

Chapter 3. Rural and Tribal Law Enforcement

Introduction

Most rural and tribal law enforcement officers live, raise their families, worship, and send their children to school in the same communities they serve. Like in any jurisdiction, the commitment to serve the public and provide safety is etched into the oath these officers take on their first day.

Before being hired, officers are tested, screened, vetted, and eventually trained by multiple professionals on a wide variety of subjects to understand and appreciate the authority of the position. Laws, policies, and standards guide their decisions, including those that must be followed under great duress. Law enforcement officers accept and perform this challenge. Whenever criminal or inappropriate officer conduct occurs, the badge is dishonored and the profession is embarrassed. However, such conduct is the exception and does not represent the honorable and brave service performed by the vast majority of the nation's law enforcement officers.

Success in law enforcement is built on a foundation of community trust. The prerequisites for obtaining that trust are sufficient staffing and sufficient training and resources for officers. When officers are stretched too thin responding to calls for assistance, they do not have time to build community relationships, attend training, and decompress from stressful situations. If they are part of a properly staffed force with appropriate training and equipment, they have the capacity to build those relationships and to ensure they can optimally handle encounters with the public. For example, when a police officer is adequately trained in crisis intervention, a person suffering from meth-related psychosis can often be de-escalated to a non-violent state. Similarly, appropriate training in cultural differences can provides tools to de-escalate simmering discord in a racially divided community.

For these reasons, recommendations within this chapter highlight the themes of adequate staffing, training, and resources and are designed to strengthen law enforcement agencies and close the public safety gap found in rural and tribal communities. Through proposed policy and funding support, these recommendations lay the groundwork to implement promising practices that will create long-term improvements to the structure of law enforcement agencies within rural and tribal communities.

3.1 Rural Law Enforcement

Background

Federal agencies use more than two dozen definitions for "rural," and these vary based on the application of the word. For this chapter, the commission defines rural as an area fewer than 50,000 persons. Looking more broadly, rural areas make up 97 percent of the United States' land area and are home to 60 million people.¹ Urban areas make up only 3 percent of the nation's land area but are home to more than 80 percent of the population.²

Conversations with Rural Law Enforcement Leaders, a report published by the Office of Community Orientated Policing Services (COPS Office), provides results of five listening sessions with rural law enforcement leadership in five states: South Dakota, Oklahoma, Utah, Iowa, and Montana.³ These sessions explored the challenges that rural departments face and identified and assessed their most pressing needs within those communities. The report acknowledges, "Rural law enforcement agencies share many of the same topic issues and challenges that the larger agencies and communities have. However, often they do not have the funding or resources to address these issues."⁴

These rural agencies have important jobs that protect large areas of the country, and they must be recognized as significant players in the protection of our national public safety. The most serious challenge for these smaller

¹ "One in Five Americans Live in Rural Areas," U.S. Census Bureau, August 9, 2017, www.census.gov/library/stories/2017/08/rural-america.html.

² U.S. Census Bureau "One in Five Americans Live in Rural Areas."

³ National Police Foundation, *Conversations with Rural Law Enforcement Leaders: Volume 1* (Washington, DC: Office of Community Orientated Policing Services, 2020), 10, <https://cops.usdoj.gov/RIC/Publications/cops-w0892-pub.pdf>.

⁴ National Police Foundation, *Conversations with Rural*, 32.

jurisdictions is overcoming the lack of funding that impedes them from fulfilling their duties. However, more considerations are necessary beyond simply throwing money at the issues to make them go away.

Current State of the Issue

Budget challenges and geographic isolation contribute to problems with staff recruitment, retention, and training for small, rural, and tribal law enforcement agencies. Constrained budgets leave little money available for hiring or training. In addition, salaries at these agencies are often not competitive with those at larger agencies and do not properly address increases in the cost of living. While not all law enforcement agencies face these challenges, these are common themes to law enforcement providing services in rural communities.

Most law enforcement officers do not join the force solely for the money; instead, they want to help people, serve their communities, and work in an exciting and interesting field.⁵ However, like other professions, as officers progress in their careers, their income increases in importance and becomes a key factor in life decisions. Therefore, appropriate pay is essential to keeping staff morale and job interest high. Law enforcement agencies will have an easier time maintaining a quality force if they eliminate salary issues and reduce the salary gap between departments.

[CROSS REFERENCE RECRUITMENT AND TRAINING]

This also has an impact on retention at many smaller law enforcement agencies, as salary is the most frequently cited reason why officers leave an agency, regardless of location.⁶ In many cases, the level of salary, benefits, and working conditions that rural law enforcement agencies often trails those found in larger nearby agencies that can offer more competitive salaries and benefits.

Training can also have an impact on retention and similarly exposes a gap between agencies. This is not always a problem of resources, but it is sometimes a problem of access to training opportunities. Training facilities and equipment are not always available in areas with smaller populations, and they often require travel to training centers, which limits the ability of these smaller agencies to take advantage of them.

3.1.2 States should develop a “pay the backfill” reimbursement program to assist rural and tribal law enforcement agencies with scheduled coverage to allow their law enforcement officers to attend job-critical trainings. These trainings should include communications, community policing, de-escalation, cultural and generational understanding, use of force, and fair and impartial policing.

The biggest issue that rural and tribal law enforcement agencies encounter regarding training is available manpower and the difficulty with backfilling an officer’s position. When an officer attends training, another colleague must cover their shift to have appropriate staffing in the office or on patrol. This may involve a shortage of staff or incurring overtime costs. It particularly affects communities that only have one or two officer’s on-duty at any one time. Law enforcement agencies require a backfill overtime officer when a permanent officer needs to be out of the office to participate in approved training courses.

