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**CONSULTATION TOPIC:** Should the Department of Justice support any of the three proposed legislative changes outlined below, which include changes to the Department’s funding mechanisms, to better meet the public safety and criminal justice needs of Tribes?

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**BACKGROUND:**

For several years Tribes have asked that the Department of Justice (“Department” or “DOJ”) support changes to the funding mechanisms that the federal government uses to support public safety programs for Tribes. Additionally, [Executive Order 14112](#) calls on agencies to—among other things—revise, provide waivers for, and otherwise administer federal funding for Tribal Nations to better fit the needs of Tribal Nations and make it easier for Tribal Nations to access and utilize federal funding. This Nation-to-Nation consultation is in response to these requests and seeks to discuss the suggestions DOJ has received on possible ways to revise public safety funding for Tribes.

According to the Department of the Interior Bureau of Indian Affairs’ (“BIA”) [Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2021](#), the estimated Tribal public safety and justice need for Indian country in 2021 was \$3.509 billion, including \$1.7 billion for law enforcement, \$284.2 million for existing detention/corrections programs, and \$1.5 billion for Tribal courts. Overall, BIA estimated that, for 2021, the funding levels for BIA-administered public safety and justice programs for Tribes were under 13% of total need. However, BIA’s assessments may not account for all public safety and criminal justice needs Tribes currently face; inflation and other factors may have impacted these numbers in recent years. Some Tribes do not receive funding from BIA for law enforcement, such as those Tribes located in states subject to mandatory Public Law 83-280 jurisdiction. And for Tribes that do receive BIA support, they may not receive services or funding from BIA in all three categories (law enforcement, detention/corrections, and Tribal courts). Thus, the full public safety need today is likely greater than BIA’s estimated amounts.

Both BIA and DOJ support Tribal public safety and criminal justice programs. BIA provides this support by funding direct services and contracts and compacts authorized by the Indian Self-Determination and Education Assistance Act. DOJ provides this support through formula and competitive grants authorized by Congress. The Department has implemented various changes to the grant structure to address concerns raised by Tribes about access to DOJ’s funding sources. For example, the Department has advocated for and received Congressional approval for Tribal set-aside programs. DOJ’s grant components have also adopted mechanisms to streamline access to funding and administrative processes.

**Previously Raised Concerns by Tribes**

Tribes have raised concerns over aspects of the Department’s funding mechanisms, including, among others: the competitive nature of many grant opportunities; the temporary nature of DOJ awards; the administrative and reporting requirements; and the restrictions on the use of DOJ awards. Tribes have also offered suggestions for how to improve funding opportunities, many of which would require action by Congress.

## **Recent Department Efforts**

As outlined above, the Department has explored and continues to explore ways to address these concerns. While improvements to the Department's administration of grant funding have been well received by Tribes, the Department remains committed to continuing to explore additional ways to streamline funding and to help Tribes receive the funding they need to effectively operate their public safety and criminal justice systems. To that end, the Department has assembled an internal working group that includes DOJ's grantmaking offices and the Office of Tribal Justice to examine options for improving funding opportunities for Tribes, including consideration of potential legislative proposals. This working group has identified three proposals that the Department has received from Tribes and advocates on potential pathways for improvement that might address long-standing Tribal concerns about inadequate funding and cumbersome funding mechanisms for Tribal public safety programming, each of which would require Congressional action.

## **Potential Proposals to Change Department Public Safety and Criminal Justice Systems Grants**

### *Proposal 1: Seek Congressional Authorization for a New DOJ Formula Grant Program*

Advocate for Congress to authorize a new DOJ Tribal formula grant program that would fund Tribal public safety and justice systems through a single grant award to each Tribe that applies for funding, to be funded either by a new appropriation or a set aside from existing appropriations.

