

**STATEMENT OF
BRYAN NEWLAND
ASSISTANT SECRETARY FOR INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE UNITED STATES
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS**

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Aanii (Hello)! Good afternoon, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department). Thank you for the opportunity to discuss the opportunities and challenges of Tribal public safety.

Background

The United States has a trust relationship with each of the 574 federally recognized Tribes, and their Tribal citizens. Through these relationships, the United States has charged itself with obligations of the highest responsibility and trust – including the obligation to protect the existence of Indian Tribes and their citizens. This obligation is at its highest when it comes to protecting the physical safety and well-being of Indian people within Indian country.

The Bureau of Indian Affairs (BIA) plays a crucial role in meeting this obligation on behalf of the United States. Our work to protect public safety through law enforcement activities in Indian country falls into three broad categories: policing, detention, and supporting Tribal courts.

Policing in Indian Country

The BIA – Office of Justice Services (OJS) provides law enforcement services directly to Tribes by OJS personnel or through self-determination contracts or compacts, also known as 638 contracts. BIA employs 352 uniformed police officers and criminal investigators serving over 200 Indian communities across the country.

OJS has several supporting operations and functions, which include the missing and murdered unit, victim assistance, drug enforcement, emergency management, internal affairs, land mobile radio program, Indian highway safety, Tribal justice support, and operation of the Indian Police Academy.

OJS also functions as a lead Federal stakeholder and advocate for public safety and justice matters affecting hundreds of Tribal communities across the country. We engage regularly with other federal stakeholders and Tribal governments to collaborate on how best to help address the unique public safety challenges faced by Tribal communities.

On March 24, 2023, the Department issued the Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice programs in Indian Country, 2020.

This report contains data for funding costs in Indian Country. Total BIA spending for law enforcement was \$246.3 million, \$123.1 million for detention facilities, and \$62.8 million for Tribal courts. The total estimated costs for public safety and justice programs is \$1.4 billion for law enforcement programs, \$247.7 million for existing detention centers, and \$1.2 billion for Tribal courts. These numbers demonstrate the continued need for investment to improve the ability of Tribal public safety systems to fully serve their communities.

The recruitment and retention of law enforcement officers and staff for Tribal law enforcement agencies continue to face unique challenges. These challenges include pay parity, the length of background investigations, lack of applicants, and officer wellness. Currently, our foremost strategy is addressing pay parity by increasing BIA law enforcement pay levels to match with other Federal law enforcement. To accomplish this, we completed an upgrade to our uniformed police officer positions during FY 2023, which increased career advancement opportunities, along with corresponding pay increases up to an additional \$30,000 annually for BIA law enforcement officers. We are also utilizing available hiring flexibilities and recruitment and retention bonuses to increase current staffing levels and better support those interested in fulfilling DOI's unique mission in Tribal communities.

The Department's Law Enforcement Task Force (Task Force) also recently released their 2023 report, which includes a list of findings and recommendations to improve all the Department's law enforcement programs. That list includes a finding from all Bureaus within the Department citing the length of time to complete background investigations as an impediment to filling open positions in a timely manner. The Task Force recommends streamlining the background investigation process to increase the timeliness of the hiring process. Our team meets on a weekly basis to ensure the hiring process and background checks move as quickly as possible.

The Task Force recommendations also include mentorship programs for new hires and ongoing culturally appropriate training opportunities. These two recommendations would assist incoming hires with retention and engagement with the community and visitors. The report also highlights the importance of wellness programs for law enforcement officers.

Law enforcement officers have a duty to protect and serve their communities, but that service exposes officers to a significant amount of stress and trauma. The past few years have been especially challenging with the COVID-19 pandemic. Combining these challenges with job demands, staffing challenges, and responding to high-risk calls requires an investment in resources such as culturally appropriate training and mentorship programs to assist in officer wellness and will increase officer retention.

Detention Centers

There are over 90 detention centers throughout Indian Country, and OJS staffs and operates a quarter of these facilities. The other detention centers are operated by Indian Tribes through 638 compacts, and there are a few that are fully funded and operated by Indian Tribes. Each facility is unique in operation and location.

Correctional facilities are important components of Tribal justice systems. The ultimate mission of OJS corrections is to ensure Indian Country facilities are operated in a safe, secure, and humane manner. To ensure these operation goals are met, the Department has requested additional funding to address critical infrastructure needs.

The Indian Affairs Division of Facilities Management and Construction and OJS regularly meet to determine detention facility center needs. The Facility Condition Index (FCI) rates detention facilities in good, fair, and poor conditions to determine which facility has the highest deficiency repair needs. To determine the FCI rating, the deferred maintenance total is divided by the current replacement value and if the result is $>.10$, the location is given an FCI condition of poor.

The deterioration of facilities negatively impacts the health and safety of its occupants and impairs the use of the facility. When these facilities don't receive the proper maintenance, they fall into disrepair and ultimately become unsafe to use. This results in reduced service levels and have a detrimental impact to the safety of the Tribal community.

