



State-Tribal Relations Committee

61st Montana Legislature

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TO: Members of the State-Tribal Relations Interim Committee

FROM: Casey Barrs, Legislative Analyst

DATE: August 19, 2010

RE: Summary of recent federal Tribal Law and Order Act

Dear members,

On July 29, the president signed the *Tribal Law and Order Act of 2010* into law. This sweeping measure touches upon many of the issues that you have raised and/or heard raised during this past interim (complexities of federal, state and tribal jurisdictions, especially as it affects warrants, arrests, and extraditions; alcohol and pharmaceutical abuse; violence against women; and more). The bill is lengthy, so hopefully you will find this six-page summary helpful.

Summary of Tribal Law and Order Act of 2010

The purposes of this Act are to: (1) clarify the responsibilities of federal, state, tribal, and local governments with respect to crimes committed in tribal communities; (2) increase coordination and communication among federal, state, tribal, and local law enforcement agencies; (3) empower tribal governments to provide public safety in tribal communities; (4) reduce violent crime in tribal communities and combat sexual and domestic violence against American Indian and Alaska Native women; (5) prevent drug trafficking and reduce rates of alcohol and drug addiction in Indian country; and (6) increase and standardize the collection of criminal data and the sharing of criminal history information among federal, state, and tribal officials.

Title I - Federal Accountability and Coordination

Section 101 -

Amends the Indian Law Enforcement Reform Act to replace the

Division of Law Enforcement Services in the Department of the Interior with the Office of Justice Services in the Bureau of Indian Affairs (BIA). Sets forth the duties of such Office, including - (1) communicating with tribal leaders, tribal community and victims' advocates, tribal justice officials, and residents of Indian land on a regular basis regarding public safety and justice concerns; (2) providing technical assistance and training to tribal law enforcement officials for gaining access to crime information databases; (3) collecting, analyzing, and

reporting data on crimes in Indian country on an annual basis; (4) sharing with the Department of Justice (DOJ) crime data received from tribal law enforcement agencies on a tribe-by-tribe basis; and (5) submitting to the House Committee on Natural Resources and the Senate Committee on Indian Affairs a spending report on tribal public safety and justice programs and a report on technical assistance and training provided to tribal law enforcement and corrections agencies. Directs the Secretary of the Interior to submit to Congress a long-term plan to address incarceration in Indian country. Authorizes BIA law enforcement officers to make warrantless arrests in Indian country based on probable cause for misdemeanor offenses involving controlled substances, firearms, assaults, or liquor trafficking. (Sec. 102) Expands requirements for reporting by federal law enforcement officers, the Federal Bureau of Investigation (FBI), and United States Attorneys to Indian tribes on decisions not to investigate or prosecute alleged violations of federal criminal law in Indian country. Requires such federal officials to: (1) coordinate with tribal law enforcement officials on the use of evidence in such cases for prosecution in a tribal court; and (2) compile data on crimes in Indian country in which investigations or prosecutions were terminated or declined. Requires the Attorney General to submit annual reports to Congress on investigations and prosecutions in Indian country that were terminated or declined. (Sec. 103) Authorizes the Attorney General to appoint tribal prosecutors and other qualified attorneys to assist in prosecuting federal crimes committed in Indian country. Requires each United States Attorney whose district includes Indian country to appoint at least one assistant United States Attorney to serve as a tribal liaison for specified purposes, including coordinating the prosecution of federal crimes that occur in Indian country, combating child abuse and domestic and sexual violence against Indians, and providing technical assistance and training on evidence gathering techniques. Expresses the sense of Congress that the Attorney General should consult with tribal justice officials when making appointments of tribal prosecutors and should take appropriate actions to encourage the aggressive prosecution of all federal crimes committed in Indian country. (Sec. 104) Amends the Indian Tribal Justice Technical and Legal Assistance Act of 2000 to direct the Attorney General to establish in DOJ the Office of Tribal Justice to advise the Attorney General on the treaty and trust relationship between the United States and Indian tribes. Establishes in the Executive Office for United States Attorneys the position of Native American Issues Coordinator to coordinate with United States Attorneys in prosecuting crimes in Indian country. (Sec. 105) Directs the Secretary of Health and Human Services (HHS) to: (1) establish a prescription drug monitoring program at the health care facilities of the Indian Health Service, tribal health care facilities, and urban Indian health care facilities; and (2) report to the House Committee on Natural Resources and the Senate Committee on Indian Affairs on such program. Directs the Attorney General, in conjunction with the HHS Secretary and the Secretary of the Interior, to: (1) conduct an assessment of the capacity of federal and tribal agencies to carry out data collection and analysis relating to prescription drug abuse in Indian communities; (2) provide training to Indian health care providers and other Indian tribal officials to promote awareness and prevention of such abuse and strategies for improving agency responses to addressing it; and (3) report to the House Committee on Natural Resources and the Senate Committee on Indian Affairs on prescription drug abuse prevention activities. Title II: State Accountability and Coordination.

