

Enhanced Sentencing Authority

Tribal Law and Order Act

Tribal Law and Policy Institute's Enhanced Tribal Authority Series



Tribal Law and Policy Institute

January 2024

A product of the

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This project was supported by Grant No. 2016-IC-BX-K001 and 2019-IC-BX-K005 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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1. Introduction

In a series of U.S. Supreme Court decisions and federal legislation, the federal government has limited tribal criminal authority.¹ Through the [Tribal Law and Order Act of 2010](#) (TLOA) and [Violence Against Women Reauthorization Act \(2013, 2022\)](#),² Congress recognized and affirmed tribal criminal jurisdiction including over certain non-Indian offenders. Tribes that want to exercise optional authorities under TLOA, and VAWA 2013 or VAWA 2022 must comply with the requirements set out in the respective statutes.

The TLOA enhanced sentencing provisions are of great interest to many tribes. However, TLOA is a very broad statute that covers numerous topics. For tribes, an in-depth understanding of the various provisions is needed to make informed decisions, especially about implementing enhanced sentencing authority. This publication provides an overview of enhanced sentencing authority, examines possible benefits and challenges of implementing that authority, provides a review of the [Bureau of Prisons Pilot Project](#), provides examples of tribal code implementing provisions, and then provides additional enhanced sentencing authority resources.³

2. Overview of Tribal Law and Order Act

The [TLOA](#) is a comprehensive statute focused on all aspects of investigating and prosecuting crime in Indian country with a primary purpose of reducing crime in Indian country and increasing public safety. The statute attempts to systematically address a wide variety of problems from data collection to housing prisoners.

Congress passed the TLOA in 2010 and it became law on July 29, 2010. Reports such as Amnesty International's [Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA](#)⁴ ignited public interest in the high rates of violence in Indian country and motivated systemic changes. TLOA increases federal accountability, increases tribal authority, authorizes (not appropriates) additional funding, and establishes the Indian Law and Order Commission (ILOC).⁵

¹ See e.g., Indian Civil Rights Act, 25 U.S.C. §§ 1301-03; *Oliphant v. Suquamish Indian Tribe*, 435 U. S. 191 (1978); *U.S. v. Lara*, 541 U.S. 193 (2004).

² VAWA 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013). VAWA 2022, Pub. L. 117-103, 136 Stat. 49 (2022) was enacted as part of the Consolidated Appropriations Act ([H.R. 2471](#)).

³ This publication is the first part of a two-part series on enhanced tribal authority. This publication discusses TLOA enhanced sentencing authority, while the other publication is entitled Tribal Criminal Jurisdiction over Non-Indians - Violence Against Women Reauthorization Act of 2022 (Indian Civil Rights Act, 25 U.S.C. § 1301(2), §1304(b.1)).

⁴ Amnesty International USA, [Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA](#) (2007).

⁵ The ILOC investigated issues related to crime in Indian country and provided a report to the president and Congress, [A Roadmap for Making Native America Safer](#) (November 2013).

Most notably, TLOA amends the [Indian Civil Rights Act](#) (ICRA)⁶ by expanding limitations on the term of imprisonment and fines that can be imposed on defendants convicted in tribal court. However, to impose these “enhanced sentencing” options, tribal courts must provide additional enumerated due process protections. These include effective assistance of counsel; free, appointed, licensed attorneys for indigent defendants; licensed judges with “sufficient legal training”; publicly available criminal laws; recordings of the criminal proceeding maintained; and an appropriate facility for long-term incarceration.

⁶ 25 U.S.C. § 1302—1341.

3. What Is Enhanced Sentencing Authority?

Prior to passage of the TLOA, the ICRA did not permit tribes to impose sentences of more than one year of imprisonment or more than a \$5,000 fine per offense.⁷ TLOA provides that if a tribe complies with the prerequisites in the statute, the tribe’s criminal court can sentence a defendant to three years imprisonment and/or impose a \$15,000 fine for a single offense. Additionally, a tribal court can stack sentences up to a cumulative total of nine years for multiple offenses addressed in one criminal proceeding. These options for tribal courts are collectively known as “enhanced sentencing authority.”

<i>Tribal Court Sentencing Authority</i>	<i>Pre-TLOA/ ICRA Limits</i>	<i>Post-TLOA</i>
Fines	Max \$5,000 per offense	Max \$15,000 per offense
Prison Sentences	Max 1-year imprisonment per offense	Max 3-year imprisonment per offense
Sentence Stacking⁸	Permissible without max	Max 9-year imprisonment
Availability of Authority	All tribes	Tribes that satisfy TLOA requirements⁹

Prerequisites: A tribe wishing to exercise enhanced sentencing authority in a criminal proceeding by imposing a term of imprisonment longer than 1 year on a defendant must comply with the following due process requirements outlined in the amended ICRA:¹⁰

1. It must *provide the defendant with an attorney* and:
 - a. that attorney must *provide the defendant with effective assistance of counsel* at least equal to that guaranteed by the U.S. Constitution; and

⁷ The ICRA of 1968 limited tribal court sentencing to a maximum of six months imprisonment and/or a fine of \$500 for a single offense. [The Anti-Drug Abuse Act of 1986](#) amended this limitation and increased the maximum sentence a tribe could impose to one year of imprisonment and/or a \$5,000 fine per offense.

⁸ See Seth J. Fortin, [“The Two-Tiered Program of the Tribal Law and Order Act.”](#) *UCLA Law Review* 61, no. 88 (2013): 91–96. Discussion of sentence stacking.

⁹ *Id.* at 96 (Some have argued that TLOA effectively foreclosed sentence stacking for tribes that do not choose to exercise enhanced sentencing authority).

¹⁰ 25 U.S.C. § 1302(c).

b. if the defendant is indigent, the tribe must provide a defense *attorney licensed to practice law* by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

2. The *judge presiding over the criminal proceeding must have sufficient legal training* to preside over criminal proceedings *and be licensed to practice law* by any jurisdiction in the United States.

3. It must *make publicly available the tribe's*:

a. *criminal laws,*

b. *rules of evidence, and*

c. *rules of criminal procedure.*

4. The tribal court must also *maintain a record of the criminal proceeding*, including audio or other recording.

Defendants: However, even if a tribe satisfies the prerequisites, the enhanced sentencing authority does not apply to every defendant convicted in tribal court. Rather, it applies only to defendants who (1) have previously been convicted of the same or a comparable offense by any jurisdiction in the United States, or (2) are being prosecuted for an offense comparable to a felony.

Previously Convicted of the Same or Comparable Offense: The TLOA amended the ICRA to permit enhanced sentencing when a defendant is a repeat offender who has previously been convicted of the same or a “comparable offense” in any jurisdiction.¹¹ “Comparable offense” is not defined in the statute, but its ordinary meaning is having enough like characteristics or qualities to make comparison appropriate.¹² Evidence needs to be submitted to the court supporting the previous convictions and the court needs to review the statute of the other jurisdiction to determine whether the current charge is comparable.

