



PROTECTING INDIAN FAMILIES THROUGH LAW

Joseph Myers, J.D.

Executive Director, National Indian Justice
Center




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INTRODUCTION

- Indian country was built on a foundation of violence.
 - Indians were marched away from their homelands onto small, isolated areas (reservations).
 - Indian children were forced to go to boarding schools &:
 - **Taught to reject their cultures**
 - **Prohibited to speak their Native languages**
 - **Forced to learn the white man's ways for domestics**
 - *Tortured and killed in these schools;*
 - *Traumatized with an irreparable emotional and psychological harm (Historical Trauma).*
 - *Only a few made it through without severe damage.*
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12 Umatilla Indian Camp, Ore.

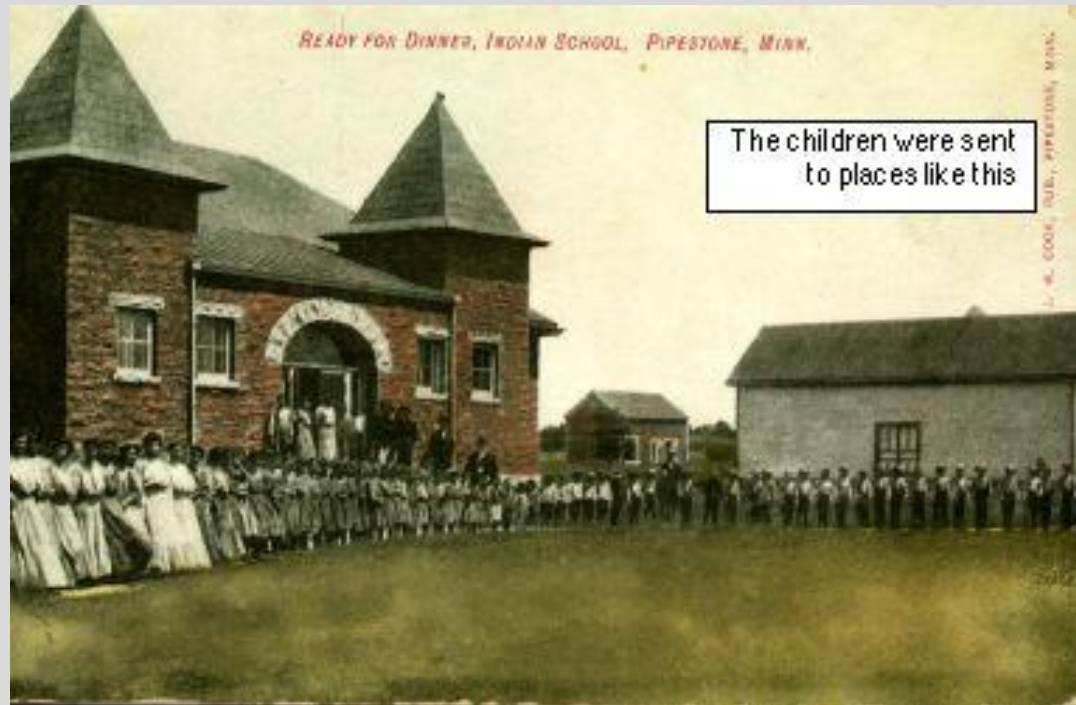
The children came from places like this.



**Native families
were
separated!**

READY FOR DINNER, INDIAN SCHOOL, PIPESTONE, MINN.

The children were sent to places like this



L. R. COOK, PUB. PIPESTONE, MINN.





Still being separated from their families, Native Americans are stripped of their culture & religion by schools.

