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Elizabeth Ann Kronk

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THE EMERGING PROBLEM OF METHAMPHETAMINE: A THREAT SIGNALING THE NEED TO REFORM CRIMINAL JURISDICTION IN INDIAN COUNTRY

ELIZABETH ANN KRONK*

*People say there is something in the air here.
I say that something is methamphetamine
It is in our air, water, soil; it is in our people and in our children.*
— Unknown¹

*Meth is easy to make. It is highly addictive.
It is ruining too many lives across our country . . .*
— George W. Bush, President of the United States²

I. INTRODUCTION

The business plan was simple: an identified customer base already primed by years of addiction was accessible; a regular stream of income in the form of per-capita checks was available; and, more than anything else, the proponents of the business plan were convinced they would have no problem attracting new customers by offering free samples. The proposed new business? The expansion of methamphetamine (“meth”) sales, use and addiction into Indian country. Beginning in the late 1990s, Jesus Martin Sagaste-Cruz, with connections to the Mexican drug cartel, led a meth ring targeting Indian reservations in Wyoming, South Dakota, and Nebraska.³

* Assistant Professor, University of Montana School of Law. J.D., University of Michigan Law School 2003. B.S., Cornell University 2000. The author is a member of the Sault Ste. Marie Tribe of Chippewa Indians. I wish to thank the library staff at the University of Montana School of Law, especially Professor Stacey Gordon and Bob Peck, and Julie Sirrs for their invaluable research assistance and contributions to this article. And, as always, Chi Miigwetch to Kirsten Matoy Carlson and the Honorable Jenny Kronk for their insights and encouragement. I also wish to thank Jared Rigby and the other editors of the North Dakota Law Review for their time and assistance with this article.

1. Roe Bubar & Diane Payne, *Methamphetamine and Child Abuse in Native America*, 31 IHS PRIMARY CARE PROVIDER 305, 306 (2006). This quote is attributed to a participant in the survey, *Methamphetamine Use and the Incidence of Child Abuse in Tribal Communities*. *Id.*

2. OFFICE OF NAT’L DRUG CONTROL POL’Y, SYNTHETIC DRUG CONTROL STRATEGY: A FOCUS ON METHAMPHETAMINE AND PRESCRIPTION DRUG USE 1 (2006).

3. Brodie Farquhar, *Meth Ring Targeted Reservations*, CASPER STARTRIBUNE.NET, Aug. 21, 2005, <http://www.casperstartribune.net/articles/2005/08/21/news/417c31e54beac4ff87257063007c5f12.txt>; Press Release, Drug Enforcement Admin., Drug Trafficker Who Preyed on Native

Believing he could capitalize on jurisdictional loopholes and lack of law enforcement in Indian country,⁴ Sagaste-Cruz moved his meth operations onto the Wind River Indian Reservation with a business plan to prey on the surrounding Indian community.⁵ Sagaste-Cruz's associates initiated their plan by moving into the community and developing romantic relationships with Indian women.⁶ The women were given free samples of meth, became addicted, and were forced to become meth dealers to feed their addictions.⁷ The cycle of addiction moved forward to the women's families, friends and eventually the larger community.⁸ Sagaste-Cruz and his associates believed their plan to be fool-proof, as they blended into the community and felt Indians were easy targets for addiction.⁹ After all, they had read a story about Whiteclay, Nebraska, where liquor stores profited from a nearby reservation.¹⁰

Sagaste-Cruz's business plan to distribute meth in Indian country is another page in the sad history of addiction in Indian country. More importantly, however, the Sagaste-Cruz business plan reveals how criminals realize that there are potential benefits to be gained by exploiting the insufficient criminal jurisdictional scheme applicable in Indian country. The combination of congressional actions and a questionable Supreme Court decision together create a jurisdictional labyrinth in Indian country. It was only a matter of time before sophisticated criminals would learn of and attempt to exploit the unworkable scheme.

Since the eighteenth century, the federal government has maintained that it has criminal jurisdiction in Indian country.¹¹ Yet, "[t]hough Congress has often justified imposition of the federal criminal justice system in Indian country on the theory that federal laws are necessary to protect

Americans is Sentenced to Life in Prison (July 7, 2005), *available at* <http://www.dea.gov/pubs/states/newsrel/denver070705p.html>; *Meth Dealer Gets Life sentence*, BILLINGSGAZETTE.COM, July 8, 2005, <http://www.billingsgazette.com/newdex.php?display=rednews/2005/07/08/build/wyoming/60-dealer-sentence.inc>.

4. The term "Indian country" as used in this article refers to the legal definition of "Indian country" found at 18 U.S.C. § 1151, which includes dependent Indian communities, all Indian allotments, and "all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation" 18 U.S.C. § 1151 (2006).

5. Farquhar, *supra* note 3.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*; *see also Meth Dealer Gets Life Sentence*, *supra* note 3 (reporting that Jesus Martin Sagaste-Cruz was sentenced to life in federal prison following conviction for conspiracy and the distribution of meth); Press Release, Drug Enforcement Admin., *supra* note 3.

11. *See generally* 1 Stat. 138 (1790), 1 Stat. 743 (1799), & 2 Stat. 139 (1802).

public safety, numerous statistical surveys suggest that the federal Indian country criminal justice regime has not achieved any such purpose.”¹² Rather, the failure of the federal criminal justice system in Indian country is a result of the ineffective criminal jurisdictional scheme created by the Major Crimes Act¹³ (MCA), the Indian Civil Rights Act of 1968¹⁴ (ICRA) and the Supreme Court’s decision in *Oliphant v. Suquamish Indian Tribe*.¹⁵ Therefore, the emerging problem of meth use in Indian country is a microcosm of the general problems with criminal jurisdiction on Indian reservations.

In order to understand why meth use has become a significant problem in Indian country, this article examines how the meth problem in Indian country uniquely challenges law enforcement and suggests some solutions to this growing problem. Part II documents the extent of the meth problem in Indian country and how it challenges effective law enforcement. Part III will show that the meth problem in Indian country is a product of the unworkable criminal jurisdictional system applied to Indian country, and will examine jurisdictional problems associated with the MCA, the ICRA, and the *Oliphant* decision. Finally, Part IV offers solutions to the meth problem in Indian country given the problematic criminal jurisdiction scheme.

II. THE SCOPE OF THE METH PROBLEM IN INDIAN COUNTRY

Nationwide, meth use is spreading at an alarming rate. Between 1992 and 2002, drug treatment admissions due to meth use increased four times over.¹⁶ Meth use has spread beyond the West Coast and southwest into the Midwest, as evidenced by the 235 meth labs found in North Dakota in 2003.¹⁷ Additionally, meth has become increasingly available in rural areas, where most Indian reservations are located.¹⁸ While the illegal use of

12. Kevin K. Washburn, *Federal Criminal Law and Tribal Self-Determination*, 84 N.C. L. REV. 779, 786 (2006).

13. 23 Stat. 362 (1885) (codified at 18 U.S.C. § 1153 (2000)).

14. 25 U.S.C. §§ 1301-03 (2006).