Punishable by More Than One Year: Additionally, TLOA amended ICRA to allow enhanced sentencing if the defendant is prosecuted for an offense in tribal court that would be comparable to an offense punishable by more than one year of imprisonment if prosecuted in federal or state court.¹³ Generally, in state or federal courts, a crime punishable by imprisonment of more than one year is considered a felony and a crime punishable by one year imprisonment or less is considered a misdemeanor. Felonies such as murder, sexual assault, and so forth, may carry

¹¹ 25 U.S.C. § 1302(b)(1).

¹² Tribal Law and Policy Institute, [Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction](#) 27 (2016), citing Webster’s New Third Int’l Dictionary 461 (unabridged ed. 2002).

¹³ 25 U.S.C. § 1302(b)(2).

enhanced sentencing. In addition, some states may consider some domestic violence and stalking crimes felonies.

Serving the Sentence: Each tribe must decide where defendants will serve their sentences. TLOA (as amended by the [Violence Against Women Act Reauthorization Act of 2022](#)) declares that the tribal judge may require the defendant:

“(1) to serve the sentence—

(A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;

(B) in the nearest appropriate federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner program described in section 304(c)[1] of the Tribal Law and Order Act of 2010;¹⁴

(C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the state or local government; or

(D) in an alternative rehabilitation center of an Indian tribe; or

(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.”¹⁵

¹⁴ As amended by the Violence Against Women Act Reauthorization Act of 2022, the Bureau of Prisons tribal prisoner program is no longer a pilot program.

¹⁵ 25 U.S.C. § 1302(d).

TRIBAL LAW AND ORDER ACT ENHANCED SENTENCING OPTION

QUICK-REFERENCE OVERVIEW OF TLOA STATUTORY & DUE PROCESS REQUIREMENTS

In order for a tribe to impose sentences exceeding one (1) of imprisonment, a fine not exceeding \$15,000 or both as set forth in the Indian Civil Rights Act 25 U.S.C. 1302 (b)(c)(d), as amended by TLOA, a tribe must ensure that the following statutory and due process requirements are met:

	Statutory & Due Process Requirement(s)	Legal Source of Due Process Requirement
1	A defendant subject to an enhanced sentence must be accused of a qualifying offense.	25 U.S.C. § 1302 (b)
2	Defendants must be provided “effective assistance of Counsel” at least equal to that guaranteed by the United States Constitution.	25 U.S.C. §1302 (c)(1)
3	The tribe must provide “indigent defense” to qualifying defendants. Indigent defense counsel must be an attorney licensed in any jurisdiction in the United States.	25 U.S.C. §1302 (c)(2)
4	The jurisdiction licensing the defense attorney must apply “appropriate professional licensing standards” and ensure both competency and professional responsibility.	25 U.S.C. §1302 (c)(2)
5	Presiding judges must have sufficient training to preside over criminal trials.	25 U.S.C. §1302 (c)(3)(A)
6	Presiding judges in criminal proceedings must be licensed to practice law by any jurisdiction in the United States.	25 U.S.C. §1302 (c)(3)(B)
7	Tribal rules of criminal procedure, rules of evidence and criminal laws must be publicly available prior to charging of a defendant.	25 U.S.C. §1302 (c)(4)
8	Tribal Court must maintain a record of the criminal proceeding including a recording of the trial proceedings.	25 U.S.C. §1302 (c)(5)
9	<p>Any defendant sentenced to more than 1 year in imprisonment must be sentenced to:</p> <ul style="list-style-type: none"> • A tribal correctional facility approved by the BIA for long-term incarceration; • The nearest appropriate federal facility; • A state or local government-approved detention or correctional facility; • A tribal rehabilitative center; or • Other alternative form of punishment as deemed appropriate by the tribal court judge. <p>For a copy of the draft BIA facility guidelines for long-term incarceration visit: http://tloa.ncai.org/documentlibrary/2011/02/BIA%20Adult%20Detention%20Facility%20Guidelines%20Dec%202010%20SQL.pdf</p>	25 U.S.C. §1302 (d)

Source: American Probation and Parole Association and Tribal Judicial Institute, *Tribal Law and Order Act: Enhanced Sentencing Authority: Tribal Code Development Considerations & Quick Reference Overview & Checklist* (July 2015).

4. Exercising Enhanced Sentencing Authority – Benefits and Challenges

The TLOA is a broad and complex statute that attempts to address various issues facing criminal justice in Indian country. The TLOA approach to handling some of those issues, through enhanced sentencing authority, presents opportunities but also challenges to tribal communities. The next two sections of this resource outline some general benefits and challenges to exercising enhanced sentencing authority.

Benefits of Exercising Enhanced Sentencing Authority

- A. Protects Tribal Communities:** One of the highlights of the TLOA is the recognition of inherent tribal jurisdiction. This recognition and the options available to tribes under TLOA allow tribes to protect their communities by enhancing tribal authority to handle cases of serious crime. Often these crimes involve acts of violence toward others in the community and under TLOA, the tribe can increase the penalties (beyond the ICRA maximum of one year imprisonment and/or a fine of \$5,000 per crime) in addition to serving culturally appropriate sentences. Additionally, support from federal attorneys (discussed below) could assist in ensuring more cases are prosecuted, thus addressing serious criminal behavior.
- B. Promotes Community Accountability and Reintegration:** TLOA's recognition of inherent tribal jurisdiction reflects the importance of justice systems being responsive to community needs. Like other sovereigns, tribes strive for laws and policies to maintain community safety. Enhanced sentencing authority allows tribal courts to administer a justice that is seen and felt in the community, to administer meaningful sentences to address serious crime. Additionally, should a tribe implement enhanced sentencing authority and in turn develop a long-term incarceration option, the tribe has the ability for defendants convicted in tribal court to serve their sentence close to home. This allows both the defendant to maintain family/community connections while incarcerated and the victim to see the perpetrator held responsible by their own community.
- C. May Deter Crime:** Tribes may be able to deter criminals from committing crimes given the increased consequences. Criminals not deterred by previous sentencing limitations of one-year imprisonment and/or \$5,000 in fines may be deterred by the *additional* two years imprisonment and/or \$10,000 in fines of potential maximum sentencing per offense. Criminals may also be deterred by the stacking potential of nine years total imprisonment for multiple offenses considered in a single proceeding.
- D. Can Strengthen a Tribe's Relationship with U.S. Attorney's Office:** [TLOA Section 213](#) requires the appointment of at least one assistant U.S. Attorney to serve as a Tribal Liaison for each district that includes Indian country. Appointment of the Liaison and the Liaison's duties require coordination with tribes in qualifying districts. The increased communication with U.S. Attorney's office required by TLOA could result in increased collaboration to prosecute more

cases arising in Indian country. Relationship building with your district's Liaison will be critical in developing your tribe's ability to respond to crime.