**Their motto was to,
“Kill the Indian and
Save the Man.”**





TRIBAL JUSTICE SYSTEMS TODAY

- 564 Federally Recognized Tribes
- 275 Tribal Courts Functioning
- Tribal Court Practices include:
 - Law Advocates and Judges, & Bar Licensed Practitioners
 - Court Admission to practice not uniform
 - Application of law (Traditional/Common Law & other)
- Broad Civil Jurisdiction (Limited by State/Federal Courts)
- Tribal Criminal Jurisdiction (Non-Indians are Exempt)
- Limited by 1968 Indian Civil Rights Act (ICRA)
 - **1 year and/or \$5,000 fine maximum sentence (misd)**
 - **ICRA “Miranda” rights—NO “right” to counsel**
- Habeas Corpus Federal Court Review (25 USC 1303)





TRIBAL FELONY CRIMINAL JURISDICTION

- Federal Prosecution of Indian Country Crimes
 - Major Crimes Act (17 specific crimes)
 - 24/93 U.S. Attorney Offices
 - FBI & BIA Historic MOU
- States (13): “P.L. 280”
 - State criminal statutes apply to all IC felonies
 - California (109); Alaska (227); Minn; Oregon; Wisconsin
 - County Attorneys/Sheriffs
- Federal General Applicable Crimes (everywhere)





THE ULTIMATE QUESTIONS

- Violence is common on Indian reservations and often tolerated by Native communities.
 - 1. Can laws protect Native families in Indian country and turn their dysfunction into healthy family units?**
- A new federal law seeks to address the violence in Indian country.
 - 2. Is it merely a wish list or can it bring peace and well being to Native families?**





THE TRIBAL LAW & ORDER ACT OF 2010


“Native American women suffer from violent crime at a 3 1/2 times greater than the national average” (U.S. Dept. of Justice).

- Focuses on decreasing violence against women in Native communities.
 - Seeks to strengthen and improve tribal police and the ability to prosecute crime effectively.
 - Establishes accountability measures for federal agencies responsible for providing for the public safety on Indian reservations.



TITLE I



- Requires the U.S. Dept. of Justice to file declination reports to tribal justice officials.
 - Enhances consultation and communication between the BIA (OJ Services) and tribal communities.
 - Requires the BIA to issue annual spending and unmet needs reports.
 - Historically, declinations by U.S. Attorneys regarding sexual assaults and rapes of Indian women were routine in some regions.
 - This provision of the Act may be resisted by some U.S. Attorneys, especially those who advocate strongly about prosecutorial discretion.
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TITLE II



- Allows tribes to call on the U.S. to assist state governments in the prosecution of major crimes.
 - When states have the authority, but lack the resources to address reservation crimes.
- Establish a program to provide technical and financial assistance to encourage tribal-state cooperative law enforcement agreements.
 - *If it intends to address P.L. 280 jurisdiction, it may fall short because P.L. 280 issues are much more profound than just money.*




TITLE III

- Provides tools to tribal justice officials to fight crime in their local communities.
 - Expands on a program to authorize tribal police to make arrests for all crimes committed on Indian lands.
 - Provides tribal police greater access to national criminal history databases, expands training opportunities to tribal colleges and state academies, and sets timelines on BIA background checks.
- **Section 304:** Increases the sentencing authority of tribal courts, 3 yrs for any single offense (up from 1-year limitation under current law).
 - Tribal courts exercising the increased authority must provide defense counsel for indigent defendants.
- Permits tribes to transfer prisoners to the Bureau of Prisons. *Note that an agreement must be negotiated between the tribe and the Bureau of Prisons.*

TITLE IV



- **Reauthorizes** and **amends** existing programs to better serve tribal communities.
 - Includes: the BIA and DOJ Tribal Courts programs, the DOJ jails statute, Tribal Juvenile Justice laws, and the Indian Alcohol and Substance Abuse Act.
 - **Reauthorizes** the DOJ Tribal Community Oriented Policing Services program to permit long term projects.
 - In some cases, permanent grants for hiring and training of tribal police officers, and the purchase of computers, weapons, vehicles, and other necessary equipment.
 - ***This law like other provisions only comes alive when congress appropriates funds to implement it.***
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TITLE V

- Seeks to improve:
 - **Collection of reservation crime data**
 - **Criminal history information sharing by**
 - Tribal, federal, and state law enforcement officers responsible for investigation and enforcing crimes committed in Indian Country.
- Currently, the reliable collection of crime data in Indian country is almost nonexistent.
- Equipment and training are the missing components in tribal police agencies along with qualified personnel to take on this challenge.