15. 435 U.S. 191 (1978).

16. Susan Dreisbach et al., *Rural Methamphetamine Use: Implications for AI/AN Communities*, 31 IHS PRIMARY CARE PROVIDER 300, 300 (2006) (indicating that admissions due to meth use increased from 10 per 100,000 people in 1992 to 52 per 100,000 people in 2002 for age 12 and older).

17. Indianz.com, *Reservations Called Breeding Ground for Meth*, Nov. 8, 2004, <http://www.indianz.com/News/2004/005240.asp>.

18. Dreisbach et al., *supra* note 16, at 300 (“Methamphetamine use intensified in the rural west and midwest in the early 1990s and gradually has invaded both the rural south and American Indian reservations.”).

meth is a national problem, it is a problem that has disproportionately affected rural Indian country.

The high rates of meth use by American Indians document the disproportionate impact it has on them. In comparison to other groups within the United States, American Indians use meth at a substantially higher rate: 1.7% of American Indians/Alaskan Natives have used meth in the past year, in comparison to only 0.1% of African Americans, 0.2% of Asians, 0.5% of Hispanics and 0.7% of Caucasians.¹⁹ Overall, meth use in Indian country has increased dramatically over the past few years.²⁰

Due to the cost of meth, its impact on the user and the time required to adequately treat an addict, meth is a unique and particularly troublesome drug that is highly attractive to users in Indian country.²¹ Meth addiction affects both men and women.²² Meth is an especially attractive drug because it has long-lasting psychoactive properties.²³ Additionally, it is typically cheaper than other drugs because it is easy to make and can be made from readily available materials, such as salt, acetone and rubbing alcohol.²⁴

Meth is a powerfully addictive stimulant that dramatically affects many areas of the central nervous system.²⁵ Users experience the highest level of pleasure the first time they use meth and have to use greater and greater quantities of meth to obtain similar effects in the future.²⁶ Meth users then experience a longer and longer “period of lethargy, depression, paranoia,

19. NAT'L CONG. OF AM. INDIANS, METHAMPHETAMINE IN INDIAN COUNTRY: AN AMERICAN PROBLEM UNIQUELY AFFECTING INDIAN COUNTRY 1 (Nov. 2006).

20. *The Problem of Methamphetamine in Indian Country: Hearing Before the S. Comm. on Indian Affairs*, 109th Cong. 106 (2006) [hereinafter *Hearing*] (statement of Hope MacDonald-LoneTree, Chairperson of the Public Safety Comm. of the Navajo Nation Council) (“In 1997, the IHS began tracking encounters for methamphetamine. That year 31 encounters were recorded; by 2005, more than 5,000 encounters were recorded.”).

21. Bubar & Payne, *supra* note 1, at 305 (“As a relatively cheap stimulant, methamphetamines create a sense of euphoria for users; it is not surprising methamphetamines have found a niche in tribal communities where poverty, depression, high unemployment, and substance abuse issues already exist as serious challenges.”).

22. Dreisbach et al., *supra* note 16, at 301. The fact that women are equally attracted to meth as men are has significant potential future implications as well. See *Hearing*, *supra* note 20, at 28 (indicating that meth use was a factor in child custody cases which resulted in children being removed from the home due to abuse and neglect). Pregnant women can transfer their meth addiction to their unborn children. *Id.* Methamphetamine addicted mothers of young children are more likely to abuse those children. *Id.*

23. STREETDRUGS.ORG, CHILDREN AT RISK: METH LABS IN OUR COMMUNITIES 2 (2005) [hereinafter *CHILDREN AT RISK*].

24. *Id.*

25. See Dreisbach et al., *supra* note 16, at 301 (explaining that meth stimulates the nervous system to release specific neurochemicals).

26. *CHILDREN AT RISK*, *supra* note 23, at 2.

and even violent or aggressive behavior” following their initial high.²⁷ Meth users become addicted quickly because they must increase the amount used to obtain the same level of pleasure and avoid “downer periods.” Meth is so addictive that some tribes have “reported that families were selling their furniture, personal belongings, family heirlooms, cars, and homes, and even prostituting their children to maintain their meth addictions.”²⁸ The seriousness of meth’s attractive and addictive qualities is compounded by the long period of time it takes to effectively treat an addict.²⁹ Everything about meth makes it a difficult drug to combat.

Meth affects not only the user, but also his or her family, community and environment. Beyond high national usage rates among American Indians, Alaskan Natives and Native Hawaiians, individual tribes have been struggling with the impacts of meth on their communities and the high usage rate of meth. On the San Carlos Apache Reservation in Arizona, 64 babies out of 256, or twenty-five percent, were born to meth-addicted mothers in 2004. In 2005, this number increased.³⁰ The same tribe documented that eighty percent of the child abuse on the reservation involved drugs and alcohol abuse, which includes meth-related abuse.³¹ Many tribal governments have noticed a significant impact from meth use on their social services and welfare systems. “According to workers in the Social Service programs for the Tribes, Methamphetamine plays a large role in [sixty-five percent] of all cases involving child neglect and placement of children in foster care.”³²

In fact, the problem of meth use in Indian country has become so pervasive that seventy-four percent of the ninety-six Indian law enforcement agencies nationwide responding to the BIA National Methamphetamine Initiative Survey indicated that “meth poses the greatest threat to the members of the communities they serviced.”³³ More specifically, the

27. *Id.*

28. Bubar & Payne, *supra* note 1, at 305.

29. Dreisbach et al., *supra* note 16, at 303 (explaining that meth addiction can require long term treatment that may involve 12 to 18 month intensive outpatient or even residential treatment).

30. *Hearing, supra* note 21, at 18 (statement of Kathleen W. Kitcheyan, Chairwoman of the San Carlos Apache Tribe).

31. Bubar & Payne, *supra* note 2, at 305.

32. *Hearing, supra* note 20, at 35 (statement of Ivan D. Posey, Chairman of the Eastern Shoshone Business Council).

33. N.M. INVESTIGATIVE SUPPORT CTR., NATIONAL METHAMPHETAMINE INITIATIVE SURVEY: THE STATUS OF THE METHAMPHETAMINE THREAT AND IMPACT ON INDIAN LANDS 4 (2006).

survey results shed light on the full impact of the meth problem in Indian country, as results showed the following:³⁴

Supply and Production³⁵

- Powdered methamphetamine in high supply 43%
- Crystal methamphetamine in high supply 46%
- High rates of methamphetamine production on reservations 16%

Community Impact

- Methamphetamine is the greatest threat to the community 74%
- Methamphetamine-related arrests increased in last year 60%
- Increase in domestic violence 64%
- Increase in assault and battery 64%
- Increase in burglaries 57%
- Increase in child abuse and neglect cases 48%

The results of the BIA National Methamphetamine Survey are unnerving, as they suggest that meth in Indian country is a pervasive problem that continues to significantly impact Indian communities.

