

Question 2. Please provide your legislative recommendations, if any, to initiatives that should be included in the reauthorizations of the tribal courts, tribal youth, and other tribal justice programs.

Answer. As noted in our testimony, one of the primary recommendations of tribal leaders has been to make funding from the Department of Justice programs more readily available and more useful for the actual needs on reservations. Right now, the funding requires a significant grant-writing capability and is often compartmentalized in ways that do not make sense. Our recommendation would be for Congress to consider something like the following:

25 U.S.C. § 458 —to read:

(a) Notwithstanding any other provision of law, the Attorney General shall carry out a program within the Department of Justice to be known as the Tribal Justice Self-Determination and Self-Governance Program.

(b) Notwithstanding any other provision of law, the Attorney General shall enter into contracts, compacts and funding agreements in accordance with Title I and IV of the Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended, with any Indian tribe who elects to utilize the authority of this title to govern any funds available to Indian tribes under the authority of the Attorney General.

(c) Notwithstanding any other provision of law, the negotiation and implementation of each agreement entered into under this section shall be governed by this title and the provisions of Title I or IV of the Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended.

(d) Regulations.

(I) Not later than 90 days after [DATE OF ENACTMENT], the Secretary shall initiate procedures under subchapter III of chapter 5 title 5 to negotiate and promulgate such regulations as are necessary to carry out this part.

(II) A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this section shall have as its members only Federal and tribal government representatives, a majority of whom shall be representatives of Indian tribes with self-governance agreements under this chapter.

(III) The Secretary shall adapt the negotiated rulemaking procedures to the unique context of Self-Determination and Self-Governance and the government-to-government relationship between the United States and the Indian tribes.

(IV) The lack of promulgated regulations shall not limit the effect of this part.

Question 3. Please include any other recommendations or comments on the draft bill.

Answer. NCAI strongly encourages the Committee to consider including the pilot project to expand tribal jurisdiction in cases of domestic violence that was included in the concept paper for the bill last November. This provision was widely supported by Indian country and is a common-sense solution to one of the most pressing problems in tribal communities. Tribal governments should have the authority to intervene when a non-Indian who has chosen to become a member of the tribal community abuses his Indian family members.

NCAI also encourages the Committee to consider including some of the recommendations for improving the effectiveness of the Adam Walsh Act in Indian Country that were made at the July 17, 2008 hearing on sex offender registration.

There are many excellent provisions in the legislation and NCAI has had a significant opportunity to provide input, so we will limit our recommendations at this time to these two, and encourage the Committee to continue to continue its efforts to receive recommendations from tribes.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO HON.
JOE A. GARCIA

Question 1. Both the Departments of the Interior and Justice appear to have serious concerns about provisions in the draft bill that would increase tribal court sentencing authority and allow tribally-sentenced Indian defendants to serve their time in the Bureau of Prisons system. How might tribes address the additional requirement of the defendant's right to legal counsel in implementing the increase in tribal sentencing authority to three years as contemplated by the draft bill?

Answer. First, NCAI strongly supports the provision which would allow tribes to send serious offenders to serve their time in the Bureau of Prisons system. As the Committee is aware, tribal detention facilities have been neglected and are significantly under funded. This is one of the most important provisions of this legislation.

Second, we agree that protecting the right to counsel is important to protect the constitutionality of tribal justice systems. In *United States v. Lara*, the Supreme Court left open the question of whether additional due process challenges could be raised to tribal prosecutions. “Hence, we need not, and we shall not, consider the merits of *Lara’s* due process claim. Other defendants in tribal proceedings remain free to raise that claim should they wish to do so. See 25 U.S.C. § 1303 (vesting district courts with jurisdiction over habeas writs from tribal courts).”

NCAI’s understanding is that a significant number of tribes already provide counsel to indigent persons who are prosecuted in tribal courts for offenses that could include imprisonment. For the remaining tribes, the issue is largely funding. We would encourage Congress to provide additional funds for tribal justice systems, but also note that the proposed statute would give tribes some flexibility. If the tribe chooses to impose sentences greater than one year, the tribal court would be able to provide counsel for indigent defendants on a case-by-case basis.

Question 2. The Operation Dakota Peacekeeper program will provide additional law enforcement officers on the Standing Rock Sioux Indian reservation for a limited period of time. Would it be more beneficial to the law enforcement efforts and public safety in general to make permanent throughout Indian Country programs such as Operation Dakota Peacekeeper and the Safe Indian Communities Initiative?

Answer. NCAI strongly agrees that increased law enforcement presence and focus is the top priority to improve law enforcement in Indian communities. Tribal leaders have made this their first concern, and this has only been reinforced by the recent successes of the Dakota Peacekeeper Operation. As noted in our testimony, we strongly urge increased resources for BIA law enforcement and the creation of specifically focused enforcement units within the Department of Justice and the Federal Bureau of Investigation.

Question 3. The Committee received testimony recommending that, to improve and prioritize law enforcement, the Office of Justice Services within the Bureau of Indian Affairs should be elevated to a Bureau directly responsible to the Assistant Secretary for Indian Affairs, similar in status to the Bureau of Indian Education, and the Deputy Director elevated to a Director. Does the NCAI agree with this recommendation?

Answer. NCAI does not agree with the recommendation at this time. Tribal leaders have been opposed to reorganization efforts to separate out the functions of the Bureau of Indian Affairs for two primary reasons. First, creating a separate bureaucracy requires the creation of additional high-level management positions that take away resources from reservation-level services. The priority of tribal leaders is to maximize the services provided at the reservation level, and this is particularly true for law enforcement. Second, the creation of a separate bureaucracy tends to “stove-pipe” decision-making and makes it more difficult to coordinate action at the local level and create bureaucratic delays. To our knowledge, this is not a question that has been discussed with tribal leadership and we would urge the BIA and Congress to take no action to reorganize the Office of Justice Services without support from tribal leaders.