposed legislative changes being considered as part of this consultation. In our experience, providing Tribes with specific information about the issues and questions the Department is seeking input on benefits both Tribal participants and the Department by ensuring Tribes have sufficient information on the policies being considered to engage in meaningful Nation-to-Nation dialogue during consultation. It is for this reason that the Department's [consultation policy](#) includes in the consultation process providing a framing paper in preparation for consultation. The Department will continue to provide framing papers for our consultations.

- 2) For an effective consultation with Tribes regarding DOJ, the agency must be more transparent about the budget process and spending, without truly understanding the Department's spending, Tribe cannot fully comment on it.

*Response:* The Department's budget and spending are [available online](#). To the extent a Tribe has any questions or concerns they wish to raise about the Department's budget, we encourage them to reach out to OTJ, [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov), to discuss further.

- 3) Speaking with the government sometimes feels like only lip service with nothing ultimately being done. Tribes have been asking for these changes and discussing them with the federal government for over a decade and nothing has changed; this makes it hard to trust that anything will come from this consultation.

*Response:* The Department takes seriously our obligation to consult with Tribes before making a final decision on a policy matter to ensure that we honor the Nation-to-Nation relationship and meaningfully incorporate Tribal feedback into any actions that fall within the Department's consultation policy. The Department takes seriously the feedback we have received from Tribes regarding the need to change our funding systems and to address the public safety and criminal justice challenges Tribes face. That feedback led to many changes with our current grant programs to make them more accessible, lessen burdens, and reduce the limitations and restrictions on those funds. This feedback also led the Department to assemble an internal working group that includes DOJ's grantmaking offices and OTJ to examine options for improving funding opportunities for Tribes, including consideration of potential legislative proposals. This working group identified the three proposals that formed the topic of this consultation. The Department remains committed to working together to find solutions to meeting the public safety and criminal justice needs of Tribes, including moving forward on developing legislative proposal, as informed by feedback from this consultation

- 4) The current timeline does not allow Tribes to provide meaningful comments, the notice period should be 60 or 90, not 30, days to allow Tribes to meaningfully engage in the discussion and to prevent consultation from being simply box checking exercises. Tribal leaders wear many hats and need ample time to work on testimony. DOJ should provide consultation materials with as much time as possible.

*Response:* We acknowledge that Tribal governments have many responsibilities to balance and are very busy. The Department has tried our best to balance providing sufficient notice to Tribes with agency timelines and obligations. Where appropriate, we will work to provide additional notice time for Tribal consultation. We also encourage Tribes to notify the Department if they need additional time beyond the written comment submission deadline provided in a particular consultation.

- 5) The combining of Tribal consultation with events that include those who are not Tribal leaders is inappropriate for a Nation-to-Nation consultation.

*Response:* The Department in no way wishes to take away from other events. Out of respect for the expensive nature of travel and the competing obligations of Tribal leaders, we strive to align our consultations with events where multiple Tribal leaders will already be present for another purpose. This allows Tribal leaders to attend the consultation in person without having to expend additional resources to travel to the consultation. While we understand this does mean at times some in attendance may not be Tribal leaders, we do inform the audience that only Tribal leaders or their authorized designees are permitted to provide testimony during Nation-to-Nation consultations. Time permitting and where appropriate, we may allow others to provide feedback on the consultation topics that the Department may add to the consultation record. For a Tribal consultation to fit the definition of a formal Tribal consultation, there must be a sufficient number of Tribal leaders present for the consultation.

- 6) For a Tribal consultation to fit the definition of a formal Tribal consultation there must be a sufficient number of Tribal leaders present for the consultation.

*Response:* While we acknowledge some consultations involve large numbers of Tribal leaders that participate, we have other consultations which have fewer attendees virtually or in-person. Additionally, we have some Tribes who request one-on-one consultation. Consultation is the Nation-to-Nation discussion, and according to DOJ's policy focuses less on the number of attendees and more on who has the discussion. We strive to provide multiple forums, including in person or virtual sessions, in order to accommodate Tribal leaders' busy schedules and to provide opportunities for all Tribal leaders who wish to engage in consultation on a particular topic.

