While America celebrated the opening of the National Museum of the American Indian in Washington, D.C., last September, the Department of the Interior (DOI) inspector general delivered a report to the U.S. Congress describing the "dismal picture of many prisons on Indian reservations." This report, titled *Neither Safe Nor Secure — An Assessment of Indian Detention Facilities*, detailed the present condition of Indian jails in America. What the DOI inspector general found was that the majority of Indian detention facilities are poorly staffed, poorly managed, inadequately funded and physically unsafe for inmates and staff.

The following analysis examines the history of the nation's Indian jails and their current condition as outlined in the DOI inspector general's September 2004 report, along with the response of the Bureau of Indian Affairs (BIA) and the recommendations made by the DOI inspector general. As Sen. Max Baucus, D-Mont., remarked after reading the DOI inspector general's report, the "conditions in Indian jails are unacceptable. They must be fixed. [America] cannot fight for human rights abroad, if we fail to protect them at home. In these facilities, we have failed."

**AN OVERVIEW OF INDIAN OFFENDERS**

Today, there are two types of Indian offenders who are detained — those who have committed crimes under federal law and those who have committed crimes under tribal law. With regard to those Indian offenders who have committed crimes under federal law, there are two statutory basis — the Major Crimes Act, 18 U.S.C. § 1153, and the Indian Country Crimes Act, 18 U.S.C. § 1152. The Major Crimes Act authorizes the federal government to prosecute Indians in Indian Country (a statutory term that includes all lands within an Indian reservation, dependent Indian communities and Indian trust allotments) who commit certain enumerated serious offenses, including murder, rape, manslaughter, aggravated assault and child sexual abuse. While tribes have concurrent jurisdiction to prosecute Indians in Indian Country for these offenses, the tribes' punishment authority is limited to $5,000 fines and one-year prison sentences. While the Major Crimes Act addresses serious crimes, the Indian Country Crimes Act authorizes the federal government to prosecute Indians who have committed minor crimes against non-Indians, and again, this authority is shared with the tribes. Indian offenders who have been convicted and sentenced to a prison term under either the Major Crimes Act or the Indian Country Crimes Act are housed in facilities operated by the Federal Bureau of Prisons.

Indian offenders who have committed crimes and have been sentenced under tribal law are placed under the jurisdiction and custody of the individual tribes as part of each tribe's inherent sovereignty. These
Indian inmates are housed in facilities operated by either BIA or the tribal government. Since the enactment of the Indian Law Enforcement Reform Act of 1990 (Public Law 101-379), BIA has been charged with the responsibility of providing law enforcement services on Indian reservations in addition to its primary mission of “fulfill[ing] trust responsibilities and promot[ing] self-determination on behalf of tribal governments, American Indians and Alaska Natives.” As of August 2004, the BIA Law Enforcement Services (BIA-LES) detention program consisted of 74 detention facilities, of which 19 are operated by BIA-LES and 35 are operated by tribal governments pursuant to Public Law 93-438.

The Justice Department’s involvement in Indian jails is typically limited to grants authorized by Section 20109, Subtitle A of Title II of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 13701, et seq., which provide funds through the Justice Department’s Correctional Facilities on Tribal Lands Program for construction of adult or juvenile detention facilities. However, this is a “bricks and mortar” grants program; the funds provided by the Department of Justice are limited only to the construction of the Indian jail and not the operation or management of the facility. As a result, tribes assume the full responsibility for financing, operating, maintaining, and maintaining Indian jails. In fiscal year 2004, the Department of Justice administered $1,885,000 in grants for the construction of Indian jails, while in fiscal year 2003, the department administered $4,967,000; in fiscal year 2002, $35,191,000; and in fiscal year 2001, $19,453,000. Overall, since the inception of the Correctional Facilities on Tribal Lands Program, the Justice Department has funded the construction of 23 Indian jails, which range from eight to 68 beds, including eight facilities that are exclusively for juveniles, three that are exclusively for adults, and 12 that are for a combination of adults and juveniles.

**THE INSPECTOR GENERAL’S INVESTIGATION**

In September 2003, the DOI inspector general began an assessment of Indian jails at the request of the U.S. attorney for Minnesota, who also chaired the attorney general’s Advisory Committee on Indian Country. The U.S. attorney expressed concern that Indian jails were crowded and in poor condition. In response to this request, the DOI inspector general assembled a team of investigators and auditors to visit a predetermined number of Indian jails to collect data about their operation and management. The focus of the team was to ascertain whether funds allocated for Indian detention facilities were properly used and to determine the level of security and safety within Indian jails. During the next several months, the DOI inspector general team visited 27 of the nation’s 74 Indian jails, dissected hundreds of detention and budget records, and interviewed more than 150 BIA and tribal officials, as well as federal and local detention professionals throughout the country.

