

TO: United States Sentencing Commission
FM: Troy A. Eid, Chairman, Indian Law and Order Commission: <http://www.aisc.ucla.edu/iloc/>
RE: Possible Formation of Tribal issues Advisory Group

Dear Commissioner:

I respectfully write to urge you to create a Tribal Issues Advisory Group. This letter is provided in my capacity as a private citizen and the former Chair of the Indian Law and Order Commission. I am also the former United States Attorney for the District of Colorado (2006-09).

Briefly, the Indian Law and Order Commission (“Commission”) was created by Tribal Law and Order Act of 2010 to advise the President and Congress on law and policy reforms at the federal, state and tribal level to make the 566 federally recognized Indian tribes and nations safer and more just for all U.S. citizens. Before the Commission’s legislative sunset last January, we developed A ROADMAP FOR MAKING NATIVE AMERICA SAFER. This landmark report is available in the Commission’s official archival site at the University of California at Los Angeles: <http://www.aisc.ucla.edu/iloc/>. THE ROADMAP, which has been described as the most comprehensive analysis on the topic of Indian country criminal justice and public safety since the New Deal, spans more than 300 pages and contains 40 specific recommendations.

The Commission’s ROADMAP repeatedly notes the substantial disparities in federal criminal sentencing between Native Americans committing crimes within federally recognized Indian country, where the Major Crimes Act and Indian Country Crimes Act apply, and other U.S. citizens who violate criminal state criminal laws elsewhere. Chapter 6 of THE ROADMAP notes the particular disparity between sentences imposed by federal courts against Native Americans, and the relative frequency with which Native Americans are sentenced as adults, as compared with relatively shorter sentences for the same or similar offenses outside Indian country. Harsher punishments for committing the same offenses stems from the federalization of crimes on Native homelands. This occurs directly in Indian country and indirectly – by state governments, who assumed these same powers without tribes’ consent – in Public Law 280 states.

These are but a few examples of why it is imperative for the United States Sentencing Commission to establish a Tribal Issues Advisory Committee. Judging from Chapter 3 of THE ROADMAP, the federal courts are sentencing Native Americans to systematically longer terms of incarceration than other U.S. citizens for the same or similar offenses. Clarifying and, where necessary, adjusting the Sentencing Guidelines may well be suitable in such situations. An advisory committee can inform proposed guideline amendments and otherwise provide advice and counsel as needed. Additionally, federal agencies are now required by Presidential executive order to engage in government-to-government consultation on proposed federal laws, regulations and rules. A Tribal Issues Advisory Committee could play an important role in supporting the government-to-government consultation process as the United States Sentencing Commission undertakes its responsibilities.

Please do not hesitate to contact me if I can be supportive of this process. All of us who served on the Commission did so as volunteers and we’ll be glad to assist you. My contact information is below.

Thank you and best regards.

Sincerely,

TROY A. EID
Chairman, Indian Law and Order Commission (2011-14)