

**Bureau of Indian Affairs
Office of Justice Services**

**Report to the Congress
on
Public Safety and Justice
Spending and Unmet Needs
in Indian Country**

Fiscal Year 2010 Report

Gathering the information – The BIA Office of Justice Services (OJS) maintains a database of the direct service and tribally contracted and compacted programs funded on an annual basis for Law Enforcement and Corrections. This database includes a number of program-related statistics for each tribe/location such as service population and violent crime rate. Efforts are currently underway to develop the same set of crucial data and statistics for the 185 tribal courts and Courts of Indian Offenses throughout Indian Country by the second quarter of FY 2013. Since the TLOA was enacted on July 29, 2010, this report details the allocation and expenditure of FY 2010 funds appropriated to the Bureau of Indian Affairs (BIA) for public safety and justice programs. Facility-related details, however, are not included in the OJS database as that information along with Facility Replacement, Facility Improvement and Repair (FI&R), and Facility Operation and Maintenance (O&M) expenditure information, as well as corresponding line authority, is maintained by the Indian Affairs Office of Facilities Management and Construction (OFMC). The expenditure amounts related to FI&R and O&M displayed in this report were obtained from the OFMC.

From BIA Programs: Funding for the programs operated by BIA as a direct service to tribes that choose not to contract or compact programs is executed through a federal financial and accounting system that provides reporting capabilities sufficient to meet nearly all of the expenditure reporting requirements of this report.

From Tribal Programs: The level of detail necessary to fulfill the requirements of this report was not readily available for the tribally contracted and compacted programs funded by BIA. Therefore, it was necessary to notify via mail the appropriate tribal leaders of the requirement for this report, as well as the availability of an online data collection survey tool that BIA established specifically for this purpose. Roughly 49 percent of the tribes contacted utilized the online tool or met with BIA field managers to report the requested information and for those that reported, the completeness of information was of varying degrees. For example, a small green box in the bottom left of each blue program section identifies the actual FY 2010 funds allocated for that program. Located directly above the green box is the corresponding breakdown of spending, which matches the funds allocated for all direct service programs. However, in very few instances do the actual funds allocated match the spending reported by tribally contracted or compacted programs.

A number of lessons learned were gained from the initial utilization of the online data collection survey, such as the need to further expand response fields to specify and capture dollar amounts as well as narrative descriptions for each category of unmet need. During this initial iteration, a single response field included both types, which precludes the capability to provide valuable subtotaling at the state, district, or national levels. In addition, consideration is being given to more effective outreach methods and the assignment of BIA field staff to gather the detailed information from tribes and input the data directly to improve the overall response rate for subsequent years' reports.

What Tribes are Included: The report includes all tribes that were provided Law Enforcement, Detention/Corrections, Tribal Courts, or related facility replacement, FI&R, or O&M funding by BIA from the FY 2010 appropriation. Also included are BIA agency

office locations that executed FY 2010 public safety and justice funds to provide direct services to tribes. In general, this report is structured with a one page summary per tribe; however, there are a number of instances where data for a tribe is split between two pages. This presentation occurs when a tribe receives direct services from the BIA for one component of the public safety program, but contracts other components. Separating the BIA and tribally run pieces was necessary to preserve the integrity of data reported by tribes, as well as maintain accountability for the funds expended by the BIA. For example, the Winnebago Tribe of Nebraska utilizes their tribal courts funding through a P.L. 93-638 contract but receives law enforcement and corrections services from the BIA Winnebago Agency office. The report includes separate pages for the tribe and the agency office. From a structural perspective, the report groups individual tribes/locations by state with appropriate summaries leading each section, including a nationwide summary on page one.

Reporting the information – An important distinction to consider when reading the report is that while the spending information provided represents funds appropriated for FY 2010, the unmet need amounts reported are current and derived from base funding levels at the beginning of FY 2012, whether reported by tribes or estimated by the BIA. This means that the FY 2010 funds spent cannot necessarily be added to the unmet need to arrive at the total need for a particular tribe or location because the FY 2012 funding level for that tribe or location could have changed since the final distribution of FY 2010 funds. However, to provide perspective at the state and nationwide summary levels, the FY 2010 funds spent and the current unmet need are graphically displayed together.

BIA Estimates of Unmet Need: Within the context of this report, the term unmet need refers to operational program needs that are not met with funding received specifically from Indian Affairs appropriations. It should be noted, however, that the Administration also provided nearly \$127 million in public safety and justice funding to tribes and tribal organizations during FY 2010 through the Department of Justice’s (DOJ) Coordinated Tribal Assistance Solicitation (CTAS) program. While it is likely that some overlap between the unmet needs identified in this report and CTAS funding received by tribes from the Department of Justice exists, it is only temporary coverage from a tribal perspective due to the one-time competitive grant nature of CTAS funding. Conversely, the vast majority of BIA funding allocations detailed in this report represents recurring annual amounts that support self-determination by providing a stable resource base, from which tribes can plan and function strategically.