The average cost of facility replacement is \$26 million (bed count and location are primary factors) and there are currently 23 facilities considered in poor condition. BIA currently estimates that it will cost at least \$590 million to replace those facilities. There are currently eight detention facilities in one of the following stages: pre-planning, planning design, design-build or construction.

The Department supports the continued investment in Tribal justice systems, infrastructure, and law enforcement.

Supporting Tribal Courts

The OJS, Tribal Justice Support provides training, technical assistance, and funding for the operation, maintenance, and support of Tribal Justice Systems. Tribal courts are an essential aspect of Tribal sovereignty and are an opportunity for Tribes to run their own justice systems. There are approximately 400 Tribal justice systems throughout the Nation. These courts are partially funded through Public Law 638 Tribal Priority Allocations (TPAs). In addition to the TPA funds, the OJS/Tribal Justice Support Directorate provides "supplemental" funding to Tribal Justice Systems.

Tribal Courts are funded through several appropriations line items including: Violence Against Women Act special tribal criminal jurisdiction training and implementation; Tiwahe which primarily handles child dependency cases; Public Law 83-280 (P.L. 280) which provides funding to P.L. 280 jurisdictions; and the general operation and maintenance for all Tribal justice systems in the United States. For example, in 2023, 440 new Tribal justice positions were funded through the Tribal Court Assessment process. The Tribal Court Assessment process is articulated in 25 U.S.C. Sections 3611, 3612, and 3613 and allows Tribes the ability to identify and seek funding for their specific and unique needs. Of the 440 positions funded, 42 positions were funded to address domestic violence issues within Tribal Justice systems, along with 260 positions in P.L. 280 jurisdictions, and 20 new positions in Healing to Wellness Courts. The

remaining positions were for the operation of Tribal courts, including clerk positions, probation positions, case manager positions, among others.

Healing to Wellness courts have provided positive results in healing and strengthening Tribal communities. For example, Penobscot Nation has not incarcerated a defendant this year, but in fact has graduated individuals from the Healing to Wellness court and provided participants with options for higher education and resulted in commitments to work to create a safer and better community. The same can be said for other Tribes, such as Saginaw Chippewa Healing to Wellness court.

Through these Healing to Wellness Tribal Courts many Tribes are reforming or creating judicial systems which incorporate traditional and cultural aspects to create a more effective measure to address the trauma induced circumstances within their communities. In addition to dealing with narcotics issues, Healing to Wellness courts also address child dependency and family matters brought by the Tribal Social Service Directorate and play an essential role in family reunification by providing support and services needed for parents to complete within the reunification plan. Tribes have seen an improvement in the reunification process when relatives and community members provide encouragement and support to those families needing assistance. Reunification is more successful through the Healing to Wellness court process, as is addressing addiction issues, which often go hand in hand with child dependency cases.

In addition, the Tiwahe funding has also provided positions not only for Tribes participating in the demonstration project but provided essential positions for Tribes seeking to have representation in state court on Indian Child welfare matters. BIA has funded 10 attorney Tribal justice positions focused on transferring children from state court to Tribal court under the Indian Child Welfare Act which solidifies the intent of the Act to bring Native Children home.

In addition to providing Tribal justice positions, the BIA supports peer-to-peer trainings and provides Tribes the ability to share best practices with others. In an effort to support Tribal self-determination, Tribes are better suited to provide best practices and discuss challenges with their peers. To that end, over 1,000 Tribal justice personnel were trained in 2023. For instance, Choctaw Nation is holding a VAWA special tribal criminal jurisdiction training next week and though the event is funded by the BIA, it is hosted and conducted by the Tribe.

Tribal Courts solidify sovereignty and work to address underlying aspects causes of individuals who become missing and murdered in their community. The focus of all these courts is to address issues “upstream” instead of dealing with ultimately tragic issues which debilitate our communities.

Challenges to Public Safety in Indian Country: Jurisdiction, Illegal Drugs, and Resources

Protecting public safety in Indian country is a difficult task, given the complex challenges facing both Tribes and federal agencies responsible for meeting our obligations to Tribes and their citizens. We’ve highlighted three of the biggest challenges we are facing: jurisdiction, illegal drugs, and resources.

Jurisdiction

The jurisdictional framework between Indian Tribes, the federal government, and states is complex, especially regarding criminal jurisdiction. Congress and the courts have tied criminal jurisdiction to several variables to determine who exercises jurisdiction. These variables include type of crime, Tribal affiliation of the defendant, Tribal membership status of the victim, and land status of the crime scene. These variables impose significant transaction costs on officers, policymakers, attorneys, judges, and advocates working to address public safety challenges in Indian country. In most other jurisdictions, resolving these issues before beginning the work of policing and adjudicating is a simple task. In Indian country, it is a necessary complexity.

