

TRIBAL LAW AND ORDER ACT CONSULTATION REPORT



**U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS & OFFICE OF TRIBAL JUSTICE
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INTRODUCTION

The Bureau of Prisons (BOP), with support from the Office of Tribal Justice (OTJ), engaged in consultations with federally recognized Tribal Leaders to review the pilot referral program which occurred from 2010 through 2014, where only six Tribally convicted offenders were accepted into BOP custody. The two substantive changes to the original pilot program include making it permanent and increasing the number of eligible Tribal prisoners by reducing the required minimum sentence length from two years to one or more years. The VAWA Reauthorization passed in 2022 made the program permanent and DOJ decided to conduct Tribal consultation to obtain Tribal input prior to implementation. The Tribal consultations addressed barriers to using the program during the pilot program and procedures to facilitate an efficient permanent referral program.

BACKGROUND

Tribal Prisoner Program (TPP) Pilot under the Tribal Law and Order Act

The Tribal Law and Order Act of 2010 (TLOA) was signed into law on July 29, 2010. TLOA created several useful programs, including the BOP Tribal Pilot Program. The Tribal Pilot Program authorized BOP to accept, pay for and house in BOP custody certain offenders convicted in Tribal court. The pilot program was authorized for four years, beginning November 26, 2010, and concluding November 26, 2014. BOP housed a total of six offenders during the pilot program. As required by TLOA, at the end of the program, the Attorney General submitted a report to Congress describing the Tribal Prisoner Pilot Program, and recommending that it be made permanent, thus remaining available as a resource for Tribes.

Permanent TPP under the Violence Against Women Reauthorization Act of 2022

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

BUREAU OF PRISONS TRIBAL PRISONER PROGRAM. -- Not later than 120 days after the date of enactment of the VAWA Reauthorization Act of 2022, the Director of the Bureau of Prisons shall establish a program under which the Bureau of Prisons shall accept offenders convicted in Tribal court pursuant to section 202 of the Indian Civil Rights Act of 1968 (25 U.S. Section 1302) (as amended by this section), subject to the conditions described in paragraph (2).

CONDITIONS. –

IN GENERAL. –As a condition of participation in the program described in paragraph (1), the Tribal court shall submit to the Attorney General a request for confinement of the offender, for approval by the Attorney General (or a designee) by not later than 30 days after the date of submission.

LIMITATIONS. —Requests for confinement shall be limited to offenders convicted of a violent crime (comparable to the violent crimes described in section 1153(a) of title 18 United States Code) for which the sentence includes a term of imprisonment of 1 or more years.¹

CUSTODY CONDITIONS. —The imprisonment by the Bureau of Prisons shall be subject to the conditions described in section 5003 of title 18, United State Code, regarding the custody of State offenders, except that the offender shall be placed in the nearest available and appropriate Federal facility and imprisoned at the expense of the United States.²

CAP.—The Bureau of Prisons shall confine not more than 100 Tribal offenders at any time.

RESCINDING REQUESTS. —

IN GENERAL. —The applicable Tribal government shall retain the authority to rescind the request for confinement of a Tribal offender by the Bureau of Prisons under this paragraph at any time during the sentence of the offender.

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

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

Tribal Consultations

Following the directive from Congress to establish a permanent referral program, OTJ contacted BOP and developed a framing paper which established the scope of the Tribal consultation and suggested relevant topic areas for participants to consider. Suggested discussion topics included the effectiveness of the referral form, transportation of Tribal offenders, available programming, communication between Tribes and the BOP regarding Tribal offenders accepted into BOP custody, notification procedures in the event of an emergency or death,³ and the release planning process. OTJ sent an invitation and the framing paper to the leaders of all 574 federally

¹ Examples of violent crimes in 18 U.S.C. Section 1153(a) include: murder, manslaughter, kidnapping, maiming, sexual abuse, incest, felony assault (assault with a weapon, with the intent to commit murder, resulting in serious bodily injury, or assault of any person under 16 years of age), felony child abuse or neglect, arson, or robbery.

² Section 5003 of title 18 states: The Director of the Bureau of Prisons, when proper and adequate facilities and personnel are available, may contract with proper officials of a State or territory, for the custody, care, subsistence, education, treatment, and training of persons convicted of criminal offenses in the courts of such State or territory.