Section 201 -

Provides for concurrent jurisdiction of the federal government and Indian tribes over the prosecution of federal crimes in Indian country at the request of an Indian tribe, and after consultation with and consent by the Attorney General.

Section 202 -

Authorizes the Attorney General to provide grants, technical assistance, and other assistance to state, tribal, and local governments that enter into cooperative agreements to improve law enforcement effectiveness and reduce crime in Indian country and nearby communities. Requires the Attorney General to submit annual reports to the House Committee on Natural Resources and the Senate Committee on Indian Affairs on assistance to law enforcement programs in Indian country. Authorizes appropriations for FY2010-FY2014.

Title III - Empowering Tribal Law Enforcement Agencies and Tribal Governments

Section 301 -

Amends the Indian Law Enforcement Reform Act to: (1) set forth training standards for tribal law enforcement officers; (2) increase the maximum age for such officers to 46; (3) require the Office of Justice Services to develop standards and deadlines for background checks for tribal law enforcement and corrections officials; and (4) grant special law enforcement commissions to tribal law enforcement officers to enforce violations of federal law. Amends the Indian Self-Determination and Education Assistance Act to direct the Secretary of the Interior to establish the Indian Law Enforcement Foundation to: (1) accept gifts to support public safety and justice services in American Indian and Alaska Native communities; and (2) assist the Office of Justice Services of BIA and Indian tribal governments in funding and conducting activities and providing education to advance and support such services. Establishes the Committee for the Establishment of the Indian Law Enforcement Foundation to assist the Secretary in establishing the Foundation. Authorizes appropriations for five fiscal years for the operation of the Foundation.

Section 302 -

Amends the Controlled Substances Act to: (1) include tribal governments in education and research programs and cooperative agreements for drug abuse prevention and control; and (2) extend certain enforcement authority to tribal law enforcement officers.

Section 303 -

Directs the Attorney General to permit tribal and BIA law enforcement agencies to directly access and enter information into federal criminal information databases and to obtain information from such databases.

Section 304 -

Sets forth standards applicable to tribal courts with respect to criminal defendants, the right to counsel, bail, and sentencing. Requires the Director of the Bureau of Prisons to establish a pilot program for accepting offenders convicted in tribal court.

Section 305 -

Establishes the Indian Law and Order Commission to conduct and report to the President and Congress on a comprehensive study of law enforcement and criminal justice in tribal communities and develop recommendations on necessary modifications and improvements to

federal, state, and tribal justice systems. Requires the Commission to establish the Tribal Advisory Committee to serve as an advisory body to the Commission. Authorizes appropriations.

