



Department of Justice

STATEMENT OF

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BEFORE THE

**SUBCOMMITTEE OF CRIME, TERRORISM AND HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

ENTITLED

“H.R. 1924, THE TRIBAL LAW AND ORDER ACT OF 2009”

PRESENTED

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Good morning, Chairman Scott, Ranking Member Gohmert, and Members of the Subcommittee. Thank you for the opportunity to testify today on the Tribal Law and Order Act of 2009, which marks a key step forward in the federal government's effort to improve public safety in tribal communities. The Administration strongly supports S. 797, the Senate version of this legislation which is sponsored by the Senate Committee on Indian Affairs Chairman, Byron Dorgan, and we look forward to working with the Subcommittee to further develop H.R. 1924. I want to acknowledge Representative Herseht-Sandlin's leadership on this issue. I appreciate the opportunity to discuss the Department's law enforcement role in Indian Country.¹

We believe that passage of the Tribal Law and Order Act is critical because violent crime in American Indian and Alaska Native communities is at unacceptable levels. The federal government has a distinct legal, trust, and treaty obligation to provide for public safety in tribal communities, and we welcome this measure as an important step in fulfilling this basic duty. Although no legislation can solve all the problems facing Indian Country, the Tribal Law and Order Act would put in place important changes that will help both the Executive Branch and the Congress better address the public safety challenges that confront tribal communities.

It is difficult to overstate the severity of the problem. Available statistics make clear that American Indians and Alaska Natives suffer violent crime at far greater rates than other Americans. According to data from the Bureau of Indian Affairs, some tribes have experienced rates of violent crime twice, four times, and in some cases over 10 times the national average. Violence against Native women and children is a particular problem, with some counties facing

¹ "Indian Country" is defined by 18 U.S.C. § 1151 as follows: . . . "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including the rights-of-way through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the titles to which have not been extinguished, including rights-of-way running through the same."

murder rates against Native women well over 10 times the national average.² Reservation- and clinic-based research shows very high rates of intimate-partner violence against American Indian and Alaska Native women.³

In October, the Attorney General convened a listening session, to which the leaders of all federally recognized tribes were invited, to discuss public safety and law enforcement in tribal communities. In addition, the Justice Department recently convened its annual tribal consultation on violence against women, as required by the Violence Against Women Act. The experiences that tribal leaders and tribal law enforcement officials shared with us at these events make clear the devastating effect crime has on the quality of life for those living in American Indian and Alaska Native communities. Tribal leaders and tribal law enforcement officials — as well as the Department’s Assistant U.S. Attorneys, Federal Bureau of Investigation (FBI) special agents, and victim specialists in the field — have described many brutal offenses against women and children. Perhaps most tragically, they find that many survivors of such crimes have been abused repeatedly during their lifetimes.

A challenge associated with policing Indian Country is the geographic isolation of many reservations. In some instances, law enforcement officials — whether tribal police, BIA police, or the FBI — may need to travel hundreds of miles to reach a crime scene. Additionally, many tribal nations lack the resources necessary to address these challenges, and the problems associated with attracting and retaining qualified law enforcement officers in Indian Country

² Zaykowski, Kallmyer, Poteyeva, & Lanier (Aug. 2008), *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What Is Known*, Bachman (NCJ # 223691), at 5, <http://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>.

³ Malcoe & Duran (2004), *Intimate partner violence and injury in the lives of low-income Native American women*, in B. Fisher (Ed.) *Violence against women and family violence: Developments in research, practice, and policy*, at I-2-5 (NCJ 199703), <http://www.ncjrs.gov/pdffiles1/nij/199701.pdf>.

cannot be solved in isolation. The federal government, and the Justice Department, have a duty to help tribes confront the dire public safety challenges in tribal communities.

I. The Department of Justice's Unique Law Enforcement Role in Indian Country

A. The Legal Framework

In Indian Country, law enforcement is a shared responsibility, subject to partially overlapping jurisdiction of Federal, state, and tribal authorities. Under current law, whether a particular crime is investigated or prosecuted by Federal, state, or tribal authorities depends on the severity of the crime, where it occurred, and whether the perpetrator and/or victim are Indian.