Meth is a drug that has substantial negative impacts on both the meth user and his surrounding community. Meth use is spreading rapidly throughout Indian country, destroying lives and families while further burdening already overburdened tribal resources. Given the pervasiveness of this problem, why has Indian country not been able to effectively deal with this problem to date? While Indian law enforcement agencies are aware of and are working to combat the addictiveness and attractiveness of meth, these agencies are forced to operate under the existing criminal jurisdictional scheme. Therefore, the answer lies largely with the ineffective criminal jurisdictional scheme in Indian country created and perpetuated by the federal government. The next part of this article attempts to uncover the deficiencies of the criminal jurisdictional scheme in Indian country.

34. DuWayne W. Honahni, *Methamphetamine in Indian Country: A Law Enforcement Perspective*, 31 IHS PRIMARY CARE PROVIDER 299, 307 (2006).

35. *Id.* The survey results in the “Supply and Production” category show that a substantial proportion of Indian law enforcement agencies reported that either powdered or crystal meth was in high supply within their jurisdictions. *Id.*

III. THE CRIMINAL JURISDICTIONAL MAZE OF INDIAN COUNTRY

The criminal jurisdictional scheme applicable in Indian country is so convoluted that some scholars refer to it as a “maze.”³⁶ Accordingly, in order to better understand the jurisdictional scheme in place in Indian country, this section will first provide a brief overview of criminal jurisdiction in Indian country. The section then goes on to explain that the criminal jurisdictional scheme that applies in Indian country is inadequate to effectively deal with the emerging meth problem. After showing that the current jurisdictional scheme is ineffective, the following section provides suggested reforms of the criminal enforcement in Indian country.

A. BRIEF OVERVIEW OF CRIMINAL JURISDICTION IN INDIAN COUNTRY

The unique nature of jurisdiction in Indian country developed from the sovereign status of Indian tribes. Beginning with the Constitution of the United States, the federal government has recognized the sovereign nature of Indian tribes.³⁷ As early as 1831, the United States Supreme Court acknowledged the separate, sovereign nature of Indian tribes.³⁸ This recognition of tribal sovereignty continues to this day, as every administration since Nixon’s has acknowledged the sovereignty possessed by tribes³⁹, the Supreme Court continues to recognize the existence of tribal sovereignty⁴⁰, and, since 1975, Congress has also advocated and encouraged a policy of self-determination and recognized tribal sovereignty.⁴¹

Tribal sovereignty may be limited by the plenary power Congress asserts over tribes.⁴² In the context of criminal jurisdiction in Indian country, Congress has acted on several occasions to limit tribal sovereignty,

36. Robert N. Clinton, *Criminal Jurisdiction over Indian Lands: A Journey Through a Jurisdictional Maze*, 18 ARIZ. L. REV. 503, 504 (1976).

37. U.S. CONST. art. I, § 8, cl. 3 & art. II, § 2.

38. See *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 2 (1831) (explaining that while tribal governments are dependent on the federal government they still remain separate entities outside of the complete control of the federal government and tribes are therefore “domestic dependent nations”); see also *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 519 (1832) (“The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial.”).

39. See, e.g., Memorandum from George W. Bush to Heads of Executive Departments and Agencies: Government-to-Government Relationship with Tribal Governments (Sept. 23, 2004), available at <http://www.whitehouse.gov/news/releases/2004/09/print/20040923-4.html>.

40. *United States v. Lara*, 541 U.S. 193, 210 (2004) (“[T]he Tribe acted in its capacity of a separate sovereign . . .”).

41. Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 (2002).

42. *United States v. Kagama*, 118 U.S. 375, 383-85 (1886).

including enactment of the MCA, the Indian Country Crimes Act (ICCA)⁴³ and the ICRA. The MCA grants jurisdiction to the federal government when certain enumerated crimes are committed by an Indian⁴⁴ within Indian country.⁴⁵ Referred to as “major crimes,” the enumerated crimes include: murder; manslaughter; kidnapping; maiming; any felony under the sexual abuse statutes; incest; assault with intent to commit murder, assault with a dangerous weapon, resulting in serious bodily injury, or against a child under sixteen; felony child abuse or neglect; arson; burglary; robbery; and felony theft.⁴⁶ Therefore, should an Indian commit one of the enumerated major crimes in Indian country, he will be subject to exclusive federal jurisdiction.⁴⁷ Additionally, the ICCA works to divest tribal criminal jurisdiction for crimes committed in Indian country under one of two conditions: (1) where the victim is an Indian, or (2) an Indian commits a crime that does *not* fall under the MCA and the tribe has not prosecuted the Indian.⁴⁸

Although the ICRA is generally thought of as applying the protections of the Bill of Rights to Indian country, it had a substantial impact on the scope of tribal enforcement authority in criminal matters by limiting the sentences that could be applied by tribal courts. The ICRA limited penalties issued by tribal courts to a \$500 fine and imprisonment for six months.⁴⁹ As a result of the ICRA, even where the MCA or ICCA do not grant the federal government exclusive jurisdiction over crimes in Indian country, tribal courts are significantly restricted in the punishment they can administer.

In addition to Congress limiting tribes’ ability to assert jurisdiction in criminal matters, the United States Supreme Court placed a significant limitation on tribal criminal jurisdiction through its decision in *Oliphant v. Suquamish Indian Tribe*,⁵⁰ when the Court held that tribes may not assert jurisdiction over non-Indians committing crimes in Indian country.⁵¹ In reaching its decision, the Court relied on the domestic dependent status of

43. 18 U.S.C. § 1152 (2006).

44. For purposes of the Major Crimes Act, the ethnicity of the victim does not matter.

45. 18 U.S.C. § 1153 (2006).

46. *Id.*

47. *Id.* Notably, the Major Crimes Act grants the federal government exclusive jurisdiction in instances where an Indian commits an enumerated major crime in Indian Country to prosecute the Indian for a *felony*. *Id.* A tribal court may also prosecute the Indian but only for the commission of a misdemeanor offense. *Id.*

48. 18 U.S.C. § 1152 (2006).

49. The Indian Civil Rights Act of 1968 was amended in 1986 to increase the period of imprisonment to one year and the maximum fine to \$5,000. Pub. L. No. 99-570, § 4217, 100 Stat. 3207 (codified at 25 U.S.C. § 1302(7)).

50. 435 U.S. 191 (1978).

51. *Oliphant*, 435 U.S. at 212.

tribes, finding that such a dependent status was not consistent with jurisdiction over non-Indians.⁵² Additionally, the Court referred to 200 years of federal legislation that allegedly implied an absence of criminal jurisdiction over non-Indians.⁵³

Consequently, effective law enforcement is significantly handicapped in Indian country. By enacting the MCA, ICCA, and ICRA, Congress not only stripped tribes of jurisdiction over most major crimes in Indian country, but further limited effective enforcement by capping the sentences tribal courts may levy. Through its *Oliphant* decision, the Court further compounded the problem by removing tribal criminal jurisdiction over non-Indians. Combined, these developments create a criminal jurisdictional scheme in Indian country that is inadequate to address the emerging meth problem.