Title IV - Tribal Justice Systems

Section 401 -

Amends the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 to: (1) extend the effective date of the Memorandum of Agreement between the Secretary of the Interior and the HHS Secretary on the scope of the problem of alcohol and substance abuse in Indian tribes; (2) include the Attorney General as a participant in such Memorandum; (3) include the Bureau of Justice Assistance (BJA) and the Substance Abuse and Mental Health Services Administration of HHS in cooperative efforts with Indian tribes in a Tribal Action Plan for combating alcohol and substance abuse and as participants in alcohol and substance abuse prevention and treatment activities; (4) extend through 2014 funding for grants to Indian tribes to provide technical assistance in the development of a Tribal Action Plan and for training, education, and prevention programs; (5) establish within the Substance Abuse and Mental Health Services Administrations the Office of Indian Alcohol and Substance Abuse; (6) require a review of the effectiveness of summer youth programs in tribal schools; (7) extend through FY2014 the authorization of appropriations for emergency shelters for Indian youth who are alcohol or substance abusers; (8) provide assistance for the investigation and control of illegal narcotics traffic on the Blackfeet Indian Reservation and extend the authorization of appropriations for such investigations through FY2014; and (9) require the Secretary of the Interior and the Attorney General, in consultation with tribal officials, to develop a long-term plan for the construction, renovation, and operation of Indian juvenile detention and treatment centers and alternatives to detention for juvenile offenders. Sec. 402) Amends the Indian Tribal Justice Act to specify the types of judicial personnel for whom funds may be used under the tribal justice system grant program to include tribal court judges, prosecutors, public defenders, guardians ad litem, and court-appointed advocates for juveniles. Extends the authorization of appropriations for tribal justice support through FY2014. Amends the Indian Tribal Justice Technical and Legal Assistance Act of 2000 to award grants to provide for guardians ad litem and court-appointed special advocates for children and juveniles in civil proceedings and for licensed public defender services to represent all criminal defendants in tribal courts. Extends the authorization of appropriations for such grants through FY2014.

Section 403 -

Amends the Omnibus Crime Control and Safe Streets Act of 1968 to permit tribal governments to participate in the Community Oriented Policing Services program (COPS). Directs the Attorney General to provide COPS grants to Indian tribal governments for the hiring and retention of tribal law enforcement officers. Removes federal matching fund requirements and permits tribes to use grant funds to cover indirect costs. Authorizes appropriations for FY2010-FY2014. Directs the Attorney General to report to Congress on the extent and effectiveness of the COPS grant program as applied in Indian country.

Section 404 -

Amends the Violent Crime Control and Law Enforcement Act of 1994 to require the Attorney General to reserve funds authorized for offender incarceration programs in FY2010-FY2014 to provide grants to Indian tribes: (1) for the construction and maintenance of jails on Indian land, to increase the efficiency of the construction of tribal jails, and to develop and implement alternatives to incarceration in tribal jails; (2) for the construction of tribal justice centers that combine courts, police, and correction services; and (3) for constructing and operating regional detention centers on Indian land for long-term incarceration of offenders. Directs the Attorney General, in consultation with the BIA and tribal entities, to submit to Congress a long-term plan to address incarceration in Indian country.

Section 405 -

Amends the Indian Tribal Justice Technical and Legal Assistance Act of 2000 to require the Director of the Administrative Office of the United States Courts to appoint Indian country residents to serve as assistant probation officers to monitor and provide service for federal prisoners residing in Indian country and to provide substance abuse, mental health, and related services to offenders residing on Indian land.

Section 406 -

Amends the Juvenile Justice and Delinquency Prevention Act of 1974 to: (1) authorize the Administrator of the Office of Juvenile Justice and Delinquency Prevention to include Indian tribes in the local juvenile delinquency incentive grant program; (2) require the Administrator to make grants to Indian tribes to support and enhance tribal juvenile delinquency prevention services and the ability of Indian tribes to respond to, and care for, juvenile offenders, and to encourage accountability of Indian tribes in preventing juvenile delinquency; and (3) require one member of the Coordinating Council of Juvenile Justice and Delinquency Prevention to be appointed by the Chairman of the Senate Committee on Indian Affairs. Authorizes appropriations for FY2010-FY2014 for the incentive grant program for local juvenile delinquency prevention programs.

