

# ENHANCED SENTENCING IN TRIBAL COURTS: LESSONS LEARNED FROM TRIBES

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## **INTRODUCTION**

The Tribal Law & Order Act of 2010 (TLOA)<sup>1</sup> was signed into law on July 29, 2010 by President Obama. The TLOA amends the Indian Civil Rights Act<sup>2</sup> by allowing felony sentencing for certain crimes through the provision of enhanced sentencing authority, establishes new minimum standards for protecting defendants' rights in the tribal court system, and encourages federally-recognized Indian tribes (tribes) to consider the use of alternatives to incarceration or correctional options as a justice system response to crime in their communities. Further, the Act authorizes the Attorney General to permit tribes access to National Crime Information Center (NCIC) data, and to grant concurrent jurisdiction/retrocession to the federal government by tribes in Public Law 83-280 as amended, often referred to as PL 280 states.

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<sup>1</sup> Public Law (Pub.L.) 111-211, H.R. 725, 124 Stat. 2258, enacted July 29, 2010.

<sup>2</sup> 25 U.S.C. §§ 1301 et seq.

The decision to implement enhanced sentencing authority is left up to each individual tribe. A handful of tribes have begun or have completed establishing the mechanisms required under TLOA to pronounce enhanced

## TRIBAL CIVIL AND CRIMINAL LEGAL ASSISTANCE PROGRAM

The Tribal Civil and Criminal Legal Assistance (TCCLA) Program provides resources to:

1. Enhance the operations of tribal justice systems and improve access to those justice systems, and
2. Provide training and technical assistance (TTA) for development and enhancement of tribal justice systems.

The TTA services in the area of tribal civil and criminal assistance help tribal communities with the provision of procedural justice in tribal civil and criminal legal procedures, legal infrastructure enhancements, public education, and the development and enhancement of tribal justice systems. Services focus on topics that include:

- Indigent defense services;
- Civil legal assistance;
- Public defender services; and
- Strategies for implementing the enhanced sentencing authority under the Tribal Law and Order Act (TLOA).

For more information on the TCCLA Program, visit [www.bja.gov/ProgramDetails.aspx?Program\\_ID=102](http://www.bja.gov/ProgramDetails.aspx?Program_ID=102).

sentences. This publication is designed to provide a brief overview, not a comprehensive review, of the changes under TLOA regarding enhanced sentencing authority, offer considerations for correctional/detention and community corrections programming related to enhanced sentences, and provide tribes with a checklist to help guide discussions around implementation of enhanced sentencing authority. Additionally, this publication explores the adoption of TLOA's enhanced sentencing authority through interviews with several tribal court judges and personnel who have been intricately involved in establishing the provisions required to convey enhanced sentences, highlighting the beginning of change at the tribal level, the processes and challenges faced by these courts, the current status of the implementation as of the date of the interviews, and any other aspects of implementation that the interviewees shared<sup>3</sup>. Finally, this publication will provide information on financial resources to fund enhanced sentencing authority implementation.

## ENHANCED SENTENCING AUTHORITY

In order to exert enhanced sentencing authority, tribal courts will be required to make and adopt criminal codes and rules of evidence, make rules of criminal procedure available to the public, provide qualified legal counsel to defendants, have law-trained judges, and record any criminal proceedings<sup>4</sup>. Figure 1 on the next page provides a quick reference of the changes related to enhanced sentencing authority under TLOA.