Concerns regarding the status of Indian detention facilities date back to as early as 1994, when the DOI inspector general published a report discussing the deteriorating physical conditions of Indian jails and lack of management of the facilities. Similarly, in 1997, the Justice Department reported that “a public safety crisis existed in Indian country,” which “threatened the welfare of the community, staff and inmates.” In 1998, the former assistant secretary of Indian Affairs testified before the U.S. Senate Committee on Indian Affairs regarding the “decrepit conditions” of detention facilities and their lack of maintenance. He also testified that the jails were understaffed due to challenges in retaining personnel, and that juvenile offenders were sometimes temporarily incarcerated with adult inmates when no juvenile facility existed in which to house them.

In June 2004, the U.S. Senate Committee on Indian Affairs conducted an oversight hearing on Indian tribal detention facilities. In anticipation of the hearing, the DOI inspector general issued an interim report of its findings, which was released in April 2004, detailing “the appalling conditions of Indian detention facilities” as characterized by the DOI inspector general. The interim report also documented the suicides and attempted suicides, deaths, escapes, assaults (on inmates and officers) and lack of adequate staffing of these detention facilities. The final report was issued and reported in September 2004 to the U.S. Senate. What follows is some of what the DOI inspector general inspection team found when it visited the Indian jails.

**A LACK OF SECURE AND SAFE FACILITIES**

Because of the lack of oversight of BIA-LES, the inspector general discovered that many of the Indian jails were operating beyond capacity, understaffed and in dire need of repair. According to the inspector general, the crowded conditions of these facilities caused personnel to employ unconventional methods for housing inmates, especially for populations that are comprised of both juvenile and adult offenders. For example, the inspector general noted that in the Sisseton-Wahpeton jail in South Dakota, juvenile offenders were placed in a locked hallway with no restroom facilities or beds and inmates were handcuffed to the chairs in order to prevent escapes. Although juveniles were not permanently housed in the Sisseton-Wahpeton facility, the inspector general noted that there were occasions on which youths were held overnight because relatives had failed to pick up the offenders.

In the inspector general’s opinion, one of the largest security concerns involved the fact that the detention facilities were grossly understaffed, with often one detention officer overseeing and controlling the entire inmate population, patrolling the grounds and ensuring the safety of the inmate population as well as him or herself. As a result of these staffing shortages, the inspector general reported that some facilities placed a lockdown on inmates 24 hours a day, seven days a week. Further, the inspector general noted that escapes were so prevalent that detention personnel did not report them and did not appear to be concerned that these offenders could pose a threat to the surrounding community. Inmates simply walked away during transports to medical facilities, while on work details, through planned escapes or whenever an opportunity for escape presented itself. Faced with the decision of pursuing escaped inmates or maintaining control of the incarcerated population, detention personnel were forced to choose the latter.

Another serious concern discovered by the inspector general was that officers faced potential assault because of the shortage of personnel. Additionally, detention officers did not have the resources to properly screen offenders for medical problems upon arrival at the facility. The inspector general found that the percentage of suicides, attempted suicides and deaths of inmates in relation to the total inmate population was also considerably higher at Indian jails because officers on duty did not have the ability to observe inmates around the clock or even check on the
inmates who had attempted suicide in the past. Finally, the inspector general found that the facilities were physically unsafe, with some facilities operating without functioning toilets, sinks, surveillance cameras or proper locks on doors and windows. According to the inspector general, vandalism in these facilities was rampant because inmates expected that requests for repairs would go unheeded and used the opportunity to escape.

A LACK OF PERSONNEL TRAINING

In addition to the shortage of detention personnel, the DOI inspector general found that a lack of training contributed to the dysfunction of the Indian detention program. Although the Indian Police Academy is required to train and certify newly hired detention officers, detention personnel remain untrained in the policies for correctional officers. Whether due to the unavailability of classes or the lack of time to attend them, the result was the same—Indian detention personnel were often underqualified to effectively manage facilities on Indian reservations. For example, the report details how detention personnel at Yakama in Washington and Pine Ridge in South Dakota allowed police officers to enter cellblocks with guns strapped to their waist in direct violation of nationally accepted standards and procedures. The inspector general also found that this lack of training affected the financial management of the detention centers, and that jail administrators were offered no guidance for budget preparation or expenditures.

