

**Federal Funding for  
Tribal Detention Facilities:  
Source of Funding & Limitations on Its Use**



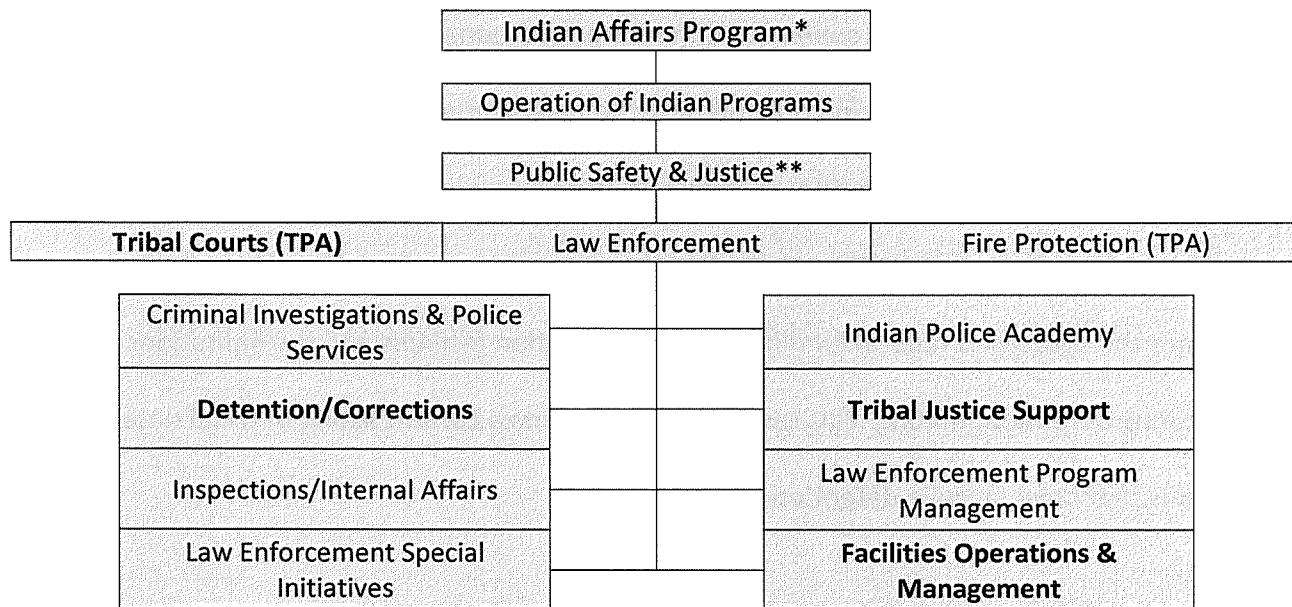
Due to unique legal and historical characteristics of Indian tribes, tribal governments receive federal funding for many basic tribal programs and services and, opposed to state and county governments, are often subject to different or additional laws and regulations. Consequently, a major concern in implementing the Juvenile Detention Alternatives Initiative (JDAI) in the tribal context is whether cost-savings from lower levels of detention can be reallocated from detention funding to funding for alternatives to detention. This research examines the sources of federal funding for tribal detention facilities and the limitations on reallocating detention funding. This research also presents a current listing of tribal detention programs that have juvenile detention facilities.

**I. Sources of Federal Funding for Tribal Detention Facilities & Alternatives to Detention**

The Bureau of Indian Affairs (BIA) is the federal agency with the main responsibility for overseeing and operating adult and juvenile detention facilities in Indian country. The BIA manages or oversees detention facilities that are (1) operated by the BIA; (2) contracted with tribes under the provisions of Pub. L. 93-638; (3) self-governance compacted between the BIA and tribes; or (4) operated by state and local entities under contract with the BIA. A small number of Indian country jails are operated strictly by tribes without BIA fiscal support.

The BIA Public Safety & Justice budget is comprised of three subactivities: (1) Law Enforcement; (2) Tribal Courts; and (3) Fire Protection. Importantly, there is not a subactivity group for corrections. Tribal detention facilities are funded through two Law Enforcement budget lines: (1) Detention/Corrections and (2) Facilities Operations & Management. Two

additional budget lines that provide funding for tribal court systems are Tribal Justice Support (within the Law Enforcement subactivity) and Tribal Courts.