Although the details of this jurisdictional patchwork are complex, one essential point is clear: the Department of Justice has primary responsibility for prosecuting major crimes, including violent felonies, in most of Indian Country, and sole responsibility for prosecuting crimes committed by non-Indians against Native Americans.⁴ In these areas, with respect to the most serious offenses and certain perpetrators, it is only the Justice Department that has authority to prosecute offenders and bring them to justice.⁵

If the Justice Department fails to enforce the law in these cases, no one else can or will. Even with respect to offenses in Indian Country over which tribal governments have concurrent

⁴ One significant exception is that in the six states that have been covered by Public Law 280 since its enactment in 1953 – Alaska, Minnesota, California, Nebraska, Oregon, and Wisconsin – state jurisdiction over criminal offenses occurring in Indian Country is exclusive of the federal government; there is no federal jurisdiction.

⁵ The two main federal statutes governing federal criminal jurisdiction in Indian country are 18 U.S.C. § 1152 and § 1153. Section 1153, known as the Major Crimes Act, gives the Federal Government jurisdiction to prosecute certain enumerated serious offenses, such as murder, manslaughter, rape, aggravated assault, and child sexual abuse, when they are committed by Indians in Indian country. Section 1152, known as the Indian Country Crimes Act, gives the Federal Government exclusive jurisdiction to prosecute all crimes committed by non-Indians against Indian victims. Section 1152 also grants the Federal Government jurisdiction to prosecute minor crimes by Indians against non-Indians, although that jurisdiction is shared with tribes, and section 1152 provides that the Federal Government may not prosecute an Indian for a minor offense who has been punished by the local tribe. To protect tribal self-government, section 1152 also specifically excludes minor crimes between Indians, which fall under exclusive tribal jurisdiction. The Federal Government also has jurisdiction to prosecute federal crimes of general application, such as drug and financial crimes, when they occur in Indian country, absent a specific treaty or statutory exemption. Finally, the Federal Government prosecutes certain specific offenses designed to protect tribal communities, such as bootlegging in Indian country, theft from a tribal organization or casino, unlawful hunting on tribal lands, and entering or leaving Indian country with the intent to stalk or commit domestic abuse. 18 U.S.C. §§ 2261, 2261A.

jurisdiction, often only federal courts can impose a sentence that is commensurate to the crime. This is because tribal courts currently are limited to imposing only relatively minor sentences, regardless of the nature of the offense.⁶

Thus, the Department of Justice has a legal and moral obligation to ensure public safety in tribal communities. The Department intends to vigorously enforce the law in Indian Country where we have authority.

B. Role of Department of Justice Law Enforcement Agencies in Investigating Crime in Tribal Communities

A number of Department of Justice components have roles in investigating crimes in Indian Country and bringing perpetrators to justice. The FBI is the Department's primary investigative arm in Indian Country. In 1994, the FBI established its Safe Trails Task Force initiative to focus exclusively on Indian Country crime. Through the Safe Trails Task Forces, the FBI joins with other Federal agencies within the Department of Justice and the Department of the Interior's Bureau of Indian Affairs (BIA), as well as with state, local, and tribal law enforcement officials to address regional problems of violent crime. The FBI currently operates 18 Safe Trails Task Forces. In addition, the FBI works with the BIA to provide training to tribal, state, and local investigators.

The FBI's Office for Victim Assistance dedicates 31 victim specialists to Indian Country. These professionals are a critical part of the investigation team, particularly in sensitive cases involving sexual assault and child abuse. Equally important, they provide critical support services to victims in Indian Country that otherwise would be entirely absent in many tribal communities.

⁶ Currently, tribes' sentencing authority is limited to one year in prison and a \$5,000 fine under the Indian Civil Rights Act, 25 U.S.C. § 1302.

In recent years, the Drug Enforcement Administration (DEA) has worked with the Native American law enforcement community to address smuggling, distribution, and abuse of controlled substances. In addition to participating in the FBI's Safe Trails Task Forces, the DEA has created its own initiatives to investigate significant drug trafficking organizations that operate on or near tribal lands. The DEA also works with the Bureau of Indian Affairs to provide core training for local, tribal, and federal investigators working with Indian Country crime.

