



# **Accountability and Returning the Offender to the Community: Core Responsibilities of Indian Justice**

**April 21, 2008**

## **Memorandum to the Senate Committee on Indian Affairs on the proposed Indian Country Crime Bill**

*Submitted by an Inter-Tribal Workgroup comprised of the following Tribes:*

**The Navajo Nation**

**The Hopi Tribe**

**Fort McDowell Yavapai Nation**

RESOLUTION OF THE  
INTERGOVERNMENTAL RELATIONS COMMITTEE

21<sup>st</sup> NAVAJO NATION COUNCIL - Second Year, 2008

AN ACTION

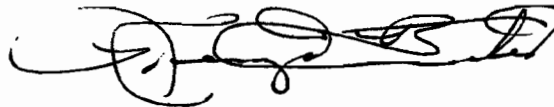
RELATING TO JUDICIARY, PUBLIC SAFETY, AND INTERGOVERNMENTAL RELATIONS;  
APPROVING THE SUBMISSION OF A MEMORANDUM TO THE SENATE COMMITTEE ON  
INDIAN AFFAIRS ON THE PROPOSED INDIAN COUNTRY CRIME BILL FROM AN  
INTERTRIBAL WORKGROUP COMPRISED OF THE NAVAJO NATION, THE HOPI TRIBE  
AND THE FORT MCDOWELL YAVAPAI NATION

BE IT ENACTED:

1. The Navajo Nation hereby approves the submission of a Memorandum to the Senate Committee on Indian Affairs on the Proposed Indian Country Crime Bill entitled, "Accountability and Returning the Offender to the Community; Core Responsibilities of Indian Justice", from an intertribal workgroup comprised of the Navajo Nation, the Hopi Tribe and the Fort McDowell Yavapai Nation, as set forth in the attached Exhibit A.
2. The Navajo Nation hereby authorizes the President, the Speaker and the Chief Justice, or their respective designees, to submit the Memorandum attached as Exhibit A and advocate on behalf of the Navajo Nation consistent with the Memorandum approved hereby.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor and 0 opposed, this 19<sup>th</sup> day of May, 2008.



LoRenzo Bates, Chairperson Pro Tem  
Intergovernmental Relations Committee

Motion: Ervin M. Keeswood, Sr.  
Second: Kee Allen Begay


THENCE

PROPOSED STANDING COMMITTEE RESOLUTION  
21<sup>st</sup> NAVAJO NATION COUNCIL -- Second Year, 2008

PUBLIC SAFETY  
COMMITTEE

INTRODUCED BY

THENCE

  
(Sponsor)

INTERGOVERNMENTAL  
RELATIONS COMMITTEE

TRACKING NO. 0225-08

AN ACTION

RELATING TO JUDICIARY, PUBLIC SAFETY, AND INTERGOVERNMENTAL  
RELATIONS; APPROVING THE SUBMISSION OF A MEMORANDUM TO THE  
SENATE COMMITTEE ON INDIAN AFFAIRS ON THE PROPOSED INDIAN  
COUNTRY CRIME BILL FROM AN INTERTRIBAL WORKGROUP COMPRISED  
OF THE NAVAJO NATION, THE HOPI TRIBE AND THE FORT MCDOWELL  
YAVAPAI NATION

BE IT ENACTED:

1. The Navajo Nation hereby approves the submission of a Memorandum to the Senate Committee on Indian Affairs on the Proposed Indian Country Crime Bill entitled, "Accountability and Returning the Offender to the Community: Core Responsibilities of Indian Justice," from an intertribal workgroup comprised of the Navajo Nation, the Hopi Tribe and the Fort McDowell Yavapai Nation, as set forth in the attached Exhibit A.

2. The Navajo Nation hereby authorizes the President, the Speaker, and the Chief Justice, or their respective designees, to submit the Memorandum attached as Exhibit A and advocate on behalf of the Navajo Nation consistent with the Memorandum approved hereby.

JUDICIARY COMMITTEE REPORT

21<sup>th</sup> NAVAJO NATION COUNCIL – SECOND YEAR 2008

INTRODUCED BY  
*Kee Allen Begay, Jr., Council Delegate*

LEGISLATION NO. 0225-08

AN ACT

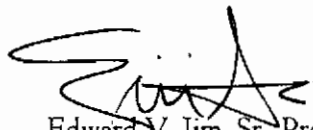
RELATING TO JUDICIARY; PUBLIC SAFETY, AND INTERGOVERNMENTAL  
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THE NAVAJO NATION, THE HOPI TRIBE AND THE FORT MCDOWELL YAVAPAI  
NATION

The Judiciary Committee has had it under consideration and reports the same with the recommendation that it DO PASS with ONE amendment, and refers to the same to the Public Safety Committee of the Navajo Nation Council.

