Umatilla’s Experience With TLOA Felony Sentencing

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November 2007, releases concept paper recommending changes to improve criminal justice in Indian country.

Notes high rate of federal declinations.

Senator Byron Dorgan
Chair SCIA 2007-2011
Proposed remedy:
Amend ICRA to allow tribes felony sentencing authority as an exercise of inherent sovereign power.

TLOA of 2009 introduced April 2009.
TLOA of 2010 introduced June 2010.

• 15 hearings held between 2007 and 2010.
• Recognized there was a very high rate of federal declinations.
• Recognized that in those cases tribal nations are the sole jurisdiction available to seek justice.
• Recognized that the ICRA limited tribal sentences to a year in jail and $5,000 per offense regardless of seriousness.
• CTUIR testified before the SCIA in December 2008 on declinations and felony sentencing.
• CTUIR was involved in its development since 2008.

Tribal Law and Order Act of 2010 Becomes Law

July 29, 2010 President Obama signs the Tribal Law and Order Act.

Section 234(a)-(b) enhances tribal sentencing to 3 years per count and 9 years per case (with conditions).
Condition #1

No sentence beyond a year unless:
1. Previously convicted of same or similar crime; or
2. Offense is comparable to a felony in any state or under federal law.

This required CTUIR to amend its criminal code to define misdemeanors and felonies.

Condition #2

Defendants are entitled to effective assistance of counsel at least equal to the US Constitution

Umatilla already provided a defense attorney to anyone that wanted one, regardless of income.
**Condition #3**

Provide indigent defense counsel:
1. At the expense of the tribe, and
2. They must be licensed by *any* jurisdiction that applies appropriate professional licensing standards and ensures competence and professional responsibility of attorneys.

Umatilla currently contracts with local defense attorneys (all members of the Oregon Bar) to provide representation – did this prior to TLOA implementation.

**Condition #4**

Presiding Judge must:

- Have sufficient legal training to preside over criminal trials,
- Be licensed to practice law in *any* jurisdiction (this means tribes too).

Umatilla’s judge is a tribal member with 30+ years of experience practicing law and being on the bench. He is a member of the Oregon Bar and graduate of UNM.
Laws, rules of evidence, and procedures must be publicly available. Proceedings must be recorded.

Umatilla laws and rules of court are on the web, and records all proceedings.

Key requirement we needed to develop after passage was amending the criminal code to define felonies and make defendant’s rights under TLOA explicit.

Approved by Law and Order Committee, went to Board of Trustees work session twice, advertised in paper for tribal member input, and presented to the General Counsel for input and approval.
Felony Sentencing Stats

At least 13 people have been charged with felonies since implementation.

3 people have been convicted of felonies and sentenced to three years in jail: 2 with more than 2 years suspended on conditions of probation and 1 with 275 days suspended leaving 820 days to serve.

Many have had original charges reduced to misdemeanors through plea bargains. Several are still pending.

One case was referred to the BOP TLOA Pilot Project on November 20, 2012. A decision from BOP is pending.

One Major Hurdle

[Image of runner falling at a hurdle]
Not Funded

- TLOA was not funded.
- Contract public defenders more reluctant to take cases without additional compensation.
- More jail time means we need to contract for more jail space.
- BOP Pilot Project is limited to Major Crimes Act-type crimes (very limited), and 2 years must be left at time of transfer. They have not been willing to give prior assessments (e.g., whether conspiracy or attempt counts) – basically a wait and see stance.

Questions?