Finally, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) works to reduce violence in Indian Country by helping tribal governments combat gang violence and other firearms-related crimes. ATF also provides training and instruction on firearms and other issues, including information about domestic violence.

C. The Role of the United States Attorney's Offices in Prosecuting Crime in Indian Country

The U.S. Attorney's Offices are responsible for prosecuting federal criminal cases arising in Indian Country. There are more than three dozen U.S. Attorney's Offices that have Indian Country within their boundaries, and approximately 25 percent of all violent crime cases opened by U.S. Attorneys nationwide each year arise in Indian Country.

The Executive Office of U.S. Attorneys coordinates among the U.S. Attorney's Offices and between these offices and other Department of Justice components. The Executive Office of U.S. Attorneys supports the Attorney General's Advisory Committee (AGAC) of United States Attorneys, including the AGAC's Native American Issues Subcommittee (NAIS), which focuses exclusively on Indian Country issues. The NAIS is comprised of U.S. Attorneys from districts having the vast majority of Native American and Alaska Native communities, and provides

important policy recommendations to the Attorney General regarding public safety and legal issues related to Indian Country.

The Department also recently created a permanent Attorney Advisor position titled Native American Issues Coordinator within the Executive Office of U.S. Attorneys' Legal Initiatives Staff. The Native American Issues Coordinator is the Executive Office of U.S. Attorneys' principal legal advisor on Native American issues, among other law enforcement program areas; and provides management support to the United States Attorney's Offices.

An important component of the United States Attorneys' Offices' efforts in Indian Country is the Tribal Liaison program, established in 1995. Tribal Liaisons have a critical role in the Department's work in Indian Country, serving as a contact between the Department and those living in tribal communities. They often provide significant training for law enforcement agents investigating violent crime and sexual abuse cases in Indian Country, and for Bureau of Indian Affairs (BIA) criminal investigators and tribal police presenting cases in federal court. Many Tribal Liaisons also serve in a role similar to a district attorney or community prosecutor in a non-Indian Country jurisdiction, and are accessible to the community in a way not generally required of other Assistant U.S. Attorneys.⁷ Tribal Liaisons typically have personal relationships with tribal governments and state and local law enforcement officials from jurisdictions bordering Indian country. These relationships enhance information sharing and assist the coordination of criminal prosecution, whether federal, state, or tribal.

D. The Role of the Department's Grant-Making Components in Supporting Tribal Justice and Tribal Law Enforcement

⁷ Although the Tribal Liaisons are collectively the most experienced prosecutors of crimes in Indian Country, they are not the only Assistant U.S. Attorneys doing these prosecutions. The sheer volume of cases from Indian Country requires these prosecutions in most U.S. Attorney's Offices to be distributed among numerous Assistant U.S. Attorneys.

In addition to active law enforcement on the ground, the Department of Justice also provides substantial support for tribal law enforcement and tribal justice systems through its grant programs. The Department's Office of Community Oriented Policing Services (COPS) helps put police on the beat, and provides the equipment and resources they need to protect public safety. The Office of Justice Programs and Office on Violence Against Women also administer important grant programs for tribal nations, support research and evaluation projects, and provide training and statistical and technical assistance for Indian tribes. These programs are designed to enhance and support Indian tribes' ability to address crime, violence, and victimization in Indian Country and in Alaska Native villages.

E. The Office of Tribal Justice

The Office of Tribal Justice is the primary point of contact for the Department of Justice with federally recognized Native American tribes, and advises the Department on legal and policy matters pertaining to Native Americans. The responsibilities of the Office of Tribal Justice include providing a single point of contact within the Department for meeting the broad and complex federal responsibilities owed to federally recognized Indian tribes; promoting internal uniformity of Department policies and litigation positions relating to Indian country; ensuring that the Department clearly communicates policies and positions to tribal leaders; and serving generally as a liaison with federally recognized tribes.