1. Line 11, strike the word "~~APPROVING~~" and insert the word "RECOGNIZING"; Line 19 Strike the word "~~approves~~" and insert the word "recognizes".

CERTIFICATION

I hereby certify the foregoing legislation was duly considered by the Judiciary Committee of the Navajo Nation Council at a duly called **Special Meeting** at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of **04** in favor and **00** opposed, this **16<sup>th</sup>** day of **April 2008**.



Edward Y. Jim, Sr., Presiding Chairperson  
Judiciary Committee  
Navajo Nation Council

Motion: Leonard Tsosie  
Second: Lena Manheimer

# THE HOPI TRIBE



**Benjamin H. Nuvamsa**  
Chairman

**vacant**

Vice-Chairman

April 21, 2008

Committee on Indian Affairs  
United States Senate  
838 Hart Office Building  
Washington, DC 20510

Committee members:

On behalf of The Hopi Tribe, I endorse and support the attached *Memorandum to the Senate Committee on Indian Affairs on the proposed Indian Country Crime Bill*.

I want to emphasize our investment in the work efforts of our tribal representatives in this workgroup. Our hope is that the federal government will implement the recommendations for the good of Northern Arizona tribes and all tribes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Benjamin H. Nuvamsa'. The signature is fluid and cursive, with a large initial 'B'.

Benjamin H. Nuvamsa  
Chairman/CEO  
Hopi Tribe

cc: President, Navajo Nation  
President, Fort McDowell Yavapai Nation

## Introduction

This Memorandum is submitted by an inter-tribal workgroup formed following a listening session held by the Senate Committee on Indian Affairs on January 14, 2008 in Phoenix, Arizona. Leaders and staff from the Navajo Nation, Hopi Tribe, and Ft. McDowell Yavapai Nation are the core workgroup. The purpose of the workgroup is to address the following:

- a. Assist the Senate Committee by defining the unique sense of Indian Justice that requires offender accountability and facilitation of return to the community through a holistic approach;
- b. Review the Concept Paper on the Indian Crime Bill in order to make recommendations on restorative justice concerns;
- c. Review the Indian Alcohol and Substance Abuse Prevention and Treatment Act and make recommendations on needed amendments upon reauthorization.

## Workgroup Sessions Summary

There have been several workgroup discussion sessions attended by the leadership and staff of all branches of government of the core workgroup tribes, including the judiciary and healthcare. The workgroup focused on problems previously brought up in testimony or comments before the Senate Committee, and reached consensus on effective solutions, based on the Indian sense of justice, that are not presently included in the Indian Country Crime Bill Concept Paper.

As a result of cross-branch and cross-agency participation, the workgroup took a more systemic view point than the previous focus on more officers and more detention facilities, which is the acknowledged need of the law enforcement component.

The workgroup very quickly reached consensus that there are unique components of a fully functioning and effective Indian justice system as contrasted with the American justice system. The workgroup agreed that the term "restorative justice" in the justice context aptly describes the basis and objectives of justice in Indian societies.

"Restorative justice" as used here is distinct from the term as commonly understood and applied. Whereas the term in the American justice system has become greatly simplified and come to mean non-convictions, no jail and no fines, restorative justice in traditional Indian justice is used in the literal sense, to "restore" in conformity with justice principles. Wrongdoers, those who are harmed, and their affected communities are engaged in search of solutions that promote repair and rebuilding. Convictions, detention, and penalties in support of personal responsibility and community safety are not excluded.

Indian justice responsibilities include accountability and return of offenders to the community. These are in addition to community safety responsibilities already addressed by the Committee in its Concept Paper. These three are core elements of all traditional justice systems notwithstanding a tribe's diverse specific customs. All agencies and community members necessary to fulfill these responsibilities are part of the Indian justice system. The workgroup

recommended that the term as used in the Indian justice context be clarified to the Senate Committee.

The workgroup unanimously agreed on what tools are urgently needed in order to make the Indian justice system more effective as a whole. Integrated and coordinated strategic approaches across justice and treatment systems and multi-purpose detention-treatment facilities under joint justice and healthcare leadership may be a solution. Judges and probation and parole services should be consulted and included in comprehensive partnerships with law enforcement and healthcare. As the solutions include public safety, accountability and healthcare components, they must be addressed in both the Indian Country Crime Bill and the reauthorized Indian Alcohol and Substance Abuse Prevention and Treatment Act.