³ Death especially may invoke the need to address Tribal specific cultural protocols including gender-based cultural beliefs, customs, and practices.

recognized Tribes informing them the Tribal consultation would be held virtually on October 3 and 6, 2022. The two sessions were held as scheduled and conducted in compliance with the DOJ Policy Statement on Tribal Consultation (August 29, 2013) and Executive Order 13175 (November 6, 2000). Attendees included Tribal government leaders, Tribal council members, Tribal risk management officials, Tribal attorneys, and other officials. Following the virtual Tribal consultation sessions, written comments were accepted.

COMMENTS AND RESPONSES FROM CONSULTATION SESSIONS

In accordance with DOJ's Consultation Policy, ideas and feedback received from virtual Tribal consultation sessions and written comments submitted after these sessions, are addressed in writing. As such, the following responses are provided.

- 1) Comment: The Tribal referral program, referral process, and benefits of participation should be clearly communicated to Tribes. The security classification process should be clarified to avoid referrals being unnecessarily denied.**

Response:

Custody Classification

The BOP website, www.bop.gov, contains all public program statements in the [Policy & Forms](#) section. Program statements are grouped by theme and can also be [searched](#) by keyword or policy number. Program Statement (PS) 5100.08, [Inmate Security Designation and Custody Classification](#) addresses the designation process and how security and custody classification decisions are made.

Security and custody classification is part of the larger designation process, where other factors such as medical needs and judicial recommendations are considered. Inmates accepted to the TPP will not be denied pursuant to the designation process, itself. Rather, inmates who fail to meet TPP admissions criteria will not initiate the designation process. BOP will promptly notify the referring Tribe of any such rejection. Inmates who meet TPP admissions criteria will be accepted for designation, up to the 100-person TPP cap.

The BOP operates institutions at four security levels (minimum, low, medium, and high). The graduated security and medical classification systems allow staff to assign an individual to an institution in accordance with their individual security and health care needs. The goal is for incarcerated individuals to function with the least amount of supervision, without disrupting institution operations or threatening the safety of staff, other inmates, or the public. While every effort is made to keep offenders within 500 miles of their residence, it is not always possible based on security and programming needs.

The BOP uses a validated classification tool to determine the appropriate security level of an offender during the initial designation process. The classification tool utilizes information contained in a presentence investigation report, including details regarding the offender's criminal history, current conviction, social, educational, medical, and mental health information.

The purpose of the Case Summary and Referral form is to collect necessary information for Tribal offenders who do not have a presentence report. Absent sufficient information, the BOP overclassifies an offender until an assessment is made regarding his/her adjustment to incarceration. The BOP will work closely with Tribal Courts to obtain detailed classification information to ensure Tribal offenders are designated to appropriate institutions without over-classification.

TPP Participation Criteria

To be eligible, TPP participants must be:

- Convicted of a violent crime comparable to the crimes described in 18 U.S.C. 1153(a).
- Sentenced to a term of one or more years of imprisonment with a minimum of one year left to serve at the time of referral to the BOP.
- At least 18 years of age at the time of the offense.
- Negative for active tuberculosis. BOP clinicians will administer a tuberculosis skin test (also known as a PPD test) following admission to the BOP facility. The offender must test negative to remain eligible.

TPP Referral Process

Referral begins with the referring Tribe's completion of the BOP TPP Referral Form. The TPP Referral Form has been provided along with these responses. Once complete, the referring Tribe should send the TPP Referral Form via email to:

BOP-CPD-DSC-PolicyCorrespondence-S@bop.gov

and direct it to the attention of the TPP Program Coordinator. The coordinator will respond directly and work with the referring Tribe to complete the intake process.

The same admission criteria, referral process, and TPP Referral Form provided pursuant to these responses shall be made available on the [BOP Tribal Offender website](#) by the end of 2022. The website is currently pending updates following consultation feedback, and to reflect accurate referral information and legal authority.

Inmate Programs

A compendium and discussion of beneficial inmate program offerings is available in the [First Step Act Approved Programs Guide](#), accessible on the BOP website.

Several [BOP program statements](#) also discuss individual inmate program offerings in further detail. These include, but are not limited to: PS 5330.11, [Psychology Treatment Programs](#); PS 5251.06, [Inmate Work and Performance Pay](#); PS 5300.17, [Education, Training and Leisure-time Program Standards](#); PS 5300.18, [Occupational Education Programs](#); PS 5350.25, [Literacy Program \(GED Standards\)](#); PS 5355.03, [Parenting Program Standards](#); PS 5370.10, [Inmate Recreation Programs](#); PS 5240.01, [Female Integrated Treatment \(FIT\)](#); PS 6010.03, [Psychiatric](#)

Evaluation and Treatment; PS 5310.16, Treatment and Care of Inmates with Mental Illness; PS 5324.10, Sex Offender Programs; and PS 5324.12, Sexually Abuse Behavior Prevention and Intervention Program.