II. The Department of Justice's Initiative on Law Enforcement and Public Safety in Tribal Communities

We support the Tribal Law and Order Act of 2009 pending in the Senate. But we also are not waiting for the bill to become law to improve our response to Indian Country crime. The Attorney General has created a Department-wide initiative to improve our efforts to make tribal

communities safer. The Department's dialogue with tribal leaders at the Attorney General's Tribal Nations Listening Session in October was an important early step in that process.

Tribal leaders at the listening session made clear the need for immediate action in response to the extreme levels of violent crime in Indian Country, which severely undermine the quality of life for our first Americans. The gravest concerns of the tribal leaders and law enforcement experts with whom we met focused on these overarching topics: (i) violence against women and children in tribal communities, including the obligation to bring perpetrators of sexual assault and domestic violence in Indian Country to justice; (ii) the need for better coordination of federal law enforcement resources – most pressingly, FBI agents, federal prosecutors, and victim specialists – in Indian Country; (iii) the obligation to improve communication and coordination with tribal law enforcement agencies; (iv) considerations of alternative, flexible funding mechanisms for tribal justice systems, including tribal courts, police departments, prevention programs, victims' services, and juvenile justice services and infrastructure; (v) the responsibility of the federal government to support the capacity-building of tribal justice systems; (vi) the obligation of federal, state, local, and tribal law enforcement to develop collaborative strategies for fighting crime in tribal communities, including through increased opportunities for cross-deputization; and (vii) the need to develop culturally sensitive prevention and intervention programs for juveniles in tribal communities. Above all, tribal leaders emphasized that interactions between the Justice Department and tribes must reflect the government-to-government relationship between the United States and the tribes; that tribal sovereignty and self-determination should be central to federal law enforcement policies in tribal communities; and that solutions developed by the tribes themselves will best effect change in tribal communities.

What we learned from tribal leaders and law enforcement experts during our listening session will inform the efforts we undertake, in close partnership with tribes, to improve public safety in tribal communities. The Justice Department is committed to take immediate action, and to implement long-term strategies to more effectively fulfill our moral and legal obligations to help tribal governments fight crime in their communities.

With new focus, therefore, we at the Justice Department are hard at work to develop sustainable, effective, and efficient strategies to improve our law enforcement efforts in Indian Country. The Deputy Attorney General, who has been a leader on these issues for a decade, and I are working closely with the Native American Issues Subcommittee of the Attorney General's Advisory Committee, the Executive Office of U.S. Attorneys, the FBI, and others to develop policies that will augment our prosecutorial efforts in Indian Country, particularly with respect to the problem of violence against women; improve communication and coordination between tribes and our Department leaders in the field; and engage federal, state, local, and tribal law enforcement in more effective and efficient collaboration. We expect to set forth new policies in each of these areas soon.

To identify just a few additional steps we are already taking:

At the suggestion of tribal leaders during the listening session, we will create a task force to focus particularly on the issue of violence against women in tribal communities. This task force will be made up of federal, tribal, and state and local prosecutors and law enforcement, and will develop strategies to combat violence against women in tribal communities. We will identify the membership and scope of the task force after additional input from tribes.

We are establishing a National Training Coordinator for Indian Country. Having a training official dedicated to Indian Country issues will help ensure that Department of Justice

prosecutors and agents have the training and cultural knowledge needed to successfully investigate and prosecute crimes occurring in Indian Country.

We are re-examining the Department's grant-making procedures and priorities to ensure that they best serve tribal communities.

We are exploring an expansion of the multi-disciplinary team approach used in child sexual assault cases to adult sexual assault cases. Multi-disciplinary teams generally include law enforcement, victim advocates, medical providers, and prosecutors. In Indian Country, these representatives would be from both the tribal and federal systems. Members of multi-disciplinary teams work together to coordinate interviews, discuss case strategy, potentially share evidence, and ensure that victims receive necessary support and services. In the child sexual abuse context, this model has served as an important prosecution tool and enabled federal and tribal law enforcement to improve communication and jointly track such cases and investigations.

Because the root causes of crime in tribal communities are related to substance abuse, poverty, and lack of educational and employment opportunities, we are working with other federal agencies to address these issues collectively. In particular, we are engaged in ongoing discussions on these issues with the Department of the Interior, and also with many others.

