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Federal Bureau of Prisons

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MEMORANDUM FOR PETER J. KADZIK
PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGISLATIVE AFFAIRS

FROM: 
Charles E. Samuels, Jr., Director
Federal Bureau of Prisons

SUBJECT: Report to Congress Required by the Tribal Law and
Order Act of 2010

Section 234(c)(5) of the Tribal Law and Order Act of 2010 (Public Law 111-211) requires the Attorney General to submit a report to Congress three years after the establishment of the Bureau of Prisons Tribal Prisoner Pilot Program describing the status of the program, including recommendations regarding the future of the program, if any.

I have attached copies of the report and transmittal letters for the Attorney General to sign.

Please let me know if I can be of further assistance.

Attachments

Status of the Tribal Law and Order Act Pilot Program Report to Congress

November 29, 2010 to November 29, 2013

Legislative Summary: The Tribal Law and Order Act of 2010, P.L. 111-211 (TLOA, or the Act) was signed into law by the President on July 29, 2010. Section 234(c) of the Act required the Director of the Bureau of Prisons (Bureau) to establish a four-year pilot program to accept in Bureau institutions certain tribal offenders convicted in tribal courts for committing violent crimes. In accordance with the requirement to establish the pilot program within 120 days after the Act's enactment, the program was implemented on November 29, 2010.

Section 234(c)(5) of the Act requires the Attorney General to submit to Congress a report describing the status of the pilot program three years after its creation, including recommendations regarding the future of the program, if any. Finally, Section 234(c)(6) requires the pilot program to expire four years after its establishment, unless otherwise provided by an Act of Congress.

Implementation and Analysis: The Bureau has a long history of working with tribal offenders convicted in Federal Court, and worked closely with federally recognized Indian tribes to implement the TLOA pilot program as required by statute. As part of the pilot development process, the Bureau participated with the Department of Justice (Department) in listening sessions with federally recognized tribes and met with individual tribes when requested to do so. The Bureau also worked closely with the Department's Office of Tribal Justice and Office of Justice Programs, as well as the Bureau of Indian Affairs, to ensure the pilot was implemented in a way that was sensitive to the challenges faced by some tribal criminal justice systems. The Bureau sent pilot program materials and applications to all federally recognized tribes via email and standard mail to ensure that they were aware of the pilot and had the opportunity to take advantage of it.

Section 234(c) of the Act provides that the Bureau shall accept into its facilities offenders convicted in tribal court pursuant to Section 202 of the Indian Civil Rights Act of 1968 (25 U.S.C. § 1302, as amended by TLOA) under the following conditions:

- A tribal court must submit to the Attorney General or the Attorney General's designee a request for confinement of the offender.
- Requests for confinement are limited to offenders convicted of a violent crime for which the sentence includes a term of imprisonment of two or more years (i.e., crimes comparable to the violent crimes described in 18 U.S.C. § 1153(a), commonly called the Major Crimes Act).¹
- The maximum number of tribal offenders in the pilot program at any time is 100.
- The Bureau's incarceration of pilot program participants shall be subject to the conditions described in 18 U.S.C. § 5003 regarding the custody of state offenders, except that the offender shall be placed in the nearest available and appropriate federal facility, and imprisoned at the expense of the United States.

- Tribal governments retain authority to rescind their requests for confinement of tribal offenders in Bureau facilities at any time during the offender's sentence.

In addition to verifying that an offender committed a violent crime that includes a term of imprisonment of two or more years, a tribal judge must certify that the offender was sentenced on or after July 29, 2010, by a tribal court of a federally recognized tribe in conformity with the provisions of 25 U.S.C. § 1302.

The Bureau requires basic sentencing data, gang history, and other information to receive and designate a tribal offender to a Bureau facility.² This information is necessary to ensure designation of the inmate to a Bureau facility that is consistent with safety, security, and programming needs. Furthermore, consistent with the Act's requirement that tribal offenders be housed in Bureau facilities, offenders must be at least 18 years old to be eligible for the program.

The Bureau determines eligibility within 30 days after receipt of the complete referral. The Bureau then determines the appropriate security level and designates an appropriate location for the service of the offender's sentence while in custody. The referring tribal judge will be notified in writing of the designation, the United States Marshals Service (USMS) drop-off location, allowable property, and documentation required for transportation by the USMS to the designated Bureau facility. Under the pilot program, tribal authorities are responsible for transporting the offender to the identified drop-off location.