- E. *Incorporation of Tribal Custom and Tradition into Sentencing:*** [Section 234](#) of TLOA recognizes a tribe's ability to incorporate tribal custom and tradition into sentencing. Tribes can consider their own values and worldviews when thinking about appropriate sentencing for defendants appearing in tribal court. Often these defendants are likely their own tribal members or are individuals who live in, and are a part of, the community and may benefit from a greater understanding of the tribe's value system.
- F. *Presents Opportunity to Address Gaps in Governing Systems:*** Because of TLOA's procedural complexity, tribes will need to review court rules, tribal codes, and possibly a tribe's constitution to implement enhanced sentencing authority. It is also important to assess a tribal court's capacity to exercise enhanced sentencing authority and to consider training for judges and court staff. This is in addition to gauging community readiness and interest in implementing enhanced sentencing authority, which can include community surveys, community meetings, and consulting tribal elders. Analyzing whether a community is interested in implementing enhanced sentencing authority can be a useful exercise to help identify justice gaps, whether or not the community decides to pursue enhanced sentencing authority.
- G. *Boosts Perception of Tribal Court Capacity and Authority:*** With the constant scrutiny that attaches itself to tribal courts, tribes equipping tribal courts to exercise enhanced sentencing authority goes a long way to enhancing the public perception of tribal court legitimacy. Developing criminal courts and handling felony-type cases allows tribal courts to show that tribal institutions are competent and fair. To exercise enhanced sentencing authority, tribes will implement further due process protections, engage with their tribal values and customs, and respond to serious crime in their community.
- More importantly, however, tribes exercising enhanced sentencing authority can show their own communities that their tribal justice systems and institutions are able to take care of people. Exercising enhanced sentencing authority can show that their own tribe's justice system is responsive and actively protecting community members.
- H. *Strengthens Tribal Sovereignty:*** Various provisions of TLOA support the strengthening of tribal sovereignty including the recognition of inherent tribal jurisdiction and the ability to incorporate tribal custom in sentencing. It also promotes the development of governmental infrastructure like tribal criminal courts and tribal codes. Further, it supports a tribe's ability to provide a community resolution for crimes occurring in the community - to receive an efficient community response and resolution. Because inherent tribal jurisdiction over all

peoples on tribal lands has been restricted by Congress and the Supreme Court, TLOA enhanced sentencing authority presents an opportunity for tribes to reclaim exercising inherent jurisdiction. However, some of these strengths can also be viewed as challenges to exercising enhanced sentencing authority.

Challenges to Exercising Enhanced Sentencing Authority

A. Costs: One of the most significant barriers to exercising enhanced sentencing authority is the cost incurred by tribes. The financial barriers to implementation have been documented in numerous reports including reports by the [Government Accountability Office \(GAO\)](#) and the [American Probation and Parole Association](#).¹⁶

In 2012, the GAO surveyed more than 100 tribes to (1) investigate to what extent tribes were exercising or planning to exercise enhanced sentencing authority and the challenges they faced, and (2) to decipher what assistance federal agencies provided to assist tribes in exercising enhanced sentencing authority. The GAO found that of the respondent tribes, zero were exercising new sentencing authority and 96 percent reported funding limitations as a challenge to exercising that authority.¹⁷ Further, the GAO recommended the Department of Justice (DOJ) improve on communicating eligibility requirements for funding resources available.

Costs associated with implementing enhanced sentencing authority under TLOA include contracting or maintaining jail and long-term incarceration options, providing qualified counsel to indigent defendants, maintaining a tribal court including recording systems and qualified personnel, and code revisions.

Discussion of the *costs to provide defense counsel* is worth further comment. The TLOA enhanced sentencing require Tribes to “provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution.” The Tribe is also required to pay for licensed defense counsel for indigent offenders and the attorney must be “licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.”

Many tribes have gone above the minimum requirements. Some tribes choose to provide counsel to all indigent defendants, while others provide all domestic violence offenders, or another subset of defendants, with counsel. Tribes also employ different standards to determine indigency, with some Tribes providing counsel to anyone who asks for it. Some Tribes rely on contract attorneys to do the majority of their defense counsel work, thereby

¹⁶ Government Accountability Office, [Tribal Law and Order Act: None of the Surveyed Tribes Reported Exercising the New Sentencing Authority, and the Department of Justice Could Clarify Tribal Eligibility for Certain Grant Funds](#) (May 2012); American Probation and Parole Association, [Enhanced Sentencing in Tribal Courts: Lessons Learned from Tribes](#) (January 2015).

¹⁷ Government Accountability Office, [Tribal Law and Order Act: None of the Surveyed Tribes Reported Exercising the New Sentencing Authority, and the Department of Justice Could Clarify Tribal Eligibility for Certain Grant Funds](#) 3 (May 2012).

minimizing the amount the tribe is required to pay to keep defense counsel on call. For some tribes, it can be difficult to find attorneys who satisfy the federal requirements and costly to retain them.

Other costs include:

- Court and Law Enforcement Personnel—increased staff to support a larger caseload and subsequent training on TLOA and meeting prosecutorial burden.
- Community Corrections—meeting defendant pretrial needs, supervising probation or parole, reentry, and/or community reintegration.
- Resources for incarcerated individuals—education programs, trade learning, and rehabilitative programming.
- Resources for community reintegration—transitional housing, mental health and behavioral health services, and family reunification services.

B. Sufficiently Trained Judges: Under TLOA, tribal court judges must have sufficient legal training to preside over criminal proceedings and licensed to practice law in any jurisdiction in the United States. The definition of “sufficient legal training” is ambiguous and not defined in TLOA. This presents the challenge of determining what is sufficient legal training and financing the education for judges that may not have the training. Further, tribal judges may not necessarily hold a state license to practice law. This presents the opportunity, but also requires the necessary capacity, to create or enhance a tribal bar association or finance preparation for tribal judges to earn licensure.

C. Recording System: TLOA enhanced sentencing requires that the tribe “maintain a record of the proceedings, including an audio recording or other recording of the trial proceeding.”¹⁸ This is to ensure that issues are preserved for appeal and that applicable legal rules and procedures are followed. The record of the proceedings should be easily accessible to the parties and the court. This requirement places on the implementing tribe the task of acquiring, assembling, operating, and maintaining a recording system. Tribes need to be prepared to produce the recording if there is a habeas corpus challenge in federal court. There have been federal habeas corpus actions in which the federal court presumed that the rights were not given when the tribe could not produce the recording.