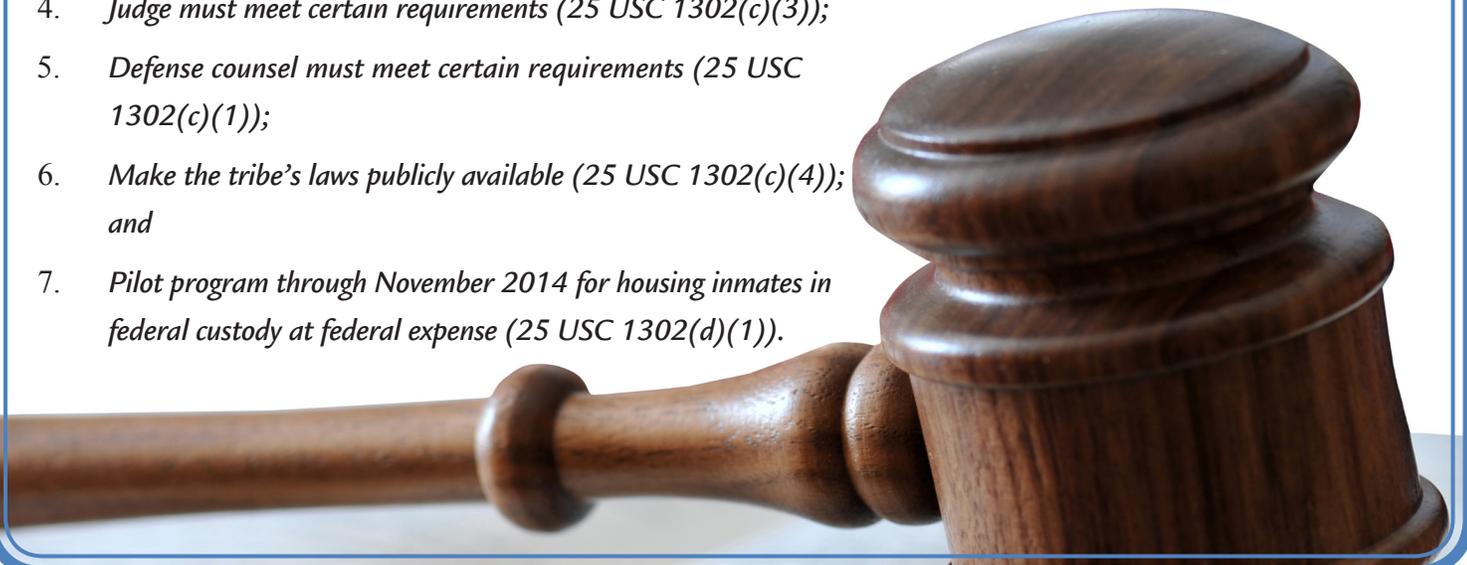
3 Chief Judge Theresa Pouley of the Tulalip Tribes, Gary LaRance who was at the time employed by the Salt River Pima Maricopa Community Public Defender's Office, and Chief Judge Richard Trujillo and Court Administrator Wilbur Maho of the Hopi Tribe were interviewed for this publication.

4 Pub.L. 111-211, H.R. 725, 124 Stat. 2258, enacted July 29, 2010.

**FIGURE 1**

## CHANGES UNDER TLOA RELATED TO ENHANCED SENTENCING AUTHORITY

1. *Sentences are increased from 1 year to 3 years for the maximum penalty per offense (25 USC 1302(a)(7)(C) and 25 USC 1302 (b));*
2. *Punishment for multiple offenses can be “stacked” to a maximum of 9 years (25 USC 1302(a)(7)(D));*
3. *Court is required to be a “court of record” (25 USC 1302(c)(5));*
4. *Judge must meet certain requirements (25 USC 1302(c)(3));*
5. *Defense counsel must meet certain requirements (25 USC 1302(c)(1));*
6. *Make the tribe’s laws publicly available (25 USC 1302(c)(4)); and*
7. *Pilot program through November 2014 for housing inmates in federal custody at federal expense (25 USC 1302(d)(1)).*



### WHAT CRIMES SHOULD QUALIFY FOR ENHANCED SENTENCING?

Tribes should carefully consider and choose which crimes will qualify for enhanced sentencing in their tribal courts. Crimes identified as appropriate for enhanced sentencing will vary among tribes; however, only certain crimes should be re-classified as eligible for enhanced sentencing. Some crimes have traditionally been treated as misdemeanors, for example thefts of property under \$500, fighting words or statutory crimes like speeding and should remain classified as such. Tribes may want to look at other jurisdictions to research crimes commonly accepted as misdemeanors and felonies and then decide what is most reasonable for their community. Figure 2, on the next page, provides an overview of examples of crimes that tribes may want to consider for enhanced sentencing.

**FIGURE 2****CRIMES THAT TRIBES MAY WANT TO CONSIDER FOR ENHANCED SENTENCING AUTHORITY**

- **Murder**
- **Vehicular manslaughter (including Driving Under the Influence (DUI) causing death)**
- **Repeat offender DUI – perhaps on fourth or fifth DUI within 10 years**
- **DUI causing substantial bodily harm**
- **Rape (spousal or otherwise); forcible sodomy; forcible oral copulation; forcible sexual penetration**
- **Assault with intent to commit rape**
- **Robbery – armed or strong-arm**
- **Kidnapping**
- **Child molestation**
- **Human trafficking (particularly use of children as sex workers)**
- **Repeat offender of domestic violence (states and federal consider at third offense)**
- **Battery (domestic violence or any) with deadly or dangerous weapon, or causing “substantial bodily harm” or “great bodily harm” or “protracted pain”**
- **Assault, battery or threats to Tribal Officials such as Tribal Council members, Community Council members**
- **Assault, battery or threats to key employees such as Tribal Administrator, police officers, judge, prosecutor, defense attorney, domestic violence advocate, Court Appointed Special Advocates (CASA) or CASA worker, etc.**
- **Assault, battery or threats to tribal elders**
- **Financial abuse of tribal elders above a certain dollar level**
- **Failure to register as a sex offender (or repeated failure to register; or failure to register by only those who have been convicted of one of these offenses)**
- **Manufacturing or sales of controlled or hypnotic substances; particularly manufacturing that endangers children or elders; particularly sales to children**
- **Desecration of graves or sacred sites**
- **Other offenses that the Tribe finds particularly appropriate for felony prosecution**