### **Indian Country Crime Bill Concept Paper Recommendation**

The workgroup strongly recommends that the following section be included in the Concept Paper and relevant Congressional reports:

#### **ISSUE # 6: LACK OF TOOLS FOR RESTORATIVE JUSTICE SENTENCING**

Indian justice is unique in that restorative justice is not simply an option; it is a responsibility of the Indian justice system. "Justice system" includes law enforcement, judiciary, corrections, probation/parole, and healthcare departments whose services are necessary for comprehensive solutions.

Restorative justice" as used here is distinct from the term as commonly understood and applied. Whereas the term in the American justice system has become greatly simplified and come to mean non-convictions, no jail and no fines, restorative justice in traditional Indian justice is used in the literal sense, to "restore" in conformity with justice principles. Wrongdoers, those who are harmed, and their affected communities are engaged in search of solutions that promote repair and rebuilding. Convictions, detention, and penalties in support of personal responsibility and community safety are not excluded.

Indian justice responsibilities include accountability and return of offenders to the community. These are in addition to community safety responsibilities already focused on by the Committee in its Concept Paper. These three are core elements of all traditional justice systems notwithstanding a tribe's diverse specific customs. All agencies and community members necessary to fulfill these responsibilities are part of the Indian justice system.

In Navajo, there is a term, ná bináhaazláo which means providing parties with a sense of completeness or comprehensiveness. It also means fairness and doing whatever is necessary in coming to a comprehensive solution. The tribal courts are charged with ná bináhaazláo through restorative justice. In Hopi, the offender's accountability – QaHopit qa'antipu'at – and bringing the offender back into the community – QaHopit ahoy kiimmi pavnaya -- are deep-rooted justice principles.

This means there is a circle of responsibilities, beginning with law enforcement and prosecution, the judiciary being responsible for accountability and bringing the offender back into the community through sentencing, and probation and parole services ensuring that the judiciary's

conditions are fulfilled. These components integrate and coordinate with mental health, social service, behavioral health professionals and traditional counselors where necessary; given the very high rate of alcohol and substance abuse disorders implicated in Indian Country crime, integration is needed in almost all instances.

Past federal initiatives in controlling and combating alcohol and substance abuse related crime and violence have attempted to employ a comprehensive approach that has been limited in its reach. Partnerships between law enforcement and treatment agencies have been encouraged for interdiction and prevention, but not for restoration. Federally-funded drug courts that attempt restoration are generally available only for non-violent crimes and clean-record offenders. Grants for such courts are typically of very short duration. Tribal judiciaries are seldom included in multi-agency and multi-year strategic planning efforts to control and prevent alcohol and substance abuse-related crime and violence.

In the Indian justice context, there is a high level of accountability required by the community of an offender. This is coupled with a great burden on the Indian justice system to rehabilitate and bring the offender back into that community according to traditional principles.

The Indian view of restorative justice, a comprehensive inclusive approach, is becoming recognized in the American justice system and in justice systems around the world as a workable, effective method to reduce prison populations and challenge recidivism. However, in many states, the offer of diversion as an incentive in restorative justice programs has made the term confusing. In the Indian justice context, restorative justice is not necessarily equated with diversion or non-convictions. In this context, restorative justice requires full accountability, community participation, and the necessary resources to bring an offender back. Indian justice throws no one away.

Under the present scheme of justice in Indian Country, accountability and rehabilitation are split between the justice system and healthcare without overlap of primary responsibilities. While partnerships are encouraged between agencies, e.g., IHS and the BIA, primary responsibility for treatment lies with healthcare, while justice pursues accountability. This split does not work in Indian Country where, according to the Arizona Attorney General, 99% of all violent crimes in Indian Country in the Southwest is attributable to alcohol or substance abuse. 40% of all violent crime which occurs on Indian reservations happens in the northern half of Arizona. The violent-crime rate on the Navajo Nation is six times the national average of 25 violent crimes per 1,000 U.S. residents in 2001, according to DOJ statistics, and in some towns, like Tuba City, Kayenta and Chinle, the per capita violent-crime rate is much higher than that.<sup>1</sup>

There is a continuum between healthcare and justice remedies. Originally, American law enforcement departments had broader responsibilities than do modern law enforcement agencies, including some healthcare functions.<sup>2</sup> Tribal police today are perceived by communities also as having some community-based responsibilities beyond their policing function. While partnerships or coordination is needed between tribal justice and healthcare

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<sup>1</sup> Mark Shaffer, Indian Country Today, *Special Report: Violent crime increasing on Arizona reservations*, May 30, 2003.

<sup>2</sup> Edward P. Richards, *Emerging Infectious Diseases, Collaboration between Public Health and Law Enforcement: the Constitutional Challenge*, Vol. 8, No. 10, October 2002.



programs, it has not been clear that Indian justice systems bear any responsibility. This lack of clarity has led to a fragmented and ineffective approach in the dispensation of Indian justice.

