

The CHAIRMAN. Six and a half minutes, actually. But we are glad you are here. Why don't you summarize at some point, Chairman?

Mr. HIS HORSE IS THUNDER. There are basically four fundamental pillars of justice in the Indian community, and that is the need for more police officers, the court systems need to be shored up. If we are going to bring in more offenders into our court systems, we need more dollars for the court systems.

Detention facilities are an area of utmost concern. I am very glad that you made part of the public record the detention facilities report, because it will show that there is a horrendous job in terms of detention facilities that this Administration has created across Indian Country. So we thank you for making that part of the report.

The fourth pillar in justice in Indian Country is this: alternative treatments for juveniles. You just can't simply lock them up, otherwise they are going to become more hardened criminals. We need to work with IHS, BIA needs to work hand in hand with IHS in terms of treatment for juvenile offenders.

Senator, members of the Committee, thank you for this opportunity to testify before you.

[The prepared statement of Mr. His Horse Is Thunder follows:]

PREPARED STATEMENT OF HON. RON HIS HORSE IS THUNDER, CHAIRMAN, STANDING ROCK SIOUX TRIBE

My name is Ron His Horse Is Thunder. I am the Chairman of the Standing Rock Sioux Tribe. I am honored to report on the law enforcement needs of the Tribe and to provide the Committee with comments on the draft bill entitled "the Tribal Justice Improvement Act of 2008." I want to thank this Committee, particularly Senator Dorgan, for your tireless work to secure much-needed resources for Indian country, for recognizing the need to reform Indian country law enforcement, and for your vision and commitment in creating this draft bill.

The Standing Rock Sioux Tribe is situated in North and South Dakota. The Reservation comprises 2.3 million acres, of which 1.4 million acres is Tribally owned and allotted trust lands. About 10,000 Tribal members and non-members reside on the Reservation in eight communities and in smaller towns. The Tribe's primary industry is cattle ranching and farming. We operate the Standing Rock Farms, two Tribal casinos, and a sand and gravel operation which help us supplement services and programs for our nearly 14,000 enrolled members.

It is important to recognize that effective public safety requires improvement and investment in all four pillars of the justice system: police, courts, detention and alternative services. All four areas must be addressed at once in order for any single improvement to be effective. Today, I will discuss our law enforcement needs and how the draft bill might help. I address each area in turn, providing specific comments on the bill. I will focus on specific provisions as well as on what I believe is missing from the bill.

I. Police

We are a direct service tribe, meaning that law enforcement and detention services are provided directly by the BIA. Until very recently, we had ten BIA police officers. This is enough for only two officers per 24-hour shift to patrol a 2.3 million acre reservation encompassing four towns, eight separate communities, 2,500 miles of roads, and a population of 10,000 residents. A 1997 Justice Department study found that Indian country had 1.3 officers for every 1,000 inhabitants, versus 2.9 officers in non-Indian jurisdictions. With our ten officers, we are 25 percent below the average for Indian country and about 66 percent below the average number of officers per 1,000 inhabitants in non-Indian jurisdictions.

As a result of inadequate law enforcement, we have one of the highest reservation crime rates. A 2006 "Gap Analysis" commissioned by the BIA to identify and review current policing and detention capacity in Indian country found that BIA District 1, which encompasses an eight-state region including North and South Dakota, had 108 law enforcement officers (LEOs), but needs over four times that amount (483 LEOs). In 2007, the BIA estimated that we would need at least 28 officers at Stand-

ing Rock to meet minimally safe staffing requirements, yet by spring of this year we still had only ten officers, despite our repeated requests to the BIA for more officers and despite Congress' increased funding to the BIA in FY 2008 to provide more officers on high crime reservations.

Violent crime rates are increasing. In FY 2007, our violent crime rate was 1,138 per 100,000. We are a rural community, but our crime rate parallels that of a major city. Just last month, a young man, a tribal member and the son of the project manager for our juvenile services center, was murdered. Our community was devastated by this murder and, even worse, it furthered solidified the impression that the BIA would never step up to provide adequate law enforcement services. However, in the wake of this young man's murder, a "surge" of officers arrived at the reservation. For two weeks, we have had 20 additional BIA public safety officers providing 24-hour enforcement.