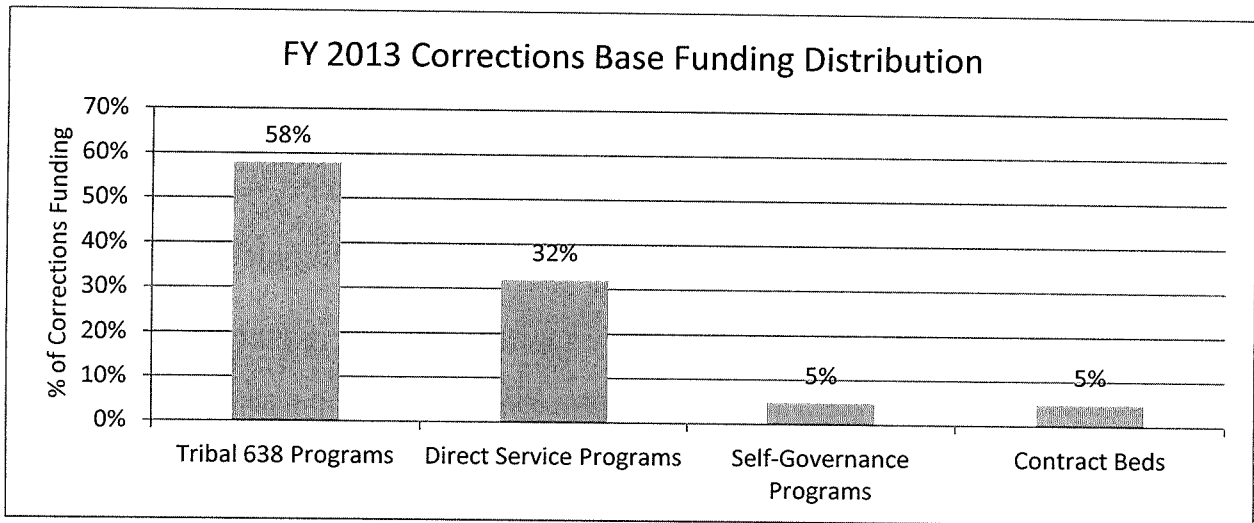


*\*The Indian Affairs (IA) Program encompasses the BIA, Bureau of Indian Education (BIE), and Office of the Assistant Secretary-Indian Affairs (AS-IA).*

*\*\* The Public Safety & Justice budget is a BIA program.*

**A. Detention/Corrections**

Detention/Corrections funds staffing, staff-related expenses, and short-term contracted bed space that is required when the capacity of existing detention facilities or programs is exceeded or otherwise not available. The BIA’s Office of Justice Services oversees 96 tribal detention programs, of which 71 are tribally operated and 25 are BIA operated to provide direct services.



Detention/Corrections funds are distributed based on historical 1999 Tribal Priority Allocations (TPA) funding levels; however, Detention/Corrections funding is *not* TPA funding. Each program's relative allocation of 1999 TPA is used to formulate an established base which is continued annually. Additional funds—funds above base funding—are distributed based on the following criteria: (1) staffing analysis, (2) bed space available vs. need, (3) proximity to other detention facilities for transport, and (4) consideration for new DOJ granted detention facilities that need full operating expenses. Absent an act of Congress, funding levels cannot be reduced. The Detention/Corrections budget for FY 2014 was approximately \$94 million.

### ***Tribal Priority Allocation***

In 1993, Congress approved the BIA budget structure change and designated Tribal Priority Allocations (TPA) as the subset of funding that applied to the local, Tribe/Agency portion of the budget. TPA funds basic tribal services, such as social services, adult vocational training, child welfare, natural resources management, and contract support. TPA gives tribes the opportunity to further Indian self-determination by establishing their own priorities and reallocating Federal funds among programs in this budget category.

TPA provides funding for local recurring programs of a varied nature, such as Law Enforcement programs. Not included in TPA: (1) recurring programs for the direct benefit of Indian people or for Indian lands; (2) recurring programs with formula distribution; (3) non-recurring programs that were time limited or competitive grant type projects; (4) funds for Central or Area Offices; and (5) funds for Special Programs and Pooled Overhead.

There is no restriction on the reprogramming of funds between program classes that are designated as Tribal Priority Allocations. The authority to reprogram applies whether the programs are under contract or compact or delivered by the BIA.

TPA distributions are based on historical allocation of tribal shares. There is not a uniform process or formula in place to determine tribal shares. Tribes' TPA base funds are the accumulation of many years of individual decisions related to the circumstances, needs, and support for individual tribes. As an exception to the distribution of TPA base funds, some formula-based programs are now included in TPA, such as contract support, general assistance, and road maintenance.

Within the BIA's Public Safety & Justice budget, Tribal Courts and Fire Protection are designated TPA program classes, whereas Law Enforcement is not a TPA program class. As part of the Presidential Initiative on Law Enforcement in Indian Country, in FY 1999 the BIA consolidated law enforcement activities within the BIA Office of Law Enforcement Services, removed law enforcement funding from TPA, and set each tribal detention program's base funding to its relative allocation of prior TPA law enforcement funding. These organizational and funding changes were taken to reform the criminal justice system in Indian country, and, importantly, to prevent law enforcement funding from competing with other TPA programs.