### *Proposal 2: Seek New Statutory Authority Allowing for Integration of DOJ Grants*

Advocate for Congress to enact a PL 477-like statute<sup>1</sup> that authorizes a program where Tribes receiving public safety and criminal justice funding can choose to integrate funding into one DOJ-approved plan. Suggestions on the scope of such a program have included integration of (1) all Tribal public safety and criminal justice funding sources across the federal government, (2) DOJ-grant awards only (both formula and discretionary, whether Tribal-specific or not), or (3) victim-services only funding sources. One option to consider is structuring such a program as a pilot program that could provide the opportunity to assess results and report to Congress whether to continue and/or expand the pilot.

### *Proposal 3: Advocate for Increased Base Funding for Public Safety Through BIA*

Partner with the Department of the Interior to advocate for an increase in base funding available through BIA to meet the public safety and criminal justice needs of Tribes. Some Tribes have suggested that increased appropriations and funding opportunities need to be made available to Tribes for these purposes. It was further suggested that these opportunities be made available to all Tribes, whether or not they currently receive base funding.

## **QUESTIONS:**

The Department seeks Tribal views on what changes to DOJ funding mechanisms would best meet the current public safety needs of Tribes. In particular, the Department seeks feedback on these three,

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<sup>1</sup> Public Law 102-477 (477) is the Indian Employment, Training and Related Services Demonstration Act (25 U.S.C. 3401 et seq.). The Program allows for the consolidation of multiple funding streams and reporting requirements in order to reduce administrative time and costs for federally recognized Tribes and Tribal organizations. The goal of 477 is to improve the effectiveness of employment, training, and related services, reduce joblessness in Indian communities, and serve Tribally determined goals consistent with the policy of self-determination. While Proposal 2 would serve a similar function as 477, it would focus on public safety funding rather than employment, training, and related services.

interconnected proposals. We do not mean to limit the discussion to these topics and welcome any other suggestions or issues Tribes may wish to raise related to the Department's funding opportunities available to Tribes.

1. **Would any of the proposals above better assist your Tribe in meeting its current public safety needs?**
2. **Is your Tribe opposed to any of the proposals? If so, what aspects of the proposals do not work for your Tribe?**
3. **Could any of the proposals be amended or joined together to better address the current public safety needs of your Tribe?**
4. **Does your Tribe have any other suggestions for changing DOJ funding programs and methods?**

**Proposal 1: Seek Congressional Authorization for a New DOJ Formula Grant Program**

5. **Does your Tribe support a consolidated Tribal grant formula program?**
6. **Should the program draw from existing Department funding sources, in the form of a percentage Tribal set aside? Or should the Department consider seeking a new funding source for such a program?**
7. **If the formula program draws from existing funding sources, should some or all of DOJ's funding sources be included in such a program? Should any of DOJ's existing Tribal funding programs (e.g., funding under the Coordinated Tribal Assistance Solicitation, the Office for Victims of Crime's Tribal Victim Services Set-Aside Program, or the Office on Violence Against Women Tribal Governments Program, etc.) be included or excluded?**
8. **Should the formula grant include allocations for specific public safety activities (e.g., law enforcement, courts, victim services, etc.)?**
9. **What factors should inform funding distribution?**
  - a. **Should whether a Tribe receives base funding from BIA be a factor?**
  - b. **Would service population be a factor?**
  - c. **Should the size of a Tribe's land base be a factor?**
  - d. **Should a formula take into account services provided (or not provided) by state agencies?**
  - e. **Are there other factors to consider?**
10. **How would your Tribe recommend developing and finalizing a workable formula for all Tribes?**
11. **Does your Tribe have thoughts on a minimum amount of funding that would be necessary for a formula program to be effective? If this minimum amount of funding is not available, should DOJ still pursue this approach?**