As a best practice, the State of Colorado promotes a backfill course that fulfills an agency’s expense of paying for a police officer to temporarily fill a short-term vacancy left by another officer, usually at an overtime rate. This may include officers who must be away from a post for the purpose of receiving training.⁷

Erik Bourgerie, the Colorado Peace Officer Standards and Training Director, explains that the “pay the backfill” program has allowed for agencies of fewer than 10 officers to meet their state-mandated critical skills training

⁵ “Why Do People Become Cops?,” Dolan Consulting Group, July 9, 2019, <https://www.dolanconsultinggroup.com/news/why-do-people-become-cops/>.

⁶ W. Dwayne Orrick, *Best Practices Guide: Recruitment, Retention, and Turnover of Law Enforcement Personnel* (Washington, DC: International Association of Chiefs of Police), 3, <https://www.theiacp.org/sites/default/files/2018-08/BP-RecruitmentRetentionandTurnover.pdf>.

⁷ “A Very Small Agency Backfill Program,” Colorado Peace Officer Standards and Training Board, accessed June 4, 2020, <https://www.colorado.gov/pacific/post/very-small-agency-backfill-program>.

requirements while still providing law enforcement coverage for their communities.⁸ In addition, Chief Ahmet Susic of the Town of Blue River, Colorado, notes, “This program has worked well for our agency. It made it possible for two officers to attend training, while the sheriff’s office covered our town and answered calls for service. Furthermore, we were able to attend training provided, meeting our in service requirements, and providing our staff with continuing education.”⁹ Implementing this system in other states would allow officers more flexibility to get the training they need while also ensuring that their agencies are not short-handed during the training sessions.

3.1.3 The Department of Justice should conduct a needs assessment to address the specific training needs of rural and tribal law enforcement.

Training is essential to improve law enforcement activities nationwide. This is particularly key for rural and tribal law enforcement departments, which do not have the same access to training as larger, urban jurisdictions. However, not all training is equal to others, and jurisdictions have different requirements when it comes to policing their communities. Therefore, training should conform to fit those particular needs. This will help make certain that federal, state, local, tribal, and territorial governments get their money’s worth for these training programs.

While local law enforcement agencies will likely engage in some level of evaluation when it comes to their own training programs, many rural agencies do not have the extra staff or appropriate skill set for developing advanced systems. Additionally, the DOJ has considerable experience in measuring the outcomes of training programs, and it has the ability and resources to compare multiple jurisdictions.

One solution to accomplish this is to reinstate the COPS Office’s national network of Regional Community Policing Institutes (RCPIs), which were designed to build capacity for law enforcement agencies across the country to engage in community policing and focus on the needs of small and rural agencies.¹⁰ An analysis of the strengths and weaknesses of the RCPI Institute program sponsored by the COPS Office may provide insight into best practices that could be replicated nationwide.

By working with rural and tribal law enforcement agencies to evaluate their training needs and, therefore, maximize their training outcomes, the DOJ would help stretch valuable resources at the local level while both increasing the impact of federally funded training programs and strengthening the responsiveness of rural and tribal agencies.

Capacity Building of Jails and Detention Centers

Rural and tribal areas face different challenges when it comes to ensuring that their detention facilities have the capacity to properly serve their populations, particularly regarding the health and safety of their inmates and staff. These challenges require adequate resources and training that may be cost-prohibitive for less-funded agencies. Federal agencies can play a significant role in helping these smaller jurisdictions create the necessary capabilities to meet the needs of local jails.

3.1.4 Congress should provide funding through the Department of Justice to help rural and tribal communities provide equipment and training to meet the public safety standards of detention facilities.

The costs associated with jails and prisons are not limited to construction, maintenance, and staff salaries. Other costs include related necessities, such as medical facilities, medications, security equipment, monitoring technology, and training for staff. These line items are often the most likely to suffer in lower-funded jurisdictions, and many of them become the responsibility of the locality. When faced with a lack of funds, these localities may be forced to do without services that are deemed important but not essential to daily operations.

⁸ *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Law Enforcement Recruitment, Retention, and Tribal* (May 13, 2020) (statement from Erik Bourgerie, Director, Colorado Peace Officer Standards and Training), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁹ Ahmet Susic, Chief of Police, Blue River Police Department, CO, email communication with Dwight Henninger, Chief of Police, Vail Police Department, CO, June 10, 2020.

¹⁰ Office of Community Oriented Policing Services, *Regional Community Policing Institutes: Training Network* (Washington, DC: Office of Community Oriented Policing Services, n.d.), <https://www.hsdl.org/?view&did=461948>.

Federal assistance could significantly alleviate these funding gaps in fundamental ways, which include providing much-needed relief to rural jurisdictions, enabling prisons to provide their populations with proper health care, employing modern technology for monitoring inmates or detecting contraband, or training corrections staff to respond to an inmate's mental health disorder or another crisis.

School-Based Law Enforcement

The need for school-based law enforcement is essential as evidenced by school shootings and other gun violence seen across the nation. For years, the emphasis has been placed on security in urban schools, which have long been thought of as inherently more violent places as a result of their presentation in popular media and because they have historically been more violent places.¹¹ However, non-urban areas are also susceptible to violence.

[CROSS REFERENCE JUVENILE JUSTICE]

3.1.5 School jurisdictions that consider arming specially selected and trained school personnel as a deterrent to crime in schools should ensure that these personnel are capable and trained to prevent, recognize, and respond to threats of violence.

In response to the latest mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, President Donald J. Trump and Education Secretary Betsy DeVos backed the idea of training and arming educators. This idea was also echoed in the *Federal Commission on School Safety Final Report*, which reinforces that there is no one-size-fits-all solution to school safety. For those states who have opted to pass laws allowing school personnel to be armed for the sake of effectively and immediately responding to violence, school districts should adopt rules and regulations in consultation with local law enforcement. This can be particularly helpful in districts where the distances involved can make police response times longer.¹²

3.1.6 Local and tribal law enforcement agencies should collaborate with school districts and schools in their jurisdiction to develop or enhance a comprehensive school safety plan that requires school safety training for all school personnel.