Ultimately, the tribal judiciary that performs sentencing oversees the healing and return phases which complete the Indian justice circle. The tribal courts have jurisdiction over the offender until all supervision conditions are met. Tribal judges are deeply invested in their communities and are engaged in meetings and conferences on a range of community matters. Tribal judges are not external adjudicators, separated from communities by a robe and bench. Tribal judiciaries should be included in policy making and strategic planning for healing and return. SAMHSA has advocated for strengthened partnerships with Indian Country law enforcement, including police and correctional organizations as well as DOJ.<sup>3</sup> Input from tribal judiciaries, including inclusion of tribal judiciaries in partnership, should also be sought.

There is an inescapable link between addiction, mental illness and crime in Indian Country.<sup>4</sup> Tribal judges are fully cognizant of this connection but lack the sentencing tools to fully address rehabilitation as a reliable option. Sentencing offenders to treatment is often a futile exercise. IHS is so short-staffed in psychiatrists that Hopi and Navajo adults and children with mental health issues, referred to IHS from tribal courts, receive no substantial treatment. The lack of treatment facilities on or near the reservations causes long delays when offenders are sentenced to residential treatment. When available, the beds are often located in major cities like Albuquerque and Phoenix. When children are taken there for treatment, they do not have the benefit of cultural connections and are removed from local supervision. Sex offenders receive no specialized treatment, often not even the benefit of general counseling.

It is essential that Indian justice systems have the tools to accomplish the holistic requirements of Indian justice. As a whole, the Indian justice system needs adequate law enforcement and healthcare personnel, adequate corrections and treatment facilities, adequate presence in the community, adequate community participation, involvement of all components of the Indian justice system in policy making and strategic planning, and clarification of the system's responsibility to complete the circle of Indian justice.

In addition, the one-year imprisonment limit on tribal court convictions under the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1302(7) may be taken as also limiting tribal judges' control over cumulative sentencing to accommodate long-term residential treatment that may exceed one year. This needs clarification.

The following is a summary of possible legislative solutions to address the lack of tools needed in restorative justice sentencing.

### **Recommendations**

- **Establish that accountability and bringing offenders back into the community are core Indian justice components.** Ensure that these components are included in any strategy to combat Indian Country crime, and include the requirement that grant-funded

<sup>3</sup> Testimony of H. Westley Clark, Dir., SAMHSA, on *Creating Healthier Tribal Communities*, to the Senate Committee on Indian Affairs, August 15, 2007.

<sup>4</sup> Id.

strategies have a holistic and synergizing, as opposed to a fragmented approach, that is necessary to complete the circle of Indian justice. Provide for training and education that support the holistic responsibilities of Indian justice.

- **Require that tribal judiciaries and healthcare departments be included in consultations with tribal governments in determining policy, guidelines and regulations for combating Indian Country crime.** Ensure that the timing, participation, and goals of these consultations are substantially detailed and defined in order to maximize tribal input.
- **Establish a permanent funding stream for restorative justice education, training and implementation.**
- **Encourage inter-agency integration with a holistic approach to Indian justice system responsibilities.** Innovative and integrated multi-agency programs addressing core Indian justice responsibilities without undue restrictions on the type of offender population to be served should be authorized and funded. Funding should be flexible and of a duration longer than one year. The Crime Bill should emphasize the comprehensive approach.
- **Permit DOJ and DOI to enter arrangements for sharing facilities and services with IHS;**
- **Authorize use of DOI/DOJ funds for the leasing, purchase, construction, expansion or modernization of multi-purpose detention-treatment facilities in Indian Country.** Services at these facilities would include counseling for those in detention, and culturally appropriate treatment modalities. This would redress the severe shortage of both detention and residential treatment beds for adults and juveniles near Indian communities. Presently, DOI and DOJ are authorized to fund detention facilities. They should also be enabled to fund a treatment facility on the same site.

Healthcare funding for treatment facilities in Indian Country remain scarce. They come under “specialized facilities” and must stand in line behind national healthcare facility needs in the health care facility priority system. Under the proposed Indian Health Care Improvement Act (S.1200), Indian Country healthcare facilities would have priority in the ranking system.<sup>5</sup> However, specialized facilities must still stand in line.

In 1986, Congress found that less than 1% of the Indian Health Service budget was spent on alcohol and substance abuse treatment facilities.<sup>6</sup> The proposed IHCA permits outside funding for IHS facilities, including specialized facilities in Indian Country.<sup>7</sup> Funding through the DOJ for multi-purpose detention-treatment facilities would emphasize that treatment of offenders in Indian Country is a justice responsibility.

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<sup>5</sup> S.1200 IHCA, Section 301.

<sup>6</sup> Findings, Indian Alcohol and Substance Abuse Prevention and Treatment Act, 25 U.S.C. §2401(9).