## CORRECTIONS/DETENTION

A significant consideration for tribes seeking to implement enhanced sentencing authority has to be not only where individuals will be housed, both pre-trial and post-sentence, but how the tribe will pay for it. The cost of housing for inmates, whether long-term or not, would fall under the same funding scheme the tribe currently uses for inmate housing costs. For example, if there is a contract with the Department of the Interior's Bureau of Indian Affairs (BIA) to house inmates for the tribe, the contract would not necessarily include those inmates housed for extended sentences as it has in the past. However, if the tribe has its own detention facility, the cost would be covered by the tribe in the same manner as the cost of housing inmates for shorter terms in the same facility, assuming the facility meets sufficient standards for long-term housing of inmates<sup>5</sup>. Tribes have funded their inmate housing costs in a variety of ways in the past, including imposing fines, filing fees, and general funds allocations. These same funds could be used for the enhanced inmate housing costs, but are likely not sufficient in volume to cover all costs.

Many tribes are seeking to build their own detention facilities—or multi-purpose facilities—to be responsive to the changing needs of their communities. The Bureau of Justice Assistance (BJA) provides a limited amount of funds to tribes seeking to renovate or construct new facilities. Purpose Area 4 of the Coordinated Tribal Assistance Solicitation should be explored if your tribe is interested in planning for, renovating, or constructing a new facility.

Another avenue for tribes may be to develop a Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA) with other jurisdictions (local, state, tribal) to assist them in housing their members sentenced under their new authority. The MOU/MOA should clearly state the agreed upon daily rate and what is included in that daily rate (such as shelter, food, medical care, services such as treatment, educational, mental health, rehabilitative, etc. as well as reentry planning for community release).

## COMMUNITY CORRECTIONS

Enhanced sentencing authority is not limited solely to incarcerating an individual for a longer period of time. The authority can include a combination of time served in a secure facility as well as time on supervised community release (probation/parole). The impact of enhanced sentencing authority on community corrections should not be overlooked when planning for anticipated costs of implementing this new authority. Community corrections personnel will not only be supervising a potentially higher number of individuals on their caseloads as a result of this new authority, but they will also be supervising a higher-risk level of individuals which is very time intensive. Tribal communities will need to ensure that a menu of services is available for individuals serving longer community based sentences as well as for individuals who plan to return to their communities following a period of secure confinement (such as transitional housing, family reunification services, and continuation of treatment, medical, and mental health services initiated during confinement).

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<sup>5</sup> For more information on these standards, please see the BIA Adult Detention Facility Guidelines here <http://tloa.ncai.org/documentlibrary/2011/02/BIA%20Adult%20Detention%20Facility%20Guidelines%20Dec%202010%20SOL.pdf>

The Bureau of Justice Assistance (BJA) has provided funds to agencies to provide training and technical assistance to tribes seeking to develop or enhance their community corrections and correctional alternative programs<sup>6</sup>. Services such as pretrial, probation, and reentry should be included as an integral planning consideration for tribes seeking to implement enhanced sentencing authority. Purpose area 3 under CTAS can be used to seek funding for community corrections personnel and programming; Purpose area 4 under CTAS can be used to seek funding for alternatives to incarceration personnel and programming; and Purpose area 9 under CTAS can be used to seek funding for community corrections personnel and programming *specific to juvenile populations*.

## LESSONS LEARNED ALONG THE PATH TO IMPLEMENTATION:

In August and September 2013, the National Tribal Judicial Center conducted interviews with tribal judges and tribal leaders that had either completed or were in the midst of TLOA implementation related to enhanced sentencing authority. The tribes contacted and interviewed were the Salt River Pima-Maricopa Indian Community (SRPMIC), the Tulalip Tribes, and the Hopi Tribe.



## POSITIVE COMMUNITY INVOLVEMENT

can be essential to achieving change in your community. Collaborative transformations are more effective than those forced on a group. If you can create consensus with your stakeholders, your chances of success increase as you seek to implement change in your system. A first step in this process is community education.

Another component of this process is sharing information about the legislative process of your tribe and why action is necessary to amend the law of the tribe. You may be able to accomplish this through tribal newspaper or newsletter announcements or articles, community forums or meetings. Regular updates on the process are also an effective way of keeping the community engaged and informed. As the process continues, your tribe may seek public comment on any code revisions or changes.