- 7) Federal representatives conducting Tribal consultations must be the appropriate individuals with sufficient authority to conduct such consultations.

*Response:* The Department agrees that for a Nation-to-Nation discussion to take place, the appropriate federal representatives must be present. For this consultation, the Department ensured that OTJ's leadership was present at every consultation. OTJ is the component authorized by Congress to oversee the Tribal consultation process of the Department. Given that this consultation is specialized in nature, we also included leadership and experts from the grantmaking components within the Department.

- 8) English is not the first language for some Tribal leaders and as such consultations should be conducted in their first language rather than in English.

*Response:* The Department acknowledges the importance of ensuring our consultations are accessible to all Tribal leaders, and that this includes language accessibility. To account for this, we included an email address to contact for any accommodations. In the future, should accommodations be needed, please contact OTJ, who will work to address accessibility requests for our consultations.

- 9) Many Tribes do not have the funds to travel to in-person consultations.

*Response:* We recognize that not every Tribe can afford to travel to multiple consultations a year. We have tried to mitigate travel costs by aligning our consultations with other events with large numbers of Tribal leaders in attendance. We also strive to provide multiple opportunities and mechanisms for Tribal leaders to provide testimony, whether oral or written. For this consultation, we offered three in-person opportunities and as well as two virtual sessions to allow for Tribal leaders to provide oral comments without the need to travel. Finally, we accepted written comments from all Tribal leaders, which allowed for leaders to submit comments without having to attend either in-person or virtual consultations. In addition, we are open to one-on-one consultation requests.

- 10) Consultation needs a more equitable balance of power where the Tribes and federal government come to the table on equal footing.

*Response:* The Department strives for an equitable and balanced Nation-to-Nation consultation where we can come together on equal footing and discuss policies with Tribal implications. To the extent our current approach does not accomplish this goal, we would be happy to hear suggestions on ways to alter our approach. These suggestions can be sent to [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov) and we will work to address concerns raised.

- 11) Consultation must require consensus as the result. Tribes need to reach agreement on the important issues; otherwise, the consultation is not meaningful.

*Response:* While we ensure Tribal comments are meaningfully considered and incorporated to the extent appropriate, E.O. 13175 consultation does not require consensus. That being said, where possible we aspire to reach consensus.

## **M. Comments on Timeline and Background for this Consultation**

- 1) What was the catalyst for this consultation? Has Congress expressed an interest in amending DOJ's current grant systems?

*Response:* While the creation of the Department's working group of Tribal funding for public safety and criminal justice stemmed from DOJ leadership, multiple members of Congress have engaged with the Department on possible ways to help DOJ's grants better meet the needs of Tribes. This propelled us forward in our efforts to develop potential legislative proposals as discussed in this consultation.

- 2) The framing paper appears to put the responsibility for change on Congress; DOJ should not leave it to Congress to make these changes.

*Response:* The Department is committed to continuing to explore avenues to make funding more accessible within our existing statutory authorities; however, some of the changes being considered require congressional authorization. These formed the basis of the topics for this consultation.

- 3) Prior to any proposal being sent to Congress it should be provided to Tribes for additional consultation and feedback on the language of the proposal.

*Response:* The Department understands the importance of consultation and coordination with Tribes. We will continue to engage with Tribes on a Nation-to-Nation level as we proceed forward in this process, including in implementing any such changes that may be authorized.

## **N. General Comments**

- 1) Lack of law enforcement leaves Tribal leaders not only in the position of trying to seek new ways to address the issue, but they are also left to help community members navigate the fear that this lack of public safety creates. Furthermore, due to a lack of law enforcement in some communities, families are left to hold the individual who just assaulted their family member for hours or days for law enforcement to come. This puts a significant burden on an individual or family that has just experienced a trauma. In other instances, they may have to just let the victim know that nothing will be done, as law enforcement will not be coming to investigate the crime. The primary goal of these efforts needs to be to bring in additional law enforcement funding to the Tribes.

*Response:* The Department has no higher priority than keeping the American people safe. The Department's Strategic Plan recognizes that, "[e]very person living in the United States deserves to feel safe in their communities." We recognize the burden placed on Tribal leaders having to support not only the safety of their community but also the emotional wellbeing. We further acknowledge the increased emotional burdens placed on communities when law enforcement is unable to respond to crimes in a timely fashion. The Department will continue to coordinate with Tribes to address these ongoing public safety concerns.