We can already see the results of increased enforcement. Our court dockets are full, and our jail so full that we now have arraignments seven days a week. We have also seen an increase in referrals to child protective services. While these statistics may not seem positive, they mean that some of the problems occurring are being addressed, perhaps for the first time in years. Increased police presence on our reservation has, at least in the past two weeks, made an enormous difference in our community's sense of safety. My concern and frustration is knowing that this surge is limited in duration.

When Congress took the Black Hills February 28, 1877, it promised to secure to us an orderly government. *Ex Parte Crow Dog*, 109 U.S. 556, 566, cites Article 8 of that Act as follows:

The provisions of the said treaty of 1868, except as herein modified, shall continue in full force, and, with the provisions of this agreement, shall apply to any country which may hereafter be occupied by the said Indians as a home; and congress shall, by appropriate legislation, secure to them an orderly government; they shall be subject to the laws of the United States, and each individual shall be protected in his rights of property, person, and life.

This provision remains good law and demonstrates the responsibility of the United States to make the increased number of law enforcement officers assigned to the Standing Rock Reservation permanent positions.

We support the draft law enforcement bill and we believe the provisions requiring increased consultation, data collection, and reporting are important. However, we are concerned that these provisions will make little practical difference when it comes to the lack of law enforcement officers in Indian country. The BIA and Congress know the statistics regarding the shortfalls in law enforcement and detention officers and the required officers and funding that must be provided to redress this public safety crisis, and yet we still do not have enough officers. We ask that you consider making additional changes to address some of the barriers to recruiting and retaining qualified police officers, such as:

- Raising officer salaries and creating recruitment incentives.
- Permitting tribes to use NAHASDA money to provide housing for tribal and BIA law enforcement officers.
- Permitting tribes to designate officers who would be eligible to receive additional training and be deputized as BIA police officers. Last year, the Standing Rock Sioux Tribe offered to designate Tribal Game Wardens as additional police officers in order to address the severe shortage of police officers, but the BIA declined our request, citing liability issues.
- Authorizing an apprenticeship program, in which officers in training could serve alongside full police officers before and during their training.

The draft bill would make important changes, however, to help ensure that existing officers are properly trained and held accountable. In particular, we support:

- Section 301, which would permit officers to be trained at alternate sites, including state police academies. With our small force, it has been very difficult to have officers leave the reservation for six months to train in Artesia. However, we ask that this provision be strengthened because we believe the BIA already has this authority but chooses to require training in Artesia. We suggest a provision requiring the BIA to authorize specific alternate local training options at the Tribe's request.
- Section 603, which would require BIA officers to undergo specialized training in domestic violence and sexual assault. This training is critical, and without it these crimes will continue to go uninvestigated and unprosecuted.

- Section 301(b), which would make Special Law Enforcement Commissions (SLECs) mandatory at a tribe's request.

We also ask Congress to recognize the significant law enforcement equipment needs in Indian country. We desperately need additional money to pay for new equipment, especially police vehicles. Outdated equipment poses a danger to officers and to the community. The bill should provide new resources for equipment upgrades.

II. Prosecution

Increased arrests are of little use in the long run if the crimes are never investigated or prosecuted. Between 2004 and 2007, United States attorneys declined to prosecute 62 percent of reservation criminal cases referred to their offices and there has been a 27 percent decrease in Indian country criminal investigations by the FBI from 2001–2006, during the period when violent crimes in reservation communities are increasing. Last July, National Public Radio reported on the rape of a young woman, a 20-year-old tribal member living on the Standing Rock reservation. Her alleged attackers were non-Indians. Her rape was never investigated by BIA police, the FBI, or the Justice Department. In fact, the IHS hospital did not even have a rape kit to preserve evidence correctly. She died a week after the incident, and her attackers were never investigated, let alone brought to justice.

We are especially supportive of the provisions of the draft bill which would increase federal accountability for prosecuting reservation crimes, including:

- Section 102, which would make declination reports mandatory anytime federal officials decline to investigate or prosecute a crime in Indian country and would require federal prosecutors to provide details of the case to tribal prosecutors so the tribe can pursue the case. We believe it should also be mandatory to provide tribal prosecutors the case files associated with any declined cases, for both Indian and non-Indian offenders.
- Section 103, which would authorize the U.S. Attorney to appoint special prosecutors in Indian country where the crime rate exceeds twice the national average and would require the appointment of Indian country liaisons.
- Section 601, which would make it a federal crime to violate a tribal protection order.