B. THE EXISTING CRIMINAL JURISDICTION SCHEME IN INDIAN COUNTRY IS INADEQUATE TO ADDRESS THE METH PROBLEM

Despite the intent of Congress in imposing the MCA, ICCA, and ICRA on tribes, and the United States Supreme Court removing jurisdiction over non-Indian affairs from tribes, criminal enforcement in Indian country has not improved in the recent decades. In fact, it appears that crime has been increasing in Indian country, while decreasing throughout the rest of the country. “[C]rime statistics involving American Indians are stunning. . . . [C]rime rates involving Indians have been higher than any other racial or ethnic group in the United States. During the 1990s, when violent crime was rapidly declining throughout the United States . . . violent crime was quickly *rising* on Indian reservations.”⁵⁴ The disparity in crime rates is consistent across the nation. For example, the White Mountain Apache Reservation has a homicide rate thirteen times the national average.⁵⁵ Additionally, Indian women are seven times more likely than non-Indians to be victims of domestic violence.⁵⁶ The crime rates in Indian country are

52. *Id.* at 206-12.

53. *Id.* at 201-06.

54. Washburn, *supra* note 12, at 786 (emphasis in original).

55. *FBI Probes 10th Murder on the Reservation*, WHITE MOUNTAIN INDEPENDENT, Dec. 22, 2006, at A1, available at http://www.wmicentral.com/site/news.cfm?newsid=17621859&BRD=2264&PAG=461&dept_id=505965&rft=6.

56. Sarah Deer, *Domestic Violence in Indian Country*, INDIAN COUNTRY TODAY, Jan. 19, 2007, available at <http://www.indiancountry.com/content.cfm?id=1096414373>.

increasing despite the fact that the federal government has significantly increased its attention to crime in Indian country.⁵⁷

Why then, despite this increased federal attention, is crime not being adequately addressed in Indian country? Some postulate that the system has failed because federal system was imposed on Indian country without approval or acceptance, and that tribally-created systems are necessary for and consistent with tribal self-determination.⁵⁸ Others, however, are more critical of the federal government, believing that lax enforcement in Indian country is due to federal prosecutors' lack of interest in crimes in Indian country.⁵⁹ If there is some reticence on the part of federal prosecutors to prosecute crimes occurring in Indian country, it may be due to the difficulty of trying cases in federal courts when the crime may have occurred on a far away Indian reservation.⁶⁰

Whatever the cause of the increase in incidents of crime in Indian country, it seems apparent that the current criminal jurisdictional system is not effectively combating crime in Indian country. Therefore, if significant threats such as meth use and distribution are to be addressed, the current criminal jurisdictional scheme in Indian country must be re-evaluated. The next section addresses changes that should be made in order to better address crime, such as meth use and distribution, in Indian country.

IV. JURISDICTIONAL CHANGES LIKELY TO LEAD TO BETTER ENFORCEMENT OF METH-RELATED CRIMES IN INDIAN COUNTRY

Because the existing criminal jurisdictional scheme in Indian country is inadequate to fully address the emerging meth problem, reforms to the existing scheme and new programs are necessary at both the federal and tribal level. Therefore, this section will begin by proposing federal reforms

57. See Indianz.com, Congress Puts Focus on Indian Country Crime, Nov. 22, 2006, <http://www.indianz.com/News/2004/005469.asp> (explaining that twenty-seven new positions were created in the FBI Indian Country Unit).

58. Deer, *supra* note 56.

59. See, e.g., Amy Radon, *Tribal Jurisdiction and Domestic Violence: The Need for Non-Indian Accountability on the Reservation*, 37 U. MICH. J.L. REFORM 1275, 1281 (2004) (indicating that some American Indian women think that the federal government will not help them); see also 137 CONG. REC. 2988, 2990 (1991) ("According to the National Congress of American Indians (NCAI), the four most common crimes on reservations are assault, intoxication, driving while intoxicated, and disorderly conduct, and NCAI notes that these are the crimes law enforcement officers find the most tedious to deal with. Hence, neither States nor the Federal governments were eager to assume this jurisdiction.").

60. 137 CONG. REC. 2988, 2988 (1991) ("[D]efendants, witnesses, victims, and law enforcement officers are located on remote reservations and it is both difficult and inordinately expensive to transport these persons to the Federal [sic] district courts for arraignments, trials, and sentencing proceedings.").

that will hopefully encourage better enforcement over meth-related crimes in Indian country. Proposed reforms include amending the MCA to allow tribes to opt-in to jurisdiction over major crimes, amending the ICRA to remove any limitations on the sentences tribal courts may levy, and adopting an “*Oliphant* fix” that would recognize tribes’ inherent authority over non-Indians committing crimes in Indian country. Furthermore, this section explores creative solutions tribes have developed to better address the meth problem in Indian country. When coupled with the proposed federal reforms, these tribal solutions offer a powerful tool in combating the meth problem.

A. PROPOSED FEDERAL SOLUTIONS TO ENCOURAGE BETTER
ENFORCEMENT OF METH-RELATED CRIMES IN INDIAN COUNTRY

While the federal government has taken several actions to address the meth problem, more needs to be done. The federal government has passed legislation, such as the Combat Methamphetamine Epidemic Act of 2005⁶¹ (CMEA), and adopted programs, such as those articulated in the President’s 2006 Synthetic Drug Control Strategy⁶² (SDCS), which address some of the problems of meth use on a national scale. However, the federal government has yet to take steps to address the insufficient criminal jurisdictional scheme in Indian country, which is the crux of the problem of inefficient enforcement of meth use. Moreover, while some federal districts, such as Arizona have welcomed the opportunity to partner with tribes in the fight against meth, most districts have yet to adopt similar cooperative measures. Enforcement in Indian country therefore remains inconsistent, as efforts are not being coordinated in a uniform manner at the national level. Therefore, given the federal government’s apparent inability to effectively combat meth use in Indian country and the ability of tribes to better deal with the problem, the current criminal jurisdictional scheme applicable in Indian country must be significantly reformed.

Notably, the federal government has already taken steps to address the meth problem in Indian country. In March 2006, the CMEA went into effect.⁶³ The CMEA requires all regulated sellers of over-the-counter medications containing pseudoephedrine, ephedrine, and phenylpropanolamine, all of which are precursors to meth, to place these medications

61. Combat Methamphetamine Epidemic Act of 2005, Pub. L. 109-177, 120 Stat. 256 (codified as amended at scattered sections of 21 U.S.C.).

