FEDERAL PROSECUTION IN INDIAN COUNTRY

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INTRODUCTION and ACKNOWLEDGMENT

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The primary purpose of this manual is to provide information on policies and procedures of the U.S. Attorney's Office with respect to Indian County investigations and prosecutions. It sets out the basic statutory framework used in the federal prosecution of these crimes. It addresses criminal jurisdiction in Indian Country and lists the relevant federal statutes and their elements.

This manual does not purport to be comprehensive; rather, its purpose is to provide an overview of the federal statutes applicable to Indian Country, protocols for our work, and clarity regarding the commitment of the U.S. Attorney's Office. The goal of this manual is to assist law enforcement in their task of investigating federal crimes which occur on tribal lands.

At the time of this writing, the United States Attorney's Office in the District of Montana is authorized to have twenty-four Assistant United States Attorneys. The number of Assistant United States Attorneys has more than doubled from its 1994 level of eleven. As a result, together with special agents in the FBI and the BIA and law enforcement personnel employed by tribes, we are better able to enforce today's federal laws which criminalize a large and diverse number of acts in Indian Country. We have been the beneficiaries of additional agents and prosecutors specifically dedicated to the District as resources to combat Indian Country crime.

I believe that great efforts are being made to meet our responsibility as employees and officers of the Executive Branch to enforce the law in order to enhance public safety in Indian Country. The goal of the United States Attorney's Office is to prosecute every viable (readily provable) case alleging a crime covered by the Major Crimes Act. Whether or not a tribe could prosecute the same acts in tribal court is not a significant consideration. For those felonies covered by the Major Crimes Act, the United States is tasked with enforcing the law. Under current law, tribal courts are precluded from imposing a term of imprisonment greater than one year. For the violent crimes covered by the Major Crimes Act, a punishment of less than one year will not vindicate the interests of victims or advance the purposes of punishment established by Congress. In addition, the investigation and prosecution of other felonies and misdemeanors committed on Montana's Indian Reservations, but not covered by the Major Crimes Act, are also important in the administration of justice.

By prosecuting many types of violations of the federal criminal law and seeking publicity for all cases, this office attempts to promote respect for the law and to deter criminal behavior. We have high expectations for the number of Indian Country cases and endeavor to prosecute a large number of criminals. While public safety in Indian Country cannot be reduced to a quantitative exercise, the numbers of investigations and prosecutions matter. At the end of the day, we should be measured on our responsiveness and the completeness of investigations and prosecutions.

In the recent years, we have undertaken process changes to help us achieve these goals. Each reservation has an Assistant U.S. Attorney assigned as a tribal liaison. We have distributed an Indian Country Crime Case Tracker (**Attachment A**) to a number of tribal leaders and program administrators to help ensure that all potential federal crimes are investigated in a timely manner and prosecuted in those instances in which adequate proof allows the government to meet its burden. We have also conducted tribal community forums to allow direct interaction between federal agents and prosecutors and people who live on reservations to hear about public safety challenges and trends.

We have attached a summary of the federal offenses and the elements necessary to prove each of the crimes if they (1) occur in Indian Country, and (2) an Indian person is the perpetrator and/or the victim. Even if you have extensive experience in this area, I urge you to review the document because Congress has created a number of new crimes applicable to Indian Country in two recently adopted laws, the Adam Walsh Act and the reauthorization of the Violence Against Women Act.

There may be a number of other good ideas on how to improve our relationships and our effectiveness. We would welcome that dialogue. Do not hesitate to contact me on ((406) 247-4638).

This manual will be periodically revised and updated with superseding editions. Comments, corrections, and recommendations are welcome.

William W. Mercer
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District of Montana

THRESHOLD CONSIDERATIONS

THRESHOLD CONSIDERATIONS: The Strategic Plan Of The U.S. Attorney's Office And Jurisdiction

Introduction

This manual is intended to provide a basic outline addressing the federal law enforcement response to crimes occurring in Indian Country. By listing the criminal statutes most frequently violated in Indian Country and the elements of each crime, it is designed to assist law enforcement in their task of investigating felonies and misdemeanors occurring in Indian Country and presenting them for federal prosecution when appropriate. A law enforcement officer's knowledge and understanding of criminal jurisdiction is essential to effective law enforcement. Jurisdiction - federal, tribal, or state - oftentimes dictates in what forum a crime is to be charged.

This manual defines when federal jurisdiction exists, and lists and provides a basic discussion of the statutes that are most commonly used in federal Indian Country prosecutions. By setting out the basic statutory framework used in federal cases, one can see how enhancing the safety of the communities within Indian Country, may be achieved through effective investigations and prosecutions.

One additional goal of this publication is to communicate with clarity on what the United States Attorney seeks to prosecute in Indian Country.

Mission Statement and Strategic Plan of the U.S. Attorney

As discussed herein, Congress has criminalized certain acts occurring in Indian Country. Provided that federal court has jurisdiction, it is the responsibility of the U.S. Attorney to prosecute viable (i.e., readily provable) felony cases. Although non-felony crimes are not generally as significant as felonies, the U.S. Attorney should prosecute misdemeanors for which neither tribal court nor state court has jurisdiction. To meet our collective responsibility to improve public safety in Indian Country, we will undertake all prosecutions where readily provable federal felonies under the Major Crimes Act have occurred even if the tribal court has jurisdiction. This approach is necessary to advance the statutory purposes of punishment, including deterrence, protecting the public, and promoting respect for the law.

General Considerations

Jurisdiction over Indian Country crimes is governed by a patchwork of federal and tribal law. To understand the law in this area, it is important to recognize that it flows from the legal premise that Indian tribes retain a certain "nationhood" status, which pre-dates the establishment of the United States, and includes inherent powers of internal self-government. See Worcester v. Georgia, 31 U.S. 515 (1832). The United States serves as a fiduciary in a trust relationship with the tribes, Seminole Nation v. United States, 316 U.S. 286 (1942), which, at a minimum, entails the duty to provide those benefits and services specified by treaty, executive order, or statute. See also Agama v. United States, 118 U.S. 375 (1886) and United States v. Wheeler, 435 U.S. 313 (1978).

JURISDICTION

JURISDICTION

Unless tribes have determined to subject their members to prosecution by the state for felonies, as have the Confederated Salish and Kootenai Tribes, federal courts have jurisdiction over felony cases arising on Reservation lands involving prosecution of felonies where either the defendant or the victim is an Indian person or both the defendant and the victim are Indian persons and of misdemeanors when the defendant is not an Indian person and the victim is an Indian person. Tribal courts have exclusive jurisdiction to hear misdemeanor cases arising on Reservation lands where the defendant and victim are Indian persons and concurrent jurisdiction in felony cases involving Indian defendants. State courts have exclusive jurisdiction of cases arising on Reservation lands where both the victim and the defendant are not Indian persons, unless there has been a violation of federal law other than the Major Crimes Act, the Assimilative Crimes Act, or the Indian Country Crimes Act.

Jurisdictional parameters for prosecution of cases arising on reservations may be summarized as follows:

Jurisdiction Matrix

DEFENDANT	VICTIM	JURISDICTION
Indian	Indian	Concurrent federal and Tribal jurisdiction for felonies. Tribal jurisdiction for misdemeanors. No federal jurisdiction for felonies not listed in § 1153. No federal misdemeanor jurisdiction. No state jurisdiction.
Indian	Non-Indian	Concurrent federal and Tribal jurisdiction for felonies listed in § 1153. Tribal jurisdiction for misdemeanors. Federal jurisdiction for other felonies and misdemeanors not listed in § 1153 unless tribe has already punished defendant. No state jurisdiction.
Non-Indian	Non-Indian	State jurisdiction. No federal jurisdiction. No Tribal jurisdiction.
Non-Indian	Indian	Federal jurisdiction for both misdemeanors and felonies. No Tribal jurisdiction.
Indian	Victimless Crime	Federal and Tribal jurisdiction.
Non-Indian	Victimless Crime	State jurisdiction. Generally no federal jurisdiction.