TITLE VI



- Provisions to address the epidemic of domestic violence and sexual assault in Indian Country.
 - **Section 601** requires federal officials to notify tribal justice officials when a sex offender is released from federal custody in Indian country.
 - It would also require the U.S. to register the offender with the tribal registry, if applicable.
 - **Section 602** requires law enforcement officers and prosecutors to receive specialized family violence training to enhance the prosecution of crimes of sexual violence in Indian Country.
 - **Section 603** requires federal employees to testify—where they obtain knowledge of a crime within the scope of their duties—in tribal court, to help support prosecutions at the local tribal level.
 - Indian Health Service officials may decline, in writing, a court subpoena should they choose to do so.



CHANGES BY THE TRIBAL LAW & ORDER ACT

- BIA Law Enf./BIA (Office of Justice Services)
 - BIA Arrest Authority
 - Raised Minimum Age Requirement (37 to 47)
 - Recruitment & Retention Issues
 - Perform Background Checks on “Tribal Law enforcement” and “corrections officers”
 - Special Law Enf. Commissions
 - Cross-deputize state-tribal officers to supplement federal resources in Indian Country
 - Fed. Crim. P.41 requires “federal” authority to obtain and execute a search warrant





CHANGES: OPPORTUNITY FOR TRIBAL COURTS TO EXPAND AUTHORITY

- Tribes can maintain existing 1 year max penalty jurisdiction *AND*
- Tribes may exercise Felony Jurisdiction
 - 3 yr and/or \$15K fine (9 year maximum*)
 - One prior conviction *OR* comparable state/fed penalty
 - Likely an “element” to be proved
- Tribal Court Practitioners
 - Defendant’s facing 1 yr + require representation
 - Licensed (by any “jurisdiction in the U.S.”)
 - Licensee Must Show Criteria
- Revise Criminal Ordinances/Increase Penalties
 - Procedural Safeguards; Defendant’s Rights (Victims?)



CONT...

- Tribal Judges Presiding over 3 year Felonies:
 - Must be Licensed
 - Provable license standards (conflict of interests; sanctions)
- Court Administration:
 - Make laws/ordinances publicly available
 - Recorded/Transcribed proceedings (Courts of Records)
 - Formalize process to meet appellate time constraints
 - Funding Issues/Alternative Fees for records (?)
 - Subpoenas to HIS & DOJ employees (sex offenses)
- What is the impact on Traditional Forms of Justice?
- More Issues for ICRA Habeas Corpus Appeal & Federal Court Review!



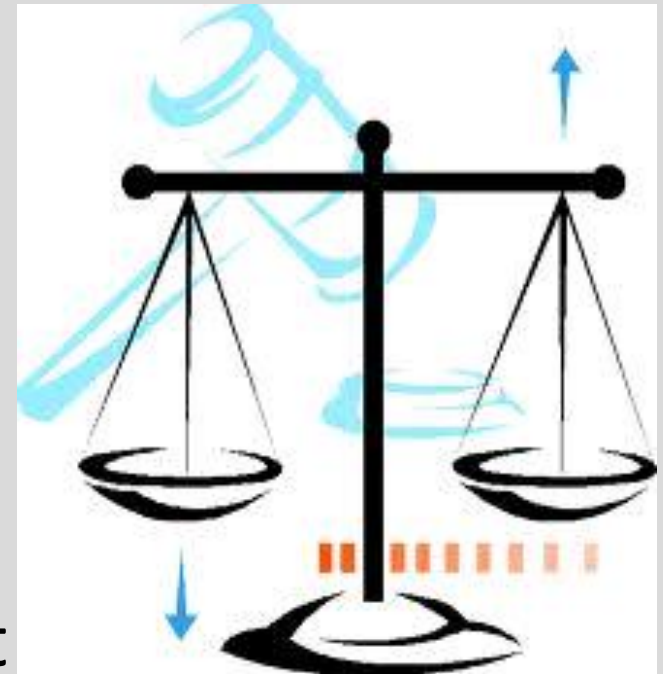
PROTECTION: COURT STAFF & PARTIES

- Systems that prioritize the physical & emotional health of the crime victim at every juncture.
- What are these rights?
 - Notification of release hearings.
 - Wrapping in the same elements found in protective orders into release conditions.
 - Tribal courthouses– Safety entering/leaving the courtroom.