D. Code or Constitutional Revisions: TLOA is a procedurally complex statute. To ensure compliance with the statute, tribes need to make changes to tribal codes and possibly to the tribal constitution. Code or constitutional revisions can be complicated and time consuming. They require work not just by attorneys but also by other community members. Those revisions serve a compliance purpose, but also would allow potential defendants to be on notice of penalties for

¹⁸ 25 U.S.C. § 1302(c)(5).

violating tribal law. The Tribe is also required to “make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government.”¹⁹ Most Tribes use the Internet to make their criminal laws, rules of evidence, and rules of criminal procedure publicly available. This may be another cost to ensure the online code is available and up to date.

E. Incarceration: Each tribe must also decide where defendants will serve their sentences. This may be in: a Tribal Correctional Center; the nearest appropriate federal facility (Bureau of Prisons Tribal Prisoner Program); a State or local government-approved correctional center (pursuant to an agreement between the Tribe and State or local government); or alternative rehabilitation center of the Tribe.²⁰ This can be costly for the tribe. Some tribes have a Tribal Correctional Center, but it must meet Bureau of Indian Affairs guidelines for long-term incarceration. If it does not meet the guidelines, the Tribe must spend money to bring into compliance or find another option. Some tribes have agreements with State and local correctional centers to house the tribally sentenced inmates, but the cost varies depending on that local or State facility. There is no standard rate, and the tribe has to negotiate the rate. Through the Bureau of Prisons Tribal Prisoner Program, the Tribe does not have to pay to house the inmate. However, there must be space (there can only be 100 tribal offenders at one time),²¹ the tribe must complete a referral form and (at time of publication) the tribe pays for the inmates travel to the federal facility.

F. Lack of Tribal Criminal Court: How tribes exercise court jurisdiction varies across the country depending on need, resources, infrastructure, and capacity. Some tribes may possess the capacity to run specialized courts or solely courts of civil jurisdiction. TLOA would require the development of a well-staffed and well-resourced tribal criminal court. The court would need to meet all the prerequisites to exercising enhanced sentencing authority like providing defense counsel and accommodating the potential increase in defendants being charged in tribal court given the availability of enhanced sentencing. This would result in the need for a robust increase in qualified court personnel, in-house counsel, contracted counsel, and so forth to meet the increased demand.

G. May Keep Potential Participants out of Healing to Wellness Court: Certain drug court funds²² may not be used to serve persons who meet the “violent offender” definitions in [34 U.S.C. § 10613](#). This “violent offender” prohibition applies to specific prior convictions and specific current charges, but it does not currently apply to most tribal court charges and convictions because the statutory language specifically references a person who is *presently charged with or convicted of* an offense that is punishable by a term of imprisonment *exceeding one year* and references prior convictions for a *felony* crime of violence.²³ A felony is defined under federal law as a crime that

¹⁹ 25 U.S.C. § 1302(c)(4).

²⁰ 25 U.S.C. § 1302(d)(1).

²¹ 25 U.S.C. § 1302a(2)(d).

²² Violent offender prohibition does not apply to grants awarded with Veterans Treatment Court (VTC) funds.

²³ Note, there is a separate definition of “violent offender” for juvenile drug courts. 34 U.S. Code § 10613(b).

is punishable by a prison sentence of more than one year. Prior to the enactment of TLOA, tribal courts were unable “to impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both.”²⁴ The “violent offender” prohibition, however, would fully apply to relevant current charges for Tribes who have implemented TLOA enhanced sentencing and also to any relevant convictions following TLOA enhanced sentencing enactment.

An analysis on whether a present charge or conviction from a tribal court may impact an individual’s ability to participate in a DOJ funded Tribal Healing to Wellness Court will depend very much on a tribe’s codes and whether the tribe is exercising TLOA enhanced sentencing.

H. Community Support: Community support of exercising enhanced sentencing authority is vital to the health of the community. TLOA offers a particular way to exercise criminal justice that may be incongruent with tribal values or culture, namely by increasing prison time and fines for particular defendants convicted in tribal court. Balancing safety concerns, tribal beliefs, and the will of the community is a tough task and should be entered into with caution. Here are some questions your community may want to think about when considering the exercise of enhanced sentencing authority under TLOA:

- Does your tribe currently use incarceration and/or high fines as criminal sanction?
- Does your tribe use a criminal justice system to handle these matters or does it use civil sanctions?
- Are the additional procedural rules under TLOA consistent with the way your court operates?
- Are serious crimes going unpunished?
- How many defendants are charged with felonies in your courts? Are they repeat offenders?

²⁴ Section 1302 (a) (7) (B) of the Indian Civil Rights Act, [25 U.S. Code § 1302 - Constitutional rights | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#).

5. Bureau of Prisons Tribal Prisoner Program

Background: As previously mentioned, TLOA is a very broad statute. In addition to (and related to) enhanced sentencing authority, TLOA created the Bureau of Prisons (BOP) Pilot Program.²⁵ The Pilot Program authorized the BOP to house a limited number of certain offenders sentenced in tribal courts for a period of four years, only accepting a maximum of 100 prisoners at one time.²⁶ The Pilot Program was set to run from November 2010 until November 2014.

Bureau of Prisons Tribal Prisoner Pilot Program Tribes: There were a total of three tribes that participated in the BOP Pilot Program: [Confederated Tribes of the Umatilla Indian Reservation](#), [Eastern Band of Cherokee Indians](#), and [the Tulalip Tribes of Washington](#). According to DOJ web archives, there were a total of six inmates housed in BOP institutions throughout the project period.²⁷ The first inmate was admitted in November 2012 and an additional five inmates were admitted before the project ended in November 2014.

The option was only used by a few tribes. There are several possible reasons for minimal use of BOP facilities. First, not many tribes were exercising enhanced sentencing authority during the pilot project period, this could be because complying with the federal prerequisites to exercise enhanced sentencing authority is time consuming and expensive. Some tribes cannot afford to satisfy the requirements, other tribes have decided the extra authority is not worth the expense, and other tribes are opposed to the effects the prerequisites will have on their cultural system of governance. Second, the regulations established by the BOP restricted which prisoners it would accept as outlined in the preceding text. Third, the forms to apply to transfer a prisoner into the BOP were complicated and time consuming to complete. It is likely that by the time interested tribes and the BOP fully understood the processes necessary to admit qualified inmates, the project period ended.

Though only a few tribes used the program, the impact of participation was great and, for some, critical. For some tribes, the BOP offered better resources and facilities. The size of BOP facilities alone could be a huge asset to tribes exercising enhanced sentencing authority, especially those without (or with small) facilities. Additionally, the BOP can offer an array of services and programs including reentry programs, mental health resources, and education programs.²⁸

On May 7, 2014, BOP submitted a report²⁹ to Congress, as required by section 234(c)(5) of the TLOA, on the project from November 29, 2010 to November 29, 2013. The BOP stated that it

²⁵ 25 U.S.C. § 1302(d).