To address the increasing risk of school-based violence, schools should implement a comprehensive emergency plan that uses an "all-hazards" approach, "which takes into account a wide range of possible threats and hazards [and] includes those that might take place in the community that might impact the school."¹³

These plans should consider a range of threats, including those that are weather-related and pandemics. Most importantly, they should account for the dangers associated with active shooters and other potential violent offenders. They should also be mindful of the unique characteristics of the school, its surrounding areas, and its staff.

Rural schools are not typically equipped with this type of threat assessment and response training, and they would benefit from working with local law enforcement, who are highly familiar with potential concerns in the area. Together, they can use resources provided by the DOJ and Department of Education to devise plans that are specific to their needs.

Technology Within Rural and Tribal Areas

Technological advances in recent years have changed the nature of policing so significantly that many methods and tools from just a decade ago have become antiquated and incompatible with current technology. In general, the current data suggest that rural law enforcement agencies, due to the lack of resources and training, have been unable to access and use many new technologies.

¹¹ David Cantor and Mareena McKinley Wright, *School Crime Patterns: A National Profile of U.S. Public High Schools Using Rates of Crime Reported to Police, Report on the Study of School Violence and Prevention* (Washington, DC: U.S. Department of Education, 2002), <https://www2.ed.gov/offices/OUS/PES/studies-school-violence/school-crime-pattern.pdf>.

¹² U.S. Departments of Education, *Final Report of the Federal Commission on School Safety* (Silver Spring, MD: U.S. Department of Education, 2018), 106, <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf>.

¹³ Readiness and Emergency Management for Schools Technical Assistance Center, *Building Blocks to School Safety: A Toolkit for Schools and Districts for Developing High-Quality Emergency Operations Plans* (Silver Spring, MD: U.S. Department of Education, 2018), 2, https://rems.ed.gov/docs/BuildingBlocksToSchoolSafety_ToolkitForEOPs.pdf.

[CROSS TECHNOLOGY]

3.1.7 State, local, and tribal governments should ensure that all law enforcement officers have access to computer-aided dispatch, records management systems, and in-car computer systems to leverage their compatibility with national, state, regional, tribal, and local information sharing systems.

CAD is considered a standard in modern-day policing and should be networked with in-vehicle computers and given the ability to connect to national databases. As CAD is an essential tool for policing, state and local governments should ensure that their agency meets those standards through necessary funding and coordination. These systems should also contain a records management system (RMS) and in-vehicle computer systems.

These CAD, RMS, and in-car computer systems may take different forms in different jurisdictions. Some may be a statewide system that agencies can pay to access, or it may be a number of linked regional systems that provide the same capabilities. By encouraging a system approach to CAD and RMS, regional and state-wide solutions can be developed, implemented, and supported, regardless of the agency size or vendor.

Although CAD provides state-of-the-art capabilities for most departments across the country, not all law enforcement agencies share equally in its benefits. Some agencies do not have CAD as a standard tool, and others do not have the same level of technology or access to necessary databases and complementary systems.

3.1.8 States should use FirstNet Authority in rural and tribal parts of the United States to provide secure and reliable data access to in-car computer systems.

After the September 11 attacks, the 9/11 commission identified fundamental deficiencies with communications systems that the nation's first responders use. Law enforcement, fire, and emergency medical services radio systems could not easily interoperate across agencies or disciplines and ultimately cost some first responders their lives. In addition, commercial wireless systems were overwhelmed by high volume use and could not reliably process calls, texts, or data.¹⁴

The nation needs a strong communications network that is accessible by officers from multiple agencies and disciplines. The 9/11 commission determined that the nation needed a single nationwide wireless broadband network dedicated to public safety communications.¹⁵

FirstNet is a national broadband network dedicated to public safety. Given FirstNet's ability to connect distant and remote jurisdictions with the information that will help them stay informed during routine patrol, planned events, and emergency situations, the states should work to ensure that all agencies have the opportunity to join the system. FirstNet uses digital broadcasting to equip first responders with advanced and uninterrupted communications capability across the country, including in remote jurisdictions where communications systems are often deficient due to environmental conditions and a lack of modern technology.

3.1.9 The Department of Justice should advance the National Information Exchange Model to provide states the ability to have statewide systems. The Department of Justice should also mandate that vendors of computer-aided dispatch and records management systems adhere to these open standards.

[CROSS REFERENCE INTERSECTION OF CRIMINAL JUSTICE PERSONNEL]

The National Information Exchange Model (NIEM) is a set of standards created through partnership between the DOJ, the Department of Homeland Security (DHS), and the Department of Health and Human Services (HHS) to develop, disseminate, and support information exchange processes across diverse public and private organizations. This advances the ability of jurisdictions to share critical information in emergency situations and during the daily operations of agencies across the nation.¹⁶

¹⁴ Ryan Burchnell, Director, FirstNet Program for AT&T, public comment to President's Commission on Law Enforcement and the Administration of Justice, March 31, 2020.

¹⁵ "FirstNet: The History of our Nation's Public Safety Network," First Responder Network Authority, accessed July 6, 2020, <https://firstnet.gov/about/history>.

¹⁶ "National Information Exchange Model (NIEM)," Justice Information Sharing, accessed July 10, 2020, <https://it.ojp.gov/initiatives/niem>.

The government should leverage federal resources to make these standards universal, which would give law enforcement agencies across the nation an efficient means to communicate with each other. When criminal justice agencies follow NIEM standards, NIEM can save time and money by providing consistent, reusable data terms and definitions and repeatable processes.

