

Tribal Law and Order Act: Legal and Policy Issues for the Indian Law and Order Commission

13th National Indian Nations Conference
Justice for Victims of Crime
December 8, 2012



Tribal Law and Order Act of 2010

- TLOA enacted July 29, 2010
- Bi-partisan support
- Pres. Obama bill-signing ceremony



Tribal Law and Order Act § 15 - created
Indian Law and Order Commission (ILOC)

✓ 9 members in total:

- 3 appointed by *President* in consultation with Attorney General and Secretary of Interior
- 2 appointed by *Majority Leader of the Senate* in consultation with Chairpersons of the Committees on Indian Affairs and Judiciary
- 1 appointed by *Minority Leader of the Senate*, in consultation with the Vice Chairperson and Ranking Member of the Committees



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• § 15 - **Indian Law and Order Commission**

- 2 appointed by *Speaker of House* of Representatives in consultation with Chairpersons of House Committees on Judiciary and Natural Resources
- 1 appointed by *Minority Leader of the House* of Representatives, in consultation with the Ranking Members of the House Committees



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Recent ILOC News

READ ALL

Senator Akaka Introduces Bill ... U.S. Senator Daniel K. Akaka (D-Hawaii), Chairman of the Committee on Indian Affairs, introduced... more »

Troy A. Eid Wins Lawyer of the ...

Office of the Attorney General ...

Washington Governor Appoints ...



Indian Law and Order Commission

The Tribal Law and Order Act (TLOA), signed into law by President Obama last July with bipartisan support, makes federal agencies more accountable for serving Indian lands. TLOA also provides greater freedom for tribes to design and run their own criminal justice systems.

TLOA created the Indian Law and Order Commission, an independent, all-volunteer advisory group, to help with the greatest challenges to securing equal justice for Native Americans living and working on Indian lands. The purpose of this website is to provide updates, news, and resources related to the Commission's activities.

TLOA directs the Commission to report back to the White House and Capitol Hill next year with specific proposals to make Indian Country safer and more just, so that Native Americans may finally receive the full protections guaranteed to all U.S. citizens by the Constitution.

To gain insight into these and many other systemic challenges, the Indian Law and Order Commission has begun visiting Indian tribes and nations to develop recommendations for lasting public policy reform.

UPCOMING FIELD HEARINGS

Coming Soon



MAY 17 ROSEBUD RESERVATION, SD

Coming Soon



JUNE 13 OKLAHOMA CITY, OK



WELCOME FROM CHAIRMAN TROY EID

About the Commission



The Honorable Troy A. Eid Commission Chairman Troy A. Eid was the United States Attorney for the District of Colorado from 2006 to 2009.

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Allie Ellis ILOC Commissioner Allie Ellis is president of Ellis Public Affairs, a public and government relations firm.

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Tom Gede ILOC Commissioner Tom Gede is a principal with Bingham Consulting Group and of counsel at Bingham McCutchen LLP.

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Carole Goldberg ILOC Commissioner The Honorable Carole Goldberg is the Jonathan D. Varat Professor of Law at the UCLA School of Law.

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The Honorable Stephanie Herseth-Sandlin ILOC Commissioner Stephanie Herseth-Sandlin represented the state of South Dakota in the House of Representatives.

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The Honorable Jefferson Keel ILOC Commissioner Jefferson Keel is the Lieutenant Governor of the Chickasaw Nation and President of NCAI.

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The Honorable Earl Ralph Pomeroy III ILOC Commissioner Now a lobbyist, Earl Pomeroy represented North Dakota in the U.S. House of Representatives.

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Theresa Pouley ILOC Commissioner Theresa M. Pouley is Chief Judge of the Tutulip Tribal Court.

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Ted Quasula ILOC Commissioner Mr. Quasula is the general manager of the Grand Canyon Skywalk on the Hualapai Indian Reservation.

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Staff for ILOC

- **Executive Director:** Jeff Davis, Assistant United States Attorney, Western District of Michigan
- **Deputy Executive Director:** Eileen M. Garry, Deputy Director, Bureau of Justice Assistance
- **Deputy Director:** Laurel Iron Cloud, Criminal Law Specialist, BIA Office of Justice Services, Div. of Tribal Justice Support



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Events

| | | |
|---|--|--|
|  SEPTEMBER 6-7 TULALIP, WA |  NOVEMBER 2 PORTLAND, OR |  DECEMBER 14 SANTA ANA PUEBLO, NM |
|  JANUARY 13 PHOENIX, AZ |  FEBRUARY 16 PALM SPRINGS, CA |  MARCH 7-8 WASHINGTON, D.C. |
|  APRIL 19 POJOAQUE PUEBLO, NM |  Coming Soon MAY 17 ROSEBUD RESERVATION, SD |  Coming Soon JUNE 13 OKLAHOMA CITY, OK |



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Coming Soon

JULY 9-13
ANCHORAGE, AK

Coming Soon

AUGUST 16
ST. REGIS MOHAWK TRIBE, NY

Coming Soon

SEPTEMBER 12
BISMARCK, ND

Coming Soon

OCTOBER 24
MICHIGAN/WISCONSIN

Indian Law and Order Commission (ILOC) mission:

- 1) to conduct [comprehensive study](#) of law enforcement and criminal justice in tribal communities
 - [jurisdiction over crimes](#) committed in Indian country
 - [tribal jail](#) and federal prisons systems
 - [juvenile justice](#) systems -- tribal and federal
 - the impact of the [Indian Civil Rights Act](#) of 1968