WORKING WITH FED/STATE CRIMINAL JUSTICE SYSTEMS

- The law aims to increase coordination with federal/state criminal justice system actors.
- There are many hurdles to this cooperation/coordination and those can be aggravated when it comes to victims/victimization issues.



CONT...

- Tools for working with Fed/State systems on victim issues. Building:

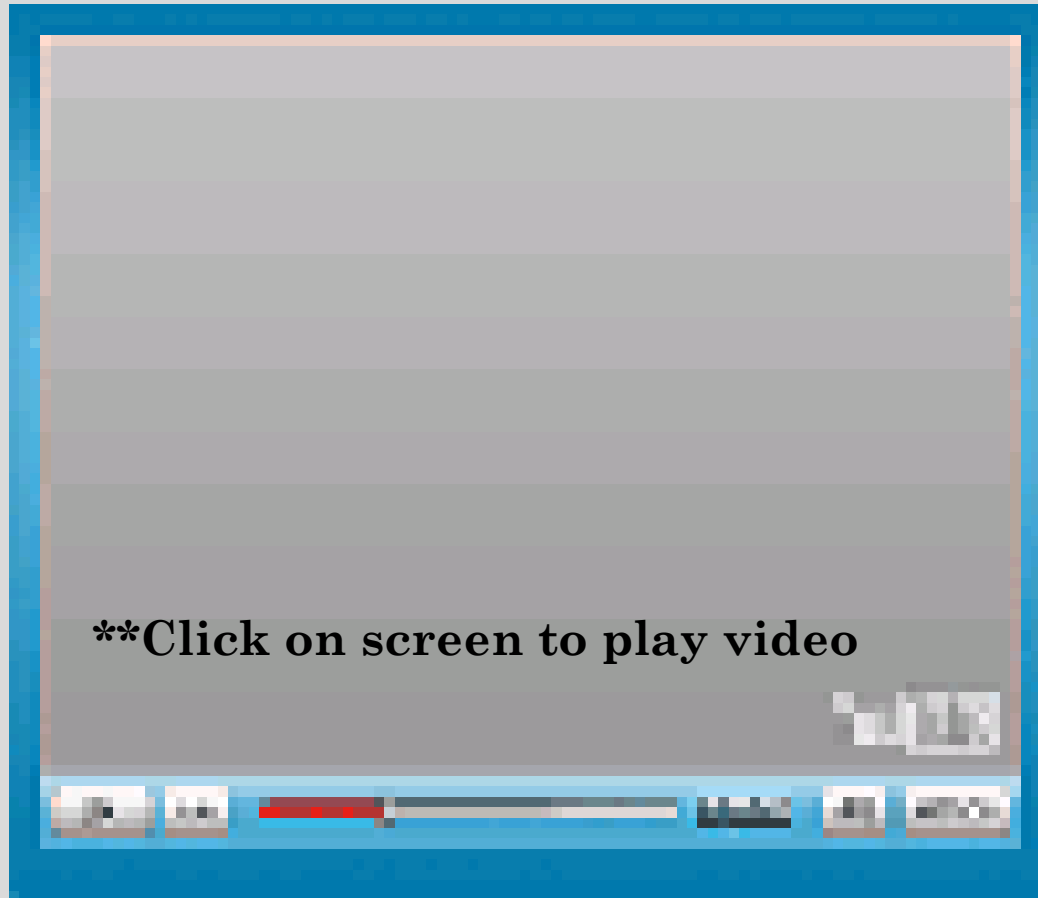




CONCLUSION

- **Violence** rages in the world today.
- The Tribal Law and Order Act 2010 certainly offers important tools for addressing violent crimes in Indian country.
- Given adequate appropriations, good things can happen through this law.
- But, let us not be fooled, violence in the home is not just an epidemic in Indian country; it rages in homes throughout the United States where it sometimes is hidden from police action.

PRESIDENT OBAMA SIGNING LAW



Thank you for viewing my presentation! 😊