**Proposal 2: Seek New Statutory Authority Allowing for Integration of DOJ Grants**

12. **Does your Tribe support a new statute that would authorize Tribes to integrate their public safety and criminal justice funding into one DOJ approved plan?**
13. **Should this proposal include DOJ-only funding sources or include public safety and justice funding from across the federal government?**
14. **Would plans/agreements similar to PL 477 be an effective mechanism for DOJ to implement?**
15. **If this proposal were enacted as a pilot program, how would your Tribe recommend that Congress consider structuring the pilot?**
  - a. **How long should the pilot last?**
  - b. **Should the pilot be open to all interested Tribes or capped at a certain number? If capped at a certain number, what would that number be?**

**Proposal 3: Advocate for Increased Base Funding for Public Safety Through BIA**

- 16. In what ways would access to increased base funding through BIA for public safety and criminal justice purposes benefit your Tribe?**
- 17. For those Tribes that do not receive base funding from BIA for public safety and criminal justice purposes, how is your Tribe currently funding operations?**

## Appendix:

### Overview of [Current DOJ Grant Programs](#)

The Department administers numerous grants available to Tribes through three offices. The [Office of Community Oriented Policing Services \(COPS\)](#), [Office on Violence Against Women \(OVW\)](#), and [Office of Justice Programs \(OJP\)](#) each administer both Tribal-specific grant programs and broader grant programs for which Tribal entities are eligible to apply. Some Tribes currently receive funding under a variety of DOJ programs, and others receive funding only under DOJ's Tribal-specific grant programs. The Department maintains a [directory of DOJ Tribal grants](#).

#### **Coordinated Tribal Assistance Solicitation (CTAS)**

[CTAS](#) was created in 2010 to enable Tribes to apply for seven separate DOJ Tribal grant programs from four different grant-making offices through a single application. CTAS provides federally recognized Tribes and Tribal consortia with funding to help them develop a comprehensive and coordinated approach to public safety and victimization. For administrative reasons and as a result of feedback received from Tribes, not all DOJ Tribal grant programs are included in CTAS. Examples of Tribal grant programs not included in CTAS are the Office for Victims of Crime's (OVC) Tribal Victim Services Set-Aside Formula Program and OVW's Tribal Governments Program.

##### *CTAS – [Purpose Area 1: Tribal Resources Grant Program](#)*

Funding under CTAS Purpose Area #1 is designed to expand the implementation of community policing and meet the most serious needs of law enforcement in Tribal Nations through a broadened comprehensive program. The funding can be used to hire or re-hire full-time career law enforcement officers and village public safety officers as well as procure basic equipment and training to assist in the initiation or enhancement of Tribal community policing efforts.

##### *CTAS – [Purpose Area 2: Comprehensive Tribal Justice Systems Strategic Planning](#)*

Through CTAS Purpose Area #2, the Bureau of Justice Assistance (BJA) provides funding for Tribes to engage in comprehensive justice system strategic planning that will improve Tribal justice and safety; develop, support, and enhance adult Tribal justice systems to prevent crime related to opioid, alcohol, and other substance abuse; and renovate, expand, and/or replace Tribal justice facilities to enhance facility conditions and/or add capacity for recidivism-reduction programming.

##### *CTAS – [Purpose Area 3: Tribal Justice Systems](#)*

Through CTAS Purpose Area #3, BJA provides funding for Tribes to engage in comprehensive justice system strategic planning that will improve Tribal justice and safety; develop, support, and enhance adult Tribal justice systems to prevent crime related to opioid, alcohol, and other substance abuse; and renovate, expand, and/or replace Tribal justice facilities to enhance facility conditions and/or add capacity for recidivism-reduction programming.

##### *CTAS – [Purpose Area 4: Tribal Justice System Infrastructure Program](#)*

Through CTAS Purpose Area # 4, BJA provides funding for Tribes to engage in comprehensive justice system strategic planning that will improve Tribal justice and safety; develop, support, and enhance adult Tribal justice systems to prevent crime related to opioid, alcohol, and other substance abuse; and renovate, expand, and/or replace Tribal justice facilities to enhance facility conditions and/or add capacity for recidivism-reduction programming.