Federal Funding and Resources

[CROSS REFERENCE GRANT PROGRAMS]

One of the biggest challenges in a law enforcement agency is managing the budget and finding new ways to meet a growing number of public and officer safety needs with limited resources. To address these challenges, most agencies seek a simple, yet temporary, solution: grants.

3.1.10 Congress should enact legislation requiring public safety funds granted through the Department of Justice to be equitably allocated to rural and tribal law enforcement agencies.

Grant programs are highly competitive and are often based upon factors that make it difficult for a rural or tribal agency to be successful. In addition, many rural and tribal agencies cannot meet matching funding requirements. As a result, only a small percentage of available grant funds are awarded to small, rural, and tribal agencies. The DOJ and other federal agencies should review existing grant programs and designate a percentage of funding specifically for rural and tribal law enforcement agencies to enhance their ability to provide public safety services.

3.1.11 The Department of Justice should examine the feasibility, costs, and benefits of expanding the performance period of the Community Oriented Policing Services Hiring Program grants to rural and tribal law enforcement agencies.

In 2020, the COPS Office increased the length of the award period from three years to five years for the Coordinated Tribal Assistance Solicitation, (CTAS), Purpose Area #1: Tribal Resources Grant Program (TRGP) Hiring and Equipment/Training.¹⁷ This change addressed requests of tribal agencies for longer term funding to increase the feasibility of using the award to hire more officers. The award caps were also adjusted to accommodate the longer grant term. DOJ should evaluate whether the costs of taking similar steps with the COPS Hiring Plan are outweighed by the benefits –to tribal and rural jurisdictions.

Given how recent this change was made, it is unclear if the intended benefits will be fully realized or if other unexpected considerations may arise. Therefore, the DOJ should develop a process to measure the outcomes from this change with the goal of establishing a new baseline for awards. If the intended benefits are realized and the outcomes prove positive, the government will have evidence that may provide general guidance regarding awards.

3.1.12 The Department of Justice should examine the feasibility, costs, and benefits of lowering the match requirement for the Community Oriented Policing Services Hiring Program grants to rural and tribal law enforcement agencies and increasing the cap.

Funders have various reasons to require match, primarily to share the costs of various government programs across jurisdictions or with the private sector. Funders also sometimes structure match requirements to promote sustainability of projects past the life of the grant program.

The Hiring Program (CHP), administered by the COPS Office, is a competitive solicitation, open to all state, local, tribal, and territorial law enforcement agencies with primary law enforcement authority.¹⁸ According to the CHP Fiscal Year 2020 Factsheet, “CHP grants cover up to 75 percent of the approved entry-level salary and fringe benefits of each newly-hired or rehired full-time sworn career law enforcement officer over the three-year grant period, with a minimum 25 percent local cash match requirement and a maximum federal share of \$125,000 per officer position.”¹⁹

¹⁷ “Tribal Justice and Safety: Grants,” U.S. Department of Justice, accessed June 5, 2020, <https://www.justice.gov/tribal/grants>.

¹⁸ “COPS Hiring Program (CHP),” Office of Community Oriented Policing Services, accessed June 5, 2020, <https://cops.usdoj.gov/chp>.

¹⁹ Office of Community Oriented Policing Services, *2020 COPS Hiring Program: Strengthening Community Policing by Hiring Officers* (Washington, DC: Office of Community Oriented Policing Services, 2020), 1, <https://www.justice.gov/usao-wdpa/page/file/1249231/download>.

CHP is structured with declining federal participation so that the local agency is hopefully self-sustaining by the end of the three-year grant period.

These grants have had a dramatic and positive effect on many law enforcement agencies by allowing agencies to increase their size. However, most rural and tribal law enforcement agencies struggle to meet the match requirement. DOJ has partially addressed this issue by eliminating the match requirement for tribal agencies. To increase community policing capacities and support crime prevention efforts, the COPS Office should examine the feasibility, costs, and benefits to lowering or eliminating the match requirement and increasing the cap for all CHP awards provided to rural and tribal law enforcement agencies.

3.2 Tribal Law Enforcement

Background

In much of Indian Country, tribal law enforcement and tribal justice systems hold criminals accountable, support victims and survivors, and confront precursors to crime, such as alcohol and other substance abuses. These efforts are often in partnership with and supported by federal agencies and have found legal support through the passage of legislation, such as the Tribal Law and Order Act in 2010 (TLOA) and the Violence Against Women Reauthorization Act of 2013 (VAWA). Every nation's survival and self-governance hinges on its ability to maintain law and order and ensure that their citizens are safe and without fear, and Indian nations are no different. Like other governments, most tribal governments carry out law enforcement, firefighting, trauma response, and other activities that promote the public safety of those who reside in their communities. As violence sees no physical boundaries, tribal governments sometimes cross-deputize their law enforcement officers with state, local, or county neighbors.²⁰

These agencies range in size from only 2 or 3 officers to more than 200. The communities they serve are as small as the Augustine Band of Cahuilla Indians (a federally recognized Cahuilla band based in Coachella, California, consisting of only 12 members) and as large as the Navajo Nation (with a population of more than 300,000 and a land area larger than the State of Connecticut).²¹ The public safety challenges in Indian Country are not uniform and vary widely between districts and tribes based upon unique conditions, a complex set of legal jurisdictional issues, geographic challenges, differences in tribal cultures, and the number of tribes and reservations within a particular area.

Current State of the Issue

Tribal law enforcement needs to be at parity with their non-tribal counterparts in areas of pay, benefits, equipment, training, and technical assistance. Parity in force levels, coupled with more emphasis on crime prevention and deterrence, attests to what can happen when tribal authorities have the comparable resources needed to do the job.