BIA’S LACK OF FISCAL MANAGEMENT

The DOI inspector general’s report also addressed BIA’s contention that additional funding was the true problem with the Indian detention program. More specifically, while the inspector general noted that additional funding is warranted, BIA failed to properly account for monies it has been allocated to oversee construction and management of detention facilities as well as for maintenance of facilities. For example, BIA-operated facilities only received $3 million of the $10 million in supplemental monies budgeted to hire 94 additional detention officers. BIA was unable to determine whether the remaining $7 million was ever used for its intended purpose. Moreover, BIA-LES failed to provide the inspector general with any record of budget submissions for the past three years, claiming that it was unable to locate any paperwork.

The inspector general’s report also noted that BIA-LES did not properly oversee the construction of new detention facilities. This failure, according to the report, resulted in the construction of new facilities that either could not be used due to staffing shortages or were not built within the federal standards. BIA managers historically requested the same amount of funding year after year without input from detention personnel or evaluation of the needs of the detention facility. Moreover, once money was given to a facility, detention personnel were not required to track expenditures. Therefore, BIA managers were incapable of identifying whether money allocated to the facilities was properly used because monies were distributed without guidelines for proper documentation.

BIA’S RESPONSE

In response to the DOI inspector general’s investigation, BIA inspected its detention centers that had health and safety problems by March 2004, and the 20 BIA detention centers in the poorest condition were also inspected for structural, plumbing, electrical and environmental concerns. BIA identified 4,313 deficiencies — 37 percent were life-threatening problems; 31 percent, physical plant problems; 8 percent, handicap problems (similar to violations of the Americans With Disabilities Act); and 3 percent, environmental problems. By the time BIA appeared before the Senate Finance Committee in September 2004, the agency had repaired 1,723 of the deficiencies cited, having prioritized the repair of health and safety items first to ensure the safety of inmates and staff.

BIA also took steps toward improving the agency’s detention program management system, restructuring the organization of detention operations into three district detention divisions. Specialists within each division have become involved in addressing day-to-day operational issues and providing improved on-site assistance for Indian communities. BIA also created the position of associate director of corrections and assistant director for detention facilities within BIA-LES, who will be accountable for ensuring that repairs and improvements are made to BIA facilities. Finally, BIA entered into a partnership with the Bureau of Prisons that detailed the need for a highly experienced prison official to work with BIA detention center staff to help evaluate and improve Indian jails and BIA’s corrections program.

BIA is also focusing on improving its training of detention center personnel by dispatching trainers from BIA’s Indian Police Academy to local reservations to train personnel on issues such as suicide intervention and prevention, arrest and search techniques, and facility security. BIA has also removed all juveniles from adult detention facilities that were not in compliance with BIA’s sight and sound separation requirements. These juveniles are now being housed in juvenile-only centers.

Finally, BIA has developed, with the help of the Bureau of Prisons, a strategic plan focused on improving Indian jails. The objectives of the plan include:

- Identifying staffing deficiencies and developing and implementing long- and short-term corrective actions;
- Standardizing the administrative review process for all serious incident reports to respond and correct deficiencies in a timely manner;
- Developing and implementing an annual detention inspection and follow-up programs;
- Improving coordination between facilities and BIA-LES; and
- Improving planning for fixing facility deficiencies at the detention centers.

MOVING FORWARD

Despite BIA’s response and strategic plan, the DOI inspector general’s final report provided a more detailed blueprint for remedying the current crisis facing America’s Indian jails. Because the DOI inspector general believes that BIA needs assistance in accomplishing these goals, many of the recommendations stressed a collaborative effort on the part of BIA, DOI and the Bureau of Prisons to effect positive and substantial reform. With regard to administrative management of the detention program, the inspector general proposed that:

- The deputy assistant secretary for law enforcement become actively engaged in coordinating the oversight and management of the BIA-LES detention program:
• DOI should create a senior-level, full-time equivalent position for a detention professional in BIA-LES to help provide increased coordination and advocacy for the Indian Country detention program;
• BIA-LES should conduct compliance inspections at BIA and tribal detention facilities on a scheduled and unscheduled basis; and
• BIA-LES should establish a senior-level detention program director with proper detention management credentials to manage the BIA and tribal detention facilities.

The inspector general also recommended staffing shortages at BIA and tribal detention facilities that are related to officer safety should be identified by the BIA-LES and corrected immediately. The inspector general also felt that BIA-LES should oversee this effort, and BIA-LES should immediately establish an effective system for prioritizing repairs that have any impact on inmate or detention officer safety.