*CTAS – [Purpose Area 6: Children’s Justice and Assistance Act](#)*

The Children’s Justice and Assistance Act (CJA) of 1986 provided states funding to establish programs to effectively handle child abuse cases. In 1988, the Anti-Drug Abuse Act amended the VOCA of 1984, authorizing the use of a portion of the state CJA funds to help Tribal communities develop and establish programs to improve the investigation, prosecution, and case management of child sexual abuse cases. Since 1989, OVC has worked to enhance the capacity of Tribal communities to address the needs of child abuse victims by providing funding through the CJA Partnerships for Indian Communities Program (CJA Program). The goal of the CJA program is to provide funding to help American Indian and Alaska Native communities develop, establish, and operate programs designed to improve the investigation, prosecution, and handling of cases of criminal child abuse and neglect, particularly child sexual abuse cases, in a manner which lessens trauma for child victims.

*CTAS – [Purpose Area 8: Juvenile Tribal Healing to Wellness Courts](#)*

These grants help participating courts develop or strengthen policies, procedures, and services that address underage drinking and substance use. Tribal juvenile healing to wellness courts often combine judicial intervention with Tribal values, such as spirituality and connection to the family and community, to treat youth.

*CTAS – [Purpose Area 9: Tribal Youth Program](#)*

Grants awarded through this program help Tribes improve their juvenile justice systems and support prevention, intervention, and treatment approaches that benefit youth. The funding is flexible to accommodate the unique needs of each Tribe since Tribes’ cultures, needs, and capacities vary widely.

**Grant Programs Outside of CTAS**

*Office for Victims of Crime / [Tribal Victim Services Set-Aside Grant Program \(TVSSA\)](#)*

OVC is one of six Program Offices within OJP and administers the Crime Victims Fund. In FY 2018, Congress created the first set aside from the Crime Victims Fund, “available to the Office for Victims of Crime (OVC) for grants, consistent with the requirements of the Victims of Crime Act, to Indian Tribes to improve services for victims of crime.” TVSSA funds may be used for any purpose directly related to serving victims of crime, and OVC encourages Tribes to be creative and innovative in using the funds to provide culturally relevant, linguistically appropriate, victim-centered services. Since the Tribal set-aside program began in 2018, OVC has made hundreds of TVSSA awards, which now provide victim services to thousands of crime victims in hundreds of Tribal communities.<sup>2</sup>

*[OVW Tribal Grant Programs](#) (All Non-CTAS)*

The Violence Against Women Act (VAWA) and subsequent legislation authorize four grant programs that are specifically designed for Tribal communities: (1) the Tribal Governments Program (TGP); (2) the Tribal Sexual Assault Services Program; (3) the Tribal Domestic Violence and Sexual Assault Coalitions Program; and (4) the Special Tribal Criminal Jurisdiction Grant Program. Tribes and Tribal organizations are also eligible for and receive grants under other OVW discretionary programs. OVW also receives annual appropriations for (1) a national clearinghouse to provide training and technical assistance related to sexual assault of American Indian and Alaska Native women and (2) a Violence Against Women Tribal Special

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<sup>2</sup> All other OJP Tribal-specific programs are in CTAS, but Tribes also receive funding under OJP special initiatives and other OJP competitive (discretionary) grant programs.

Assistant U.S. Attorney (VAW Tribal SAUSA) program, the goal of which is to train Tribal prosecutors in federal law, procedure, and investigative techniques to enable them to bring every viable domestic or sexual violence case in Tribal court, federal court, or both. (Previously an intermittent special initiative, this program received an annual appropriation of \$3 million in FYs 2022, 2023, and 2024 but does not have an annual authorization of appropriation in VAWA.) Tribes also receive funding under other OVW discretionary (competitive) grant programs open to multiple applicant types.<sup>3</sup>

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<sup>3</sup> The 2022 reauthorization of VAWA also authorized a new program to reimburse Tribes for costs incurred exercising Special Tribal Criminal Jurisdiction. This is not a grant program.