

Tribal Law & Order Act: Implementation Efforts by the Salt River Pima-Maricopa Indian Community

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TLOA Work Group

- Community President
- Community Manager and Assistant Community Managers
- Chief Judge
- Court Administrator
- Court Solicitor
- Prosecutor
- Defense Attorney
- Legal Services Attorney
- Family Advocacy Center Director
- Corrections Director
- Health and Human Services Director
- IT Project Manager
- Assistant General Counsel

Where to begin?

- Court – Council retains administrative oversight and can authorize efforts to improve efficiency and accountability
- Enhance due process protections
- Update criminal code
- Expand rehabilitative services

TLOA Implementation Steps Due Process Protections

- 1. **Effective Assistance of Council.** Provide a defendant with effective assistance of counsel – licensed attorney. Defense Advocates Office (DAO) provides this service.
- 2. **Licensed Defense Attorney for indigent defendants.** At the expense of the tribal government, the defendant must be provided a defense attorney licensed to practice law by any jurisdiction in the United States (the jurisdiction must apply appropriate professional licensing standards and effectively ensure the competence and professional responsibility of licensed attorneys). DAO provides this and the new Rules of Criminal Procedure provide that a defense attorney in a TLOA prosecution will be licensed by a state bar association.

Implementation Steps continued

- 3. **Judicial Licensing.** Judges must have sufficient legal training and be licensed to practice law by any jurisdiction of the United States. Efforts underway to appoint judges licensed by a state bar association to serve in these cases.
- 4. **Publication of Tribal Rules & Laws.** Make publicly available the criminal laws, rules of evidence, and rules of criminal procedure. New Rules of Criminal Procedure have been developed and are posted on the Court's website along with the current Criminal Code. New Rules of Evidence and Appellate Procedure are in process.
- 5. **Record Keeping.** Maintain a record of the criminal proceeding, including an audio or other recording of the criminal adjudication process. Court currently utilizes audio recording. A new judicial complex is under construction which will include video record keeping capacity.

Recommendations were data driven

- Salt River Police Department Crime Stats for a 5 year period
- Tribal Prosecutor's Office Charging Stats for a 3+ year period
- Cases referred for federal prosecution for a 5+ year period

Updated Criminal Code is working its way through the legislative process

- Public comment period ended December 3rd.
- Community members asked to weigh in on several policy issues:
 - Should probation be an option for any TLOA offense? If so, which ones?
 - Should any offense have automatic minimum or maximum sentences upon conviction? If so, which ones?
 - Should Court consider whether it's a first offense? If a child or elder is a victim? If a weapon was used?

Mandatory Minimum Sentences

- Currently, all offenses are probation eligible.
- If updated Criminal Code is enacted to authorize enhanced sentencing, the following offenses will not be probation eligible and will have mandatory minimum jail sentences:
 - Participating in a Criminal Street Gang (min 1 year)
 - Aggravated Sexual Assault (min 1 year)
 - Aggravated Child Abuse (min 1 year)
 - Sexual Abuse of a Child (min 1 year)
 - Continuous Sexual Abuse of a Child (min 2 years)
 - Discharge of Firearm at Occupied Structure (min 1 year)

Homicide Offenses

- If updated Criminal Code is enacted to authorize enhanced sentencing, homicide offenses will have the following minimum sentences:
 - Negligent Homicide – 1 year
 - Manslaughter – 2 years
 - Murder – 3 years

Other offenses recommended for Enhanced Sentencing

- Abusive Sexual Contact (new); Sexual Assault; and Sexual Contact with a Child
- Aggravated Assault
- Child Abuse
- Child Prostitution
- Kidnapping
- Robbery
- Arson
- Sale of Drugs (not mere possession)
- Endangerment

Other Enhanced Sentencing considerations

- Should repeat offenses qualify for Enhanced Sentencing?
 - DUI
 - Domestic Violence
 - Violent offenses

Assets

- Community President is a former defense attorney
- Licensed attorneys serve as prosecutors, defense attorneys, and legal services providers
- Good relationship with US Attorney's Office - Several tribal prosecutors are SAUSAs
- New corrections facility with professional leadership and capacity for additional inmates
- Professional law enforcement/investigators

Anticipated Challenges

- Currently, no tribal judges are licensed by any bar association
- Administrative structure and systems for the Court will require improvements
- Little legal precedence to guide us

Questions?

Thank you.

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