²⁶ "Tribal Offenders," Bureau of Prisons, accessed August 28, 2019, https://www.bop.gov/inmates/custody_and_care/tribal_offenders.jsp.

²⁷ U.S. Department of Justice, [Indian Country Accomplishments of the Justice Department 2009–2016](#) 10.

²⁸ "Custody and Care," Bureau of Prisons, accessed January 3, 2020, https://www.bop.gov/inmates/custody_and_care/.

²⁹ Bureau of Prisons, [Status of the Tribal Law & Order Act Program](#) (May 2014).

supports the TLOA Pilot Program and recommended making the Pilot Program permanent to ensure the resource is available to tribes.

On March 15, 2022, President Biden signed the Violence Against Women Act Reauthorization bill (VAWA 2022) as a part of the Omnibus funding bill ([H.R. 2471](#)). VAWA 2022 authorized a permanent BOP tribal prisoner program.

For the BOP to house defendants convicted in tribal court, federally recognized tribes have to refer the defendant to the BOP. Tribal judges complete the referral and the BOP evaluates the referral for eligibility.

A defendant is eligible³⁰ if:

- Convicted of a violent crime,*
- Sentenced to a term of one or more years of imprisonment with a minimum of one year left to serve at the time of referral to the BOP for pilot participation,
- At least 18 years of age at the time of the offense, and
- Negative for active tuberculosis. BOP clinicians will administer a tuberculosis skin test (also known as a PPD test) following admission to the BOP facility. The offender must test negative to remain eligible.

*A violent crime comparable to the crimes described in 18 U.S.C. 1153(a). Examples include murder, manslaughter, kidnapping, maiming, sexual abuse, incest, felony assault, felony child abuse or neglect, arson, or robbery.

Further information about the BOP tribal prisoner program can be found at: www.bop.gov/inmates/custody_and_care/tribal_offenders.jsp.³¹

³⁰ "Tribal Law & Order Act Pilot Program," Bureau of Prisons, accessed August 28, 2019, <https://www.bop.gov/inmates/docs/tloa.pdf>.

³¹ "Custody and Care," Bureau of Prisons, accessed December 19, 2022, https://www.bop.gov/inmates/custody_and_care/.

6. Tribes Exercising Enhanced Sentencing Authority

As of January 2023, there are seventeen known tribes exercising enhanced sentencing authority. These are tribes that have been made known to the Tribal Law and Policy Institute, National Congress of American Indians, and the National Council of Juvenile and Family Court Judges, and may not represent all tribes that are currently implementing enhanced sentencing authority under the TLOA.

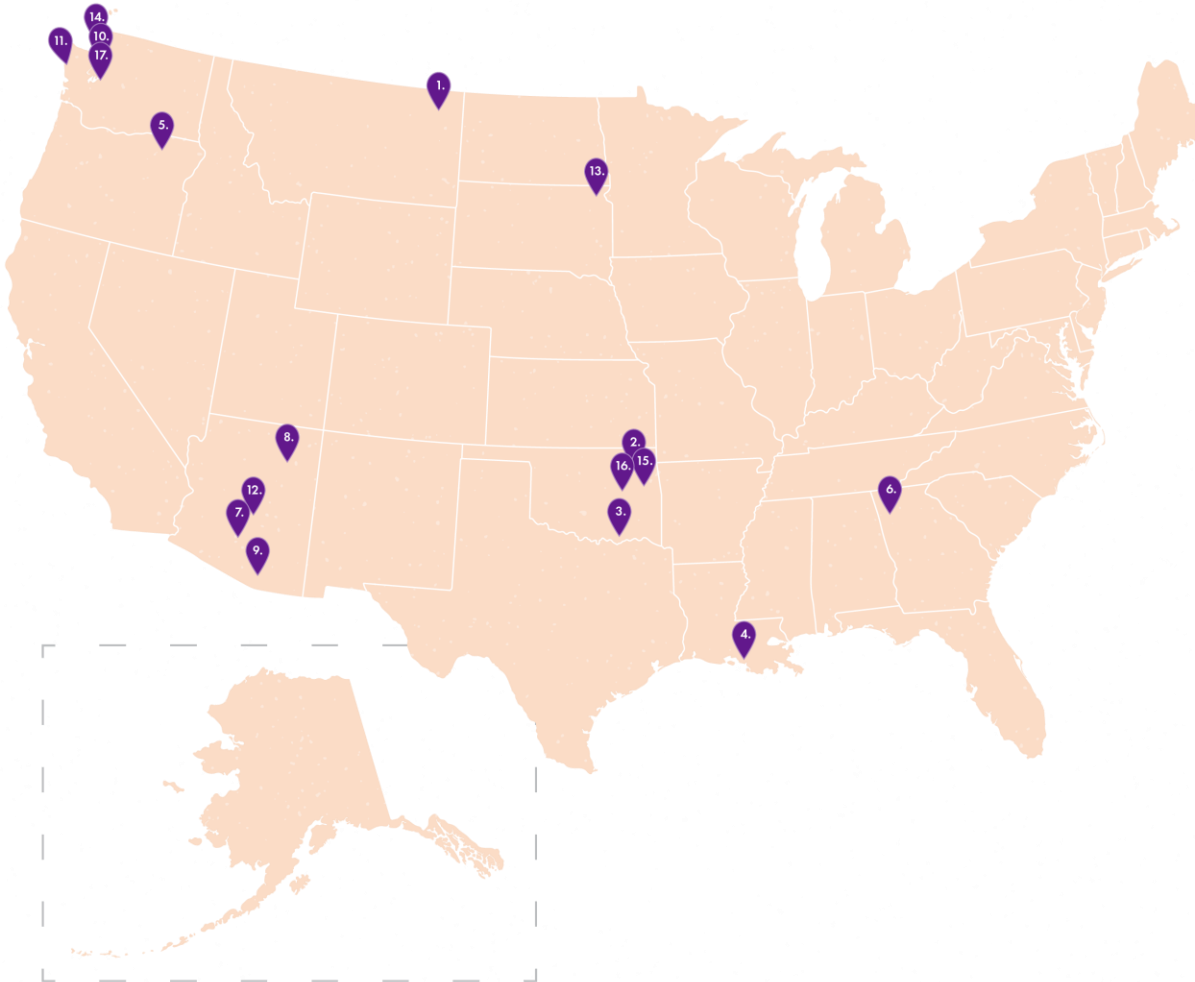
- Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation
- Cherokee Nation
- Chickasaw Nation
- Chitimacha Tribe of Louisiana
- Confederated Tribes of the Umatilla Indian Reservation
- Eastern Band of Cherokee Indians
- Gila River Indian Community of the Gila River Indian Reservation
- Hopi Tribe of Arizona
- Pascua Yaqui Tribe of Arizona
- Port Gamble S'Klallam Tribe
- Quinault Indian Nation
- Salt River Pima Maricopa Indian Community of the Salt River Reservation
- Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
- Suquamish Tribe of the Port Madison Reservation
- The Choctaw Nation of Oklahoma
- The Muscogee (Creek) Nation
- Tulalip Tribes of Washington