Criminal jurisdiction in Indian Country depends on a number of factors. An officer needs to determine, at the earliest point of an investigation, whether the offender and the victim are Indian or non-Indian. The location of the offense must also be determined. Of course, the officer needs to determine what the perpetrator did, and whether he may be charged. All of this will also determine where the offender will be charged -- federal, tribal, or state court. With this in mind, a basic understanding of the following concepts is required.

- What is Indian Country?
- Who is an Indian?
- What are the limits on federal, tribal, and state criminal jurisdiction?
- What are the primary federal criminal statutes applicable in Indian Country?

What is Indian Country?

Indian Country is defined in 18 U.S.C. § 1151 as including:

> (a) [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, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The definition of Indian Country as codified in § 1151 is expansive and is intended to include all reservations whether established by treaty, executive order, or act of Congress.

Who Is An Indian?

The term Indian is not defined in 18 U.S.C. § 1153, so the definition is the product of judicial interpretation. The Supreme Court first addressed this issue in United States v. Rogers, 45 U.S. 567 (1846), where it created a two prong test:

(a) degree of blood (slight degree is sufficient); and

(b) whether the person is recognized as an Indian by the tribe or the federal government.

The "recognition" aspect was explained in United States v. Bruce, 394 F.3d 1215, 1224 (9th Cir. 2005). The test is whether the Native American has a sufficient non-racial link to a formerly sovereign people. Four factors are considered: 1) tribal enrollment; 2) government recognition formally and informally through receipt of assistance reserved only to Indians;

3) enjoyment of the benefits of tribal affiliation; and 4) social recognition as an Indian through residence on a reservation and participation in Indian social life.

Generally, therefore, a person is an Indian for purposes of 18 U.S.C. §§ 1152 and 1153, if he or she is a member of a federally recognized tribe. Tribal membership can generally be established through Bureau of Indian Affairs or tribal records. Enrollment in a tribe is not an absolute prerequisite for holding status as an Indian. United States v. Antelope, 430 U.S. 641, 647 (1977), but it is the most common means of proof of that element. United States v. Bronchial, 597 F.2d 1260, 1263 (9th Cir. 1979) and United States v. Torres, 733 F.2d 449, 455 (7th Cir. 1984). See also United States v. Dodge, 538 F.2d 770, 786 (8th Cir. 1976) (defendant was an Indian where he had one-fourth Arak Indian blood and had filed an application to be recognized as a member of the Arak Tribe); United States v. Lossiah, 537 F.2d 1250 (4th Cir. 1976) (adequate proof that the defendant was an Indian where the government introduced a certificate of the Tribal Enrollment Officer of the Eastern Band of Cherokee Indians that the defendant was on Revised Roll No. 3902, was born on May 8, 1943, and possessed three-fourth degree of Eastern Cherokee blood). United States v. Ramirez, 537 F.3d 1075 (9th Cir. 2008), sets forth the most recent law within the Ninth Circuit.

Federal Criminal Jurisdiction

Federal jurisdiction over most crimes occurring in Indian Country can be asserted by applying one of two statutes, 18 U.S.C. § 1152 or 18 U.S.C. § 1153.

The Federal Enclaves Act or **Indian Country Crimes Act**, 18 U.S.C. § 1152, provides for federal criminal jurisdiction where the offender is non-Indian and the victim Indian, or, conversely, where the offender is Indian and the victim is non-Indian, the crime is not one enumerated under the Major Crimes Act, 18 U.S.C. § 1153, and the Indian offender has not already been punished by the tribe for that conduct. It reads as follows:

> Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian Country.
>
> This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian Country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

Where there is no applicable substantive federal crime, the law of the state in which the crime occurred may be incorporated into the federal criminal code in § 1152 prosecutions pursuant to the Assimilative Crimes Act, 18 U.S.C. § 13. See Williams v. United States, 327 U.S. 711 (1946). The Assimilative Crimes Act supplements federal criminal law by "borrowing" most state criminal law, where there is no applicable substantive federal law; and applying it to areas under federal jurisdiction.

The Major Crimes Act, 18 U.S.C. § 1153, provides for federal criminal jurisdiction over certain enumerated "major" crimes where the offender is an Indian.

It reads as follows:

> (a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian Country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.
>
> (b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

The crimes specified in § 1153 are commonly called the "major felonies." Where the specified offense is not contained in the federal criminal code -- such as incest or burglary -- § 1153 directs that state law be assimilated.

The tribe also has jurisdiction over these crimes, but double jeopardy principles do not apply to a successive federal court prosecution. If an offense is presented in tribal court, it can also be prosecuted in federal court.

Crimes of General Applicability, A final basis for federal jurisdiction over crimes committed in Indian Country is simply the commission by anyone of a federal offense of general applicability, such as drug offenses, counterfeiting, bank robbery, etc., all of which may be prosecuted regardless of the location of the offense. See United States v. Blue, 722 F.2d 383 (8th Cir. 1983); United States v. Palmer, 766 F.2d 1441 (10th Cir. 1985); Walks On Top v. United States, 372 F.2d 422 (9th Cir.1967).

Tribal Jurisdiction

Unless Public Law 280 is applicable, tribal courts have jurisdiction over all crimes committed by Indians in Indian Country, United States v. Wheeler, 435 U.S. 313 (1978); 25 U.S.C. § 1302. Although historically it was not settled whether 18 U.S.C. § 1153 preempts tribal jurisdiction over the crimes enumerated therein, see Duro v. Reina, 495 U.S. 676, 680, n.1 (1990), the case of Wetsit v. Stafne, 44 F.3d 823 (9th Cir. 1995) has now resolved the issue, at least in the Ninth Circuit. The case basically held that a tribal court, which is in compliance

with the Indian Civil Rights Act, is competent to try a tribal member for a crime also prosecutable under the Major Crimes Act. It is also firmly established that tribes retain exclusive jurisdiction over all other crimes committed by Indians against the person or property of other Indians in Indian Country. See Wheeler, supra; Talton v. Mayes, 163 U.S. 376 (1896); Ex Parte Crow Dog, 109 U.S. 556 (1883). Consequently, any crimes committed by Indians in Indian Country not enumerated in § 1153 or crimes of general applicability may only be brought in tribal court or a court of Indian offenses. 25 U.S.C. § 1311.

Tribal sentencing jurisdiction has been limited to one year incarceration and up to a fine of $5,000 by the Indian Civil Rights Act. 25 U.S.C. § 1302.

State Jurisdiction

As a general principle, the federal government has exclusive power over the tribes, which preempts the assertion of power over tribes by states, unless expressly authorized by Congress.

In the criminal justice arena, jurisdiction over crimes between non-Indians in Indian Country is within the exclusive jurisdiction of the states within which the reservation is situated. See United States v. McBratney, 104 U.S. 621 (1881), but the states are without criminal jurisdiction over crimes committed by Indians in Indian Country by virtue of the federal statues described above.