Although historic steps have been made, law enforcement agencies within Indian Country would benefit from additional resources that are more comparable to similarly situated agencies outside of Indian Country.²² Resource limitations place direct constraints on the ability of law enforcement and justice agencies to protect the safety of Indian Country residents and to prevent crime and victimization. Increased monetary resources—and the translation of these resources into manpower, training, facilities, equipment, program development, research and evaluation, and community outreach—would have a critical impact within Indian country.

3.2.1 The Department of Interior, in collaboration with the Department of Justice and the Office of Personnel Management, should conduct a complete review, update, and re-classification of law enforcement officer position descriptions at the Bureau of Indian Affairs to ensure compliance with 25 CFR § 12.33, which requires that positions be established at no lower grade level than similar federal law enforcement officer positions in other agencies.

²⁰ U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (Washington, DC: U.S. Commission on Civil Rights, 2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

²¹ The Navajo Epidemiology Center, *The Navajo Population Profile 2010 U.S. Census* (Window Rock, AZ: The Navajo Nation, 2013), <https://www.nec.navajo-nsn.gov/Portals/0/Reports/NN2010PopulationProfile.pdf>.

²² International Association of Chiefs of Police, *Improving Safety in Indian Country, Recommendations from the IACP 2001 Summit* (Alexandria, VA: International Association of Chiefs of Police, 2001), <http://www.tribal-institute.org/download/ACF1262.pdf>.

BIA law enforcement officers and investigators are paid less compared to some of their counterparts in federal agencies both within and outside the DOI. Because 25 CFR § 12.34 is predicated off of section 12.33, if pay was increased for BIA law enforcement officers, the amounts paid by tribes to law enforcement officers in departments funded by BIA would also become more competitive. This change would have a positive impact on recruiting and retaining both BIA and tribal law enforcement officers.

3.2.2 Congress should enact laws that either permit the FBI Criminal Justice Information Services systems to share names and other identifying information about missing persons with the public or permit the Criminal Justice Information System to release that information to a third party to share with the public.

3.2.3 States should enact laws requiring all law enforcement with access to the FBI Criminal Justice Information Services systems Network to enter information on all missing persons cases.

3.2.4 Congress should then either provide funding and direction to the FBI Criminal Justice Information Services (CJIS) Division to coordinate with tribal governments and other stakeholders to ensure all missing American Indians and Alaska Natives are included in the National Crime Information Center’s Missing Persons File, or permit the CJIS to work with a third party to coordinate this effort.

3.2.5 Congress should allocate sufficient, predictable, and dedicated funding for the Department of Justice’s Tribal Access Program.

The DOJ launched the Tribal Access Program for National Crime Information in August 2015.²³ The program was developed to meet the Tribal Law and Order Act of 2010’s (TLOA) requirement that tribal law enforcement officials who meet applicable federal or state requirements be permitted access to national crime information databases.²⁴ The program is supported by three funding sources provided by DOJ’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office), the COPS Office, and Office for Victims of Crime (OVC). Tribes must have either a sex offender registry program under the Adam Walsh Act; a law enforcement agency with arrest powers; or an eligible agency which serves victims of crime, such as a civil court that issues orders of protection. If a tribe does not have any one of those three agencies, then they are not eligible for the program.

Attorney General Barr praised the value of this access while announcing an expansion in December 2019, saying, “[The Tribal Access Program] provides law enforcement and tribal governments real-time access to data that can help locate a missing person, identify a dangerous fugitive or prevent a domestic abuser from obtaining a gun, among many other important functions.”²⁵

Without general congressional funding, those tribes remain without access. Also, without sufficient and predictable funding through congressional authorization, the program is annually in jeopardy of being forced to both turn away new applicant tribes and shut down services to the tribes currently in the program.²⁶

3.2.6 Federal agencies should convert more grant-based, competitive Indian Country criminal justice funding into permanent, recurring base funding for tribal law enforcement and justice services.

Federal base funding for tribal justice systems should be made available on equal terms to all federally recognized tribes and should continue from year to year. This approach would help tribes take maximum advantage of federal funding, ensure funds are fairly distributed, and help close the public safety gap that afflicts tribal communities.

According to *A Roadmap for Making Native America Safer*, “DOJ’s involvement has been of great benefit to Tribes. In some cases, it has developed programs explicitly for tribal applicants; in others, it has opened funding streams formerly available only to State and municipal governments to tribal governments. Tribes have taken advantage

²³ “Tribal Access Program (TAP),” U.S. Department of Justice, accessed June 8, 2020, <https://www.justice.gov/tribal/tribal-access-program-tap>.

²⁴ Indian Arts and Crafts Amendments Act, H.R. 725, 111th Congress (2010), <https://www.justice.gov/sites/default/files/usao-az/legacy/2010/10/14/Tribal%20Law%20%20Order%20Act%202010.pdf>.

²⁵ “Thirty tribes to be given access to National Crime Information Databases,” News 3 Las Vegas, December 17, 2019, <https://news3lv.com/news/local/thirty-tribes-to-be-given-access-to-national-crime-information-databases>.

²⁶ News 3 Las Vegas, “Thirty Tribes to be Given Access.”

of these funds to, among other key investments, enhance their criminal codes, develop victim support programs, practice community-oriented policing, design wellness courts (tribal drug courts), and create intertribal judicial bodies.”²⁷

Despite these benefits, DOJ’s funding approach has some detriments:

- Small tribes and tribes with fewer resources lack the capacity to pursue grants, write competitive applications, or administer them. These tribes generally have fewer resources to address their criminal justice needs.
- To construct a strong criminal justice system, a tribe must repeatedly apply for and be awarded many single-issue grants with different deadlines and reporting requirements, which is a significant management challenge.
- Many tribes are uncomfortable with the idea that for one tribal government to win grant funds, other tribes must “lose.”