Map of Tribes Exercising Enhanced Sentencing Authority



IMPLEMENTING TRIBES

Tribes Exercising Enhanced Sentencing Authority
Under the Tribal Law and Order Act as of January 2023



1. Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation
2. Cherokee Nation
3. Chickasaw Nation
4. Chitimacha Tribe of Louisiana
5. Confederated Tribes of the Umatilla Indian Reservation
6. Eastern Band of Cherokee Indians
7. Gila River Indian Community of the Gila River Indian Reservation
8. Hopi Tribe of Arizona
9. Pascua Yaqui Tribe of Arizona
10. Port Gamble S'Klallam Tribe
11. Quinault Indian Nation
12. Salt River Pima-Maricopa Indian Community
13. Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
14. Suquamish Indian Tribe of the Port Madison Reservation
15. The Choctaw Nation of Oklahoma
16. The Muscogee Creek Nation
17. Tulalip Tribes of Washington

7. Conclusion

The TLOA was a momentous occurrence in the larger landscape of tribal court jurisdiction. With the primary purpose of reducing crime in Indian country and improving public safety, TLOA recognized tribal inherent jurisdiction. TLOA also enhanced tribal court criminal jurisdiction by providing new limits to a tribal court's ability to sentence defendants to prison and enforce fines. Collectively known as "enhanced sentencing authority," these new limits were intended to reduce the occurrence of serious crimes. However, results of tribes exercising enhanced sentencing authority or attempting to exercise enhanced sentencing authority have been mixed. Tribes have faced heavy fiscal and procedural hurdles ranging from affording legal representation for indigent defendants to developing sustainable resources.

Despite the hurdles and challenges, exercising enhanced sentencing authority reaffirms tribal jurisdiction and can strengthen tribal sovereignty. Tribal members can see a form of justice enacted through their tribal laws, administered by their justice system, felt by their community members, and executed in a community responsive fashion; a justice that substantively responds to the seriousness of crimes committed in tribal communities. From incorporating culturally informed sentencing to promoting community accountability, exercising enhanced sentencing authority could be a step your tribe is ready to take.

The complexity of the TLOA and the implications of exercising sentencing authority require serious attention from tribal leaders, tribal citizens, and tribal agency leadership alike. Consideration of exercising enhanced sentencing authority requires a deep analysis of community readiness and a community's approach to justice. However, there are now resources to help tribes navigate the statute's complexity. The most important resource is the experience of other tribes currently exercising enhanced sentencing authority. Other relevant resources are provided in the final section of this resource.

8. Examples of Tribal Code Implementing Provisions

Jurisdictional Statement

EASTERN BAND OF CHEROKEE INDIANS
PART 1 – CHARTER AND GOVERNING DOCUMENT OF THE EASTERN BAND OF CHEROKEE
INDIANS
CHAPTER 7: JUDICIAL CODE

Sec. 7-2. Jurisdiction of the Judicial Branch.

(a) The jurisdiction of the Eastern Band of Cherokee Indians, including the Judicial Branch, extends to all persons, activities, and property within the territory of the Eastern Band based upon inherent territorial or popular sovereignty. The territory of the Eastern Band is comprised of all lands within the Qualla Boundary, all lands held by the United States for the benefit of the Eastern Band or any member of the Eastern Band, and all other lands acquired by the Eastern Band, notwithstanding the issuance of any right-of-way. The territory includes all surface and sub-surface lands, submerged lands under navigable or non-navigable waters, all air and water, and all natural resources. Every person who enters the territory shall, by entering, be deemed to have consented to the jurisdiction of the Eastern Band of Cherokee Indians.

(b) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians, including cases in which the Eastern Band of Cherokee Indians, or its officials and employees, shall be a party. Any such case or controversy arising within the territory of the Eastern Band of Cherokee Indians shall be filed and exhausted in the Judicial Branch before it is filed in any other jurisdiction. This grant of jurisdiction shall not be construed to be a waiver of sovereign immunity.

€ The Judicial Branch shall not have jurisdiction over matters in which the exercise of jurisdiction has been specifically prohibited by a binding decision of the United States Supreme Court, the United States Court of Appeals for the Fourth Circuit or by an Act of Congress.

(d) In deciding cases and controversies over which it has jurisdiction, the Judicial Branch shall be bound by the laws, customs, traditions, and precedents of the Eastern Band of Cherokee Indians. If there is no applicable Cherokee law, the Judicial Branch shall look next to Federal law, then to North Carolina law, and finally to the law of other jurisdictions for guidance. Limitations on the authority of the Cherokee Court to grant certain types of relief, which are set forth in the Cherokee Code, shall remain in full force and effect, unless they are specifically rescinded by the Tribal Council (e) The Supreme Court shall have appellate jurisdiction to certify and decide any appeal from the Trial Court. The Supreme Court shall have original and exclusive jurisdiction to review a final determination made by the Election Board in any election dispute.

(Ord. No. 29, 4-1-2000; Ord. No. 291, 7-6-2000)

Sentencing Provisions

HOPI CODE
TITLE 3—CRIMINAL CODE
CHAPTER 4: PENALTIES

3.4.1 IMPRISONMENT AND FINES. The Court may impose the following criminal penalties against a person who is convicted for violating, this Code:

- A. A maximum of three years in custody and/or a fine of up to \$15,000.00 upon conviction for an offense which is defined in this Code "as a "dangerous offense;"
- B. A maximum of two years custody and/or a fine of up to \$10 ,000.00 upon conviction for an offense which is defined in this code "as a "serious offense;"
- C. A maximum of one year in custody and/or a fine of up to \$5,000.00 upon conviction for an offense which is defined in this Code as an "offense;"
- D. A maximum of six months in custody and/or a fine of up to \$ 2,500.00 upon conviction for an offense which is defined in this Code "as a "minor offense."
- E. A maximum of three months in custody and/or a fine of up to \$1,250.00 upon conviction for an offense which is defined in this Code "as a "petty offense."

3.4.2 REPETITIVE OFFENDERS.

The Court may, at its discretion, sentence a person who has been previously convicted of the same offense, or a comparable offense by any jurisdiction in the United States, to one class higher than the sentence imposed in the previous conviction. Convictions for two or more offenses committed for the same act may be counted as one conviction for the purposes of this section.