In 1953, Congress transferred criminal jurisdiction to certain state governments pursuant to P.L. 280, 18 U.S.C. § 1162. Since the original passage of P.L. 280, states, including Arizona, Iowa, Nevada, North Dakota, Utah, Florida, Washington, Idaho, and Montana, have acquired some type of jurisdiction, which may or may not include criminal jurisdiction, over certain, but not necessarily all, reservations within those states. In Montana, the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation are the only tribes in Montana covered by P.L. 280.

Jurisdictional Summary

As set forth above, jurisdiction over crime in Indian Country is divided among three sovereigns -- federal, tribal, and state. Thus, when analyzing jurisdiction in a particular case one must analyze the location of the crime, the ethnicity of the offender (Indian or non-Indian) and the victim (Indian or non-Indian), and the type of crime because these factors determine which sovereign(s) has jurisdiction over the crime.

It is best to begin by determining whether the state has jurisdiction or not because the rules are fairly well-established and straightforward. The state always has jurisdiction when (1) a non-Indian commits a crime against another non-Indian, or (2) where there has been an express delegation of jurisdiction pursuant to P.L. 280 or some other express act of Congress. Of course, outside of Indian Country, states have general criminal jurisdiction over all persons, including Indian persons.

Because the **federal** statutory scheme is largely based on the ethnicity of the defendant and the victim, the next step is to determine the status of both the defendant and victim.

The type of crime must also be determined. The jurisdictional chart incorporated in this manual (at p. 4) will assist in determining which sovereign has jurisdiction.

A summary of these categories is included in United States v. Johnson, 637 F.2d 1224 (9th Cir. 1987).

In footnote 11 of that case the court gives an educational summary:

> The general rules of state and federal criminal jurisdiction over persons committing any of the § 1153 enumerated offenses in Indian Country are as follows:
>
> (a) *Indian against Indian crimes are subject to federal jurisdiction under § 1153.*
>
> (b) *Indian against non-Indian crimes* are subject to federal jurisdiction under either § 1152 or § 1153. *See*, H.R. REP NO. 1038, 94th Cong. 2d Sess. 3 *reprinted in* [1976] U.S.C.C.A.N. 1125, 1126.
>
> (c) *Non-Indian against Indian crimes* are subject to federal jurisdiction under § 1152.
>
> (d) *Non-Indian against non-Indian crimes* are subject to state jurisdiction under United States v. McBratney, 104 U.S. 621 (1881), and other Supreme Court cases which have followed. McBratney held that absent contrary treaty provisions or explicit congressional action, federal courts lacked jurisdiction over such crimes, and state courts possessed the exclusive power to try and punish such offenders. Id. at 623-24.

Johnson, 637 F.2d at 1231.

Crimes committed not against particular persons or their property, but rather against public order and morals, are characterized as "victimless crimes." Victimless crimes need to be addressed. These typically include such offenses as traffic violations and disorderly conduct.

When the offender in a victimless crime is an Indian, the tribe usually has jurisdiction. Federal jurisdiction may occur only in certain, very limited circumstances under § 1152.

When the offender in a victimless crimes is a non-Indian, there is exclusive state jurisdiction.

Misdemeanors

Prosecution of federal misdemeanor offenses in Indian Country by the U.S. Attorney's Office is an infrequent occurrence. By definition, felony offenses are deemed to be more serious than misdemeanors and deserve prioritization. Moreover, tribal prosecutors are able to pursue misdemeanor offenses in tribal courts provided that both the victim and perpetrator

are Indian persons. The exception to this general rule is when a non-Indian commits an offense on a reservation with an Indian person as the victim for which jurisdiction for prosecution exists only in federal court. The tribal court has no jurisdiction over the perpetrator because he is not an Indian. The state has no jurisdiction because it occurred on a reservation and an Indian person is the crime victim. An assault or an act of domestic violence (which does not result in serious bodily injury) on the reservation involving a non-Indian perpetrator and Indian victim is an example. In addition, some offenses are important crimes not addressed by tribal criminal codes. For example, federal law makes it a misdemeanor for certain individuals to fail to report allegations of child abuse. To ensure appropriate reporting, prosecution of this offense is an important nexus to generate general deterrence.

INVESTIGATIVE GUIDELINES

INVESTIGATIVE GUIDELINES

Purpose and Goals

Pursuant to the Memorandum of Understanding between the Department of Interior and the Department of Justice (**Attachment B**), these guidelines set forth the respective investigative responsibilities of the Federal Bureau of Investigation, Bureau of Indian Affairs, and Tribal Law Enforcement entities. These guidelines are intended to provide for the effective and efficient administration of criminal investigative service in Indian Country. These guidelines govern the investigation of cases arising on reservation lands which involve violations of federal law, including, but not limited to, violations set forth in 18 U.S.C. §§ 1152 and 1153.

The paramount principle to be served by these guidelines is the proper and thorough preparation of cases for prosecution. The goals of these guidelines are to provide for the rights of victims of crime in Indian Country and to identify and prosecute the offenders.

Investigative Authority

Pursuant to 28 U.S.C. § 533 and direction of the Attorney General, the FBI has investigative jurisdiction on Indian reservations. The BIA's investigative authority derives from the Indian Law Enforcement Reform Act, 25 U.S.C. § 2801, *et. seq.,* and extends only to those Reservations requesting assistance; in Montana, these are the Crow, Northern Cheyenne and Blackfeet Reservations. The tribes on the Fort Peck, Rocky Boy, and Fort Belknap Reservations have contracted to conduct law enforcement services on their respective reservations.

Investigation Responsibilities

The primary investigative agency (or "lead" agency), determined through application of these guidelines or special assignment by the United States Attorney, will be responsible for conducting and coordinating the investigation, presenting the case to the U.S. Attorney's Office, and assisting the U.S. Attorney's Office at all stages of prosecution. If the agency which would be primarily responsible under these guidelines for an investigation is unable to do so, other agencies may undertake the investigation.

The first law enforcement officer at a crime scene is responsible to secure the scene, preserve evidence, identify witnesses and participants, and take such other steps as may be required to insure successful prosecution. Preservation of the crime scene is the primary concern. Wherever possible, collection and preservation of evidence should be accomplished by the lead agency.

Joint investigations involving the Federal Bureau of Investigation are mandated in cases involving death(s), sexual abuse, rape, kidnapping, arson, assault, and crimes involving weapons. Each agency will share information, provide timely copies of reports, and fully communicate with the other agency concerning all matters relevant to an investigation. To the extent possible, resources of one agency will be made available to the other to assist in case investigation. Burglary and other property crimes may be investigated by any agency

and presented to the U.S. Attorney's Office for prosecution.

Crime victims have been granted rights through a recently-adopted statute. The Crime Victims Rights Act of the Justice for All Act of 2004 enumerates eight rights. It is discussed in further detail on page 21, and investigative agencies should be mindful of their new statutory obligations to victims. Federal investigative agencies must meet the obligations delegated to them by this statute with respect to victims in the period before a charge is filed or the U.S. Attorney's Office declines to prosecute the case.

Notice to Agencies

In matters requiring immediate response or involving exigent circumstances, such as sexual abuse, murder, manslaughter, or assaults, the initial agency responding will immediately notify the other applicable law enforcement agency without regard to which agency will ultimately have responsibility for the investigation. In matters not involving a crime scene or exigent circumstances, each agency will notify the other within one day after an investigation is initiated.

Investigative Assignments

Without regard to these guidelines, the U.S. Attorney has the authority to request either the FBI, the BIA, or Tribal C.I.'s, to act as the lead agency to investigate a possible crime, or to request any agency to assist in an investigation. Absent special assignment, and recognizing that cooperation between the agencies is always required and joint investigations are mandated, the following assignments will apply.

