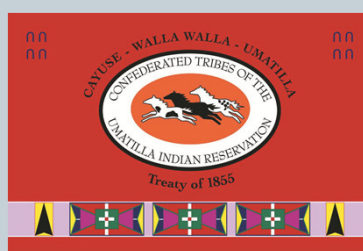


Implementing Felony Sentencing Under TLOA

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Topics Covered

- I. Development of TLOA
- II. TLOA Requirements for felony sentencing
- III. Umatilla's experience with implementation

In April of 2007 Amnesty International released "Maze of Injustice," highlighting that the high rate of sexual violence against Indigenous women is directly linked to the failure of authorities to bring those responsible to justice.

Recommendation 41:

"Congress should amend the Indian Civil Rights Act to recognize the authority of tribal courts to impose penalties proportionate to the offenses within the context of a trial and sentencing process that conforms to international fair trial standards."



Maze of Injustice
April 2007

May 2007, Sen. Dorgan holds Oversight Hearing on Law Enforcement in Indian Country. He notes his experience in ND and AI's report.

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 2008
introduced July 2008.

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 regarding Indian country crimes.
- Recognized that in those cases where feds decline to prosecute, tribal nations are the sole jurisdiction available to seek justice, accountability, and victim safety.
- Recognized that the ICRA limited tribal sentences to a year in jail and \$5,000 per offense.
- Misdemeanor rape and murder?

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:

Previously convicted of same or similar crime; or

Offense is comparable to a felony in any state or under federal law.

Condition #2



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



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.

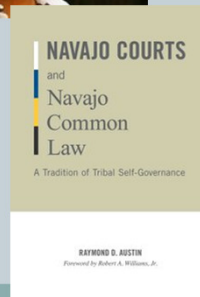


Condition #4

Presiding Judge must:

Have sufficient legal training to preside over criminal trials, and

Be licensed to practice law in *any* jurisdiction (this means tribes too).



Condition #5



- Laws, rules of evidence, and procedures must be publicly available.
- Proceedings must be recorded.

Umatilla Implemented in March 2011



- Actively involved since Dorgan's 2007 concept paper.
- Provide public defenders to everyone, law trained tribal member judge for 30+ years, hearings are recorded, laws are on public website, etc...
- Amended 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

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



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?