<sup>7</sup> S.1200 IHCA, Sections 304(a), 310, 311(a) and 316 regarding the acquisition, planning, design, construction, lease, expansion, renovation, or modernization of treatment facilities in Indian Country.

IHCIA does not authorize multi-purpose detention-treatment facilities.

- **Establish a Joint Venture Multi-Purpose Detention-Treatment Facility Demonstration Project in Northern Arizona.** The demonstration project would expedite construction of a much-needed regional facility in northern Arizona using DOJ and/or DOI detention-treatment facilities funding. The facility would be maintained under proposed IHCIA joint venture provisions at S.1200, Section 311.

The IHCIA proposed joint venture provision permits tribes to expend tribal, private, or other available funds for acquisition or construction of a health facility for a minimum of 10 years under a no-cost lease in exchange for IHS providing equipment, supplies, and staffing.

- **Clarify the ICRA one-year limit on imprisonment.** The one-year limit should not prevent tribal courts from imposing cumulative sentences to long-term residential treatment in excess of one year for a single offense until the court determines that the full needs of an offender suffering from mental health or addiction disorders are adequately being addressed.
- **Reauthorize and amend the Indian Alcohol & Substance Abuse Act (25 U.S.C. §§ 2401-2471), as follows:**
  - Inter-departmental MoAs under Section 2411 presently permitted between BIA and IHS should also include SAMHSA and DOJ, and partnerships include tribal judiciaries, tribal behavioral health, and probation and parole services;
  - The scope of MoAs should be expanded according to recommendations of this workgroup to be submitted shortly;
  - The core elements of Indian justice, including accountability and return of offenders to communities, should be included;
  - Flexibility should be permitted in IASA programs, including extending one-year grants to flexible five-year cycles;
  - Reciprocal language permitting IHS to enter arrangements for sharing facilities and services with DOJ and BIA. Note that Section 406 of proposed IHCIA permits IHS to enter arrangements for sharing facilities and services between the Services, tribes, Department of Veterans Affairs, and the Department of Defense.

**Detailed recommendations for the Indian Alcohol and Substance Abuse Act** will be submitted to the Committee shortly.

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## Attachments

Attachment 1 is suggested legislative language on restorative justice and multi-purpose detention-treatment facility construction for inclusion in the Indian Country Crime Bill.

## Workgroup Participants

### Navajo Nation

Herb Yazzie, Chief Justice

Ben Shelley, Vice President

Patrick Sandoval, Chief of Staff to President Joe Shirley

Cheron Watchman, Legislative Services Director, Speaker's Office, Navajo Nation Council

Delores Greyeyes, Director, Department of Corrections

Deswood Tome, Gov't & Legislative Communications Director, Navajo Nation Washington Office

Randall Simmons, Gov't & Legislative Affairs Associate, Navajo Nation Washington Office

Allen Sloan, Window Rock District Judge

Albert Long, Senior Program Project Specialist, Navajo Behavioral Health

Rita Cantsee, Eastern Agency Manager, Navajo Behavioral health

Selena Applewhite, Office of President and Vice-President

Sherrick Roanhorse, Staff Assistant to Vice-President Shelley

Josephine Foo, Associate Attorney, Office of the Chief Justice

Martha Shelley

### Hopi Tribe

Benjamin Nuvamsa, Hopi Tribal Chairman

Delford Leslie, Acting Chief Judge

Dorma Sahneyah, Chief Prosecutor

Dr. Robert Robin, Director, Hopi Behavioral Health Services

Milton Poola, Staff Assistant to Chairman Benjamin Nuvamsa

Emma L. Anderson, Hopi Tribal Council Rep. and Member, Law Enforcement Team

Wilbur Maho, Hopi Judicial Administrator

### Ft. McDowell Yavapai Nation

Diandra Benally, Special Counsel

## Workgroup Contact Information

Direct correspondence to:

### ***Inter-Tribal Workgroup on the Indian Law and Order Bill***

c/o Josephine Foo, Navajo Nation Judicial Branch, P. O. Box 520, Window Rock, AZ 86515

Tel: (928) 871-7669 Fax (928) 871-6761

Email: [josephinefoo@navajo.org](mailto:josephinefoo@navajo.org)

**ATTACHMENT 1**

**PRELIMINARY DRAFT**  
**language for inclusion in the Indian Country Crime Bill**

**TITLE \_\_\_\_--RESTORATIVE JUSTICE DEVELOPMENT**

**SEC. \_\_\_\_ . PURPOSE.**

It is the purpose of this Title to acknowledge the responsibility of the United States to encourage and fund restorative justice solutions through the Department of the Interior and the Department of Justice for tribes that have declared the implementation of those solutions as a core responsibility of their justice systems.