- 2) Comment: Tribes should be aware of the length of the referral process for a Tribal offender to be designated to a BOP facility and common causes for a referral to be denied.**

Response: Please refer to the response above for TPP admissions criteria. Upon receipt of all required information, designation will ordinarily take place within seven (7) business days. However, referring Tribes should expect a process of up to thirty (30) days to anticipate the likelihood of clarifying questions and requests exchanged between the TPP Program Coordinator and BOP prior to designation.

- 3) Comment: BOP should consider expanding qualifying crimes to enable more Tribally convicted offenders to be eligible for the referral program, as well as increase the total number of Tribal offenders incarcerated under the program.**

Response: The qualification criteria are specified by Congress in the VAWA Reauthorization Act of 2022. BOP has no legal authority or discretion to expand the qualifying crimes.

- 4) Comment: BOP should give primary consideration to the sentence imposed rather than an individual's release date (including good conduct time) when evaluating eligibility for program referral the BOP should also explain how Tribal sentences are calculated.**

Response: The qualification criteria are specified by Congress in the VAWA Reauthorization Act of 2022. The BOP has no legal authority or discretion to modify the criteria of one year remaining on an offender's sentence at the time of referral to the TPP. However, the BOP will work to promptly resolve any issues as part of the referral to prevent undue delay.

The BOP will not calculate the sentence imposed by the Tribal Court. Instead, the referring Tribal court will provide the calculation and release date to the BOP.

- 5) Comment: Tribal law enforcement officers may not have the authority to transport Tribal offenders off reservations, including via airline travel. Additionally, some tribes have only a limited number of Tribal corrections officers and resources for transporting offenders. Therefore, BOP/DOJ should allow Tribally convicted offenders to be transported to the closest BOP transfer center or facility to the tribe or the United States Marshals Service (USMS) should transport Tribal offenders to the designated BOP facility.**

Response: At this time, the BOP is unable to commit to transporting inmates from Tribal jurisdictions to the BOP designated facility. As neither TLOA nor the VAWA Reauthorization Act discuss transportation under the TPP pilot or permanent TPP, this matter requires further discussion between BOP, USMS, Tribes, and stakeholders.

6) Comment: Tribal offenders should have access to programming, including those that address substance use, spiritual needs, work, education, victim impact, and mental health counseling.

Response: Accepted TPP participants are afforded access to programs offered at BOP institutions where they are housed subject to meeting eligibility criteria for participation. These include programming targeting substance use disorders, spiritual needs, work, education, victim impact and mental health counseling. All institutions offer Drug Education and Non-residential Drug Abuse Programs.

Spiritual services available include the use of sweat lodges and accommodations for spiritual practices. Educational opportunities include General Equivalency Diploma (GED) programs, English as a Second Language (ESL), and Adult Continuing Education (ACE) classes. All facilities are also staffed with a Psychology Services professionals who provide individual and group counseling for individuals in BOP custody, including Tribal offenders.

Please see the “Inmate Programs” section of the response to Comment (1), above for further information on where to locate details on the extensive programs and activities available to inmates in BOP custody.

7) Comment: Tribal Crime Victim Advocates should receive timely notification of the location and release plans of Tribally convicted offenders housed in BOP custody. Tribal Crime Victim Advocates should also be notified of any attempt by Tribal offenders in BOP custody to contact their victims.

Response:

Contact with BOP Facilities

Federal regulations allow BOP to release inmate information to Tribal law enforcement agencies and courts. However, requests must originate from the Tribal law enforcement agency or court. Once the TPP participant is designated to his or her BOP facility, information about that facility can be found on the [Locations](#) page of the BOP website. For each facility, details are posted on visiting, mailing, funds, inmate legal activities, and updated COVID-19 information. The local Admissions & Orientation Handbook and commissary catalog are also provided.

Of relevance to Tribal Crime Victim Advocates, every institution lists an email address, phone number, and fax to which inquiries may be directed. The email address will typically be to the facility Executive Assistant, a managerial position in the Executive Staff. The Executive Assistant will appropriately respond to inquiries and put Tribal Crime Victim Advocates in touch with responsible institution staff, including members of the inmate’s Unit Team and the Reentry Affairs Coordinator.

Release Planning

Release planning begins approximately 17-19 months prior to release from custody, during which time inmates may provide a proposed release plan. Following Tribal contact with the facility, BOP will coordinate with Tribal points of contact for developing a final approved release plan, including any special reporting or program conditions of release.