In addition, because the unmet needs data reported by tribes was comprised primarily of text, which did not allow subtotaling, the OJS utilized standard methodologies for estimating unmet needs in the areas of law enforcement and detention/corrections. These program-based estimates are provided as a supplemental component to the report, and are not intended to replace what was reported by individual tribes.

The unmet need for law enforcement programs is estimated using a ratio of officers per 1,000 residents. The data used to determine the appropriate ratio are found in the FBI Uniform Crime Report (UCR).¹ Based upon the 2010 UCR staffing tables, county

¹ The UCR Program was conceived in 1929 by the International Association of Chiefs of Police to meet a need

agencies have an average of 2.8 officers per 1,000 residents.² The county agency average includes both metropolitan and non-metropolitan counties. Metropolitan Statistical Areas (MSA) contains a principal city or urbanized area with a population of at least 50,000 inhabitants. This MSA includes the principal city; the county in which the city is located; and other adjacent counties that have a high degree of economic and social integration with the principal city and county as measured through commuting.³

The UCR does not have a specific ratio for Indian Country, but the 2.8 sworn personnel per 1,000 residents may be the comparable ratio to the majority of Indian Country communities. Most non-Indian Country municipalities located within a county have their own police force with distinct jurisdictional boundaries. Since most Indian Country departments provide services to multiple communities, small towns and un-incorporated county areas, it may be necessary to utilize a higher staffing ratio than the national average to effectively address the higher crime rate in some Indian Country communities.

Unlike the law enforcement field, staffing for the correctional facilities is based upon physical plant design rather than service population. In 2005, the National Institute of Corrections (NIC) conducted training in developing staffing patterns for Indian Country jails. Individual staffing models were developed for each jail based on physical plant, type of prisoners housed and programming. The NIC methodology was used to determine appropriate staffing levels for each BIA-funded jail. Developing the analysis consisted of a ten step process which included: profiling the physical plant, programs, operations and inmates; calculating work hours and coverage; and balancing these against operational cost availability. Consideration is given to jail design, inmate classification and level of programs and services.

In addition to salaries, travel and training, the estimated program-based needs include amounts for regular equipment replacement, including vehicles, radios, and firearms. Estimates of Facility O&M unmet need are provided as well, as they represent a recurring annual cost of operating existing Law Enforcement and Detention/Corrections programs.

Unmet need estimates in the area of facility replacement and improvement/repair represent significant investments that are one-time in nature versus recurring annual costs of program operations. This fundamental difference drives most federal agencies to separately request operating and construction appropriations. Upon reviewing multiple presentation formats for this report, it was clear that unmet facility replacement and improvement/repair need estimates from BIA would be more appropriately reported separate from operational needs and are thus excluded. However, needs in this category that were reported by individual tribes are included in the detailed section for each tribe.

The scope of this report is also limited to existing programs receiving public safety and justice funding from BIA; therefore, newly constructed detention facilities that are not yet

for reliable, uniform crime statistics for the nation. In 1930, the FBI was tasked with collecting, publishing, and archiving those statistics.

² See 2010 Uniform Crime Report table 71 at www.fbi.gov/ucr/cius2010/police/index.html

³ See 2010 Uniform Crime Report area definitions at www.fbi.gov/ucr/cius2010/police/index.html

operational were not included. There are currently 14 new detention facilities that are scheduled to commence operations over the next two years and the corresponding tribal leaders have been contacted by the BIA regarding their planned operations. Three of the tribes have stated that operational assistance will not be sought from BIA, leaving 11 facilities that will require an estimated \$32.8 million annually to fund approximately 410 correctional staff and related operational costs.

This report does not address the potential unmet need that may develop in P.L. 280 states in response to enactment of provisions under the TLOA regarding concurrent federal jurisdiction. As affected tribes make the determination to establish a law enforcement program and begin a dialogue with the BIA about doing so, a clearer estimate of unmet need for these tribes will be possible. As an indication of the work that lies ahead, there are currently 105 federally recognized tribes located in the State of California, but only five receive public safety and justice funding from BIA and are therefore included in this report. Of those five, only two responded to the online survey of unmet need.

Distribution of PS&J Funding – Reviewing the detailed pages of this report for each location/tribe reveals that the estimate of unmet need in proportion to the tribe’s current funding level varies significantly among the numerous tribally contracted or compacted programs. In other words, some tribes are funded at a higher percentage of overall estimated need than others. Intuitively, one would assume that it is the BIA’s responsibility to ensure that all tribal programs are funded at or near the same percentage of estimated need. However, because the history of the Law Enforcement and Detention/Corrections programs is rooted in BIA’s Tribal Priority Allocation (TPA) category, this inequity in funded need actually began decades ago with each tribe’s discretion to prioritize funds within their overall TPA base for public safety programs.