As set forth in the U.S. Attorney's Office's Attorney Responsibility Matrix (ARM), which has been distributed to all law enforcement agencies, crimes in Indian Country are now distributed under these category headings: Adam Walsh Act, Drugs, Firearms, Other Indian Country Crimes, and Violent Crime, Threats and Extortion. Other general crimes are listed separately.

Violent crimes include murder, manslaughter, arson, robbery, felony assaults, burglary, and sexual assaults of persons over the age of 18.

Child abuse includes both sexual and physical abuse of victims who have not reached the age of 12 years. These cases fall into two categories: crimes prosecuted under the sexual abuse statutes, and crimes prosecuted under the general assault statutes. With the passage of the Adam Walsh Act, federal prosecutors can now look to State law to charge child abuse and neglect cases as major crimes.

Thus, these violent crimes include:

1.	Murder	18 U.S.C. § 1111
2.	Manslaughter	18 U.S.C. § 1112
3.	Kidnapping	18 U.S.C. § 1201
4.	Maiming	18 U.S.C. § 114
5.	Arson	18 U.S.C. § 81

6.	Assault	18 U.S.C. § 113
7.	Sexual Abuse	18 U.S.C. §§ 2241 - 45 and Mont. Code Ann. § 45-5-507
8.	Robbery	18 U.S.C. § 2111
9.	Child Abuse	Mont. Code Ann. § 45-5-212
10.	Burglary	Mont. Code Ann. § 45-6-204

The first seven of these violent crimes shall be investigated jointly and cooperatively by the FBI and either BIA or Tribal C.I.'s. In these investigations, the involved agencies should reach agreement as to which agency will be the lead agency. If the involved agencies are not able to agree on who shall be considered the lead agency, then the FBI will act as such. The last two categories may be investigated by either BIA, Tribal Criminal Investigators, or the FBI.

Under the ARM, the third category, "other Indian Country offenses," is comprised primarily of property crimes such as theft and misdemeanors. The BIA or Tribal Criminal Investigators, depending on the reservation involved, will be the lead investigative agency, and present the cases directly to the U.S. Attorney's Office.

A fourth category of cases involves federal gun violations (Title 18 of the U.S. Code, Chapter 44 and Title 26 of the U.S. Code, Chapter 53) in which ATF has certain investigative responsibilities. The principle of joint investigations applies to these cases. ATF shall be the lead agency as to firearm or explosive devise felonies, except that any underlying felonies shall be investigated as set forth elsewhere in these guidelines. In Indian Country, the FBI may also investigate crimes involving federal firearms violations.

A fifth category of cases, drug crimes, should be investigated by the Drug Enforcement Administration, Bureau of Indian Affairs, or the Federal Bureau of Investigation or another federal agency (or a task force with federal agency involvement). In Indian Country, an established multijurisdictional drug task force comprised solely of tribal, local, and/or state investigators may present cases for federal prosecution.

Finally, other federal statutes of general applicability criminalizing behavior (e.g., bank robbery) may be presented for prosecution by any federal agency authorized by law to investigate such crimes.

Working with Recalcitrant or Reluctant Victims and Witnesses

Victims' Rights statutes and guidelines do not allow a victim or a witness to be obstinate and refuse to provide information. Nothing in the Victim Rights statute or any other statute gives victims or witnesses a "right to refuse to press charges" or a "right to preclude the government from fully involving and prosecuting a case." Victims cannot dictate whether cases are investigated or charged. This is reflected in a recent policy statement from BIA (**Attachment C**).

If an offender is not prosecuted because a victim wishes to abstain from responding to the questions of investigators, we have failed in our responsibility to protect the public and deter crime through a prosecution. Whether it is domestic violence or another situation where a witness is fearful of what the perpetrator might do if the witness cooperates, we need to do everything possible to protect the public and make sure the perpetrator is held accountable

and is precluded from striking again because we have gotten a conviction and incarceration. We have an obligation to investigate criminal acts, which may require putting a recalcitrant or reluctant victim-witness into the grand jury if the witness will not speak to investigators. Where necessary and appropriate, the government needs to utilize the grand jury to extract information from recalcitrant witnesses. Victims who recant or refuse to provide statements cannot be allowed to have the ultimate decisionmaking authority on whether a prosecution will be undertaken. Society's interests are not served with such an approach.

PROSECUTION IN FEDERAL COURT

PROSECUTION IN FEDERAL COURT

All agencies are reminded that in most cases, the statute of limitations is one year for tribal charges. As a result, where concurrent jurisdiction exists, an early determination is needed on the question of whether a case will be prosecuted in federal court or tribal court. If it is a crime under the Major Crimes Act, a federal case should be pursued. The prosecution guidelines issued by the U.S. Attorney's Office should resolve most other questions on the appropriate forum. If any doubt exists, the investigating agencies must consult with the U.S. Attorney's Office.

If a law enforcement agency wishes to have a case prosecuted in federal court, the lead investigative agency should prepare a complete investigative report which includes, at a minimum, all materials sought by the IRCL form (**Attachment D**), and the VALI form (**Attachment E**). Drug cases require different paperwork (**Attachment F**).

If the Assistant U.S. Attorney assigned to the matter decides either that it would not be a viable prosecution or that no federal jurisdiction exists, a written confirmation of the decision not to prosecute will be provided by the Assistant U.S. Attorney to the referring agency indicating, among other things, whether prosecution in tribal court is encouraged. Pursuant to 25 U.S.C. § 2809(b), a letter will also be provided to the tribal prosecutor to inform him or her of the decision. The investigating agency or victim of a crime can obtain a review of that decision. Our "Second Look Policy" is invoked when the investigating agency or the victim of a crime asks the First Assistant United States Attorney to review the matter for a second opinion. If any agency believes a case should have not been declined, the agency is encouraged to submit a "Second Look" request to the First Assistant U.S. Attorney.

Although this formal protocol is the way to present a case for prosecution, the Assistant U.S. Attorney with primary responsibility as tribal liaison for cases arising on a particular reservation is always available to answer questions and provide legal advice. The U.S. Attorney's Office does not decline cases orally. Based upon written requests for prosecution, at the end of the fiscal year, the U.S. Attorney's Office will provide a summary of the number of cases presented for prosecution and the number of cases charged.

If a case is declined for prosecution and is to be referred to tribal court, the lead investigative agency shall, within 10 days from the date of the notice of the declination, advise the tribal prosecutor and will provide the prosecutor with all appropriate reports, evidence, and information available to facilitate a tribal court prosecution.

Caveat

The primary basis for BIA and FBI to dedicate law enforcement agents to Montana's reservations is for the investigation of violent crimes. Fraud is troublesome wherever it occurs in Montana. However, those crimes covered by the Major Crimes Act - - murder, manslaughter, kidnapping, maiming, arson, assault, sexual abuse, robbery, and burglary - - and drug crimes must be given priority status for investigation over basic fraud crimes. Agents whose primary responsibility is investigating IC cases who are considering investigating a significant fraud against an individual or entity other than the United States may wish to get assurance from the Criminal Chief that the USAO will prosecute the case if a

crime has been committed. In this context, 'significant' is defined as a fraud case involving multiple victims or at least $10,000 in loss. Without this pre-authorization, prosecution of Indian Country fraud cases presented by agents other than OIG agents is disfavored. It should be presumed that a preauthorization request by an Indian Country agent to investigate a fraud case outside a reservation is unlikely to be approved. If an agency wishes to investigate fraud crimes on or near reservations with personnel other than Indian Country agents, the USAO's Prosecution Guidelines, not this language, will be applicable.