- 2) Wherever States are receiving funds based on population, the populations of Tribes should be subtracted and those funds sent directly to the Tribes.

*Response:* Thank you for this recommendation, which we will take under advisement as we continue to review our current grant programs.

- 3) Some states do not work well with the Tribes in the state; as a result, Crime Victims Fund money should go directly to Tribes and not be passed through the states. States do not have a trust responsibility, as this is the obligation of the federal government, and thus the states may not be meeting these obligations when administering funds.

*Response:* The Department appreciates bringing this issue to our attention. Crime Victim Funds that are distributed through the Tribal Victim Services Set Aside are not passed through the states. Please visit [the TVSSA website](#) for more information about accessing Crime Victim Funds through this formula program.

- 4) Crimes against Native Americans and Alaska Natives should be its own category on Bureau of Justice Statistics' (BJS) National Crime Victimization Survey (NCVS).

*Response:* American Indian and Alaska Native populations are included within the NCVS; however, due to small numbers of sample cases, they are not included within a separate category. To better account for crime rates within Indian country, the Department publishes annually the

Indian Country Investigations and Prosecutions Report. DOJ's National Institute of Justice also funded a study of intimate partner and sexual violence against American Indians and Alaska Natives throughout the United States; more information is available at:

<https://nij.ojp.gov/topics/articles/violence-against-american-indian-and-alaska-native-women-and-men>.

- 5) The Department should support NCAI Res. 23-066, Calling on Congress and the President to Undertake An Emergency Indian Country Crime Fighting Initiative, and Res. #NC-24-037, Renewing NCAI's Call For A National Summit and Additional Funding to Address the Public Safety Crisis in Indian Country.

*Response:* Thank you for bringing these resolutions to our attention and we will take this under advisement.

- 6) There should be a violent crime reduction commission with the Attorney General, Secretary of the Interior, and Tribal leaders. The commission should be operational, not simply conduct a study and make a report.

*Response:* The Department has various taskforces working on issues of crime within Indian country. These are operational taskforces working in the field. We will take the suggestion of a leadership level commission under advisement.

- 7) Tribes have a long history of information divulged being used against Tribes when it was collected based on claims that it would help Tribes. Tribes are concerned that this information and other information disclosed will be used against Tribes.

*Response:* The Department understands the importance of protecting the privacy of Tribes. That being said, we are subject to certain disclosure laws which may limit our ability to protect certain information. We try to be transparent about these obligations and begin consultations by providing notice of these limits. We will continue to work to protect the privacy of Tribes to the extent we are able.

- 8) A policy developed in DC can in no way reflect an understanding of and meet the needs of Tribes.

*Response:* The Department acknowledges that Tribes know best what their communities need. This is among the reasons Tribal consultation is so important. It is through these consultations that we are able to better tailor policies under consideration to meet the needs of Tribes and their communities. We will continue to engage with Tribes on this issue with the aim of an approach that does meet the needs of Tribes.

- 9) The U.S. Constitution makes treaties the supreme law of the land and they must be treated accordingly.

*Response:* The Department has long understood that treaties are binding federal law. The Department has worked to protect the treaty and reserved rights of Tribes and will continue to do so as we are able.

- 10) Proposed changes must take into account longevity to ensure they continue to be beneficial to Tribes.

*Response:* The Department will strive to consider the longevity of any proposals and will continue to engage with Tribes in ongoing coordination on funding.

- 11) More needs to be done to implement Savanna's Act. While Tribes have meetings with their local teams, some have not actually had the Tribal consultations required. We need clear protocols.

*Response:* All relevant USAOs have had these guidelines in place since the spring of 2022. USAO personnel, such as Tribal Liaisons and MMIP Regional Outreach Program personnel, will continue to engage with Tribes and law enforcement agencies working in Indian Country to ensure the guidelines are being followed. DOJ has also charged United States Attorney's Office (USAO) with establishing clear protocols for how they will work with relevant federal, Tribal,

state, and local law enforcement partners to efficiently respond to crime in Indian Country. *See Memorandum on Promoting Public Safety in Indian Country from the Deputy Attorney General (DAG) to Director, ATF, et al. (July 13, 2022)*. All USAOs with Indian Country responsibilities updated their operational plans in November 2022, and will continue to do so annually after consultation with Tribal partners.