**SEC. \_\_\_\_ . DEFINITIONS.**

For purposes of this Title—

- (a) The term “detention facility” means a facility mandated to hold individuals convicted of misdemeanors by a tribal court. The facility may detain both adult and juvenile offenders provided there is sight and sound separation between adult and juvenile populations.
- (b) The term “long-term treatment facility” means a residential treatment facility providing non-hospital care in a program lasting between three to twelve months and is focused on the “resocialization” of the individual. The programs offered by these facilities may include alternative and traditional treatment methods.
- (c) The term “multi-purpose detention-treatment facility” means a detention facility and long-term treatment facility at a single site.
- (d) The term “Northern Arizona” means Apache, Coconino, Mohave, Navajo and Yavapai counties in the State of Arizona.
- (e) The term “restorative justice” as used here is distinct from the term as commonly understood and applied. As used here, the term means restorative justice in the context of Indian justice broadly including full accountability of the offender and meaningful efforts to bring the offender back into the community as part of a comprehensive and coordinated approach to administering justice. Whereas the term in the American justice system has become greatly simplified and come to mean non-convictions, no jail and no fines, restorative justice in traditional Indian justice is used in the literal sense, to “restore” in conformity with justice principles. Wrongdoers, those who are harmed, and their affected communities are engaged in search of solutions that promote repair and rebuilding. Convictions, detention, and penalties are not excluded.

**SEC. \_\_\_\_ . ACKNOWLEDGEMENTS.**

Congress acknowledges:

- (1) Intrinsic in the inherent sovereignty of Indian tribes is a tribe's power to create and administer a justice system.
- (2) American Indian culture and traditions have survived an unusual amount of oppressive federal and state policies intended to assimilate Indian people, including the administration of justice in Indian Country.
- (3) American Indian culture and traditions are inclusive of Indian principles of justice and make up the unique cultural identities of Indian tribes that should be preserved, developed, and transmitted to future generations.
- (4) American Indian laws and principles of justice are fundamental to the spiritual health and well-being of tribal communities in many aspects of Indian life.
- (5) The Indian concept of restorative justice in the justice context requires meaningful efforts to hold an offender accountable and return the individual to the community; the concept is widely applied in Indian tribes notwithstanding culture and traditions that may vary from tribe to tribe.
- (6) Accountability in the context of Indian justice does not simply mean a finding or admission of guilt, but refers to a sense of personal responsibility for an offense and its consequences on others.
- (7) Meaningful efforts to return an offender to a community is an intrinsic characteristic of Indian justice, without which Indian justice is not complete.
- (8) Given the inescapable linkage between addiction, mental illness and crime and the high rate of addiction and alcohol abuse on Indian reservations, meaningful efforts for the return of offenders to their communities are vital to the survival of Indian communities.
- (9) Indian laws and principles of justice universally call for accountability and return of the offender to be included in any strategy to combat Indian Country crime.
- (10) Congress has the responsibility to be sufficiently educated as to the traditional Indian sense of justice before fashioning solutions to combat Indian Country crime.
- (11) The healthcare concerns of mental illness, alcoholism and addiction are so inextricably linked to Indian Country crime as to be joint federal and tribal justice and healthcare responsibilities.

(12) Regional multi-purpose detention-treatment facilities with the capacity to hold both adult and juvenile offenders near their culture and communities are the most comprehensive solution to further public safety, accountability, and return of offenders to their communities in the best interest of Indian tribes.

**SEC. \_\_\_\_ . DECLARATION OF POLICY.**

It is the policy of the United States to encourage and invest in the application of Indian justice principles in order to ensure the well-being, safety and survival of Indian communities.

**SEC. \_\_\_\_ . FINDINGS.**

Congress makes the following findings:

- (1) Given the inextricable linkage of mental health and addiction disorders to Indian Country crime, multi-purpose detention-treatment facilities, culturally sensitive detention personnel and professional healthcare personnel are the most important resources needed by tribal courts in restorative justice sentencing.
- (2) There is a scarcity of both detention facilities and long-term treatment facilities in Indian Country, and healthcare professionals willing to live and work on geographically remote reservations.
- (3) In Northern Arizona, an area inhabited primarily by the Navajo Nation and Hopi and Hualapai tribes, offenders suffering serious mental or addiction disorders have few sentencing options: they go untreated, or suffer lengthy wait periods before they are sent hundreds of miles out of the region to facilities in Phoenix and Albuquerque, NM.
- (4) For maximum benefit to Native populations, long-term treatment resources should incorporate cultural values, utilize traditional healthcare practitioners, and be located at the same site or adjacent to detention facilities near tribal communities in order to maintain cultural and community connections.
- (5) Under present healthcare funding schemes, treatment facilities in Indian Country are considered “specialized health care facilities” that compete for limited federal funding under a “healthcare facility priority system” in which the need for specialized facilities is ranked for funding purposes against hospitals, clinics, staff quarters, and other facilities.
- (6) The high rate of alcohol and substance abuse disorders among offenders in Indian Country requires direct investment by the Department of the Interior and the Department of Justice in the acquisition, planning, design, construction, lease, expansion, renovation, or modernization of treatment facilities in Indian Country.