Summary

The paramount principle to be served by these guidelines is the proper and thorough preparation of cases for prosecution. The primary investigative agency (or "lead" agency) will be responsible for conducting the investigation, presenting the case to the U.S. Attorney's Office, and assisting the U.S. Attorney's Office at all stages of the prosecution. Joint investigations are encouraged where not required. In any event, each agency must share information, provide timely copies of reports, and fully communicate with the other agency concerning all matters relevant to an investigation. To the extent possible, resources of one agency will be made available to the other to assist in case investigations. These guidelines will be reviewed periodically to ensure that they are serving the needs of the administration of justice.

Expeditious Investigations and Prosecutions

On occasion, we have considered whether to establish an internal guideline on how quickly a charging decision must be made after an investigative agency has forwarded a prosecution report to the USAO. Although the policies in this manual neither establish aspirational time frames for the completion of investigations after a crime is committed nor requirements for a prosecutive decision after receipt of an agency's request for prosecution (report), it goes without saying that prompt investigations and prosecutions are important to vindicate the interests of victims and the goal of the criminal justice system that accountability for crimes will be swift and sure. Federal agents, victim-witness specialists, and prosecutors are mindful of the impact investigative and prosecutorial delays have on a community in Indian Country in terms of perceptions regarding public safety. At the same time, while timely investigations and prosecutions are an important goal, speed is a secondary goal to our primary goal of completeness and accuracy.

It is important for law enforcement agencies and the U.S. Attorney's Office to monitor whether investigations and prosecutions are moving as expeditiously as possible. Although we have rejected the idea of mandatory time frames for charging decisions. However, file reviews in both the investigative agencies and the U.S. Attorney's Office must ensure prompt completion of investigative work and charging decisions.

JUVENILES

JUVENILES

The federal statutes which govern proceedings against juveniles are set forth at 18 U.S.C. § 5031, *et seq.* The statutes describe who is considered a juvenile under federal law, the circumstances under which a juvenile may be proceeded against in federal court, the circumstances under which a juvenile may be prosecuted as an adult, and the procedures to be followed.

When juveniles commit acts criminalized by the Congress, the U.S. Attorney's Office has the authority to bring the defendant before the district court to answer to such charges. A large number of these cases are charged each year, although the existence of them and the outcomes are largely unknown because such proceedings are closed.

Who Is A Juvenile?

The federal juvenile statutes at 18 U.S.C. § 5031, *et seq.*, apply to any offense committed before the defendant's eighteenth birthday, as long as the defendant is still under twenty-one at the time of the proceedings. 18 U.S.C. § 5031. We, therefore, use the term "juvenile" to refer to any defendant under twenty-one who committed a federal offense before his or her eighteenth birthday.

The Nature of Federal Juvenile Proceedings

When the United States charges a juvenile in federal court, the proceeding is ordinarily a juvenile delinquency proceeding rather than a criminal prosecution. In such a proceeding, where the defendant is found to have committed the offense charged, the result is a status adjudication of the defendant as a juvenile delinquent rather than a criminal conviction. The primary intent of the proceeding is rehabilitative rather than punitive. The juvenile statutes contain significant limitations, which are set forth in 18 U.S.C. § 5038, on the disclosure of information concerning a juvenile proceeding and the identity of the juvenile defendant.

When to Proceed in Federal Court

The federal juvenile statutes embody a presumption of state jurisdiction over juvenile offenses. Federal jurisdiction may be established: (1) where the appropriate state court does not have jurisdiction or refuses to assume jurisdiction; (2) where the state does not have available programs and services adequate for the needs of juveniles; or (3) where the offense charged is a felony that is a crime of violence, a violation of 18 U.S.C. § 922(x), or one of certain drug offenses enumerated in the first paragraph of 18 U.S.C. § 5032 and there is a substantial federal interest in the case.

The federal statute requires that, in order to proceed against a juvenile in federal court, the Attorney General must certify, after investigation, that one or more of the enumerated statutory bases for federal jurisdiction exists. The Attorney General's authority to make this certification has been delegated to the United States Attorney.

A Ninth Circuit case, United States v. Pierre Y., 280 F.3d 1008 (9th Cir. 2002), contains a comprehensive discussion regarding certification. With specific reference to the statutory

bases for certification, the Ninth Circuit made clear that the term "state" does not include Indian tribes. Consequently, the federal government can exercise jurisdiction without certifying that the respective tribe has no interest or jurisdiction in the case.

When Juveniles Can Be Tried as Adults

The federal juvenile statutes do provide for juveniles to be tried as adults under certain circumstances. Among other things, the juvenile must be charged with a felony that is a crime of violence or one of certain drug offenses enumerated in the fourth paragraph of 18 U.S.C. § 5032. The United States Attorney may give such authorization.

In addition to the provisions for involuntary transfer for adult prosecution, the juvenile statutes provide that a juvenile may be tried as an adult if he or she so requests in writing, upon the advice of counsel. 18 U.S.C. § 5032 (fourth paragraph).

How to Proceed in Federal Court

A juvenile delinquency proceeding is initiated by the filing of an information by the United States. 18 U.S.C. § 5032. A certification from the United States Attorney pursuant to 18 U.S.C. § 5032 as to the grounds for federal jurisdiction must also be filed.

Any prior juvenile court records of the defendant must be obtained and provided to the court if at all possible. In the alternative, the clerk of the juvenile court must certify in writing that the juvenile has no prior record or that the record is unavailable and why. 18 U.S.C. § 5032 (tenth paragraph).

The juvenile delinquency proceeding itself proceeds essentially like a bench trial. Where detention may follow the proceeding, juveniles have been held to have constitutional rights under the due process clause to adequate notice, to the assistance of counsel, to the privilege against self-incrimination, and to cross-examine adverse witnesses. In re Gault, 387 U.S. 1 (1967). Where a juvenile is charged with an act which would constitute a crime if committed by an adult, the due process clause also requires proof beyond a reasonable doubt. In re Winship, 397 U.S. 358 (1970). Juveniles do not have a constitutional right to a jury trial in juvenile court, McKeiver v. Pennsylvania, 403 U.S. 528 (1971), and the federal statutes do not provide for one. In *Pierre Y.*, the Ninth Circuit confirmed this longstanding rule, holding that in a prosecution under the Major Crimes Act that incorporates a state law crime, such as burglary, the state right to a jury trial is not imported into the federal proceeding. Pierre Y., 280 F.3d 1008 (9th Cir. 2002). The Federal Rules of Evidence appear to apply to juvenile delinquency proceedings. *See* Federal Rule of Evidence 1101.

The entire proceeding is subject to the limitations set forth in 18 U.S.C. § 5038 on disclosure of the identity of the juvenile defendant and information about the juvenile proceedings. The usual methods of complying with these limitations include filing documents in the case under seal, using the juveniles initials or "John Doe" to describe the teenager in any pleadings, and conducting proceedings in a closed courtroom or in the judge's chambers.

Disposition Upon The Judge's Adjudication

Upon an adjudication of delinquency, the judge has discretion to impose any of the conditions listed in 18 U.S.C. § 5037. These include restitution, probation (and conditions of probation), and official detention, but not fines.