62. OFFICE OF NAT’L DRUG CONTROL, *supra* note 2, at 1.

63. Combat Methamphetamine Epidemic Act of 2005, Pub. L. 109-177, 120 Stat. 256 (codified at scattered sections of 21 U.S.C.).

behind a counter or in a locked box and that all consumers show proper identification and sign a logbook for each purchase.⁶⁴ The CMEA also limits daily and monthly sales of these products.⁶⁵ It is anticipated that the requirements of the CMEA will combine to make it more difficult for local producers of meth to obtain the ingredients they need to make the meth. The CMEA also created three new meth grant programs, but, unfortunately, tribes could not apply for these grants. Representatives Tom Udall (D-NM) and Dale Kildee (D-MI) currently have a legislative bill pending that would fix this oversight.⁶⁶

Additionally, President George W. Bush has released the SDSC, which focuses on meth use.⁶⁷ The SDSC proposes to reduce use of meth and domestic meth laboratories significantly over the next three years.⁶⁸ Moreover, the United States Department of Housing and Urban Development adopted regulations that would prohibit an individual convicted of drug-related criminal activity, such as the manufacture or production of meth, from living in federally-assisted housing.⁶⁹

The federal government has also taken actions more directly targeted to address the meth problem in Indian country. The SDSC has recognized the importance of partnering with tribal authorities to combat the meth problem and specifically called for increased training for tribal law enforcement officers in meth use and laboratory awareness.⁷⁰ In fact, the White House has created a federal inter-agency task force to coordinate the federal response to meth in Indian country.⁷¹

Attorney General Alberto Gonzales fulfilled the President's commitment in part on March 29, 2006, when he announced funding for the Methamphetamine Investigation Training for Tribal Law Enforcement program.⁷² The money will fund a course that provides Tribal law enforcement officers with training on how to conduct successful and safe

64. 21 U.S.C. § 830 (2006).

65. *Id.*

66. Native American Methamphetamine Enforcement and Treatment Act of 2007, H.R. 545, 110th Congress (2007) ("To amend the Omnibus Crime Control and Safe Streets Act of 1968 to clarify that territories and Indian tribes are eligible to receive grants for confronting the use of methamphetamine.").

67. OFFICE OF NAT'L DRUG CONTROL, *supra* note 2, at 1.

68. *Id.* at 5.

69. 24 C.F.R. §§ 882.518, 982.553 (2006).

70. OFFICE OF NAT'L DRUG CONTROL, *supra* note 2, at 25.

71. *Id.*

72. Press Release, Dep't of Justice, Attorney General Alberto R. Gonzales Visits Yakama Nation Indian Reservation: Announces New Initiatives to Fight Methamphetamine and Investigate Cold Cases (Mar. 29, 2006), *available at* http://www.usdoj.gov/opa/pr/2006/March/06_ag_184.html.

investigations into meth use and production.⁷³ Additionally, Congress is also aware of the problem caused by meth in Indian country, as the Senate Committee on Indian Affairs held an oversight hearing on “The Problem of Methamphetamine in Indian Country” on April 5, 2006.⁷⁴

For their part, some federal districts have welcomed the opportunity to partner with tribes to better combat meth use in Indian country. For example, the office of the United States Attorney for the District of Arizona partnered with the BIA, the Federal Bureau of Investigation (FBI), and the Drug Enforcement Administration’s Phoenix Field Division (DEA) to develop an initiative that addresses the threat of meth in Indian country.⁷⁵ The proposed initiative focuses on training, education, enforcement and prosecution. The United States Attorney for the District of Arizona has also announced a zero tolerance policy for drug dealers, including meth dealers.⁷⁶ The United States Attorney’s office for the District of Arizona is also conducting quarterly meetings with local tribes to discuss problems associated with violent crimes, drug trafficking and gang violence.⁷⁷ The purpose of these meetings is to improve communication between the United States Attorney’s office and the tribes, as well as to increase prosecutions and encourage a more efficient use of available resources. Although the District of Arizona is to be applauded for its efforts to coordinate enforcement efforts with local tribes, many more federal districts have yet to engage in similar cooperative efforts. Accordingly, without a unified, national effort across all federal enforcement departments, it is unlikely that federal enforcement of meth use will improve.

As a result, despite efforts on the part of the federal government, the problem of meth use continues.⁷⁸ This is because the federal programs already in place are merely band-aids on the meth problem in Indian country. Accordingly, the federal government must take more significant action to assist in controlling meth use in Indian country. Specifically, the existing criminal jurisdictional scheme must be re-evaluated. Such a re-evaluation will show that the MCA and limitation on tribal court enforcement power need to be reformed. Additionally, Congress should act to recognize the inherent authority of tribal courts to assert criminal jurisdiction over non-Indians.

73. *Id.*

74. *Hearing, supra* note 21, at 1.

75. *Id.* at 6-7 (statement of Kathleen W. Kitcheyan, Chairwoman of the San Carlos Apache Tribe).

76. *Id.*

77. *Id.*

78. *See supra* Part I (discussing federal criminal jurisdiction in Indian country).

1. *Reforming the Major Crimes Act*

Under the current criminal jurisdictional system in Indian country, the federal government has authority over meth-related felony possession and distribution charges. As discussed in Part II.B, criminal statutes are not being adequately enforced in Indian country. The current criminal jurisdictional scheme not only fails in instances where Indians commit meth-related crimes, but also in instances where meth-related crimes are committed by non-Indians in Indian country, such as those crimes committed by Jesus Martin Sagaste-Cruz. Therefore, Congress must consider reforming the MCA to allow for tribal prosecution of felony possession and distribution charges, despite the ethnicity of the perpetrator. Such a reform would be consistent with the federal government's policy of recognizing self-governance, which allows tribes to negotiate broad compacts with the United States Department of the Interior for the administration of programs in Indian country.⁷⁹ Some have advocated for an "opt-in" provision allowing tribes to choose whether to take over enforcement for felony crimes, as enumerated in the MCA.⁸⁰

A system allowing tribes to opt-in to criminal jurisdiction over those crimes enumerated in the MCA is preferred to the current system for several reasons. First, tribal jurisdiction in such instances is consistent both with tribal self-governance and inherent tribal sovereignty in general. Additionally, rather than forcing jurisdiction on tribes who may not be currently prepared to undertake jurisdiction in felony matters, an opt-in system allows tribes to determine when they are prepared to undertake such jurisdiction, thus ensuring a greater likelihood of success. Returning jurisdiction over felony crimes to the tribes increases the likelihood of prosecution given the geographical connection between the crimes committed and prosecution; the current distance problems would be erased. Additionally, returning criminal jurisdiction to the tribes would also increase the likelihood of community shaming and community-based assistance as mechanisms to ensure successful enforcement. This conclusion is supported by the fact that other similar self-determination initiatives have resulted in improved services to Indian country.⁸¹

79. Indian Self-Determination Amendments of 1987, Pub. L. No. 100-472, 102 Stat. 2285, 2296.

80. Washburn, *supra* note 12, at 831.

81. *Id.* at 847.

In all other areas of federal Indian policy, self-determination initiatives seem to have improved delivery of services to Indian people, partially by making the providers of those services more directly accountable to tribal leadership and thus to the tribal community, and partially by insuring that delivery of services occurs in a culturally

Moreover, given that every tribe has a different history and culture, an opt-in provision would allow tribes to experiment with programs and manners of enforcement that best serve a particular community.⁸² Such experimentation has proved successful in Indian country. For example, the Navajo Nation has developed a culturally-sensitive model to address problems on the Navajo Nation Reservation, which is the largest reservation in the United States. Because the Western police model largely failed, the Navajo Nation developed a system of justice “based upon discussion, consensus, relative need, and healing. It is ‘restorative justice,’ which puts people in good relations with each other, and in continuing relationships. The Navajo system is ‘horizontal’ or egalitarian law.”⁸³ The Navajo Nation’s new model of restorative justice has succeeded where the Western model failed.