Further, the inspector general stressed that DOI should take steps to ensure that BIA-LES establishes and implements clear reporting protocols for serious incidents occurring at all BIA and tribal detention facilities. Also, all escapes should be reported immediately to surrounding local, tribal and state law enforcement authorities. Lastly, BIA and tribes should explore alternatives to detention for intoxicated inmates and DOI should work with the tribes and BIA to establish a memorandum of understanding with the Indian Health Service to provide on-site medical assistance at all detention facilities with more than 20 inmates.

To ensure that detention centers are staffed with qualified personnel, the DOI Law Enforcement and Security Board of Advisors should develop recruiting standards and guidelines for BIA detention officers. The inspector general’s report states that BIA-LES should then assist tribal detention programs in developing standards and guidelines for tribal detention officers. BIA-LES and the Indian Police Academy should take immediate action to identify and train all current detention officers who have not received the basic academy detention officer training, and appropriate measures should be implemented to track and ensure compliance/certification of training by detention officers.

As for the fiscal management of the detention program, the inspector general recommended that BIA establish and implement a single line-item budget for all BIA-LES detention facilities and expenses. BIA should also use accurate budget projections that incorporate future funding requirements when preparing funding requests rather than just using historical data. It was further recommended that DOI work closely with BIA, tribes and the Bureau of Prisons to develop strategic plans for jail replacement and renovation. In addition, BIA should implement internal control procedures and proper management oversight to ensure that BIA funding and expenditures are accurately tracked and reported regularly.

Finally, the inspector general recommended that DOI should conduct routine scheduled and unscheduled inspections to determine compliance with the juvenile sight and sound restriction wherever adult and juvenile offenders are co-located. DOI should also assist BIA-LES with the development and implementation of appropriate standards for Indian Country jails, taking into consideration size, capacity and type of facility. The inspector general recommended that at a minimum, standards should identify core health and safety requirements that would be applicable to all jails regardless of size and capacity. Also, DOI and BIA should work closely with the tribes and continue to explore using regional detention facilities to accommodate longer-term inmates and to reduce crowding at smaller facilities.

In response to the DOI inspector general’s report, U.S. Sen. Ben Nighthorse Campbell, R-Colo., introduced the Indian Tribal Detention Facility Reform Act of 2004 that, if passed, would have implemented the recommendations of the DOI inspector general regarding Indian tribal detention facilities. In introducing his legislation, Campbell noted that, if passed, the Indian Tribal Detention Facility Reform Act of 2004 “establishes clear lines of authority for detention services by directing the secretary of Interior to create a separate branch of detention services. This separate branch will give the proper attention to issues surrounding detention facilities.” The bill would have also required the creation of “reporting protocols on serious incidents, particularly escapes, to proper law enforcement authorities.” Finally, the bill would have required “that the Department of Interior conduct a full report on the conditions and needs of the detention facilities in Indian communities, including staffing shortages and training, and a plan for addressing the needs.” Unfortunately, Congress adjourned without passing the legislation.

Neither Safe Nor Secure — An Assessment of Indian Detention Facilities details the many years of neglect experienced by the nation’s Indian jails. However, it is important to remember the report’s conclusion that “the responsibility for the conditions and failings … found at Indian Country detention facilities cannot be attributed to any particular individual or administration. Some of these problems are decades old. Thus, the solutions will not be easy to achieve and may take considerable time, effort and funding. However, nothing less than a Herculean effort to turn these conditions around would be morally acceptable.”

ENDNOTES
1 The inspector general’s final report notes that detention personnel in 53 percent of the visited facilities stated that they are routinely crowded; others stated that they become crowded on holidays and tribal events.
2 One female officer at the Shiprock Adult Detention Center in New Mexico stated that an inmate escaped her custody in June 2003 while she was escorting a group of ankle-shackled inmates from the detention facility to the courthouse across the courtyard. Since she was the only officer on duty, she chose not to leave the other inmates unattended and does not believe that the escapee has ever been recaptured.
3 The Tonah O’Odham Detention Facility in Arizona has established a field training officer program to ensure that new detention officers are mentored and veteran detention officers are provided with refresher and skills enhancement training.
4 There are a few notable exceptions. Indian jails in Salt River, Gila River and Tonah O’Odham in Arizona as well as the jail in Ute Mountain in Colorado are managed by jail administrators who have extensive training in operating detention centers.
5 As of the end of fiscal year 2001, 38 additional officers had been hired.
6 The repairs included renovation of fire/smoke alarm systems, installation of interior door closures, renovation of sprinkler systems, installation of heating systems, renovations of kitchens, toilet repairs and renovation of security camera systems.

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