### **B. Facilities Operations & Management**

Detention Facilities Operations funds are used for operational services (including janitorial services, utilities cost, refuse disposal, fire protection, maintenance of vehicles, communication cost, pest control, personnel services, equipment, material and supplies, travel,

and training), for purchasing products required to keep services operational, and for purchasing items necessary for compliance with Occupational Safety and Health Act standards and codes. Detention Facility Maintenance funds are used to conduct preventive, routine, scheduled, and unscheduled maintenance for all detention facilities, equipment, utility systems, and ground structures. Tribes receive funding from the Facilities Operations & Managements budget based on detention facility square footage. The Facilities Operations & Management budget for FY 2014 was approximately \$13 million.

### **C. Tribal Justice Support**

Tribal Justice Support provides funds for tribal court reviews, training and technical assistance, and studies and research on tribal justice systems. The purpose of Tribal Justice Support is to further the development, operation, and enhancement of tribal justice systems and BIA Courts of Indian Offenses. Tribal courts regularly request technical assistance in the fields of pre-trial, probation, alternative sentencing issues, family matter issues including Indian Child Welfare Act (ICWA), juvenile issues, and victim witness issues, probate matters, contract matters, matters of economic development including contract issues and Uniform Commercial Codes legislated by tribal governments. A portion of this funding is allocated to providing specific training to tribal court personnel: trial advocacy training, specific training for tribal court judges, tribal court prosecutors, and tribal public defenders, along with additional training and funding for tribal court management computer systems. For JDAI purposes, Tribal Justice Support is the account that would provide technical assistance for alternatives to detention. The Tribal Justice Support budget for FY 2014 was approximately \$5 million.

#### **D. Tribal Courts**

Tribes utilize Tribal Courts funding for salaries and related administrative costs for judges, prosecutors, public defenders, court clerks, court administrators, pre-trial and probation officers, juvenile officers, victim witness specialist, and other court support staff central to the operation of tribal justice systems. Of the 300 tribal courts, 185 courts receive funds from the Tribal Courts budget under 638 contracts and self-governance compacts. The remaining 115 tribal courts do not receive funding from this program due to tribal prioritization of TPA funding in other TPA programs. For JDAI purposes, Tribal Courts is the account that would actually fund alternatives to detention. The Tribal Courts for budget FY 2014 was approximately \$23 million.

#### ***Indian Self Determination and Education Assistance Act***

The United States Congress enacted the Indian Self-Determination and Education Assistance Act (ISDEAA) in 1975. The ISDEAA's main purpose was to enhance tribal participation the planning and administration of programs for Indians. The ISDEEA is divided into five Titles. Titles I and II allow tribes to enter into self-determination contracts ("638 contracts") with the federal government to take control of federal programs and schools for Indians. Title III created a self-governance demonstration program to increase flexibility in administration of tribal programs. Title IV and V made self-governance permanent for the Department of Interior and the Indian Health Service, respectively.

## **II. Limitations on Using Cost-Savings to Fund Alternatives to Detention**

### **A. Insufficient Overall Funding**

Cost-savings are undermined by an overall lack of sufficient federal funding. According to BIA officials, federal funding does not provide sufficient resources to completely fund any tribal detention program. The total amount of federal funding covers on average approximately 50% of tribal detention facility costs. Therefore, absent drastic reductions in detention costs, a



### ***Self-Determination “638 Contracts”***

Under the ISDEAA, tribes and tribal organizations may enter into contracts with the federal government to take over administration of programs formerly administered by the federal government on their behalf. Programs subject to 638 contracts included all those administered by the Department of the Interior under the Snyder Act or the Indian Reorganization Act, or with monies from other agencies “for the benefit of Indians,” or administered by the Department of Health and Human Services “for the benefit of Indians because of their status as Indians.”

The Secretary of the Interior may only deny a tribal request to enter into a self-determination contract if the services to the Indian beneficiaries will not be satisfactory, the contract will jeopardize the trust resources of the tribe, the tribe cannot fulfill the contract, the proposed cost is more than that permitted under the Act, or the activity is outside the scope of the Act because the proposal includes activities that cannot lawfully be carried out by the contractor. The ISDEAA provides federal funds for contracts shall not be less than would have been provided had the United States operated the program. ISDEAA has been amended to require funding of “contract support costs,” which are costs a tribal organization must incur to comply with its self-determination contracts, but which are not considered part of the direct operation of the program.

tribe would have little or no money to reallocate cost-savings in detention funding to alternatives.