Incarcerated populations are a high-risk group for the transmission of tuberculosis. To protect Bureau staff and inmates from potential tuberculosis exposure, documentation of a clinician-read PPD skin test within one year of transfer to a Bureau facility is required for all offenders in the pilot program. If the test result measures 10 mm or more, this indicates the individual has a tuberculosis infection. For such cases, a chest x-ray must also be included, to allow the Bureau to determine if the offender is infectious to others.

Pilot Participation: Since implementation on November 29, 2010, tribes have submitted requests for four tribal offenders to be confined in the Bureau's pilot program. The Bureau accepted all four offenders. The chart below provides a description of each pilot participant.

Inmate	Tribe	Charge	Sentencing Information	Bureau Facility
1	Confederated Tribes of the Umatilla Reservation	Felony Assault and Felony Conspiracy to Commit an Assault	Sentence Imposed: 2 years and 3 months Release Date: 4/3/2015	Federal Correctional Institutions (FCI) Herlong
2	Confederated Tribes of the Umatilla Reservation	Assault	Sentence Imposed: 2 years and 2 months Release Date: 2/13/2015	FCI Sheridan
3	Eastern Band	DWI; DWLR;	Sentence Imposed: 4	United States

	of Cherokee Nation	Assault on a Female; Injuring Public Property; and Failure to Obey a Lawful Order of the Court	years Release Date: 11/16/2016	Penitentiary McCreary
4	Eastern Band of Cherokee Nation	Assault Inflicting Serious Bodily Injury and Assault with a Deadly Weapon	Sentence Imposed: 3 years Release Date: 5/3/2016	FCI Butner II

Costs associated with these four inmates have been minimal. The inmates are participating in reentry programming consistent with the Bureau's philosophy that reentry begins on the first day of incarceration and continues throughout an inmate's sentence. Federal prisons offer a variety of programs to assist inmates in returning to their communities as law-abiding citizens, including work, education, vocational training, substance abuse treatment, observance of faith and religion, psychological services and counseling, release preparation, and other programs that impart essential life skills. The Bureau remains prepared to house the statutory maximum of 100 tribal offenders. It is not clear why so few tribal offenders have been referred to the pilot program.

Recommendations: The Bureau supports the TLOA pilot program and recommends making the current pilot program permanent, so that it remains available as a resource for tribes. Although there have been very few requests from federally recognized tribes to participate in the pilot program to date, we believe it offers meaningful benefits to tribal nations. Our discussions with tribes suggest that the availability of reentry programs, as well as alcohol and substance abuse treatment, is greater in Bureau of Prisons facilities than in most tribal detention facilities. Accordingly, we believe that in some circumstances the tribal pilot program significantly supports tribes' efforts to rehabilitate tribal offenders. In addition, as more tribes become able to meet the requirements for enhanced sentencing under TLOA and for special domestic violence criminal jurisdiction under Section 904 of the Violence Against Women Reauthorization Act of 2013, 25 U.S.C. § 1304, allowing tribal offenders to be housed in federal facilities will facilitate tribes' ability to exercise their sentencing authority under these statutes and thus will support tribal sovereignty.

Given budgetary constraints and the level of crowding in the Bureau, particularly at medium and high security prisons, it is important that the program remain limited to a maximum of 100 beds. Based on our experience to date, however, we believe that this will remain sufficient to provide a meaningful service to the tribes for the foreseeable future.

Notes:

¹ Examples of these violent crimes include murder, manslaughter, maiming, felony assault, arson, sexual abuse, incest, or felony child abuse.

² The Bureau requires the following information in order to process a referral and safely designate a tribal offender to the nearest appropriate Bureau facility:

- Name
- Gender
- Date and place of birth
- Tribal affiliation
- Offense of conviction and offense conduct (description)
- Sentencing information
- Court-ordered financial obligations
- Prior record, including descriptions of arrests and convictions
- Detainers, pending charges, and outstanding warrants
- Personal and family data (marital status, children, etc.)
- Physical condition
- Mental and emotional health
- History of substance abuse
- Educational/vocational history
- Employment history
- Gang affiliation
- Separation concerns (any person or group whom the offender must not contact)
- Victim information
- Current place of incarceration, including address and contact information