Preventing Unauthorized Victim Contact

BOP can work with Tribal Crime Victim Advocates to assist with preventing unauthorized inmate-victim contact. If Tribal Crime Victim Advocates learn unauthorized contact has occurred by mail, they should contact the facility regarding the incident. The local Special Investigative Services (SIS) office will take measures to prevent further contact. BOP can also discipline inmates for such violations, such as disciplinary segregation or restriction of commissary privileges.

Telephone and email contact are easier to prevent, because such contact is only possible with the explicit consent of the party in the community. All inmate phone lines, except specially arranged calls with legal counsel, are monitored and recorded. The recipient of a call must affirmatively indicate they wish to receive the call, that the call originates from a federal prison, and are informed who is calling by a voice recording of the offender stating his or her name. Should they not wish to proceed, the victim may terminate the call. If Tribal Crime Victim Advocates learn such a call was attempted, they may notify the facility for assistance. SIS can block the number from the inmate's contact list so no future attempts can be made.

The Trust Fund Limited Inmate Computer System (TRULINCS) application enables electronic messages to be exchanged between inmates and the public in a secure manner. TRULINCS is electronic messaging, but far more restrictive than email. Outgoing messages are held for a short time to allow staff review. Each inmate must be approved to use the system and each person that an inmate wants to communicate with must give their permission to do so. Inmates' access to TRULINCS is controlled and inmates do not have access to the internet. In the event contact is made by an incarcerated Tribal member in BOP custody, a victim can contact an institution directly to report the unwanted contact or can advise the Tribal Crime Victim Advocate, who can reach out to the institution to take action to prevent further contact.

8) Comment: Tribal leaders request regular updates on the status of Tribal offenders confined in BOP facilities, including disciplinary issues, program progress, work, transfers, and medical care, which may have an impact on awarding good time.

Response: Inmates are classified and subsequently reviewed for security, custody and program needs typically once every 180 days, and once every 90 days when they are within a year of release. At the initial program review meeting, a program plan is developed for the inmate during his/her incarceration. At subsequent meetings, progress in recommended programs is reviewed, and new programs recommended based upon skills the inmate has gained during incarceration. Inmates are provided a copy of each program review report. During release planning, a comprehensive program review report is prepared summarizing the programs, services, and discipline of the individual during incarceration. Using the procedures described in

response to Comment (7), Contact with BOP Facilities, appropriate Tribal officials may periodically contact the facility to request program review reports.

9) Comment: BOP should immediately communicate with Tribal corrections and/or Tribal court officials, as appropriate, in the event of a death of a Tribally convicted offender to ensure cultural traditions are observed in accordance with applicable spiritual practices.

Response: All inmates are required to specify appropriate points of contact and next of kin for immediate contact in the event of emergency or death. Program Statement 5553.08, Escape/Deaths Notifications requires that BOP immediately notify to the next of kin or other specified point of contact in the event of an inmate death.

10) Comment: Tribal leaders encourage access to virtual hearings to enable Tribally convicted offenders in BOP custody to resolve pending charges.

Response: BOP continues to equip its facilities with video teleconferencing capabilities. Tribal leaders may learn more about specific BOP facilities once the offender is designated, by navigating to the [Locations](#) page on the BOP public website. If information about video teleconferencing is unavailable on the facility location page, the Tribe may inquire further using the procedures described in response to Comment (7), Contact with BOP Facilities.

11) Comment: BOP should establish and publish a point of contact for Tribal Officials to address issues related to Tribally convicted offenders in BOP custody.

Response: The BOP public website's Tribal Offender page contains the following current contact information. The email address will direct messages to a dedicated individual or small team of persons with knowledge of the TPP who is assigned to respond to inquiries.

Tribal Prisoner Program (TPP) Coordinator
Designation and Sentence Computation Center
Grand Prairie Office Complex
U.S. Armed Forces Reserve Complex 346
Marine Forces Drive
Grand Prairie, TX 75051

Email: BOP-CPD-DSC-PolicyCorrespondence-S@bop.gov
Phone: 972-352-4400

12) Comment: A process of notifying sex offender registration officials should be put in place when Tribally-convicted offenders are released from BOP custody.

Response: BOP's policy for sex offender notifications is contained in Program Statement 5110.17, Notification Requirements Upon Release of Sex Offenders, Violent Offenders, and Drug Traffickers. BOP is currently exploring whether notification procedures for federal inmates can be used for Tribal offenders. However, BOP will coordinate release planning with the Tribal

point of contact who can ensure all appropriate notifications to sex offender registration officials have been made prior to release.