Law enforcement in tribal communities faces unique, practical, and jurisdictional challenges, and it is paramount that tribal police have the tools they need to fight crime and maintain public safety in their communities. DOJ recognizes that investigating crime and prosecuting those responsible is critical to public safety in Indian Country. To that end, the DOJ’s partnerships with tribes and all federal, state, and local law enforcement are crucial.

Amendments to Federal Criminal Laws to Enhance Public Safety in Indian Country

These proposed legislative amendments support law enforcement and maintain public safety in Indian Country. The purpose of the first three amendments is to protect AI/AN women living in Indian Country from human trafficking to surrounding cities by being transported, coerced, or enticed. Currently, it is a federal crime for this to occur across state lines. These amendments would make it a federal crime for this to occur across reservation boundaries.

3.2.7 Congress should enact legislation to amend Transportation for Illegal Sexual Activity and Related Crimes (18 U.S.C. § 2421) to include entrance to and departure from Indian Country.

Proposed amendment § 2421. Transportation generally

In general. Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, **or into or out of Indian Country**, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

3.2.8 Congress should enact legislation to amend Coercion and Enticement (18 U.S.C. § 2422) to include entrance to and departure from Indian Country.

Proposed Amendment

§ 2422. Coercion and enticement

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, **or to enter or leave Indian Country** to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

(b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for

²⁷ Indian Law and Order Commission, *A Roadmap for Making Native America Safer* (Washington, DC: Indian Law and Order Commission, 2013), 85, https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf.

which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

3.2.9 Congress should enact legislation to amend Transportation of Minors (18 U.S.C. § 2423) to include entrance to and departure from Indian Country.

Proposed Amendment

§ 2423. Transportation of minors

(a) Transportation with intent to engage in criminal sexual activity. A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, **or into or out of Indian Country**, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

(b) Travel with intent to engage in illicit sexual conduct. A person who travels in interstate commerce, **or enters or leaves Indian Country**, or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, with a motivating purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(c) Engaging in illicit sexual conduct in foreign places. Any United States citizen or alien admitted for permanent residence who travels in foreign commerce or resides, either temporarily or permanently, in a foreign country, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(d) Ancillary offenses. Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce, **or enters or leaves Indian Country**, for with a motivating purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both.

3.2.10 Congress should enact legislation to amend the Bail Reform Act to add 18 U.S.C. § 113(a)(8) to the list of cases for which detention is presumed under 18 U.S.C. § 3142(e)(3).

The Bail Reform Act, which requires release while a defendant awaits trial in federal court, provides a rebuttable presumption for certain offenses that there is no combination of release conditions that can be set to ensure the safety of a person or the community. The presumption does not completely deny release, but it instead puts the responsibility on the defendant to show that there are conditions that would ensure the protection of the community and any individual person. At this time, strangulation is not one of those enumerated offenses.

Research shows that strangling a dating partner highly predicts the perpetrator's likelihood of future potential domestic homicide.²⁸ The act of strangulation puts the victim in a particularly vulnerable position compared to other victims of domestic abuse. Officers, doctors, and other medical professionals have witnessed that strangulation victims are at a high risk of repeated abuse or possible death. In the United States, 10 percent of violent deaths are from strangulation.²⁹ This is particularly concerning in Indian Country, where intimate partner violence is pervasive.

Currently, the government can seek detention in strangulation cases under 18 U.S.C. § 3142(f)(1)(A). However, the burden is on the government to prove by clear and convincing evidence that there are no conditions of release that can ensure the safety of the community or any person. In cases where there is not a significant conviction history, and even when there is a long tribal arrest history, this burden can be difficult to meet. Insular communities in Indian Country also present a problem, as victims often have a hard time ensuring separation from a released offender.

²⁸ Ronet Bachman et al., *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known* (n.p., 2008), <https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>.

²⁹ Allison Turkel, "And Then He Choked Me: Understanding and Investigating Strangulation," *National Center for Prosecution of Child Abuse Update* 20, no. 8 (2007): 1, http://www.ncdsv.org/images/NCPCA_AndThenHeChokedMe_vol_20_no_8_2007.pdf.

This proposed change would create a rebuttable presumption and would still allow pretrial release in cases where the defendant is able to demonstrate that there are conditions that will protect the victim and community. To help address violence against women in Indian Country, amending § 3142(e)(3) to add 18 U.S.C. § 113(a)(8) would give the United States an opportunity to better protect victims by detaining offenders throughout the pretrial process.

Cross-Deputization

Law enforcement officers, specifically those who serve cross-jurisdictional areas, are asked to navigate a complex body of laws to address public safety issues in Indian Country.³⁰ Tribal law enforcement have jurisdictional authority (and state and local law enforcement do not, except in limited circumstances where P.L. 280 jurisdiction was ceded by the tribe or mandated by Congress) in the following situations in Indian Country:³¹

- crimes by Indians against Indians
- crimes by Indians against non-Indians
- victimless crimes by Indians

State and local law enforcement have jurisdictional authority (and tribal law enforcement do not) in the following situations in Indian Country:³²

- crimes by non-Indians against non-Indians
- victimless crimes by non-Indians

Finally, in Indian Country (except on P.L. 280 reservations where state and local law enforcement would also have jurisdiction), only the federal government has jurisdictional authority in the situation of crimes by non-Indians against Indians. Tribal governments that have opted to comply with the requirements set forth in the Violence Against Women Act also have jurisdiction over certain domestic violence crimes committed by non-Indians against Indians.

This is confusing to officers who must consider the location of the alleged crime, their present location, the political identity of the alleged perpetrator, the political identity of the alleged victim, and the nature of the alleged crime before determining what action, if any, they are authorized to take.

