

Tribal Law and Order Act
(TLOA)
Opportunities and Challenges for
Tribal Healing to Wellness Courts

Jerry Gardner
Executive Director
Tribal Law and Policy Institute
(TLPI)

Tribal Law and Order Act (TLOA)
Opportunities and Challenges for Tribal
Healing to Wellness Courts

- Opportunities
- Challenges
- Effectively addressing these opportunities and challenges

Overall TLOA Opportunity:

TLOA has focused federal government attention on:

- American Indian/Alaska Native Criminal Justice Issues
- Tribal Law Enforcement
- Tribal Justice Systems
- Tribal Healing to Wellness Courts

Some Overall Challenges

- TLOA was not able to effectively address some of the most important issues due to political limitations (See Oliphant in the room)
- TLOA was only able to provide funding authorization (virtual \$) rather than appropriations (real \$)
- Ongoing need to hold Congress and Administration accountable to fully fund and fully implement TLOA – while fully consulting with tribes
- So many moving parts – TLOA provisions, reports consultations, webinars, trainings, etc.

Illustration of Specific Current Challenge:

- Draft DOI/DOJ Long Term Plan for Tribal Detention Programs released for comment on 7/14/2011 (last Thursday)
- Comment Period is only one week. Due by 7/21/2011 (this Thursday)
- Due to Congress no later than one year from TLOA enactment 7/29/2010
- Very important for Tribal Wellness Courts

TLOA Overall Intent

- Enhanced Funding for Tribal Justice Systems
- Enhanced Authority for Tribal Justice Systems
- Enhanced Federal Cooperation and Accountability

One Way to Look at TLOA

- Which provisions can Tribal governments take advantage of NOW?
- Which provisions require Federal action first?
- Which provisions require funding?

Reauthorize/Expand Existing Programs for Funding Tribal Justice Systems

- Provides 5 more years of authorizations (“virtual funding”) thru FY2015 – for series of tribal justice funding acts
 - TLOA Section 241: Indian Alcohol and Substance Abuse Act (1986)
 - TLOS Section 242: Indian Tribal Justice Act (1993)

Reauthorizations (continued)

- TLOA Section 242: Indian Tribal Justice Technical and Legal Assistance Act (PL 106-559) which includes TCAP authorization
- TLOA Section 243: Tribal COPS
- TLOA Section 244: DOJ Tribal Jails Program
- TLOA Section 246: OJJDP Tribal Youth Program (TYP)

TLOA Provisions

- Evidence sharing and declination data:
 - Requires federal prosecutors to maintain data on criminal declinations in Indian Country, and to share evidence to support prosecutions in tribal court
- Tribal Police Access to Criminal History Records
 - Many tribal police have no access to criminal history records. TLOA provides tribal police greater access to criminal history databases that provide them with essential information when detaining or arresting a suspect

TLOA Provisions

- Federal Testimony: Requires Federal Officials who work in Indian country to testify about information gained in the scope of their duties to support a prosecution in tribal court
- Authorizes Deputization of Special Assistant U.S. Attorneys to prosecute reservation crimes in Federal courts and encourages Federal courts to hold cases in Indian country

TLOA Provisions

- Increases Deputization of Tribal and State Police to Enforce Federal Law:
 - Enhances Special Law Enforcement Commission program to deputize officers to enforce federal laws on Indian lands
- Authorizes the Drug Enforcement Agency to deputize tribal police to assist on reservation drug raids
- Increases recruitment and retention efforts for BIA and Tribal police
- Expands training opportunities for BIA and Tribal police to receive training at state police academies and tribal, state, and local colleges – where Federal law enforcement training standards are met

TLOA Section 221 (PL 280)

- Amends mandatory “Public Law 280” (18 USC 1162 & 25 USC 1321(a))
- Prior to TLOA:
 - Retrocession required state concurrence; Secretary of Interior decided
- Now:
 - Allows for re-assumption to concurrent federal jurisdiction; no state concurrence; AG decides
- DOJ proposed rule

TLOA Section 234 (a)-(b)

- Amends Indian Civil Rights Act (25 USC 1302)
- Prior to TLOA:
 - Tribal courts limited to 1 year per count
- Now:
 - Tribal courts limited to 3 years per count and 9 years per case

TLOA Section 234 (a)-(b) cont.

- Amends Indian Civil Rights Act (25 USC 1302)
 - Tribal courts that exercise felony jurisdiction must provide:
 - Bar licensed indigent defense counsel
 - Bar licensed judge
 - Tribal criminal laws must be publicly available

TLOA Section 211(b)

- Amends ILERA (25 USC 2802)
- DOI, in coordination with DOJ, must develop a long term tribal detention plan
- Report must be submitted to Congress within 1 year

*TLPI provides Tribal Healing
and Wellness Courts Training
and Technical Assistance*

Contact:

diana@tlpi.org

323.650.5467

www.tlpi.org