Official detention may not extend beyond the defendant's twenty-first birthday for defendants under eighteen at the time of disposition, or five years for defendants between the ages of eighteen and twenty-one at the time of disposition. In addition, the period of detention may not exceed the maximum period of imprisonment authorized had the defendant been an adult. 18 U.S.C. § 5037. If a state law crime is involved, as is the case in Major Crimes Act cases that incorporate state law crimes, such as burglary, any minimums and the statutory maximum established by state law apply to the federal proceeding. Pierre Y., 280 F.3d 1008 (9th Cir. 2002).

Juveniles sentenced to official detention are committed to the custody of the Attorney General. The Federal Bureau of Prisons designates a place of confinement. Juveniles may not be placed in an institution in which they have "regular contact" with adults convicted of crimes or awaiting trial on criminal charges. 18 U.S.C. § 5039.

Arrest of a Juvenile

A juvenile may be arrested on a warrant issued on either a complaint or a juvenile information. Where arrest is not needed, the court may be asked to issue a summons on the complaint or information. In either case, it is important to have the complaint and/or information placed under seal to avoid public disclosure of the juvenile's identity.

By statute, the officer arresting a juvenile is required to advise a juvenile of his/her rights, and must immediately notify the Attorney General (notice to the United States Attorney is sufficient) and the juvenile's parents, guardian, or custodian of such custody. 18 U.S.C. § 5033. The arresting officer is also required to notify the parent, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense. *Id.* The juvenile must be taken before a magistrate as soon as possible and within a reasonable period of time. *Id.* The duties of the magistrate at that time are set forth in 18 U.S.C. § 5034.

If a juvenile is to be interrogated, prior to the interrogation, parents must be notified of the juvenile's Miranda rights. United States v. Wendy G., 255 F.3d 761, 762 (9th Cir. 2001). If parents ask for an opportunity to advise and counsel their child, the request cannot be unreasonably denied. *Id.* It is an affirmative obligation placed upon the law enforcement officers to advise the parents that they will be given an opportunity to communicate with their child prior to any questioning. *Id.* In addition, the admissibility in federal court of a statement taken from a juvenile is governed by federal law, not local or tribal law. Pierre Y., 280 F.3d 1008 (9th Cir. 2002).

The federal juvenile statutes provide for fingerprinting and photographing of juveniles only after a finding of guilt of certain types of drug and violent offenses. *See* 18 U.S.C. § 5038(d). Routine booking photographs and fingerprints should, therefore, not be taken upon arrest of a juvenile. In addition, unless a juvenile is prosecuted as an adult, neither the name nor picture may be made public in connection with the proceeding. This restriction must be

observed regarding press releases.

Detention Pending Trial

The juvenile statutes provide for release of a juvenile pending trial to his/her parents, guardian, custodian, or other responsible individual unless the magistrate determines, after a hearing at which the juvenile is represented by counsel, that detention is required to secure the juvenile's timely appearance before the appropriate court or to insure the safety of the juvenile or that of others. 18 U.S.C. § 5036. If the juvenile is detained, he has to be tried within thirty days, otherwise the charge is dismissed, usually with prejudice.

SERVICES TO CRIME VICTIMS

SERVICES TO CRIME VICTIMS

On October 30, 2004, the President signed into law the Justice for All Act of 2004 (18 U.S.C. § 3771). The Act establishes the rights of crime victims in federal criminal proceedings and provides mechanisms to enforce those rights.

Section 3771(a) provides crime victims with the following rights:

(1) the right to be reasonably protected from the accused;

(2) the right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused;

(3) the right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding;

(4) the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding;

(5) the reasonable right to confer with the attorney for the Government in the case;

(6) the right to full and timely restitution as provided by law;

(7) the right to proceedings free from unreasonable delay; and

(8) the right to be treated with fairness and with respect for the victim's dignity and privacy.

Section 3771(c)(1) requires that officers and employees of the Department of Justice and other federal departments and agencies engaged in investigative and prosecutorial work "make their best efforts" to (1) ensure notification of victims of these rights and (2) ensure victims are accorded these rights.

We have made tremendous progress in the vindication of the rights of victims in the past two decades. The primary federal investigative agencies – the FBI and BIA – have Victim-Witness Specialists who work with victims in the period before a charging decision is made and U.S. Attorneys' Offices have Victim-Witness Specialists who communicate with victims after cases have been charged.

OTHER ISSUES

Multidisciplinary Teams

Multidisciplinary teams (MDTs) are critical to investigations of the physical and sexual abuse of children and their use in Indian Country is grounded in statute.

18 U.S.C. § 3509(a)(7) governs the use and role of multidisciplinary child abuse teams. An MDT is a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse.

> **18 U.S.C. § 3509(g) Use of multidisciplinary child abuse teams.** –
>
> **(1) In general.** – A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with State and local governments that have established multidisciplinary child abuse teams designed to assist child abuse victims and child witnesses, and the court and the attorney for the Government shall consult with the multidisciplinary child abuse team as appropriate.
>
> **(2) Role of multidisciplinary child abuse teams.** – The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including–
>
> (A) medical diagnoses and evaluation services including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;
>
> (B) telephone consultation services in emergencies and in other situations;
>
> (C) medical evaluations related to abuse or neglect;
>
> (D) psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other care givers, or any other individual involved in a child victim or child witness case;
>
> (E) expert medical, psychological, and related professional testimony;
>
> (F) case service coordination and assistance, including the location of services available from public and private agencies in the community; and
>
> (G) training services for judges, litigators, court officers and others that are involved in child victim and child witnesses cases, in handling child victims and child witnesses.

Given the significant responsibility to protect children in Indian Country, each reservation should have an effective MDT with participation from federal law enforcement agencies and the USAO.

Tribal Liaison Program

Through our Tribal Liaison program, the U.S. Attorney's Office has made significant efforts to regularize and improve our outreach efforts to the six reservations for which we have jurisdiction to prosecute felony crimes. In addition to case-related investigations, each of the lawyers in the U.S. Attorney's Office assigned to Indian Country prosecutions are assigned to perform a liaison function on specific reservation(s). Four AUSAs serve as Tribal Liaisons.

The liaison function is critically important to effective Indian Country law enforcement efforts. In all instances, the offices of the U.S. Attorney are considerable distances from the reservation populations we serve. If we are to generate confidence among those who live on the reservations, the regular presence and engagement regarding law enforcement services and prosecution by the Tribal Liaison is crucial. These visits should enable the USAO to benefit from ideas and reminders from those with whom the Tribal Liaisons meet and defuse frustrations or misunderstandings before they germinate into major problems.

Prosecutors must consider their liaison duties as inviolate as trial work, training, or other high priority scheduling. In each liaison visit, which occur no less than every four months, the Tribal Liaison is directed to meet with Tribal law enforcement (both 638 and BIA personnel), the Indian Health Service Unit Director or Tribal Health Administrator (if a 638 contract exists), the Director of the Tribe's Social Service Program, the Multi-Disciplinary Team (MDT), the Child Protection Team (CPT) or its representative, the Tribal Chairperson/President, the Tribal Council (or, in the alternative, the chairperson of the Council's Law and Justice Committee), the County Attorney, the Sheriff, the County Commission, FBI agents, the Drug Task Force, the Tribal prosecutor, the Tribal judges, the Weed & Seed Steering Committee (if one exists), and other key individuals and organizations.

In the conversations, efforts should be made to draw out opinions as to how the community/law enforcement relationship is functioning, what crime issues the community may see as unaddressed, and matters that need attention from the IC attorney or the United States Attorney.