<sup>6</sup> To request technical assistance for your community corrections programming, please visit the American Probation & Parole Association Tribal Justice Capacity Building Training and Technical Assistance Project Page at [http://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IV\\_ProjectDetail&wps\\_key=7414391d-e5db-4bf6-b9b1-5648c496bdc7](http://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IV_ProjectDetail&wps_key=7414391d-e5db-4bf6-b9b1-5648c496bdc7)

The next section includes a discussion of lessons learned from their experiences that hopefully will guide other tribes to success in their own implementation. Additionally, a checklist of considerations is provided to guide other tribes in their decision-making processes related to enhanced sentencing authority implementation.

## BEGINNINGS

Implementation of TLOA has created some challenges for tribal communities ranging from interpreting the language used in the Act to garnering community support. For example, TLOA states, in part, that the judge handling cases that are eligible for enhanced sentencing must be “licensed to practice law by any jurisdiction in the United States.” (25 USC 1302 (c)(3)(b)). The lack of definitive guidance on phrases such as “any jurisdiction” has led to multiple interpretations in the field. One jurisdiction could choose to interpret the language as requiring a state licensed attorney in the position; whereas, another jurisdiction might interpret that to mean a tribally licensed attorney. The widely accepted interpretation of this language suggests that the judge could be licensed by the tribe only and there is no strict requirement that the judge be licensed by any jurisdiction.

Another critical factor involved in making changes to codes or procedures is commitment to the process by the tribal governing body. Sometimes the decision-making process is slow and there is a certain level of lobbying for change that should occur. Additionally, marshaling the involvement of the proper parties who should be involved in the process of changing codes to accommodate the modification and addition of procedures required by TLOA can make this a time-consuming project.

In addition, tribes must make the financial commitment to the judicial branch as well as the policing, corrections, and community corrections departments necessary to effectuate the requirements of TLOA. While tribes now work within ICRA pre-TLOA amendments and have set tribal “hard funds” and budget goals accordingly, the TLOA amendments require increased expenditures that are difficult to quantify because the law is new, and tribes may be hesitant to take on the burden without more certainty.

## PROCESS

The process for each court is and will be unique to individual community needs. At the SRPMIC, for example, the County Manager and Tribal President met with certain department directors to ask what each thought was needed in order to implement the TLOA requirements. The first step for them was to amend The Rules of Court followed by drafting a new criminal code. This process was spread over 25 months.

In contrast, the Tulalip Tribes amended their code in September 2012 to add a layer of enhanced prosecutions to the base code provisions. Due to the new class being felonies, they chose to designate these offenses as “Class F” offenses. BIA first approved then rescinded approval of the amendments because the code did not explicitly state that the tribe published their codes. The requirements of TLOA do not specifically state that a tribe has to

include, within the code itself, notice of where a defendant can access the codes but rather the tribe has to make the code available, which Tulalip Tribes had, for some time before this change was proposed. The Tulalip Tribes continue to make all of their codes publicly available on the tribal website. The Tulalip Tribes have prosecuted cases under this code since January 2013.

At Hopi Tribe, they initially sought to amend their code but determined it was best to write an entirely new

criminal code to adopt the TLOA changes. The tribe held a series of meetings to gather community input before amending the code. The law was adopted in September 2012, and technical amendments were made in April 2013. The tribe also adopted all federal rules of evidence and procedure to provide familiarity for any federal judges who may be tasked with appeals from the tribal court in these cases.

## AT THE DATE OF THESE INTERVIEWS,

it should be noted that other tribes have sentenced inmates under the federal pilot program. The Tribes exercising enhanced sentencing and incarcerating inmates under the TLOA include:

- Hopi Tribe
- Tulalip Tribes
- Cherokee Nation of Oklahoma
- Confederated Tribes of the Umatilla Reservation
- Eastern Band of Cherokee Nation
- Fort Peck Assiniboine & Sioux Tribes
- Muscogee (Creek) Nation of Oklahoma
- Salt River Pima Maricopa Indian Community
- Pascua Yaqui

Several other tribes are close to implementation.  
<http://tloa.ncai.org/tribesexercisingTLOA.cfm>

Any tribe wishing to pursue enhanced sentencing will have to formulate a plan that addresses foremost, the community's self-identified needs. The community should be represented by the most inclusive amount of shareholders as possible, even though the inclusiveness may initially slow the process. Next, the tribe will have to audit its codes to comply with the requirements of TLOA. An essential element of the code audit is to make sure other codes, not only the criminal code, reflect any changes necessitated by TLOA criminal code changes, such as social services codes, personnel codes, and children's codes, to name a few, as well as the tribe's constitution. The tribe will then have to make a "best guess" of the fiscal impact of the code changes going forward and budget monies accordingly if the revisions are voted on and accepted by the community.