Section 407 -

Allows the state of Alaska and any Indian tribe or tribal organization that employs a village public safety officer to apply for a grant under the COPS program and the Staffing for Adequate Fire and Emergency Response grant program. Allows an Alaska village public safety officer or tribal law enforcement officer to participate in training programs offered at the Indian Police Academy of the Federal Law Enforcement Training Center. Authorizes appropriations for FY2011-FY2015 to provide grants to Alaskan Indian tribes and tribal organizations for the training of village public safety officers and law enforcement officers under the tribal resources grant program.

Title V - Indian Country Crime Data Collection and Information Sharing

Section 501 -

Amends the Violence Against Women and Department of Justice Reauthorization Act of 2005 to include the BIA Office of Justice Services as an agency reporting gang activity information to the FBI National Gang Intelligence Center. Amends the Omnibus Crime Control and Safe Streets Act of 1968 to authorize the Bureau of Justice Statistics to collect and analyze crime data

and drug control activities in tribal areas. Requires the Director of the Bureau to report to Congress annually on the data collected relating to crimes in Indian country.

Section 502 -

Amends the Indian Law Enforcement Reform Act to direct the Secretary of the Interior to award grants to Indian tribes for activities to ensure uniformity in the collection and analysis of data relating to crime in Indian country.

Section 503 -

Amends the Omnibus Crime Control and Safe Streets Act of 1968 to authorize BJA to include tribal criminal justice agencies in the grant program for inter-jurisdictional sharing of information on criminal and terrorist offenses and conspiracies.

Title VI - Domestic Violence and Sexual Assault Prosecution and Prevention

Section 601 -

Amends the federal criminal code to require the Bureau of Prisons to provide to tribal governments: (1) technical assistance for the improvement of their correctional systems; and (2) written notice of the release or change of residence of a prisoner in federal custody who was convicted of a drug trafficking crime or a crime of violence; and (3) notice of the release of a convicted sex offender. Expands the authority of the National Institute of Corrections to include tribal governments and communities in its grant programs and activities.

Section 602 -

Amends the Indian Law Enforcement Reform Act to: (1) expand training of tribal law enforcement officers in interviewing victims of domestic and sexual violence and collecting evidence in such cases to increase the conviction rate; (2) require the Director of the Office of Justice Services or the Director of the Indian Health Service to approve or disapprove, in writing, any request or subpoena from a tribal or state court for a law enforcement officer, sexual assault nurse examiner, or other employee to testify in a deposition, trial, or other criminal proceeding; and (3) require the Secretary of the Interior to develop appropriate victim services and victim advocate training programs to improve domestic violence or sexual abuse responses, improve forensic examinations and collection, and identify problems in the prosecution of domestic violence or sexual abuse. Requires the Secretary of the Interior to report the the House Committee on Natural Resources and the Senate Committee on Indian Affairs, within two years after the enactment of this Act, on domestic violence or sexual abuse in Indian country, including recommendations on preventing sex trafficking of Indian women.

Section 605 -

Amends the Indian Health Care Improvement Act to require the Director of the Indian Health Service to develop standardized sexual assault policies and protocol for tribal health facilities based on similar protocol established by DOJ.

Section 606 -

Establishes in the Office of Justice Programs of DOJ the Alaska Native Village Community Safety Demonstration Project. Directs the Attorney General to (1) provide five-year grants to not less than 18, and not more than 30, Indian tribes in Alaska for innovative approaches to improve public safety in Alaska Native villages; and (2) promulgate regulations by June 1, 2010, to

implement such grant program. Authorizes appropriations for FY2011-FY2015. Limits the administrative expenses of the demonstration project to 10% of appropriated funds. Repeals restrictions in the Consolidated Appropriations Act, 2004, on the use of funds for courts or law enforcement officers in certain Alaska Native villages.

Section 607 -

Directs the Comptroller General to: (1) conduct a study of the capability of Indian Health Service facilities in remote Indian reservations and Alaska Native villages to collect, maintain, and secure evidence of sexual assaults and domestic violence incidents required for criminal prosecution; (2) develop recommendations for improving such capabilities; and (3) report on such study to the House Committee on Natural Resources and the Senate Committee on Indian Affairs within one year of the enactment of this Act.

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