Domestic Violence and Other Assaults Committed by Non-Indians

Under the Major Crimes Act, an assault resulting in serious bodily injury may be prosecuted by the USAO if the act occurred on reservation land. Assault resulting in serious bodily injury arises in a number of different contexts. If serious bodily injury is the result of an act of domestic violence, it will be pursued as a felony. If serious bodily injury did not result from the act of domestic violence, it can still be prosecuted by the U.S. Attorney's Office in one limited circumstance. If the perpetrator of domestic violence (which did not result in serious bodily injury) is not an Indian person but the victim is, neither state court nor tribal court has jurisdiction to hear the matter if the crime occurred on a reservation. However, the USAO can charge the matter as a misdemeanor in U.S. District Court under 18 U.S.C. § 113(a)(4) or (5).

To the extent there is any confusion about what federal prosecutors can and will do, the U.S. Attorney's Office will prosecute viable cases where the perpetrator of domestic violence is not an Indian person but the victim is. We appreciate the fact that no other prosecutor has

the legal authority to file a case on these facts.

Law enforcement agents should pursue an investigation when allegations of domestic violence are made. If the victim is an Indian person, nothing precludes the BIA or tribal police from getting a statement from the victim. If a law enforcement agency does not believe it has the authority to investigate because the suspect is not an Indian person or because the incident occurred on the reservation, it is crucial that you contact the Assistant U.S. Attorney assigned to the reservation to ensure that an investigation is timely completed by the appropriate law enforcement agencies.

Driving Under the Influence of Alcohol in Which Injury to Person or Property Results

When a drunk driver causes an injury to a person or a death, a federal prosecution should follow. It is well established that a drunk driver who is in an accident where the victim suffers substantial bodily injury can be charged with assault resulting in serious bodily injury. The most common factual scenario resulting in a charge of involuntary manslaughter is a drunk driving automobile accident that results in death.

Alcohol abuse is a significant problem in Indian Country in Montana and impairs public safety on each reservation. Those who choose to drink and drive and kill others as a result of this conduct pose an extreme danger to the entire community, thus, this conduct must be addressed when there is a viable case. Therefore, cases involving drunk driving deaths are given priority.

In United States v. Loera, 923 F.2d 725 (9th Cir.1991), the inebriated defendant also drove in an extremely reckless manner prior to striking his victims. He was charged with one count of second degree murder and one count of assault resulting in serious bodily injury. Id. at 726. The Circuit wrote, "The evidence was sufficient to establish an assault resulting in serious bodily injury in violation of 18 U.S.C. § 113(f). An assault resulting in serious bodily injury is a general intent crime. The element of willfulness is satisfied by proof of a volitional act done by one who knows or should be reasonably aware that his conduct is wrongful. Loera is presumed to have intended the natural and probable consequences of his unlawful and reckless acts. The evidence showed that Loera recklessly drove his vehicle while in a state of voluntary intoxication." Id. at 730.

False Statements to Federal Investigators

We have observed an increase in the number of false statements to investigators. False statements to federal agents and concealment of information may be prosecuted under 18 U.S.C. § 1001 provided that they were material and made knowingly and willfully. Although we do not intend to prosecute all false statements to federal law enforcement agents and officers, some misrepresentations are so egregious that they must be prosecuted. For example, knowing and willful false statements or concealment that result in the arrest and detention and/or loss of employment of an innocent person should be investigated and presented for prosecution to the U.S. Attorney's Office.

Aggravated Domestic Violence

With the reauthorization of the Violence Against Women Act (VAWA), Congress established a new crime for those convicted of repeated acts of domestic violence. An individual who commits an act of domestic violence on a Montana reservation having been convicted of domestic violence on at least two previous occasions in state, tribal, or federal court may be charged pursuant to 18 U.S.C. § 117.

Failure to Register as a Sex Offender

As part of the Adam Walsh Act, Congress made it a crime for a person required to register as a sex offender because of a prior conviction to leave or enter Indian Country without registering as required. Vigilance in detecting sex offenders who fail to register on a reservation although required to so and that prosecution of such offenders help to enhance public safety in Indian Country.

Statutory Rape

We have detected some confusion about whether the federal government will investigate and prosecute individuals who engage in sexual relations with adolescents where there is a significant variance between the ages of the people. Under 18 U.S.C. § 2243, the U.S. Attorney's Office has the authority to prosecute the crime commonly known as statutory rape. If the victim is 12, 13, 14, or 15 and has sex with a person at least four years older, the U.S. Attorney's Office can charge sexual abuse of a minor. As with other violations of § 2243, prosecution of this offense is favored if the case is viable.

Indian Country Drug Cases

The U.S. Attorney's Office prosecutes drug trafficking offenses in Indian Country although the drug quantities at issue are smaller oftentimes than what the U.S. Attorney's Office prosecutes outside of Indian Country. Drug distribution is a significant problem on Montana's reservations. The U.S. Attorney's Office is committed to the prosecution of those who bring drugs to Indian Country and those who sell drugs in Indian Country.

Indian Country cases involving small amounts of controlled substances possessed for personal use (e.g., a fraction of a gram of methamphetamine), as opposed to distribution, should be referred to tribal prosecutors.

Indian Country cases involving small amounts of marijuana possessed for distribution (less than one pound) should be referred to tribal prosecutors, not federal prosecutors, unless it is clearly documented in the Drug Violation Intake Summary (DVIS) that:

1. The subject has a long criminal history which includes crimes of violence and/or drug distribution charges. The subject's tribal criminal history will be considered when making this determination; or

2. The investigation reveals significant historical information that indicates that the subject is a long time drug dealer who has operated unabated in the community for a long period of time; or

3. The subject is part of a project specifically authorized by the U.S. Attorney which targets a large number of drug dealers, distributing small quantities of narcotics on a targeted reservation, which will have significant deterrent value on future drug distribution efforts on the targeted reservation.

STATUTES – *Jurisdictional*

INDIAN COUNTRY
18 U.S.C. § 1151

Except as otherwise provided in sections 1154 and 1156 of this title, the term Indian Country, as used in this chapter, means

(a) 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,

(b) all dependent Indian communities within the orders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

FEDERAL ENCLAVES ACT
18 U.S.C. § 1152

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian Country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian Country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

MAJOR CRIMES ACT
18 U.S.C. § 1153

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian Country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

ASSIMILATIVE CRIMES ACT
18 U.S.C. § 13

(a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(b) **(1)** Subject to paragraph (2) and for purposes of subsection (a) of this section, that which may or shall be imposed through judicial or administrative action under the law of a State, territory, possession, or district, for a conviction for operating a motor vehicle under the influence of a drug or alcohol, shall be considered to be a punishment provided by that law. Any limitation on the right or privilege to operate a motor vehicle imposed under this subsection shall apply only to the special maritime and territorial jurisdiction of the United States.

(2) **(A)** In addition to any term of imprisonment provided for operating a motor vehicle under the influence of a drug or alcohol imposed under the law of a State, territory, possession, or district, the punishment for such an offense under this section shall include an additional term of imprisonment of not more than 1 year, or is serious bodily injury of a minor is caused, not more than 5 years, or if death of a minor is caused, not more than 10 years, and an additional find under this title, or both, if –

(I) a minor (other than the offender) was present in the motor vehicle when the offense was committed; and

(ii) the law of the State, territory, possession, or district in which the offense occurred does not provide an additional term of imprisonment under the circumstances described in clause (I).

(B) For the purposes of subparagraph (A), the term "minor" means a person less than 18 years of age.

(c) . . . . . .

STATUTES – *Major Crimes*

ARSON
18 U.S.C. § 81

Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously sets fire to or burns any building, structure or vessel, any machinery or building materials or supplies, military or naval stores, munitions of war, or any structural aids or appliance for navigation or shipping, or attempts or conspires to do such an act, shall be imprisoned for not more than 25 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both.