These jurisdictional issues arise on tribal lands and where state and tribal lands meet. Cross-deputization of law enforcement officers is one solution to that problem. Under this type of agreement, tribal police are given officer status by state or local authorities and vice versa. If agreed, both state and local, and tribal law enforcement officers have the authority to enforce the law of the other jurisdiction, regardless of where the incident occurred or who is involved. This not only reduces jurisdictional complexity for all law enforcement officers, it also increases the law enforcement coverage across the usually vast expanses of Indian Country. Rather than requiring a tribal officer to drive miles to respond to crime involving an Indian, a nearby county deputy can respond, and vice versa.

Despite the many benefits of cross-deputizing tribal law enforcement officers, several barriers keep tribal jurisdictions and state and local jurisdictions from entering into cross-deputization agreements with each other. These include the cost and burden of tribal law enforcement being certified as law enforcement under state law, liability concerns for the agencies and the officers, and the complexity of the issues.

3.2.11 The Department of Justice should provide grant-based incentives for local, state, and tribal agencies to enter into cross-deputization agreements to assist participating agencies in providing seamless law enforcement services.

This recommendation, originally put forward by the Indian Law and Order Commission, has yet to be implemented.³³

³⁰ National Institute of Justice, *Public Law 280 and Law Enforcement in Indian Country—Research Priorities* (Washington, DC: National Institute of Justice, 2005), <https://www.ncjrs.gov/pdffiles1/nij/209839.pdf>.

³¹ “Chapter 3: Specific Justice Systems and Victims’ Rights,” Office for Victims of Crime Archive, accessed July 10, 2020, https://www.ncjrs.gov/ovc_archives/nvaa99/chap3-4.htm.

³² Office for Victims of Crime Archive, “Chapter 3: Specific Justice Systems.”

³³ Indian Law and Order Commission, *A Roadmap for Making*, 105.

Section 222 of TLOA states that the attorney general may provide technical and other assistance to state, tribal, and local governments that enter into cooperative agreements. “Other assistance” could include financial resources (i.e., grants) for states and locals to enter into deputation agreements with their respective tribal agencies. In addition to grants, the report mentions that in order to “facilitate MOUs for deputization arrangements, tribes need the financial resources to participate in the requisite POST training in the state where they are located. The federal government can facilitate this training without imposing preemptive standards or policies. Public safety is best accomplished at the local level, and providing the resources for training is a simple and straightforward step in the right direction.”³⁴

By taking this approach it ensures vetted or qualified tribal law enforcement agencies are defined as law enforcement agencies pursuant to U.S. Code.

3.2.12 The Department of Justice, in collaboration with the Department of the Interior, should create a working group that includes members of state, local, and tribal law enforcement. The working group should consider recommendations to mitigate and clarify liability concerns of state and local law enforcement agencies and tribal law enforcement agencies that result from entering into cross-deputization agreements.

Tribal law enforcement officers and agencies that help enforce state criminal laws pursuant to state or local law enforcement deputization need to understand the additional liability they undertake under federal and state law for both constitutional torts (e.g., conducting an illegal search) and common-law torts. The working group should consider the exposure of both officers and the agency. The working group should also consider the forum where claims can be brought, and the availability and cost of counsel.

3.3 Law Enforcement Needs of Alaska

Background

Of the 574 federally recognized tribal nations, 229 are located in Alaska. Each Alaska Native tribal nation is distinctly unique from tribal nations located in the lower 48 states. This is because Alaska Native tribal nations have no treaties with the U.S. government, as treaty-making ended in 1871 after the 1867 Alaska Purchase Treaty with Russia.³⁵

Two legal features are important to highlight. First, and unique to Alaska, is the near-total absence of recognized Indian Country. The impact of *Alaska v. Native Village of Venetie Tribal Government*, the U.S. Supreme Court held that millions of acres of land owned by Native villages pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA) no longer qualify as Indian Country.³⁶ That ruling limited the authority of Alaska Native villages to exercise criminal jurisdiction over their lands, which in turn placed an even greater responsibility on the state’s highly centralized law-enforcement and criminal justice systems.³⁷

Second, Alaska is one of only six mandatory P.L. 280 states.³⁸ This means that, under P.L. 280 (*see* 18 U.S.C. 1162), the State of Alaska—rather than the United States—has jurisdiction to prosecute certain crimes committed by or against Native Americans. Therefore, Congress has assigned state law enforcement and state courts, rather than their federal counterparts, the key role in arresting, investigating, prosecuting, and punishing offenders and therefore protecting public safety in Alaska Native villages. The state is also responsible for providing the bulk of funding and other resources in support of public safety efforts. Bryan Schroder, United States Attorney for the District of Alaska, states,

³⁴ Indian Law and Order Commission, *A Roadmap for Making*, 105.

³⁵ Martha Hirschfield, “The Alaska Native Claims Settlement Act: Tribal Sovereignty and the Corporate Form,” *Yale Law Journal* 101, no. 6 (1992): 1331, <https://digitalcommons.law.yale.edu/yj/vol101/iss6/4/>.

³⁶ *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), <https://supreme.justia.com/cases/federal/us/522/520/>; and Alaska Native Claims Settlement, 43 USC § 1611 (2019), <https://uscode.house.gov/view.xhtml?path=/prelim@title43/chapter33&edition=prelim>.

³⁷ U.S. Department of Justice, *Tribal Consultation on Public Safety in Alaska Native Villages* (Washington, DC: U.S. Department of Justice, 2017), <https://www.justice.gov/tribal/page/file/930406/download>.

³⁸ “Frequently Asked Questions about Public Law 83–280,” U.S. Attorney’s Office, District of Minnesota, updated May 1, 2015, <https://www.justice.gov/usao-mn/Public-Law%2083-280>.