While these changes will help increase federal accountability for prosecution, Indian country law enforcement will always have to compete with other Department of Justice priorities such as border patrol and homeland security. The bill could better ensure consistent enforcement if tribal prosecutors were empowered to bring federal charges in federal courts. Such a program could be similar to the SLEC program for tribal police.

III. Tribal Court Powers and Resources

The Tribe strongly supports the provision that would permit tribal courts to impose longer sentences. At Standing Rock, we provide public defender services and strive to ensure that due process is provided in all stages of prosecution, and we believe expanded sentencing authority is long overdue. The Standing Rock Constitution was changed by referendum on June 11, 2008 to permit sentences of up to one year and/or fines of up to \$5,000 per violation.

Expanded sentencing authority for Indian offenders does not go far enough. A significant portion of crimes committed at Standing Rock and on other Reservations are committed by non-Indians. This is especially true for drug crimes and for violence against women and sexual assault. The bill proposes to require tribal courts to meet certain basic due process requirements in order to impose sentences of more than one year on Indian defendants; these same courts should be empowered to sentence non-Indian offenders as well. The Tribe strongly supported the jurisdictional pilot project outlined in your 2007 concept paper. This project would have permitted certain tribes, after adopting specific due process protections, to exercise criminal jurisdiction over non-Indians for domestic violence offenses where the offender was in a consensual (married or cohabiting) relationship with an Indian victim. This program would be an important first step toward expanded tribal criminal jurisdiction and it would also help stem the rampant violence against Indian women, which has been well-documented before this Committee. This is an emergency situation which requires a strong response. Standing Rock would be pleased to host such a pilot program. This provision should be restored to the bill.

Another way to address the problem of non-Indian crime while allaying some of the U.S. Supreme Court's concerns about membership and criminal jurisdiction would be to empower tribal courts to exercise delegated federal prosecutorial pow-

ers. Allowing tribal courts to enforce at least federal laws against non-Indian criminals would go far toward closing the significant gap in law enforcement. As it is, tribal courts are powerless to respond to criminal activity by non-Indians on reservations, yet the Federal Government consistently fails to perform its duty in this respect. Reservation "lawlessness" cannot be addressed without attention to the crimes of non-Indians.

We also support Title III and Title IV of the bill, which would strengthen tribal justice systems and provide increased access to federal crime databases. We remain concerned, however, that a lack of funding is the root of the difficulties faced by tribal courts. If the changes proposed in the draft bill are not supported by significantly increased appropriations for tribal courts, Congress will be setting tribal courts up to fail. We need additional personnel in the Tribal Courts to assure timely processing of cases to protect the rights of the victims and the accused in accordance with the Standing Rock Bill of Rights set forth in Article XI of the Tribal Constitution, which mirrors the Indian Civil Rights Act.

We also support the provision that would require the Bureau of Prisons to house these felony offenders at the tribe's option. Given the detention shortages in Indian country, this is essential to the success of any expanded sentencing authority.

IV. Detention

We support the provisions of the draft bill that would provide additional resources for detention construction. However, we are concerned that more needs to be done. The need for detention services in Indian country received significant Congressional attention in 1997 when President Clinton published his "Report of the Executive Committee for Indian Country Law Enforcement" and again in 2004 when the Inspector General under President Bush published "Neither Safe Nor Secure: An Assessment of Indian Detention Facilities." Each time Congress directed significant additional resources to detention but little improved, due to serious problems with the BIA's management of its detention program. One significant problem is that the BIA makes unilateral decisions regarding detention policies and how to allocate detention funding without consulting or notifying tribes. Section 101 of the draft bill should require that the Bureau consult with tribes on policies and standards, not just regulations.