- 12) The definition of victim needs to be changed to be broader and more culturally appropriate. Furthermore, the word “fleeing” must be removed. A victim of domestic abuse may be in a place where they did not need to “flee” as the abuser has been forced out, but this does not mean they are not in need of services.

*Response:* The Department appreciates bringing this issue to our attention. More information about DOJ’s support for victims of crime in Tribal communities, including who is eligible for services, may be found here <https://ovc.ojp.gov/program/tribal/ovc-support-for-tribal-communities> and <https://www.justice.gov/ovw/tribal-governments-program>. While OVW’s Transitional Housing purpose area funds cannot be used to help a victim stay in a home that the abuser has left, OVW’s Tribal Governments Program does not require that victims be currently fleeing abuse to qualify for assistance. However, the program statute does not permit funds to be used to maintain current housing. The Department will consider this concern during the next VAWA reauthorization. In the meantime, further questions or concerns on this point can be brought directly to OVW.

- 13) DOJ should require that those resources and databases which DOJ funds for states are shared with Tribes within the state.

*Response:* The Department will take this comment under advisement. In the meantime, the Department’s [Tribal Access Program \(TAP\)](#) allows selected federally-recognized Tribes to more effectively serve and protect their nation’s citizens by ensuring the exchange of critical data across the Criminal Justice Information Services (CJIS) systems and other [national crime information systems](#). We encourage interested Tribes to apply to participate in TAP. The TAP Application Period is usually open during the summer or fall of each year. Please check the [TAP website](#) for updates on the next TAP Application Period.

- 14) Tribes did not ask to enter into the recent PL-477 MOA; they did not get a say and yet had their rights taken from them.

*Response:* Congress directed DOI and federal partners to negotiate and execute a Memorandum of Agreement (MOA) on the implementation of the 477 program. An MOA was signed in 2018 and was then re-opened for further negotiation in 2021. After robust Tribal feedback, DOI and 11 agencies, including DOJ, entered into an [updated MOA in 2022](#) which better supported Tribal sovereignty. To the extent Tribes continue to have concerns about this MOA, they are welcome to bring those concerns to the attention of OTJ, [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov).

- 15) DOJ should set stringent restrictions on the ability of United States Attorneys’ Offices to decline a case. When such a declination does occur, the impacted Tribe must be notified promptly regarding the declination and why the case was declined.

*Response:* The Department issues an [annual report](#) on Indian country investigations and prosecutions, as required by Section 212 of the Tribal Law and Order Act (TLOA). The report details investigative efforts by the FBI and dispositions of matters received by USAOs with Indian country responsibility. Consistent with the TLOA, if the USAO declines to prosecute, or terminates the prosecution of, an alleged violation of federal criminal law in Indian country, the USAO must promptly inform Tribal law enforcement and prosecutors of that decision and coordinate with those officials on the use of evidence relevant to the case. The same requirements extend to ATF, DEA, FBI, and USMS if they decide against referring an investigation for



prosecution. Specific protocols for communication following a declination are included within the USAOs district operational plans which are continually revised and refined. All USAOs with Indian country responsibilities must appoint at least one Assistant United States Attorney (AUSA) as a Tribal Liaison to serve as the primary point of contact with Tribes in the district. To the extent there are concerns regarding the communication protocols please contact your USAOs Tribal Liaison who is better equipped to discuss the current local protocols.

- 16) There were multiple requests for OTJ to attend DOI's Tribal-Interior Budget Council (TIBC) meetings.

*Response:* OTJ attended the most recent TIBC public safety meeting and is available to attend future meetings, where appropriate.

- 17) DOJ should support short- and long-term efforts to address the concerns created by Restrictive Settlement Acts.

*Response:* Thank you for bringing attention to this issue. While this is beyond the scope the current consultation, OTJ, available by email at [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov), would be happy to discuss any specific concerns or issues that arise on this issue.