**SEC. \_\_\_\_ . CONSULTATIONS WITH TRIBES.**

(a) **IN GENERAL**—All actions under this Act shall be developed and carried out with active and meaningful consultation on an ongoing basis with Indian Tribes and Tribal Organizations to implement this Act and the national policy of Indian self-determination.

(b) **INDIAN JUSTICE COMPONENTS**—Tribal law enforcement, judiciaries, and the relevant healthcare service providers shall be included in the above consultations.

**SEC. \_\_\_\_ . TRADITIONAL JUSTICE PRACTICES.**

(a) **PROMOTION**—The Secretary of the Interior shall ensure that programs established pursuant to this Act involve the use and promotion of the traditional practices of the Indian Tribes to be served.

(b) **EDUCATION AND TRAINING**—The Secretary shall develop and implement or assist Indian Tribes and Tribal Organizations to develop and implement, a program of education and training which shall be designed to provide education about traditional responsibilities in law enforcement, justice and behavioral health issues, including traditional health care practices, to political leaders, Tribal judges, law enforcement personnel, members of tribal health and education boards, health care providers and other critical members of each tribal community. Such program may also include community-based training to develop local capacity and tribal community training on community responsibilities in restorative justice solutions in the Indian justice system.

(c) **GRANTS FOR RESTORATIVE JUSTICE PROGRAMS**—The Secretary may make grants to individual Tribes and to Tribes organized as multi-tribe consortiums for the design, planning, and implementation of innovative multi-agency and multi-departmental programs that comprehensively address restorative justice as defined under this Title.

**SEC. \_\_\_\_ . GRANTS FOR MULTI-PURPOSE DETENTION-TREATMENT FACILITIES.**

(a) **GRANTS**—The Secretary of the Interior and the Attorney General may make grants to individual Tribes and to Tribes organized as multi-tribe consortiums for the lease, purchase, renovation, construction, expansion, or modernization of multi-purpose detention-treatment facilities.

(b) **RULES AND REGULATIONS**—The Secretary and Attorney General shall formulate rules and regulations for administration of the grants no later than 90 days after enactment of this Act, and in consultation with the impacted Tribes or multi-tribe consortiums.

(c) **OPERATIONS AND MAINTENANCE**—Operations and maintenance of these facilities shall be an obligation of departments and services of the federal government under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.), including where relevant, the Bureau of Indian Affairs Office of Facilities Management.



- (d) **PROFESSIONAL TREATMENT PERSONNEL**—Tribes or tribal consortiums who are recipients of a grant under this section may staff the treatment portion of the facility using federal and non-federal sources of funding.
- (e) **COUNSELING AND CULTURAL EDUCATION**—Tribes or tribal consortiums who are recipients of a grant under this section shall implement a program of counseling and cultural education for inmates and residents of the facility geared toward reentry and resocialization, funding for which may be from both federal and non-federal sources.
- (f) **FACILITIES SHARING**—The Department of Justice and the Department of the Interior may enter into facilities sharing arrangements with other federal agencies, tribes, and non-profits under this section.
- (g) **MEMORANDUM OF AGREEMENT**—The Secretary and/or Attorney General may enter into a Memorandum of Agreement with other federal agencies, tribes, or tribal consortiums for the operations and maintenance of these facilities.
- (h) **ELIGIBILITY**—To be eligible to receive a grant under this Title, a Tribe or Tribes organized as multi-tribe consortiums shall submit an application to the Secretary of the Interior or the Attorney General which includes—
- (1) assurances that the service area for which funds are requested under this Title lacks adequate detention bed space that comply with national standards.
  - (2) assurances that the service area for which funds are requested under this Title lacks a needed long-term treatment facility for the rehabilitation of offenders with mental health and/or addiction disorders.
  - (3) assurances that the long-term treatment time served is appropriately related to the determination that the offender suffers from a mental health, alcohol or substance abuse disorder and for a period of time deemed necessary for rehabilitation;
  - (4) assurances that the Tribe or Tribes have implemented policies that provide for the recognition of the rights and needs of crime victims, particularly in regards to violent offenders sentenced to long-term treatment;
  - (5) assurances that funds received under this section will be used to construct, develop, expand, modify, operate, or improve multi-purpose detention-treatment facilities to ensure that bed space is available for detention of offenders and the rehabilitation of offenders and other individuals suffering from mental health, alcohol and/or substance abuse disorders;
  - (6) assurances that culturally appropriate education and counseling will be available to inmates and residents of the facility;
  - (7) assurances that the Tribe or Tribes have a comprehensive rehabilitation and reentry plan which represents an integrated approach to the management and operation of detention and long-term treatment facilities and programs, including a Memorandum of Understanding or Agreement between the Tribe or