Each tribe, being sovereign, has the privilege and responsibility to design its own budget priorities and may choose to exercise its governance at a level less than permitted by TLOA. Tribes funded through "self-governance" funds in particular enjoy this privilege, and "638" funded tribes must negotiate for its funds for every department and program. Tribal "hard funds", or monies derived from its own businesses, may already be assigned or budgeted and the government will have to make the political choices it deems necessary for the community. Therefore, the uncertainties of the increased costs weigh heavily upon the communities.

## CHALLENGES

The Hopi code requires state bar licensed attorneys for defense and prosecution, as well as for its judges in all TLOA enhanced sentencing cases. Non-attorney judges are permitted to hear other matters under Hopi law. The cost for hiring state-licensed attorneys was a concern of the community and council prior to passage. The additional cost was one of the reasons the Hopi community expressed some resistance to adoption of the enhanced sentencing. To address this resistance, a group of Hopi women appeared at a tribal council meeting to tell their stories and explain why the changes were needed. Stories told were of unprosecuted crimes against the women of the tribe and the resulting injustices. The changes passed easily after their very personal presentations.

The Tulalip Tribes reported one external challenge to implementation that was due to the process issues they experienced getting their code changes approved by BIA. Ultimately, the tribe was able to resolve the issue and moved forward. However, it was a challenge that required extra time to process changes they sought to implement in their justice system.

The challenges from within the Tulalip Tribes included: (1) getting the tribe to focus on the needed changes to implement enhanced sentencing authority; (2) determining additional cost to the tribe for processing enhanced sentencing cases and determining who would pay for the costs; and (3) getting the federal authorities to use appropriately licensed and capable trial prosecutors, such as Special Assistant United States Attorneys (SAUSAs). Once the tribe focused on how few crimes would fall under these amendments, the delays were overcome at the tribal level. Tulalip Tribes experienced minimal additional cost since they already used state-licensed attorneys for judges and defense counsel. The U.S. Attorney in the Western District in Washington State does not use tribal prosecutors as SAUSAs and this has not changed since TLOA was enacted.

For the SRPMIC, the challenges were more internal in that the public defender's office was not included in the decision-making process. The resulting code amendments do not include several critical provisions, including: (1) flexibility for the court to depart from mandatory minimum sentences; (2) mitigation factors for sentencing considerations; or (3) an option for alternative sentencing for offenses where the court may determine it is appropriate. The tribe addressed their internal challenges and is moving forward in this new era of enhanced sentencing.

Ultimately, the tribe was able to resolve the issue and moved forward but it was a challenge that added required extra time to the process changes they sought to implement in their justice system.

## STATUS

### As of June 2013:

- At SRPMIC, approximately 10-15 people have been prosecuted under the enhanced sentencing provisions. At the time of the interview, no tribal members have received enhanced sentences.
- Hopi Tribe has filed approximately 10-15 cases under its enhanced sentencing authority. As of the date of the interview, none of these cases had been set to trial. Hopi is actively pursuing housing a number of its defendants in the Bureau of Prisons pilot program<sup>7</sup>.

### As of August 2014:

- Tulalip Tribes, under the Class F Offenses category or TLOA offenses, have filed 23 cases (with 26 total charges). Eleven cases remain open. Twelve cases (with 14 total charges) have been disposed of with nine guilty pleas, two not guilty pleas and three cases dismissed (two were dismissed in conjunction with a Class F charge). One defendant has been sent to federal prison and another defendant will be sent in the near future<sup>8</sup>.

## OTHER POINTS OF INTEREST

Hopi Tribe is considering amending its code to include special criminal jurisdiction in domestic violence cases under the changes in the Violence Against Women Re-Authorization Act (VAWA) of 2013, but a serious concern for the tribe is whether it would want to include non-Hopis on their juries. The Tulalip Tribes is already in the process of amending its codes to implement the special criminal jurisdiction in domestic violence cases under VAWA 2013. They currently have a process for utilizing non-Indian employees of the tribe for jurors. SRPMIC is also in the process of amending its code to include prosecution of non-Indians under VAWA of 2013.