3.4.3 CONSECUTIVE TERMS OF IMPRISONMENT.

If multiple crimes are committed, and multiple sentences of imprisonment are imposed on a person at the same time, the Court may, at its discretion, direct the sentences to run consecutively.

3.4.4 OTHER CRIMINAL PENALTIES.

In addition to, or in lieu of, the penalties set forth in Section 3.4.1, the Court may order restitution, diversion from criminal prosecution, community service, treatment, probation, parole, or suspension of sentence, unless a provision of this Code provides otherwise with respect to a certain type of offense.

The Court may substitute community services for a fine, upon a showing that the defendant is indigent.

3.4.5 CIVIL DAMAGES [omitted]

3.4.6 HOPI TRADITIONS, CUSTOMS AND PRACTICES

The Court shall consider Hopi traditions, customs and practices when imposing the penalties set forth in this section.

Due Process Provisions

TULALIP TRIBES
TITLE 2: TRIBAL JUSTICE SYSTEM
CHAPTER 2.25: CRIMINAL PROCEDURES

Sec. 2.25.070. Rights of defendant in a criminal proceeding.

(1) Presence of the Defendant. Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

(2) Rights of the Defendant. In all criminal proceedings, the defendant shall have the following rights:

- (a) To be free from excessive bail and cruel punishment;
- (b) To defend in person or by counsel;
- (c) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;
- (d) To confront and cross-examine all prosecution or hostile witnesses;
- (e) To compel by subpoena:
 - (i) The attendance of any witnesses necessary to defend against the charges; and
 - (ii) The production of any books, records, documents, or other things necessary to defend against the charges;
- (f) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
- (g) To appeal any final decision of the Tribal Court to the Tribal Court of Appeals;
- (h) To be tried only once by the Tribal Court for the same offense;
- (i) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and
- (j) To petition for a writ of habeas corpus.

(3) Right to Counsel. During the initial appearance before the Court, every defendant must be informed of the right to have counsel at his or her own expense or the right to apply for appointment of counsel. If the defendant wishes to obtain counsel, or is found to be ineligible for appointed counsel, the Court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause. If the defendant is being charged with a felony crime, with potential sentencing in excess of one year:

- (a) The defendant shall have the right be represented by an attorney who is a member of the Tulalip Tribal Bar and who is licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys; and

(b) If the defendant is indigent, the Court shall, at the Tribes' expense, provide the defendant with an attorney meeting the qualifications in subsection (3)(a) of this section at all critical stages of the criminal proceeding.

(4) Right to a Jury Trial. A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six fair and impartial jurors. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(5) Subsequent Prosecutions. A subsequent prosecution is allowed when the previous prosecution was properly terminated under any of the following circumstances:

(a) The defendant consents to the termination or waives, by motion, an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;

(b) The Tribal Court finds that a termination, other than by acquittal, is necessary because:

(i) It is impossible to proceed with the trial in conformity with the law;

(ii) There is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;

(iv) The jury cannot agree upon a verdict; or

(v) A false statement of a juror on voir dire prevents a fair trial;

(c) The subsequent prosecution was for an offense which was not completed when the former prosecution began; or

(d) There was a transfer of jurisdiction to another authority.

The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without prejudice upon a pretrial motion; or discharge for want of prosecution without a judgment of acquittal.

(6) Writ of Habeas Corpus [omitted].

(7) Right to a Speedy and Public Trial [omitted].

[Res. 2013-233; Res. 2013-102; Res 2012-445 § 9; Ord. 48 § 5.7, 1-8-2010 (Res. 2010-10)].

9. Tribal Law and Order Act: Enhanced Sentencing Resources

A. Statutes

1. Congress passed the [Tribal Law and Order Act](#) in 2010. It was signed into law on July 29, 2010. This is a comprehensive statute focused on all aspects of investigating and prosecuting crime in Indian country with a primary purpose of crime in Indian country and increasing public safety. The statute attempts to systematically address a wide variety of problems from data collection to housing prisoners.

2. On March 15, 2022, President Biden signed the [Violence Against Women Act Reauthorization bill \(VAWA 2022\)](#) as a part of the Omnibus funding bill ([H.R. 2471](#)). This amended parts of ICRA statute and made the BOP tribal prisoner pilot program under TLOA permanent.

B. Government Documents/Reports

1. [“Tribal Law and Order Act: None of the Surveyed Tribes Reported Exercising the New Sentencing Authority, and the Department of Justice Could Clarify Tribal Eligibility for Certain Grant Funds,”](#) U.S. Government Accountability Office (GAO) Report, May 30, 2012. The U.S. GAO report to Congress regarding: (1) To what extent did selected tribes report that they exercise, or have plans to exercise, TLOA’s new sentencing authority, and that they implement, or have plans to implement its associated requirements, and what challenges, if any, did the selected tribes report in doing so? And (2) what types of assistance did federal agencies report that they provide to assist tribes in exercising TLOA’s new sentencing authority, and what, if any, federal assistance did selected tribes report that they would like to receive?

2. [“Bureau of Prisons Implements Key Provision of Tribal Law and Order Act with Pilot Program to Incarcerate Tribal Prisoners in Federal Prisons,”](#) November 26, 2010. The DOJ Federal Bureau of Prisons implemented a key provision of the TLOA of 2010 by launching a four-year pilot program to accept certain tribal offenders sentenced in tribal courts for placement in BOP institutions. The four-year pilot program has now expired.

3. [“U.S. Department of Justice Tribal Law and Order Act Report on Enhanced Tribal-Court Sentencing Authority,”](#) U.S. Department of Justice.

The TLOA, Pub. L. No. 111-211, tit. II, 124 Stat. 2261 (2010), was signed into law by President Obama on July 29, 2010. In part, Congress intended TLOA to empower tribal law enforcement agencies and tribal governments. To that end, Section 234(b) of TLOA (amending the ICRA, 25 U.S.C. § 1301 *et seq.*) requires the Attorney General, in coordination with the Secretary of the Interior, to submit a report to the appropriate committees of Congress that includes (1) a description of the effectiveness of enhanced tribal-court sentencing authority in curtailing violence and improving the administration of justice on Indian lands; and (2) a recommendation of whether enhanced sentencing authority should be discontinued, enhanced, or maintained at the level authorized by TLOA. This report fulfills the Section 234(b) requirement.