However, Congress, has legislated to clarify and affirm criminal jurisdiction in Indian Country. These enactments include:

- the 1968 amendments to P.L. 280, which required states to obtain the consent of the Indian Tribe prior to exercising criminal jurisdiction in Indian Country and permitted states to withdraw from the jurisdictional arrangement;
- the 1991 amendments to the Indian Civil Rights Act, which affirmed Indian Tribes' inherent criminal jurisdiction over non-member Indians;
- the 2010 Tribal Law and Order Act, which enhanced the criminal sentencing authority of Tribal courts;
- the 2013 reauthorization of the Violence Against Women Act, which recognized and affirmed Indian Tribes' inherent jurisdiction to prosecute non-Indians for certain crimes committed in Indian Country;
- the 2019 enactment of Savanna's Act, which improved the federal response to missing or murdered indigenous persons by increasing coordination among Tribal, Federal, State, and local law enforcement agencies.
- the 2019 enactment of the Not Invisible Act, which created a Commission to make recommendations to the Department of the Interior and Department of Justice to improve intergovernmental coordination and establish best practices for state-Tribal-federal law enforcement to combat the epidemic of missing persons, murder, and trafficking of Native Americans and Alaska Natives; and
- the 2022 reauthorization of the Violence Against Women Act, which expanded and reaffirmed Indian Tribes' inherent jurisdiction to prosecute non-Indians for additional crimes committed in Indian Country.

These enactments demonstrate that Indian Tribes themselves can best meet the public welfare and safety needs of communities within their jurisdiction.

Illegal Drugs in Tribal Communities

Drug related activity in Tribal communities is a major contributor to violent crime and imposes health and economic hardship. As a response, OJS has a specialized national drug enforcement division, the Division of Drug Enforcement (DDE), to investigate the distribution of illegal narcotics in Indian Country. OJS also conducts investigations on narcotics, gangs, human

trafficking, and border violations in Indian Country. The DDE provides investigations that focus on disrupting drug distribution networks and analytical support to track drug cases that directly impact Indian Country. The DDE provides drug related training and technical assistance to law enforcement programs that operate in Indian Country.

Current Drug Seizure Totals

Each year, our DDE plans and executes multiple undercover narcotic and highway interdiction operations throughout Indian Country. The operations will typically range from 4 to 14 days, during which the assigned special agents and police officers focus efforts solely on a specific reservation. The number and success of these operations is the strongest driver of our annual illegal drug seizures. During FY 2023, twenty-two such operations were completed, leading to seizure totals of:

- Methamphetamine: 1,846 lbs.
- Fentanyl Powder: 98 lbs.
- Fentanyl Pills: 1,097,671
- Marijuana: 11,411 lbs.
- Heroin: 23 lbs.
- Cocaine: 1,418 lbs.

Current Drug Threats and Impact on Tribal Communities

Nationwide activities of our drug enforcement team are identifying methamphetamine and fentanyl as the prevalent emerging drug threats to the safety of Tribal communities. Tribes reported 1,590 fatal overdoses in FY 2023 and 899 non-fatal overdoses. While the data conveys the seriousness of these threats, we are unable to measure the resulting impact to victims, affected families, and the already strained Tribal justice and social service systems in these communities.

Resources

Many resources are needed to help fully staff Tribal public safety agencies. This includes housing, updated equipment, and the improvement of Tribal public safety data collection.

Housing for Tribal public safety staff is important for recruitment and retention. Many Tribal communities are in remote areas and law enforcement recruits often must relocate to those communities for their jobs. It's no secret that housing needs within Tribal communities are very high. Housing conditions vary from community to community, but homes are often overcrowded, lack running water and heat, and need replacement. Combined with traveling long distances from home to work contributes to fatigue on Tribal law enforcement staff and the faster deterioration of public safety equipment.

The Task Force report stated that Department law enforcement officers identified having updated equipment and technology resources as one of the top priorities needed to support their safety. Because many Tribal communities and homes are located in remote areas with unpaved roads, public safety vehicles accumulate greater wear and tear and need to be routinely replaced. Tribal

law enforcement officers often respond to high-risk calls alone and face greater rates of death in the line of duty. Ensuring all Tribal officers have access to reliable top-tier equipment can contribute to their safety in the field. Law enforcement heavily rely on field communications, like land mobile radios, to respond to calls and maintain officer safety. Expanded radio coverage would minimize “no coverage” areas and should include video and data capabilities to increase officer safety and reduce the stress of uncertainty of whether assistance will be available.

Another component to ensuring Tribal law enforcement officer safety is access to law enforcement data systems. State and federal law enforcement agencies utilize their own data systems to track important information like warrants, missing individuals, unsolved crimes, evidence, and the level of danger a criminal poses. These systems often do not communicate with each other and contribute to data gaps in Tribal communities. Tribal law enforcement agencies also do not always have access to these systems and if they do, individuals must be trained to use federal systems and many agencies often do not have the staff to utilize that training. Consolidating those existing law enforcement systems would improve the capture of public safety data and allowing Tribal law enforcement agencies to have access to that consolidated system can also ensure Tribal officer safety in the field.

Conclusion

The Department continues to prioritize and reinforce Tribal sovereignty and self-determination by providing support and resources to improving public safety in Indian Country.

Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee, thank you for the opportunity to provide the Department’s views. We look forward to working with Congress to affirm and support Tribal sovereignty and public safety within Tribal communities. I am happy to answer any questions that you may have.