The Department of Justice has provided several grants in the past decade for tribes to construct new detention facilities, some of which have never opened. Standing Rock has one of those facilities. We received a \$3.695 million grant to design and construct an 18-bed juvenile facility on the reservation. Unfortunately, construction has been stalled for several years because our architects have identified an additional \$1.2 million in unmet construction costs. Nearly one-half of our resident Tribal members are under the age of 25. There is no effective law enforcement for youth offenders at Standing Rock if they are released because there are no facilities to house them. We are working to create a place in the community where individual and family counseling can reverse destructive behavior. The bill should address how existing shortfalls will be handled so that in-progress facilities can be completed quickly.

Another major barrier is the Bureau's resistance to providing ongoing operations and maintenance funding for these facilities once they are completed. We understand that the Department of Justice is seeking assurances that newly-built facilities will have steady operational funding, but the BIA is unwilling to commit to funding in advance. We would like to see the bill address this by requiring the BIA and the DOJ to coordinate regarding operation of new facilities and requiring BIA to operate at least those facilities included in the joint planning process.

Finally, detention facilities sometimes remain unopened because the Bureau is unable to recruit and retain qualified staff. Any improvements in the bill related to police officer recruitment, training and retention should also apply to detention and corrections staff. Specifically detention staff should also have the option of training at alternative local sites.

V. Other Facility Construction

While manpower is one piece of the equation, adequate facilities are another important piece. This includes police stations, courtrooms, short and long-term detention facilities, and transitional and treatment facilities. While the draft bill does a great deal to increase the resources for construction of detention facilities, we would like to see this expanded to include other facilities. For example, we are in the process of conducting a staffing and space needs assessment to assist us in designing and building a modern Tribal Justice Center to house Tribal Courts, the BIA police department, and an adult detention center. Right now, there is simply no money within the BIA or the DOJ for this type of project. Similarly, the DOJ will not con-

struct and the BIA will not operate any alternative facilities, such as treatment centers or drug court programs. Yet these facilities are equally important to Indian country justice systems, especially if we are to avoid a cycle of locking up more and more of our own people.

VI. Tribal Eligibility for Justice Grant Programs

We encourage the Committee to consider adding a provision that would make tribes directly eligible for the full range of justice-related grants that are available to other governments. Section 302 would make this change for drug enforcement grants, and we encourage you to expand this section to include all other justice-related grants. In particular, tribes are not now directly eligible for Byrne Justice Assistance Grants, Byrne Formula Grants, Local Law Enforcement Block Grants, juvenile justice formula grants, and many other targeted grants offered by the Department of Justice. This should be corrected.

Thank you again for your work on this bill and for inviting me to testify today. The Standing Rock Sioux Tribe looks forward to working with Congress to improve and pass this legislation.

The CHAIRMAN. Mr. Chairman, thank you very much for being here. We appreciate your testimony.

Next we will hear from Mr. Joe Garcia, who is the head of the National Congress on American Indians and has done a lot of work and provided great leadership on these issues. Mr. Garcia, thank you for being here.

STATEMENT OF JOE A. GARCIA, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. GARCIA. Thank you.

Good morning, everyone. I bring greetings Pueblo Country out in New Mexico.

If I may, Senator, we lost a Cherokee Indian patrolman, highway patrolman just last night or yesterday. So I would like to ask people to say in their own prayers, in their own way, prayers for him and for his family out in Cherokee Eastern Band.

Honorable Chairman and members of the Committee, thank you for the opportunity to testify today. Almost one year ago, NCAI provided testimony that outlined solutions to the public safety crisis in Indian Country. We urged the Committee to write legislation, work with the tribes and then pass legislation in this session of Congress.

I want to express my deepest appreciation to Senator Dorgan, Vice Chair Murkowski and Senators Kyl, Johnson, Thune, Burr, Barrasso, Akaka, Cantwell, and Tester, for taking up this important task. The legislation reflects first-rate work and provides common sense solutions. Indian communities have lived with high crime rates for many years. But this reality has finally gained broader attention. There is a window of opportunity right now to make constructive change.

I feel a tremendous responsibility to make improvements when they are possible. However, this is the time when we must listen to tribal leaders and take advantage of the insights they can provide. The draft legislation was circulated only last week, so we will need a little bit more time for better response. In particular, we have found that the best information often comes from people who work in the criminal justice system.

I am pleased that with the direction of the draft bill, it tackles a wide range of issues that have been raised by tribal leaders, including requiring the Department of Justice to track its declina-