“While the troopers work very hard to respond, these extreme situations sometimes leave a village, and most tragically a victim, trying to cope with the situation on their own.”³⁹

Current State of the Issue

Over the years, efforts have been made to improve public safety within Alaska;⁴⁰ however, to meet the comprehensive public safety needs of Alaska, appropriate public safety resources (e.g., adequate funding) are needed to:

- hire sufficient staff law enforcement officers and provide them with standard equipment and coordination necessary to do their jobs safely and effectively
- create and sustain public safety infrastructure appropriate to each community’s size and need, such as housing, communications, technology, transportation, holding facilities, offices, and equipment
- increase training and cultural competencies for first responders and law enforcement officers

3.3.1 Congress should allocate permanent base funding to meet the public safety needs of Alaska. This funding should help address the inadequate staffing.

Referring to her region in western Alaska, Vivian Korthuis, Executive Officer of the Association of Village Council Presidents, says, “the response to any kind of disaster, or crises, for example, a fire, a death, a drowning, murders [will be minimal because] there are only three officers to respond to any of this.”⁴¹ Attorney General Barr answered that call for help by declaring a law enforcement emergency in rural Alaska under the Emergency Federal Law Enforcement Assistance Program: “With this emergency declaration, I am directing resources where they are needed most and needed immediately, to support the local law enforcement response in Alaska Native communities, whose people are dealing with extremely high rates of violence. . . . Lives depend on it, and we are committed to seeing a change in this unacceptable, daily reality for Alaska Native people.”⁴²

According to Alaska DPS Recruitment and Retention Plan, the state suffers from high levels of attrition and vacancy rates among law enforcement agencies. The lack of a full staff has had a negative impact on morale, “reduced in-service training, and increased overtime costs for routine shift coverage. Further, gaps in the agency’s ability to deliver public safety services include reduced ability to respond to routine calls for service (including not responding to some calls that are deemed lower priority), slower response times, reduced travel for proactive law enforcement, and a lack of equipment (e.g. aircraft and boats) to effectively respond to calls for service in rural Alaska.”⁴³

In addition to increased attrition, recruitments have not yielded adequate numbers to backfill vacancies. DPS has currently authorized 300 Alaska state trooper and 89 Alaska wildlife trooper positions.⁴⁴ Over the last 10 years, the number of positions has fluctuated based on constitutional mandates, legislative actions, and authorized budgets.

3.3.2 Congress should provide funding to develop and maintain infrastructure for rural law enforcement services through a federal agency.

³⁹ *President’s Commission on Law Enforcement and the Administration of Justice: Hearings on Rural and Tribal Law Enforcement* (May 21, 2020) (written statement by Bryan Schroder, U.S. Attorney for the District of Alaska). <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁴⁰ Indian Law and Order Commission, *A Roadmap for Making*.

⁴¹ *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Rural and Tribal Law Enforcement* (May 27, 2020) (written statement by Vivian Korthuis, Chief Executive Officer, Association of Village Council Presidents), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁴² Office of Public Affairs, “Attorney General William Barr Announces Emergency Funding to Address Public Safety Crisis in Rural Alaska,” U.S. Department of Justice, June 28, 2019, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-emergency-funding-address-public-safety-crisis>.

⁴³ Alaska Department of Public Safety, “Recruitment and Retention Plan.”

⁴⁴ Schroder, *President’s Commission on Law*, May 21, 2020.

In the summer of 2018, the Association of Village Council Presidents (AVCP) took a comprehensive assessment of public safety buildings in the region.⁴⁵ Of the 48 communities, 38 had public safety facilities: 4 of those facilities required major renovation or replacement, and 24 facilities required some level of renovation. Nine communities had no public safety facilities at all, and 26 of the communities had no dedicated public-safety housing.⁴⁶ In their application for the \$6 million in Emergency Federal Law Enforcement Assistance (EFLEA) grant made available to the State of Alaska by Attorney General Barr, the Alaska DPS expressed its intent to sub-grant those funds to Alaska communities to address problems with public safety infrastructure. The state has awarded those sub-grants to assist 31 rural communities.

Part of the grant package provided to Alaska after the Attorney General's visit in 2019 was \$7 million to the Denali Commission to establish a micro-grant program for rural Alaska.⁴⁷ The Denali Commission is "an independent federal agency designed to provide critical utilities, infrastructure, and economic support throughout Alaska. With the creation of the Denali Commission, Congress acknowledged the need for increased inter-agency cooperation and focus on Alaska's remote communities."⁴⁸

The U.S. Attorney's Office has worked with the Denali Commission, the Alaska National Guard, and the U.S. Department of Defense to identify unused National Guard Armories that can be converted to public safety use in rural communities. The federal government should take an active role to ensure adequate law enforcement in Alaska's Native villages, including more extensive funding of village law enforcement infrastructure needs (e.g., housing).

Bryan Schroder, United States Attorney for the District of Alaska, explains,

The visit by the Attorney General highlighted the need for a cooperative effort between the federal government, Alaska Native tribes and organizations, and the State of Alaska. While the Attorney General provided support that is being used to fill in significant funding gaps, we must come up with new ideas to provide the public safety that rural Alaskans deserve, like all citizens of our state. I recommend that the federal government as a whole commit to continuing our cooperation with Alaska Natives and the state government, including appropriate funding support. I can assure you that the United States Attorney's Office for the District of Alaska is committed to rural Alaska, and Attorney General Barr has demonstrated his continuing commitment as well.⁴⁹

⁴⁵ Association of Village Council Presidents, *Public Safety Facilities Assessment* (Bethel, AK: Association of Village Council Presidents, 2018), <http://pcva.247ikonic.com/wp-content/uploads/2019/01/AVCP-Public-Safety-Facility-Assessment--Summer-2018.pdf>.

⁴⁶ Association of Village Council Presidents, *Public Safety Facilities Assessment*.

⁴⁷ Denali Commission, accessed June 8, 2020, <https://www.denali.gov/>.

⁴⁸ Denali Commission.

⁴⁹ Schroder, *President's Commission on Law*, May 21, 2020.