Although being underfunded is a major limitation in attempting to utilize cost-savings to fund alternatives, cost-savings from lower levels of detention would nonetheless be beneficial to tribes. First, cost-savings would lessen the effect of being underfunded.

Second, substantial cost-savings can in theory produce a scenario where a detention facility would no longer be underfunded. In this scenario, reallocating cost-savings

to fund alternatives would then be a practical consideration, albeit still limited due to some technical restrictions. (*See Reprogramming Limitation section below*). The main takeaway is that lower levels of detention may produce cost-savings, but unless savings are substantial then reprogramming resources to fund alternatives may not be practical policy to implement. (*See Table below for Detention/Corrections Base Funding*).

## B. Reprogramming Limitation

The Indian Affairs budget is divided into programs and accounts that do not allow for cost-savings in detention to be simply reallocated to alternatives to detention. Eligibility for Detention/Corrections funding requires compliance with BIA Corrections Standards. The scope of the BIA Corrections Standard is limited to adult and juvenile detention and corrections programs. Consequently, alternatives to detention would be ineligible for Detention/Corrections funding. Therefore, to utilize cost-savings from lower levels of incarceration to fund alternatives, funds from Detention/Corrections would need to be *reprogrammed* to another account that funds alternatives or technical assistance for alternatives, such as the Tribal Courts subactivity or the Tribal Justice Support account within the Law Enforcement subactivity. In addition to an overall underfunding of all tribal detention facilities, reprogramming limitations would also hinder a tribe's ability to utilize cost-savings to fund alternatives.

Reprogramming is generally defined as the movement of funds from one account to another within the same appropriation. 'Account' describes the congressionally established levels to which reprogramming limitations apply. In

### ***Self-Governance Compacts***

Congress enacted the Tribal Self-Governance Act after finding that in spite of the Self-Determination Act, the centralized rules and regulations of the federal bureaucracy continued to erode tribal self-governance and dominate tribal affairs. The Act allows tribes to negotiate a single annual funding agreement for the administration of all programs for tribes or Indians administered by the Department of Interior. A tribe may also negotiate a "self-governance compact" which affirms the government-to-government relationship and includes provisions that apply to all bureaus within the Department of Interior. Compared to 638 contracting, self-governance compacting allows tribes to reallocate funds among the programs and redesign or consolidate programs.

some cases, account means program class; in other cases, account means a group of program classes or an entire budget activity or fund.

According to agency policy, for all appropriations, (1) there is no restriction on the reprogramming of funds involving the Office of Self Governance, so long as there is no change in the purpose of the funds, (2) no reductions are allowed in programs specifically increased by Congress without congressional approval, and (3) No reprogrammings are allowed that would create a new program (i.e., a program that was not presented to Congress) without congressional approval. For appropriations to the Operation of Indian Programs budget, no reprogrammings—except for reprogrammings within TPA program classes—are allowed that exceed \$1 million in cumulative increases or decreases at the ‘account’ level without congressional approval. The \$1 million limitation is not applied per tribe or per facility; it is applied to the cumulative changes in a budget account.

For reprogramming within the Public Safety & Justice budget, the three subactivities—Law Enforcement, Tribal Courts, and Fire Protection—are the ‘accounts’ to which reprogramming limitations apply. Therefore, funds can be transferred from Detention/Corrections to Tribal Justice Support without being restricted by the \$1 million reprogramming limitation because both are within the Law Enforcement account. However, transfers between Detention/Corrections to Tribal Courts are limited to \$1 million per year because both funds are not within the same account. The importance of the reprogramming limitation for JDAI purposes is that the reprogramming limitation restricts transfers from detention funding to the account most appropriate for alternatives funding. Although transfers can be made to Tribal Justice Support subject to 638 contract renegotiations, it is of limited use

because Tribal Justice Support can only provide technical assistance for alternatives but not direct funding for alternatives. Tribal Courts is the account that funds alternatives.

There are two exceptions to this rule that are relevant, yet ultimately unhelpful to reprogramming detention funding for JDAI purposes. First, there is no restriction on the reprogramming of funds between TPA program classes. This exception would not be an available option when attempting to utilize cost-saving in detention to fund alternatives simply because the Law Enforcement subactivity is not a TPA program class. The Tribal Courts account is a TPA program class, but the Detention/Corrections and Tribal Justice Support budgets within Law Enforcement are not TPA program classes. Second, there is no restriction on the reprogramming of funds involving the Office of Self Governance. This would also not be an available option. Typically, compacting tribes have broad discretion to reprogram funds to meet community needs as the tribe sees fit. However, this broad discretion does not extend to detention funding per agency policy. Detention funding can be transferred by the BIA to the Office of Self Governance for distribution to self-governance tribes, but Detention/Corrections program funding is restricted to only Detention/Corrections programs.