Additionally, as discussed below, tribal drug courts are another example where tribes have successfully developed mechanisms to better deal with crime in Indian country. Tribal drug courts allow tribes to adapt Western norms of justice in their individual communities, creating programs that are consistent with the tribe’s individual needs and focus on rehabilitation. Therefore, the MCA should be amended to allow tribes to opt-in, assuming jurisdiction over felony crimes committed in Indian country when a tribe is prepared to do so.

2. Amending the Indian Civil Rights Act to Remove Limitations on Penalties Issued by Tribal Courts

Congress passed the ICRA to apply the Bill of Rights to Indian country.⁸⁴ For reasons that are unclear, the ICRA also placed limitations on the enforcement authority of tribal courts. These limitations should be lifted. Today, tribal judges, more often than not, are educated lawyers unlikely to violate the fundamental rights of individuals. Additionally, limitations on tribal enforcement powers severely limit tribal courts’ ability to effectively rehabilitate meth addicts. Therefore, along with amendment of the MCA, the ICRA should be reformed to remove all restrictions on the enforcement power of tribal courts.

appropriate manner. . . . Public trust in the criminal justice system, and therefore the legitimacy of that system, are likely to increase when self-determination is realized.

Id. (citations omitted).

82. *Id.* at 839.

83. Robert Yazzie, “*Hozho Nahasdlíi*”—*We Are Now in Good Relations: Navajo Restorative Justice*, 9 ST. THOMAS L. REV. 117, 120 (1996).

84. Donald L. Burnett, Jr., *An Historical Analysis of The 1968 ‘Indian Civil Rights’ Act*, 9 HARVARD J. ON LEGIS. 557, 557 (1972).

As previously described, the ICRA limits tribal court enforcement to a \$5,000 fine and one year in jail.⁸⁵ Beyond general concerns with the limited deterrent effect that such enforcement powers may have in Indian country,⁸⁶ the limit on a tribal court's ability to incarcerate an individual for up to one year has substantial ramifications in the fight against meth use in Indian country. As previously explained, meth is highly addictive and, as a result, effective treatment can require over a year of inpatient care at a rehabilitation facility.⁸⁷ Tribal courts that are restricted to sentences of a maximum of one year in prison may not be able to assist in the effective rehabilitation of a meth addict because the forced period of rehabilitation would not be long enough.

From the legislative history of the ICRA, it is unclear why Congress added the restriction on tribal court enforcement to the ICRA.⁸⁸ The original version of the ICRA introduced in 1965 did not include any such restriction on the enforcement authority of tribal courts.⁸⁹ It was only after testimony by Frank Barry, Solicitor for the United States Department of the Interior, that specific rights were enumerated in the manner in which they currently appear in the ICRA.⁹⁰ In relevant part, Mr. Barry recommended that the proposed bill be amended so "that the prohibitions in the eighth amendment be extended to Indians, that is, that excessive bail and excess fines and cruel and unusual punishment be prohibited."⁹¹ However, Mr. Barry did not go so far as to suggest that fines should be limited in the manner that they eventually were. The limitation, as was finally adopted in 1968, first emerged in the revised version of the bill in 1967.⁹²

Therefore, it would seem that the limitation on tribal court enforcement authority was based on a belief that such limitations were necessary to protect against cruel and unusual punishment. Additionally, statements from committee members also suggest that there may have been concern

85. 25 U.S.C. § 1302(7) (2006).

86. Such a concern about the deterrent effects of limited tribal court enforcement authority is warranted given that some criminals seem to be targeting Indian Country, believing that even if caught they would face only minor criminal sanctions. This was apparently part of the reason Jesus Martin Sagaste-Cruz chose to bring his meth "business" to Indian Country. Farquhar, *supra* note 3.

87. See *Hearing*, *supra* note 20, at 3 (statement of Conrad Burns, U.S. Sen. from Mont.) (explaining that meth detoxification can take years).

88. Burnett, *supra* note 84, at 557.

89. *To Protect the Constitutional Rights of American Indians: Hearing on S. 961, S. 962, S. 963, S. 964, S. 966, S. 967, S. 968, S.J. Res. 40 Before the Subcomm. on Constitutional Rights of the S. Comm. on the Judiciary*, 89th Cong. 5 (1965).

90. *Id.* at 18.

91. *Id.*

92. S. REP. NO. 841, at 14 (1967).

about “the tribal judges’ inexperience, lack of training, and unfamiliarity with the traditions and forms of the American legal system.”⁹³

Sarah Deer proposes a few additional reasons the Subcommittee may have added the limitation on tribal court authority to the ICRA:

The provision limiting the ability to sentence may have been linked to the same fear which later drove the Supreme Court to remove tribal jurisdiction over non-Indians in *Oliphant*—the unfounded concern that defendants must be protected from “arbitrary and unjust actions of tribal governments.” Another possibility is that the Bureau of Indian Affairs desired to maintain control over tribal courts and councils by limiting the severity of penalties. More likely, perhaps, is that Congress interpreted the Major Crimes Act as eliminating tribal jurisdiction over felonies, and thus, wanted to prevent Indian tribal courts from giving lengthy sentences for misdemeanors.⁹⁴

Regardless of the original rationale, such limitations on the enforcement powers of tribal courts are no longer warranted. Tribal court judges are now very familiar with the concepts of civil rights embodied in the ICRA, as most of them are either graduates of American law schools, or have attended training specifically developed to introduce tribal court judges to federal Indian law or, in some cases, have both types of training.⁹⁵ In fact, tribal judges may actually do a better job of addressing the meth problem in Indian country because tribal judges have traditionally been more empathetic to defendants and understand what works and what does not work in their own communities.⁹⁶ Furthermore, even if a tribal court judge violates an individual’s fundamental rights, that individual has a right to relief in the federal courts through a writ of *habeas corpus*. However, the evidence suggests that tribal court judges are not violating principles of basic fairness since an average of less than one writ of *habeas corpus* has

93. 113 CONG. REC. 13, 473 (1967) (statement of Sen. Ervin).

94. Sarah Deer, *Expanding the Network of Safety: Tribal Protection Orders for Survivors of Sexual Assault*, 4 TRIBAL L. J., 3, 3 n.61 (2003/2004), available at http://tlj.unm.edu/articles/volume_4/violence,%20women/content.php (citation omitted).

95. Ralph W. Johnson, *Indian Tribes and the Legal System*, 72 WASH. L. REV. 1021, 1030 (1997); Stacie S. Polashuk, *Following the Lead of the Indian Child Welfare Act: Expanding Tribal Court Jurisdiction Over Native American Juvenile Delinquents*, 69 S. CAL. L. REV. 1191, 1220 n.85 (1996).