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2) to develop [recommendations](#) on

- justice systems improvements -- [simplifying jurisdiction](#) in Indian country
- [preventing juvenile crime](#) on Indian land --rehabilitating Indian youth -- reducing recidivism



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- adjustments to [penal authority of tribal courts](#) and exploring [alternatives to incarceration](#)



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- the enhanced use of the [Federal Magistrates Act](#) in Indian country
- effective means of protecting the [rights of victims](#) and defendants in tribal criminal justice systems
- changes to the [tribal jails](#) and federal prison systems



- other issues that would reduce violent crime in Indian country



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- 3) will [report](#) to President and Congress not later than *2 years* following enactment [findings](#) and [recommendations](#) for legislative and administrative actions



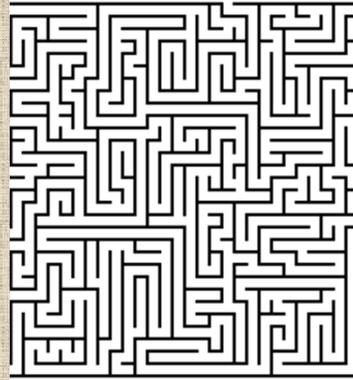
2012



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Indian Country Criminal Justice

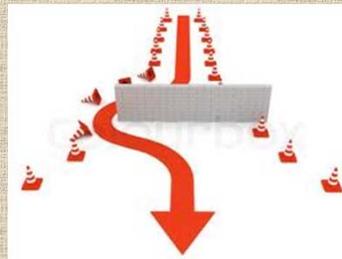
- Complex “maze”
- Created piecemeal over time
- Multiple systems
- Imposed, often alien
- Fragmented, underresourced
- Widely criticized



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Two Strategies

- Major Restructuring
- Work-Arounds



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Five Areas of Special Focus

- Jurisdiction
- Juvenile Justice
- Strengthening Tribal Justice Systems
- Detention/Alternatives to Incarceration
- Intergovernmental Cooperation



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DISCLAIMER

- What follows is preliminary and partial
- The Commission has yet to reach any conclusions or recommendations



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Jurisdiction

- Some Concerns We Have Heard
 - Federal courts are too remote – physically, politically, culturally
 - Non-Indians are effectively outside the law
- TLOA Provisions
 - Expanded tribal sentencing authority
 - New federal authority in PL 280 states
 - Work-arounds: declination reports, SAUSA's, information sharing, policing agreements



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Jurisdiction

- Some Ideas Raised So Far (each at tribal option)
 - Repeal federal Indian country criminal jurisdiction
 - Authorize tribal jurisdiction over non-Indians
 - Create special federal appeals court for tribal cases
 - Let tribes initiate PL 280 retrocession
 - Let tribes and states negotiate jurisdiction
 - Establish demonstration projects
 - Tribal court exercising federal authority (CFR?)
 - Tribal court joint jurisdiction with states
 - Tribal court judges appointed as federal magistrates



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Juvenile Justice

- Some Concerns We Have Heard
 - Federal system unsuited for juveniles, harsher
 - Tribal youth sent to distant facilities lacking culturally appropriate programs
 - Tribes lack resources to handle the cases
- TLOA Provisions
 - Plan for juvenile detention/treatment centers
 - Grants for tribal prevention/response to juvenile offenders



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Juvenile Justice

- Some Ideas Raised So Far
 - Eliminate federal authority at tribal option
 - Redirect resources to tribes for prevention, treatment, education, restoration, reintegration
 - Emphasis should be on holistic, community-based alternatives to incarceration



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Strengthening Tribal Justice

- Some Concerns We Have Heard
 - Resources are inadequate, too grant-driven
 - Cost and location hinder recruiting personnel
 - Justice should be culturally appropriate, independent from politics
 - PL 280 tribes are excluded from support
- TLOA Provisions
 - Enhanced sentencing authority
 - Training opportunities, more grants



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Strengthening Tribal Justice

- Some Ideas Raised So Far
 - HPPG (so-called “surge”)
 - Redirect federal justice resources to tribes
 - Education subsidies tied to justice service in Indian country
 - Increased partnerships with law schools
 - Funding mechanisms (e.g., block grants)



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Detention/Alternatives to Incarceration

- Some Concerns We Have Heard
 - Unsafe, overcrowded IC facilities
 - Construction and staffing aren't coordinated
 - Federal facilities are too remote
 - Not enough alternatives
- TLOA Provisions
 - Plans for detention/treatment facilities
 - BOP available for enhanced sentences



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Detention/Alternatives to Incarceration

- Some Ideas Raised So Far
 - Address social, cultural, spiritual needs
 - Increase use of electronic monitoring
 - Increase emphasis on reentry, reintegration
 - Greater coordination of tribal agencies



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Intergovernmental Cooperation

- Some Concerns We Have Heard
 - Lack of respect and trust
 - Relationships vary too much over time
 - Insufficient information sharing
- TLOA Provisions
 - Training and technical assistance to states entering into agreements with tribes
 - Enhanced training & access to SLECs



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Intergovernmental Cooperation

- Some Ideas Raised So Far
 - State peace officer status for tribal police (including access to state retirement system)
 - Incentives for cooperative agreements
 - Diversion programs from state or federal to tribal court



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WE INVITE ADDITIONAL
IDEAS, SOLUTIONS



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