Finally, to ensure ongoing input from tribal governments as we develop strategies to better address the public safety challenges in tribal communities, the Attorney General will establish a Tribal Nations Leadership Council, beginning next year.

III. Benefits of the Tribal Law and Order Act

The goals of the Justice Department's public safety in tribal communities initiative – improved communication and coordination between the federal and tribal governments; renewed

focus on violence against women in tribal communities; institutionalized commitment to tribal justice across the federal government that will provide security and public safety over the long term; and enhanced accountability – are all advanced by the Tribal Law and Order Act currently before the Senate. The legislation provides a number of important tools that will help both the Congress and the Executive Branch fulfill the federal government’s responsibility to provide for public safety in Indian Country, and will also help to strengthen tribal nations’ own law enforcement systems. Moreover, it does so in a manner that is appropriately respectful of tribal sovereignty and self-determination. As a result, the bill enjoys strong support not only from the Administration, but more importantly, from the tribes it seeks to assist. As stated at the outset, the Administration supports the Senate version of this legislation. We look forward to working with the Subcommittee to discuss changes to H.R. 1924 that are consistent with the goals of S. 797.

One important provision in both versions is a clarification authorizing the Attorney General to appoint tribal prosecutors to serve as Special Assistant U.S. Attorneys (SAUSAs). For decades, the Department has relied on assistance from experienced SAUSAs from other federal agencies and state and local governments in enforcing criminal law. Many tribal prosecutors have the dedication, experience, and expertise required to assist the Department in prosecuting Indian Country crime, and we welcome the bill’s clarification of the Attorney General’s authority in this area.

The Tribal Law and Order Act would also increase the prominence of the Office of Tribal Justice as a permanent Department component. We share that goal, but for administrative reasons urge the Subcommittee to adopt minor changes to this provision, so that the Office of Tribal Justice is accorded the appropriate status within the organizational structure of the

Department. For instance, we believe that it most appropriately would remain an “Office” rather than a “Division,” as is currently the case under H.R. 1924. Divisions are large litigating components within the Department — such as the Criminal Division — and thus the role of a Division is substantially different than the specific role assigned to the Office of Tribal Justice under the bill.

Under the Act, the Department also would be required to coordinate with tribes when decisions are made to decline to prosecute crimes arising in Indian Country, so that where concurrent tribal jurisdiction exists, tribes have a fair opportunity to exercise it. The Department believes that close communication with our tribal law enforcement partners is critical to our efforts to improve public safety in tribal communities. Indeed, this is our intention regardless of whether this provision is included in the Tribal Law and Order Act.

We likewise support the concept of creating a permanent position at Main Justice to coordinate federal prosecution efforts in Indian Country and, as noted above, the Department has already established a permanent Native American Issues Coordinator within the Executive Office of U.S. Attorneys here in Washington. We believe this position will be most effective within this Office, as provided in the Senate version, because U.S. Attorneys are on the front lines of responding to law enforcement challenges in Indian Country. We therefore recommend that H.R. 1924 be amended to locate this position and responsibility within the Executive Office of U.S. Attorneys rather than in the Criminal Division.

The bill also includes annual reporting requirements concerning decisions by the U.S. Attorney’s Offices to decline to prosecute alleged crimes and by the FBI to administratively close matters arising in Indian Country. This is important data for both the Department and the

Congress, and we support the increased accountability that will come with more specific information in this area.

Finally, the Act will institutionalize improved coordination between the Department of Justice and other federal partners, such as the Department of the Interior. Although we are already collaborating with fellow agencies, we agree that these statutory provisions will provide a useful framework to ensure such collaboration continues on a predictable basis into the future.

IV. Conclusion

The challenges facing law enforcement in tribal communities are enormous. The basic level of police protection that most Americans take for granted simply does not exist in many parts of Indian Country. We have a duty to change that. Although no single piece of legislation can address all of the needs in this area, the Tribal Law and Order Act makes important improvements that will continue to benefit tribes in this and future Administrations.

I urge the Subcommittee to do all it can to move this measure forward, so that it can be signed into law as soon as possible.

Thank you, and I look forward to your questions.