96. Elizabeth Ann Kronk, *Promoting Tribal Self-Determination in a Post-Oliphant World: An Alternative Roadmap*, 54 FED. LAW. 41, 42-43 (2007).

been brought from a tribal court decision in each of the past thirty-nine years.⁹⁷

The original reasons for the limitations on tribal court enforcement powers are outdated and no longer relevant, and should be removed so that tribes have the power to effectively rehabilitate meth addicts and combat the increasing meth problem. Specifically, the limitation on the time a tribal court may sentence an individual to prison should be removed, thereby allowing tribal courts to sentence meth addicts to an adequate time necessary for complete rehabilitation. Anything less, will only further handicap an effective solution to the meth problem in Indian country.

3. *Recognizing Tribal Inherent Authority Over Non-Indians Committing Crimes in Indian Country*

The Supreme Court's decision in *Oliphant v. Suquamish Indian Tribe*⁹⁸ removed tribal jurisdiction over crimes committed by non-Indians in Indian country.⁹⁹ As Jesus Martin Sagaste-Cruz knew, a massive jurisdictional loophole exists in Indian country as a result of the *Oliphant* decision—non-Indians will escape prosecution for crimes committed in Indian country if the federal government fails to prosecute because the tribes lack jurisdiction over non-Indians. As former Senator Ben Nighthorse Campbell remarked, “the word is out that people can get off the hook, so to speak, if they are not Indian and they do something on Indian land.”¹⁰⁰ Accordingly, the *Oliphant* decision presents perhaps the greatest obstacle to effective enforcement in Indian country and *Oliphant* should be unconditionally repealed by Congress.¹⁰¹ In 1991, the Commission on Civil Rights concluded that *Oliphant* should be repealed.¹⁰²

97. E-mail from Matthew L.M. Fletcher, Assistant Professor, Michigan State University College of Law, Dir., MSU Indigenous Law & Policy Ctr. (Feb. 6, 2007, 06:32 MST) (on file with author).

98. 435 U.S. 191 (1978).

99. *Oliphant*, 435 U.S. at 212.

100. *Impact of Supreme Court Rulings on Law Enforcement in Indian Country: Hearing Before the Comm. on Indian Affairs*, 107th Cong. 17 (2002).

101. See generally *Oliphant*, 435 U.S. at 191 (removing tribal jurisdiction from Indian country for non-Indian crimes). Therefore, 5 U.S.C. § 1301(2) should be amended to recognize tribal jurisdiction over “all persons”.

102. U.S. COMM. ON CIVIL RIGHTS, THE INDIAN CIVIL RIGHTS ACT: A REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS n.185 (June 1991).

In a 1981 report, the Commission on Civil Rights recommended that ‘congress should enact legislation permitting Indian tribes, at their option, to assume criminal jurisdiction over all persons within reservation boundaries, in compliance with the limitations and procedural guarantees specified by the Indian Civil Rights Act.’ The Commission reiterates its support for this recommendation, and recommends the eventual reversal of the effects of the *Oliphant* decision.

Jurisdiction over non-Indians is an inherent right possessed by tribes before first contact with Europeans, removed *only* through the policy changes made by the Supreme Court since 1978. Therefore, tribal jurisdiction over non-Indians is not an increase of tribal power, but is rather a removal of a constraint created by the Court on a power pre-existing the formation of the United States. Furthermore, an unconditional congressional repeal of *Oliphant* is consistent with self-determination. The executive and legislative branches of the federal government support tribal self-determination. As previously discussed, President George W. Bush released a memorandum articulating the Administration's commitment to the policy of tribal self-determination.¹⁰³ Furthermore, congressional legislation has consistently supported and articulated the policy of tribal self-determination.¹⁰⁴ Congress has recognized that the policy of tribal self-determination has been successful in promoting progress in Indian country.¹⁰⁵

Moreover, there is evidence to suggest that the United States Supreme Court Justices who decided *Oliphant* never intended for the decision to extend beyond the facts of the case. The facts of *Oliphant* were not friendly to a decision favoring tribal jurisdiction over non-Indians. Under the facts as presented, only one-third, or approximately forty-one acres, of the reservation land remained in tribal ownership, and, of these forty-one acres, thirty-six acres were leased to a non-Indian corporation under a fifty year lease.¹⁰⁶ The remaining five acres falling under tribal ownership were used as a park and cemetery.¹⁰⁷ Furthermore, the Indian population of the reservation in question was less than 200, with only fifty of those being enrolled in the tribe.¹⁰⁸ Conversely, there were almost 3,000 non-Indians living on the reservation.¹⁰⁹ Therefore, *Oliphant* involved a tribe whose reservation lands were largely owned or controlled by non-Indians and whose population was overwhelmingly composed of non-Indians.

Id. (internal citation omitted).

103. Memorandum from George W. Bush to Heads of Executive Departments and Agencies, *supra* note 39.

104. *See* Indian Self-Determination and Education Assistance Amendments of 1988, Pub. L. No. 100-472, 102 Stat. 2285, 2296 (creating a tribal self-governance project).

105. Kronk, *supra* note 96, at 42 (“[C]ompared to state, county and municipal governments of similar demographic and geographic characteristics, the level of development attained by Tribal governments over the past twelve years is remarkable. This progress is directly attributable to the success of the federal policy of Indian self-determination.”) (citation omitted).

106. Brief of Petitioner at 8, *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (No. 76-5729).

107. *Id.*

108. *Id.*

109. *Id.*

Justice Blackmun's notes from the *Oliphant* decision show that he and other Justices were aware of the slanted facts. In his notes, Justice Blackmun remarks that *Oliphant* presented "tough facts."¹¹⁰ Justice Blackmun's notes also suggest that Justice Powell was equally aware of the slanted facts of the case.¹¹¹ Additionally, Justice Blackmun's notes suggest that both Justices Powell and Stevens believed the matter of tribal jurisdiction over non-Indians was a question better left to Congress.¹¹² Therefore, Justice Blackmun's notes would seem to show that the Justices were aware that they were dealing with a case where the facts slanted against tribal court jurisdiction and that the decision should be limited to the facts.

Because a restriction on tribal criminal jurisdiction over non-Indians appears contrary to congressional intent and that the Justices who rendered the *Oliphant* decision may have intended for the case to be restricted to the facts presented, a repeal of *Oliphant* is warranted, and tribes should regain criminal jurisdiction over non-Indians. Moreover, an "*Oliphant* fix" would merely return to the tribes the jurisdictional authority stolen by the Supreme Court only three decades ago in 1978. Because tribal governments are often in a much better position to understand what constitutes effective enforcement in their own territories, tribal criminal jurisdiction over non-Indians will greatly assist tribes in combating meth use in Indian country and filling the current jurisdictional gap in Indian country.

B. TRIBES ARE WORKING CREATIVELY TO ADDRESS METH USE IN INDIAN COUNTRY DESPITE THE EXISTING, INADEQUATE CRIMINAL JURISDICTIONAL SCHEME

Given the magnitude of the meth problem in Indian country, many tribes are actively engaged in developing effective strategies to combat meth use. As discussed below, the result has been the development of many innovative, culturally-sensitive programs to address the meth problem. However, the ultimate success of these programs is still limited by the existing criminal jurisdictional scheme. Accordingly, for tribes to be truly successful in developing the most effective solutions to the meth

110. Personal Papers of Harry A. Blackmun from the Library of Congress (memorandum from Crane, No. 76-5729 *Oliphant* and *Belgrade v. Suquamish Indian Tribe*, at 1 (January 1, 1978)) (on file with author).