Tribes with a treatment provider that will be administering the long-term treatment facility; such plan to contain provisions for prioritizing sentenced offenders, job skills programs, traditional educational programs, a pre-release assessment to provide risk reduction management, post-release assistance, and an assessment of recidivism rates;

(8) assurances that the Tribe or Tribes have involved States, counties and non-profits, when appropriate, in the construction, development, expansion, modification, operation or improvement of long-term treatment facilities designed to ensure the treatment and rehabilitation of violent offenders, and that the Tribe or Tribes will share funds received under this section with States and counties, taking into account the burden placed on States and counties when they are required to treat sentenced prisoners because of lack of available space in Tribal treatment facilities;

(9) assurances that funds received under this section will be used to supplement, not supplant, other Federal, State, Tribal, and other funds;

(10) assurances that the Tribe or Tribes have implemented, or will implement within 18 months after the date of the enactment of this Act, policies to determine the veteran status of offender patients and to ensure that veterans receive the veterans benefits to which they are entitled; and

(11) if applicable, documentation of the multi-tribe consortium that specifies the construction, development, expansion, modification, operation, or improvement of long-term treatment facilities.

## **SEC. \_\_\_\_. NORTHERN ARIZONA JOINT VENTURE DEMONSTRATION PROJECT.**

(a) **IN GENERAL**—The Secretary and Attorney General, through grant or contract with Tribes organized as a multi-tribe consortium, shall fund the construction of 1 regional multi-purpose detention-treatment facility in Northern Arizona, where no regional detention facility or long-term treatment facility presently exists.

(b) **IHS JOINT VENTURE**—The treatment facility portion of the demonstration project shall be a joint venture demonstration project pursuant to Section 311 of the proposed Indian Health Care Improvement Act under which the Department of Justice and Department of the Interior will fund the acquisition or construction of a health facility for a minimum of 10 years, under a no-cost lease, in exchange for the Indian Health Service to provide the equipment, supplies, and staffing for the operation and maintenance of such a facility.

(c) **OPERATIONS AND MAINTENANCE, DETENTION**—Operations and maintenance of the detention portion of this facility shall be an obligation of the federal government under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.), including the Bureau of Indian Affairs Office of Facilities Management.

(d) COUNSELING AND EDUCATION—Implementation of counseling and cultural education programs are required pursuant to Section \_\_\_\_ of this Title.

(e) RULES AND REGULATIONS—The Secretary and Attorney General shall formulate rules and regulations for the joint venture demonstration project no later than 90 days after enactment of this Act, and in consultation with the impacted multi-tribe consortium.

(f) REPORTING REQUIREMENT— Not later than 90 days after the date on which the demonstration project terminates, the Secretary shall submit to Congress a report on the demonstration project.

**SEC. \_\_\_\_ . EFFECTIVE DATE.**

This title shall take effect beginning on the date of enactment of the Act.

**SEC. \_\_\_\_ . TECHNICAL ASSISTANCE AND TRAINING.**

The Attorney General in collaboration with the Secretary of the Interior may request that the Secretary of Health and Human Services and the Director of the Substance Abuse and Mental Health Services Administration provide technical assistance and training to a Tribe or Tribes that receive a grant under this Title to achieve the purposes of this Title.

**SEC. \_\_\_\_ . EVALUATION.**

The Secretary of the Interior and Attorney General may request the Administrator of the Substance Abuse and Mental Health Services Administration to assist with an evaluation of programs established with funds under this Title.

**SEC. \_\_\_\_ . AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2018 to carry out this title.

**SEC. \_\_\_\_ . AVAILABILITY OF FUNDS.**

The funds appropriated pursuant to this Title shall remain available until expended.

**SEC. \_\_\_\_ . RESULTS OF DEMONSTRATION PROJECT.**

The Secretary shall provide for the dissemination to Indian Tribes and Tribal Organizations of the findings and results of the demonstration project conducted under this Title.

**SEC. \_\_\_\_ . CLARIFICATION OF INDIAN CIVIL RIGHTS ACT.**

The Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1302(7) is hereby clarified as to exclude single or cumulative sentences to long-term treatment in excess of one year for purposes of restorative justice as defined under this Title.