## FUNDING RESOURCES

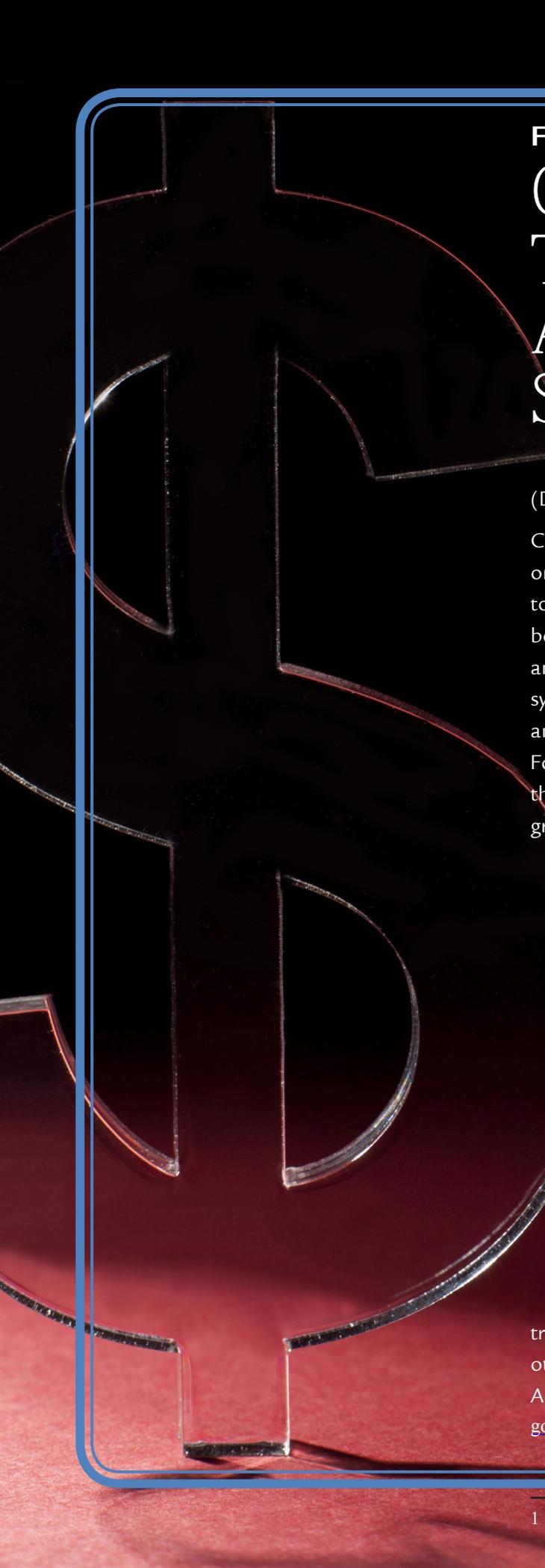
One of the key barriers for tribes choosing to exert enhanced sentencing authority continues to be the lack of funding. Much of the funding available begins at the federal level. The Bureau of Indian Affairs (BIA) provides funding for law enforcement services in Indian Country, and for support of certain court operations, including corrections operations. Tribes can access this funding through the Office of Justice Services at: [www.bia.gov/WhoWeAre/BIA/OJS/index.htm](http://www.bia.gov/WhoWeAre/BIA/OJS/index.htm).

One-time funding and individualized training and technical assistance for Tribal Justice Systems is also available through the Division of Tribal Justice Support, Office of Justice Services (TJS). TJS conducts voluntary tribal court assessments intended to evaluate tribal court needs and provide tribal courts with a 3-5 year strategic plan focused on improving court operations. In many instances, additional one-time funding and on-site training and technical assistance is provided as TJS works with BJA in an effort to provide training and technical assistance which is individualized to the Tribe. Purpose Area #3<sup>9</sup>, Justice Systems and Alcohol and Substance Abuse, of the Coordinated Tribal Assistance Solicitation (CTAS) provides funding to federally-recognized Indian tribes

<sup>7</sup> Please see <http://tloa.ncai.org/documentlibrary/2010/11/BOP%20Pilot%20Program.pdf> for more detailed information on the federal pilot program.

<sup>8</sup> Updated information provided by Tulalip Tribal Court, Court Projects Supervisor Nicole Sieminski.

<sup>9</sup> Violence Against Women Reauthorization Act of 2013, S. 47, 113th Congress, 2013-2015.



## FIGURE 3

# COORDINATED TRIBAL ASSISTANCE SOLICITATION<sup>1</sup>

CTAS is administered by the U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), the Office of Community Oriented Policing Services (COPS) and the Office on Violence Against Women (OVW). The funding can be used to conduct comprehensive planning, enhance law enforcement, bolster justice systems, support and enhance efforts to prevent and control delinquency and strengthen the juvenile justice system, prevent youth substance abuse, serve sexual assault and elder victims, and support other efforts to combat crimes. For more information on the CTAS, visit the CTAS Factsheet or the CTAS FAQs. The 9 purpose areas covered under the CTAS grant opportunity are:

1. Public Safety and Community Policing (COPS)
2. Comprehensive Tribal Justice System Strategic Planning (BJA)
3. Justice Systems and Alcohol and Substance Abuse (BJA)
4. Corrections and Correctional Alternatives (BJA)
5. Violence Against Indian Women-Tribal Governments Program (OVW)
6. Children's Justice Act Partnerships for Indian Communities (OVC)
7. Comprehensive Tribal Victim Assistance Program (OVC)
8. Tribal Juvenile Healing to Wellness Courts (OJJDP)
9. Tribal Youth Program (OJJDP)

Tribes or tribal consortia may also be eligible for non-tribal national grant programs and are encouraged to explore other funding opportunities for which they may be eligible. Additional funding information may be found at [www.grants.gov](http://www.grants.gov) or the websites of individual agencies.