111. Personal Papers of Harry A. Blackmun from the Library of Congress (notes under "Powell, J." from discussion amongst all Justices on No. 76-5729 *Oliphant v. Suquamish Indian Tribe* (January 11, 1978)) ("This case is a farce factually.") (on file with author).

112. *Id.* (notes under "Powell, J." and "Stevens, J." ("Let Cong carve out" and "Better of Cong would go over"))).

problem, federal reforms discussed in Part IV.A.1-3 must also be implemented.

Tribes are actively engaged in developing tribal solutions to the meth problem in Indian country. Several tribes have developed tribal code provisions criminalizing the illegal possession, use or distribution of meth. For example, in February 2005, the Navajo Nation amended the Navajo Nation Controlled Substances Act of 2004 to include meth on the list of controlled substances banned from the Navajo Nation.¹¹³ Similarly, the Uniform Controlled Substances Act of the Confederated Tribes of Siletz includes stimulants such as meth in its Schedule II of substances with a high hazard potential and that are illegal on the reservation.¹¹⁴

The Washoe Tribe of Nevada and California has developed a two-prong attack to combat its meth problem. First, the Washoe Tribe has adopted a Methamphetamine Zero Tolerance Task Force Strategic Plan, *Strong Heart & Strong Families*, specifically designed to address the problem within the Washoe Tribe in a culturally-sensitive manner.¹¹⁵ Additionally, the Washoe Tribe has also entered into a Law Enforcement Aid Agreement with Douglas County and Carson City, both within the State of Nevada. "The purpose of this Agreement is to improve the cooperation, efficiency and effectiveness of law enforcement . . . against meth sales or manufacturing activities or crimes or maintaining a premises where meth is used."¹¹⁶ The Law Enforcement Aid Agreement allows the tribal, county and city enforcement officers to work together in the same territory when investigating and enforcing meth-related crimes under certain circumstances.¹¹⁷ Such an agreement will certainly assist in addressing some of the jurisdictional obstacles to effective law enforcement in Indian country that have been previously discussed.

Tribes continue to develop innovative solutions to the meth problem in Indian country. The Chippewa Cree Tribe of Montana, the Flandreau Santee Sioux Tribe of South Dakota, the Fort Peck and Sioux Tribes of Montana, the Lummi Nation of Washington, the Washoe Tribe of Nevada

113. Res. of the Navajo Nation Council, 20th Navajo Nation Council, Third Year (2005) (on file with the author).

114. Uniform Controlled Substances Act, Siletz Criminal Code 12.01 (on file with the author).

115. STRONG HEARTS & STRONG FAMILIES: PARTNERSHIP FOR HEALTHY WASHOE COMMUNITIES, METHAMPHETAMINE ZERO TOLERANCE TASK FORCE STRATEGIC PLAN (forthcoming) (on file with the author).

116. Tribal Law Enforcement Aid Agreement Between the Washoe Tribe of Nevada and California, the County of Douglas, and Carson City, Nevada, 1, June 1, 2006 (on file with the author).

117. *Id.*

and California, and the Yakima Nation of Washington have all used funds available through the Department of Justice to create drug courts to address meth problems.¹¹⁸ Initial research suggests that drug courts are better situated to handle meth addicts, because drug courts typically engage in closer supervision over addicts.¹¹⁹

For example, the Little Traverse Bay Bands of Odawa Indians in Michigan created a drug court, called the Healing to Wellness Court. Each individual falling under the court's jurisdiction will proceed through four phases. "The program goal is to assist the addict, mentally, physically and culturally, to become a whole and balanced person capable of dealing with life's many and varied challenges."¹²⁰ The Little Traverse Bay Bands of Odawa Indians' Healing to Wellness Court provides much greater supervision over each participant. Participants are required to attend substance and mental health treatments consistently, as well as make consistent court appearances on a weekly or bi-weekly basis.¹²¹ Because meth addicts typically require close supervision and substantial rehabilitative treatments, it is more likely that courts, such as the Healing to Wellness Court, will be able to adequately assist meth addicts to become whole persons once again.

Until significant changes are made to the current criminal jurisdictional scheme applicable to Indian country, as suggested above, tribes should continue to develop creative methods of combating meth use in Indian country.

V. CONCLUSION

Meth use presents a modern, substantial threat to Indian communities. Because of its highly addictive nature, low cost and ease of manufacture, meth is particularly attractive to both men and women in Indian country. Unlike other drugs, meth addiction can be difficult to overcome, requiring over a year of treatment. Therefore, to enable tribes to better address the meth problem in their communities the restriction on tribal court enforcement authority as articulated under the ICRA should be removed.

118. *Combating Methamphetamine in Indian Country: Hearing on Pub. L. No. 109-177 Before the S. Comm. on Indian Affairs*, 109th Cong. (2006) (statement of Matthew H. Mead, U.S. Att'y for the District of Wy.).

119. *Id.*; see also C. WEST HUDDLESTON ET AL., NAT'L DRUG COURT INST., PAINTING THE CURRENT PICTURE: A NATIONAL REPORT CARD ON DRUG COURTS AND OTHER PROBLEM SOLVING COURT PROGRAMS IN THE UNITED STATES 4 (2004), available at <http://www.ndci.org/publications/paintingcurrentpicture.pdf> (explaining that drug courts provide a treatment structure that benefits offenders).

120. Little Traverse Bay Bands of Odawa Indians, Ndibaaknigaaz Noojim Nmino-bmaadiz (Healing to Wellness Court) (on file with the author).

121. *Id.*

Following such a removal, tribal courts would be able to sentence meth addicts to the full rehabilitation period necessary for complete recovery. Additionally, given that non-Indians, such as Jesus Martin Sagaste-Cruz, are attempting to exploit the loophole created by the *Oliphant* decision by moving their meth operations into Indian country, Congress should act to repeal *Oliphant* and return criminal jurisdiction over non-Indians to tribes. Such a repeal is consistent with the federally-recognized policy of tribal self-governance and would further aid prosecution of meth-related offenses as tribal courts would have authority of non-Indians. Finally, tribes should be given the option to assume jurisdiction over felony offenses, where jurisdiction is currently reserved to the federal government under the MCA and the ICCA. Tribes who opt for such jurisdiction will have the opportunity to assert jurisdiction in cases of felony possession and distribution of meth.

Meth use is a significant problem in Indian country. Yet, it is also a microcosm of the larger problem associated with the ineffective criminal jurisdictional scheme applied in Indian country. Accordingly, by reconsidering and reforming the existing criminal jurisdictional scheme, hopefully meth use will be addressed more effectively and similar future problems may be averted—preventing criminals, like Jesus Martin Sagaste-Cruz, from implementing business plans that exploit Indian country.