C. Resources developed by Bureau of Justice Assistance (or Department of Justice) Tribal Technical Assistance Providers

1. ["Tribal Legal Code Resource: Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction Guide for Drafting or Revising Tribal Laws to Implement the Tribal Law and Order Act \(TLOA\) Enhanced Sentencing and the Violence Against Women Act Reauthorization of 2013 \(VAWA 2013\) Special Domestic Violence Criminal Jurisdiction,"](#) Tribal Law and Policy Institute (updated 2016). This Implementing TLOA and VAWA resource provides guidance for Native Nations interested in implementing enhanced sentencing under the TLOA and/or the special domestic violence criminal jurisdiction under the 2013 VAWA.
2. ["Enhanced Sentencing in Tribal Courts: Lessons Learned from Tribes,"](#) American Probation and Parole Association, Tribal Judicial Institute and The National Tribal Judicial Center, January 2015. The publication provides a brief overview of changes under the TLOA regarding enhanced sentencing authority in tribal courts; offers considerations for corrections professionals regarding enhanced sentencing authority; and provides tribes with a checklist to help guide discussions on implementation of the new sentencing authority and corrections issues. Lastly, this publication provides information on financial resources to fund enhanced sentencing authority implementation.
3. ["Intersecting Laws: The Tribal Law and Order Act and the Indian Civil Rights Act,"](#) American Probation and Parole Association and Tribal Judicial Institute, October 2016. This publication explains the expanded sentencing rights of Indian tribes under the TLOA and how those rights must be exercised consistent with the rights of criminal defendants protected by the ICRA. In addition, the publication explains a number of challenges that tribes should consider when imposing enhanced sentencing on criminal defendants and offers solutions to overcome the challenges.
4. ["Tribal Law and Order Act: Enhanced Sentencing Authority: Tribal Code Development Considerations & Quick Reference Overview & Checklist,"](#) American Probation and Parole Association and Tribal Judicial Institute, July 2015. This publication provides background information on how the TLOA of 2010 amended the ICRA of 1978 as well as a quick-reference checklist to aide jurisdictions as they initiate discussions around or begin planning for implementation of this new authority. Within this publication are two functional tools jurisdictions can use to guide discussions and/or implementation processes: Quick-reference overview of statutory and due process requirements and quick-reference checklist for tribal code review, amendment, and development.

10. Tribal Law and Order Act: General Resources

A. Congressional Hearings

1. Legislative Hearing on "[S. 797, the Tribal Law and Order Act of 2009,](#)" June 25, 2009.
2. [Oversight Hearing on Tribal Law and Order Act One Year Later: Have We Improved Public Safety and Justice throughout Indian Country?](#), September 22, 2011.
3. [Oversight Hearing on Tribal Law and Order Act \(TLOA\)—5 Years Later: How Have the Justice Systems in Indian Country Improved?](#), December 2, 2015.
4. Roundtable discussion, "[The Tribal Law and Order Act 5 Years Later: Next Steps to Improving Justice Systems in Indian Communities,](#)" February 25, 2016 (This is a Webcast.).

B. Government Documents/Reports

1. "[A Roadmap for Making Native America Safer—Report to the President and Congress of the United States,](#)" Indian Law and Order Commission, November 2013. The Indian Law and Order Commission's final report and recommendations—A Roadmap for Making Native America Safer—as required by the TLOA of 2010, Public Law 111-211. The recommendations are intended to make Native American and Alaska Native nations safer and more just for all U.S. citizens and to reduce the unacceptably high rates of violent crime that have plagued Indian country for decades. This report reflects one of the most comprehensive assessments ever undertaken of criminal justice systems servicing Native American and Alaska Native communities.
2. "[Indian Alcohol and Substance Abuse Memorandum of Agreement,](#)" U.S. Department of Health and Human Services, U.S. Department of the Interior, and U.S. Department of Justice, August 2011. Pursuant to the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (Title IV, Subtitle C of Public Law 99-570) (the Act), the Department of Health and Human Services and Department of the Interior (DOI) entered into a Memorandum of Agreement (MOA) to develop and implement a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level. Through the TLOA of 2010 (Title II of Public Law 111-211) amendments to the Act, Congress sought to engage new federal partners to build upon those efforts. Pursuant to the TLOA amendments to the Act, the Secretary of Health and Human Services, the Secretary of the Interior, and the Attorney General developed and entered into an MOA.
3. "[The Tribal Law and Order Act Long-Term Plan to Build and Enhance Tribal Justice Systems,](#)" U.S. Department of Interior and U.S. Department of Justice, August 2011. TLOA mandates that the DOJ and the DOI develop, in consultation with tribal leaders and tribal justice professionals, a long-term plan to address incarceration and the alternatives to it in Indian country. The DOJ and

DOI obtained substantial input from tribal justice officials, including law enforcement, courts, and corrections. The DOJ and DOI conducted a series of consultations with tribal leaders across the country; conducted focus groups with tribal justice officials; hosted webinars; created a multiagency Work Group on Corrections (“Work Group”) to provide recommendations on action steps; and drafted a Tribal Justice Plan (Plan) for public comment. Those comments were incorporated into the final Plan submitted to Congress.

4. [“United States Attorney Tribal Law and Order Act Directives.”](#) Duties imposed on United States Attorneys by the TLOA of 2010.

5. [“Review of the Department’s Tribal Law Enforcement Efforts Pursuant to the Tribal Law and Order Act of 2010.”](#) Office of the Inspector General, U.S. Department of Justice, December 14, 2017. The report found that the DOJ (Department) has taken some steps to carry out TLOA’s mandates. However, the Department and its components still lack a coordinated approach to overseeing the assistance it provides in Indian country. Further, the Department has not prioritized assistance to Indian country at the level consistent with its public statements or annual reports to Congress. The report also found that the Department needs to do more to ensure it provides all of the training TLOA requires. Finally, crime data in Indian country remains unreliable and incomplete, limiting the Department’s ability to engage in performance-based management of its efforts to implement its TLOA responsibilities.

C. Websites

1. Tribal Law and Policy Institute, [Tribal Law and Order Act](#) webpage provides links to the text of the TLOA; reporting on the federal declination rates; information on enhanced sentencing authority; Indian Law and Order Commission; reports and documents related to the TLOA; and other resources.

2. National Congress of American Indians, [Tribal Law and Order Act Resource Center](#) is a website specifically developed by the National Congress of American Indians to share information and resources relative to TLOA. It contains news, events, webinars, and other helpful information.

3. U.S. Department of Justice, [Tribal Law and Order Act](#) webpage provides links to the text of the TLOA; documents to enhance understanding of its provisions; and some of the reports and action items that have been created in accord with provisions and directives in the Act.

4. U.S. Department of Justice, [Bureau of Justice Assistance TLOA Website](#) provides an overview of Bureau of Justice Assistance (BJA), an overview of the TLOA, TLOA activities that BJA is involved in, an overview of BJA training and technical assistance, BJA publications and performance reports, an overview of BJA programs that serve tribal communities, and an overview of Coordinated Tribal Assistance Solicitation that could potentially fund TLOA activities.

For additional information, visit the
Tribal Court Clearinghouse:

www.TLPI.org



“A project of the Tribal Law and Policy Institute”