<sup>1</sup> Please see <http://www.justice.gov/tribal/open-sol.html>.

and authorized consortia to develop, enhance and continue tribal justice systems. This includes tribal courts, corrections and reentry. Language in this purpose area specifically mentions that funding can be used to support enhanced sentencing authority implementation. See Figure 3, on the preceding page, for a more information on CTAS funding and the process<sup>10</sup>. Tribes may also look to their own budgets for funding this kind of system change.

## CHECKLIST

Many tribal communities are holding off on deciding whether to move toward enhanced sentencing authority for a variety of reasons. Some indicate they are waiting to see the impact the new authority has in other communities while others cite lack of financial resources to designate for implementation.

Because this law is so new and so few tribes have moved towards implementation, there are very few resources and/or tools available to guide tribes seeking direction in how to implement enhanced sentencing in their courts. To meet this need, the following checklist has been developed, based upon the experiences of tribes that have led the way with implementation, to assist other tribes in auditing their own laws, codes, competencies / capabilities to meet the provisions required under TLOA to enact enhanced sentencing authority. While this checklist is not exhaustive, it does provide interested tribes with a starting point in moving toward implementation.

	<b>What are the existing competencies/capabilities of the tribe to implement enhanced sentencing under the TLOA?</b>
	<b>Determine if there will be an increased cost to the tribal justice system.</b>
	<b>For a judicial officer that meets the qualifications of TLOA:</b>
	Will this judge be used for all cases or just enhanced sentencing cases?
	Do the enhanced sentence cases include any case where stacked sentences exceed a year or where the base crime itself is punishable by more than a year, or both?
	Will the tribe establish its own laws and regulations for determining if the judge meets the TLOA requirements?
	Is the tribe setting up judicial licensing and training? What are the requirements?
	Is a program that certifies tribal court judges competent to hear TLOA enhanced sentencing cases in existence and if so, has the tribal judge been certified by it? What are the requirements?
	<b>For defense counsel that meets the qualifications of the TLOA:</b>
	Will this counsel be used for all cases or just enhanced sentencing cases?
	Do the enhanced sentencing cases include any case where stacked sentences exceed a year or where the base crime itself is punishable by more than 1 year, or both?
	Will the tribe establish its own laws and regulations for determining if defense counsel meets the TLOA qualifications?

<sup>10</sup> <http://www.justice.gov/tribal/grants.html>

	<p>Are grants available to hire indigent defense counsel?                  Are there regional non-profits or other agencies that are willing to provide this service at low or no cost to the tribe?                  Can the tribe pull from the pool of available attorneys who may already practice in the tribal court system?</p>
	<p>Is the tribe setting up attorney licensing and training? What are the requirements?</p>
	<p>Is the tribe setting up a Tribal Bar Association? What are the requirements?</p>
	<p>Does a program exist that certifies defense counsel as competent to defend these TLOA enhanced sentencing cases, and if so, has defense counsel been certified by it? What are the requirements?</p>
	<p><b>For inmate incarceration for enhanced sentences:</b></p>
	<p>How is housing currently paid for with non-TLOA sentenced inmates?</p>
	<p><b>For ensuring the court is a “court of record”:</b></p>
	<p>What mechanism is used to record hearings?</p>
	<p>Can this be accessed and searched?</p>
	<p><b>For ensuring the tribe’s laws are publically made available:</b></p>
	<p>Are the tribal laws online?</p>
	<p>Are they available in hard copy?</p>
	<p>Are they available on CD-ROM?</p>
	<p>Are they otherwise available? If so, how?</p>
	<p><b>Codes:</b></p>
	<p>Which crimes will be subject to TLOA enhanced sentences (see Figure 2 for suggested offenses)?</p>
	<p>What code sections would need to be amended/drafted to be in compliance:</p> <ol style="list-style-type: none"> <li>a. Criminal code: the entire criminal code or just sections (punishments, certain offenses)?</li> <li>b. Criminal procedures: the entire code or just sections (related to certain punishments or certain offenses)                         <ol style="list-style-type: none"> <li>1. Notices</li> <li>2. Procedures before, during, and after trial</li> <li>3. Statutes of limitations</li> <li>4. Probation/Parole administration</li> <li>5. Alternative sentences</li> <li>6. Appeals</li> <li>7. Rules of court</li> <li>8. Ethics Codes (for judges, prosecutors, defenders and other attorneys and advocates and court staff)</li> <li>9. Fee schedules</li> <li>10. Establishment of licensure standards for court (judges and attorneys in TLOA enhanced sentencing cases)</li> </ol> </li> </ol>