The base funding amounts for contracted or compacted Law Enforcement and Detention/Corrections programs have evolved over time since they were removed from the TPA category in BIA’s FY 1999 appropriation. The amount each tribe had allocated to Law Enforcement at that time represents the starting point for the current funding levels used to estimate unmet need in this report. Since by law, one tribe’s base funding under contract or compact cannot be reduced in order to increase the base of another tribe, additional appropriations (budget increases) received for public safety programs over the past 12 years represented the only opportunity for BIA to provide funding increases to those operated by tribes. Direct service programs have received a portion of the budget increases as well; however, because the BIA retains discretion to reallocate between these locations as needed in a given year, there is greater consistency in the percentage of need funded among them.

Rather than look solely at percentage of need funded for each tribe/location, the BIA evaluates a number of factors to ensure appropriated increases “reach the areas with the greatest need” as directed in the Conference Committee Report to the Consolidated Appropriations Act, 2008. To this end, the BIA utilizes a funding increase methodology that incorporates primarily objective criteria as identified on the following page:

Criminal Investigation and Police Services

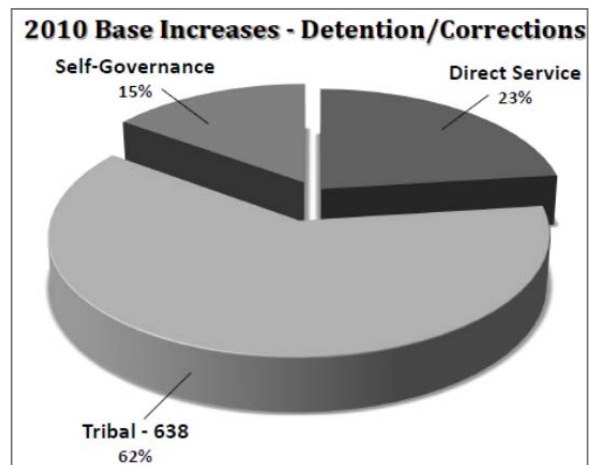
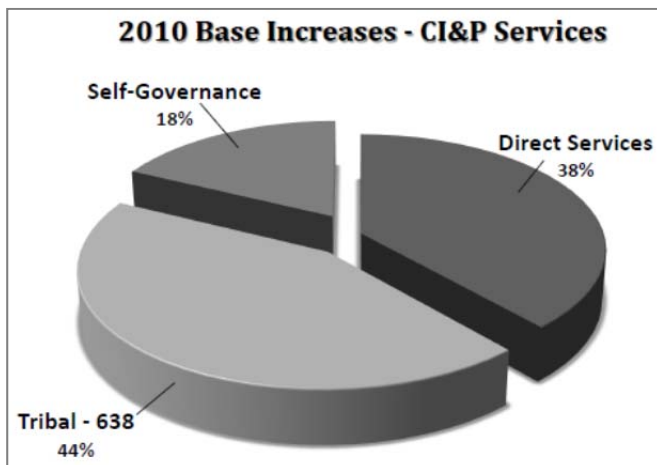
- Violent crime rate
- Staffing levels/shortages by parity ratios
- Service population
- Size/land base to be serviced
- Calls for service
- Prevalence of drug/gang activity
- Status as High Priority Goal location

Detention/Corrections

- Annual inmate intake
- Staffing levels/shortages by parity ratios
- Violent crime rate
- Service population
- Size/land base to be serviced
- Proximity to other facilities (transport)
- Consideration of new facilities
- Status as High Priority Goal location

The Tribal Courts program differs from Law Enforcement and Detention/Corrections in that it remains in the TPA category, which means the funds provided therein can be allocated and reallocated by tribes among various other TPA programs in a manner that best meets their individual need or priority in any given year. This characteristic adds potential complexity in targeting appropriated increases to the areas of highest need because the base increase amount could be reallocated to other programs such as social services or roads maintenance at the tribe’s discretion the following year. Despite this fact, efforts are currently underway to implement an appropriate funding increase methodology for the Tribal Courts program. In the past, the BIA has distributed Tribal Courts base increases utilizing a pro-rata methodology, as well as request-based determinations supported by court review data or status as a High Priority Goal location. For example, of the \$10.0 million increase appropriated to Tribal Courts for FY 2010, half was distributed as base increases pro-rata based on the existing amount each tribe allocated to their Tribal Courts program for FY 2010. The remaining \$5.0 million was distributed as targeted base increases to address specific deficiencies identified in court reviews and anticipated rapid caseload growth at High Priority Goal locations.

It is important to note that the BIA OJS funding increase methodology is not a straight formula with direct inputs and outputs as utilized by a number of other BIA programs. Though it includes formulaic components to generate recommended amounts by tribe/location, each amount is then reviewed, and adjusted if necessary, on a case by case basis to ensure appropriate consideration is given to all relevant factors.



Additionally, contracted (Tribal – 638) and compacted (Self-Governance) public safety programs together generally receive a substantially larger portion of appropriated increases than those operated by the BIA (Direct Service) as shown above for FY 2010. These graphs represent the distribution of appropriated increases of \$20.5 million to Criminal Investigations & Police (CI&P) Services and \$10.0 million to Detention/Corrections utilizing the OJS funding increase methodology. With 62 percent and 77 percent respectively going to tribally operated programs, it is apparent that additional resources are connecting to the programs identified with the highest unmet need in this report.