## CONCLUSION

Tribes considering implementation of enhanced sentencing authorized by TLOA face a number of considerations and challenges; none of which are insurmountable. The tribes at the forefront of these changes serve as a valuable resource to other tribes planning to make the same changes in their own communities. The successes and difficulties faced by these tribes offer a lesson in perseverance to further develop the jurisdiction of their courts. Tribal government involvement at all levels and community support for this transformative process are fundamental in securing a positive move forward. Tribes may encounter additional barriers in financing this evolution of the tribal justice system, but support through competitive grant funding can be found through DOJ and BIA. Tribes may also choose to access other funding streams through their governmental budgets. TLOA offers tribes an opportunity to strengthen their justice systems and emphasize their commitment to providing their citizens with a higher level of justice.

*This publication is part of a series of publications being developed through a Cooperative Agreement with the Bureau of Justice Assistance and the 2012 Tribal Civil & Criminal Legal Assistance (TCCLA) Training and Technical Assistance Project Partners, The American Probation and Parole Association (APPA), the Tribal Judicial Institute at the University of North Dakota School of Law (TJI/UND), and the National Tribal Judicial Center, National Judicial College (NTJC/NJC).*

*Project Overview: Tribal communities face a daunting task of providing safety for tribal communities where violent crime is, according to a 2004 Department of Justice, Bureau of Justice Statistics Report, 2.5 times higher than the national norm. The Tribal Law and Order Act of 2010 (TLOA) sought to enhance the provision of justice in Indian Country as a means to address the increasing crime rates by allowing for tribes to enhance their sentencing authority and encouraging tribes to seek out alternatives to incarceration/correctional options. However, while these provisions are necessary and welcomed by many tribal justice agencies, little guidance has been developed on how to implement the strategies encouraged by TLOA.*

*Throughout this 24-month project, the 2012 TCCLA Training & Technical Assistance partners will:*

- *Develop and disseminate a training needs assessment to adequately assess the training and technical assistance needs of grantees funded under the Tribal Civil and Criminal Legal Assistance Grant;*
- *Deliver two national/regional trainings comprised of jurisdictional teams (prosecutors, judges, defense and community corrections personnel);*
- *Provide on-site technical assistance to up to three tribal jurisdictions ready to take the next step, beyond training, to implementation;*
- *Provide office-based technical assistance for up to 30 tribes;*
- *Develop and disseminate three project-related publications; and*
- *Deliver 6 webinars.*

*For more information on this project, including the above deliverables, please visit our project page by clicking the link:  
Tribal Civil & Criminal Legal Assistance Program*

## **ADDITIONAL RESOURCES**

### **American Probation and Parole Association**

[www.appa-net.org](http://www.appa-net.org)

### **Bureau of Justice Assistance Grants/Funding Page**

<https://www.bja.gov/funding.aspx>

### **Bureau of Justice Assistance Tribal Law and Order Act**

[https://www.bja.gov/ProgramDetails.aspx?Program\\_ID=88](https://www.bja.gov/ProgramDetails.aspx?Program_ID=88)

### **Bureau of Prisons, Tribal Law & Order Pilot Program**

[http://www.bop.gov/inmate\\_programs/docs/tloa.pdf](http://www.bop.gov/inmate_programs/docs/tloa.pdf)

### **Grants.gov Page**

[www.grants.gov](http://www.grants.gov)

### **National Congress of American Indians TLOA website**

<http://tloa.ncai.org/>

### **National Tribal Judicial Center/National Judicial College**

<http://www.judges.org/ntjc/>

### **Office of Justice Services, Bureau of Indian Affairs Page**

[www.bia.gov/WhoWeAre/BIA/OJS/index.htm](http://www.bia.gov/WhoWeAre/BIA/OJS/index.htm)

### **Tribal Civil & Criminal Legal Assistance Project**

[http://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IV\\_ProjectDetail&wps\\_key=49d0989a-0f8a-4644-ba62-2cedacc704bc](http://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IV_ProjectDetail&wps_key=49d0989a-0f8a-4644-ba62-2cedacc704bc)

### **Tribal Judicial Institute**

<http://law.und.edu/tji/>

### **Tribal Law & Order Resource Center**

<http://tloa.ncai.org//tribesexercisingTLOA.cfm>

### **United States Department of Justice, Coordinated Tribal Assistance Solicitation (CTAS) Page**

<http://www.justice.gov/tribal/grants.html>

### **United States Department of Justice:**

<http://www.justice.gov/tribal/tloa.html>

### **United States Department of Justice, Bureau of Justice Assistance TLOA Website:**

[https://www.bja.gov/ProgramDetails.aspx?Program\\_ID=88](https://www.bja.gov/ProgramDetails.aspx?Program_ID=88)

### **Walking on Common Ground**

<http://www.walkingoncommonground.org/>

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