If the building is a dwelling or if the life of any person be placed in jeopardy, he shall be fined under this title or imprisoned for any term of years or for life, or both.

ASSAULT
18 U.S.C. § 113

(a) Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of any assault shall be punished as follows:

(1) Assault with intent to commit murder, by imprisonment for not more than twenty years.

(2) Assault with intent to commit any felony, except murder or a felony under chapter 109A, by a fine under this title or imprisonment for not more than ten years, or both.

(3) Assault with a dangerous weapon, with intent to do bodily harm, and without just cause or excuse, by a fine under this title or imprisonment for not more than ten years, or both.

(4) Assault by striking, beating, or wounding, by a fine under this title or imprisonment for not more than six months, or both.

(5) Simple assault, by a fine under this title or imprisonment for not more than six months, or both, or if the victim of the assault is an individual who has not attained the age of 16 years, by fine under this title or imprisonment for not more than 1 year, or both.

(6) Assault resulting in serious bodily injury, by a fine under this title or imprisonment for not more than ten years, or both.

(7) Assault resulting in substantial bodily injury to an individual who has not attained the age of 16 years, by fine under this title or imprisonment for not more than 5 years, or both.

(b) As used in this subsection –

(1) the term "substantial bodily injury" means bodily injury which involves –

(A) a temporary but substantial disfigurement;
or
(B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty; and

(2) the term "serious bodily injury" has the meaning given that term in section 1365 of this title.

from 18 U.S.C. § 1365

(3) the term "serious bodily injury" means bodily injury which involves –

(A) a substantial risk of death;
(B) extreme physical pain;
(C) protracted and obvious disfigurement;
or
(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

(4) the term "bodily injury" means –

(A) a cut, abrasion, bruise, burn, or disfigurement;
(B) physical pain;
(C) illness;
(D) impairment of the function of a bodily member, organ, or mental faculty; or
(E) any other injury to the body, no matter how temporary.

FELONY CHILD ABUSE
Mont Code Ann. § 45-5-212

§ 45-5-212. Assault on minor

(1) A person commits the offense of assault on a minor if the person commits an offense under 45-5-201, and at the time of the offense, the victim is under 14 years of age and the offender is 18 years of age or older.

(2) A person convicted of assault on a minor shall be imprisoned in a state prison for a term not to exceed 5 years or be fined not more than $50,000, or both.

§ 45-5-201. Assault

(1) A person commits the offense of assault if the person:

(a) purposely or knowingly causes bodily injury to another;
(b) negligently causes bodily injury to another with a weapon;
(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or
(d) purposely or knowingly causes reasonable apprehension of bodily injury in another.

§ 45-2-101. General Definitions

(5) "Bodily Injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

MAIMING
18 U.S.C. § 114

Whoever, within the special maritime and territorial jurisdiction of the United States, and with intent to torture (as defined in section 2340), maim, or disfigure, cuts, bites, or slits the nose, ear, or lip, or cuts out or disables the tongue, or puts out or destroys an eye, or cuts off or disables a limb or any member of another person; or

Whoever, within the special maritime and territorial jurisdiction of the United States, and with like intent, throws or pours upon another person, any scalding water, corrosive acid, or caustic substance –

Shall be fined under this title or imprisoned not more than twenty years, or both.

DOMESTIC ASSAULT BY A HABITUAL OFFENDER
18 U.S.C. § 117

(a) In general. – Any person who commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country and who has a final conviction on at least 2 separate prior occasions in Federal, State, or Indian tribal court proceedings for offenses that would be, if subjected to Federal jurisdiction –

> **(1)** any assault, sexual abuse, or serious violent felony against a spouse or intimate partner; or
>
> **(2)** an offense under chapter 110A,

shall be fined under this title, imprisoned for a term of not more than 5 years, or both, except that if substantial bodily injury[1] results from violation under this section, the offender shall be imprisoned for a term of not more than 10 years.

(b) **Domestic assault defined** – In this section, the term "domestic assault" means an assault committed by a current or former spouse, parent, child, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child, or guardian of the victim.

NOTE: Applies to any person, Indian or Non-Indian. Not required to be charged under 18 U.S.C. § 1153. Tribal, state or Federal court convictions count as predicate convictions.

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[1]"Substantial bodily injury" is defined in 18 U.S.C. § 113(b)(1).

THEFT
18 U.S.C. § 661

Whoever, within the special maritime and territorial jurisdiction of the United States, takes and carries away, with intent to steal or purloin, any personal property of another shall be punished as follows:

If the property taken is of a value exceeding $1,000, or is taken from the person of another, by a fine under this title, or imprisonment for not more than five years, or both; in all other cases, by a fine under this title or by imprisonment not more than one year, or both.

If the property stolen consists of any evidence of debt, or other written instrument, the amount of money due thereon, or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, shall be the value of the property stolen.

MURDER
18 U.S.C. § 1111

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty in the first degree shall be punished by death or by imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

MANSLAUGHTER
18 U.S.C. § 1112

(a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

Voluntary – Upon a sudden quarrel or heat of passion.

Involuntary – In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of voluntary manslaughter, shall be fined under this title or imprisoned not more than ten years, or both;

Whoever is guilty of involuntary manslaughter, shall be fined under this title or imprisoned not more than six years, or both.

FAILURE TO REPORT CHILD ABUSE
18 U.S.C. § 1169

(a) Any person who -

(1) is a -

(A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

(B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,

(C) administrative officer, supervisory of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,

(D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

(E) psychiatrist, psychologist, or psychological assistant,

(F) licensed or unlicensed marriage, family, or child counselor,

(G) person employed in the mental health profession, or

(H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;

(2) knows, or has reasonable suspicion, that -

(A) a child was abused in Indian country, or

(B) actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and

(3) fails to immediately report such abuse or actions described in paragraph (2) to the local child protective services agency or local law enforcement agency,

shall be fined under this title or imprisoned for not more than 6 months or both.

(b) Any person who -

(1) supervises, or has authority over, a person described in subsection (a)(1), and

(2) inhibits or prevents that person from making the report described in subsection (a),

shall be fined under this title or imprisoned for not more than 6 months or both.

(c) For purposes of this section, the term -

(1) "abuse" includes -

(A) any case in which -

(I) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematona, soft tissue swelling, and

(ii) such condition is not justifiably explained or may not be the product of any accidental occurrence: and

(B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

(2) "child" means an individual who -

(A) is not married, and

(B) has not attained 18 years of age;

(3) "local child protective services agency" means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; and

(4) "local law enforcement agency" means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

(d) Any person making a report described in subsection (a) which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.

KIDNAPPING
18 U.S.C. § 1201

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when –

> **(1)** the person is wilfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary if the person was alive when the transportation began;
>
> **(2)** any such act against the person is done within the special maritime and territorial jurisdiction of the United States;
>
> **(3)** any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 46501 of title 49;
>
> **(4)** the person is a foreign official, an internationally protected person, or an official guest as those terms are defined section 1116(b) of this title; or
>
> **(5)** the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties;

shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

(b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported to interstate or foreign commerce. Notwithstanding the preceding sentence, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the 24-hour period has ended.

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

(d) Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if

> **(1)** the victim is a representative, officer, employee, or agent of the United States,

(2) an offender is a national of the United States, or

(3) an offender is afterwards found in the United States.

As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49. For purposes of this subsection, the term "national of the United States" has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(22)).

(f) In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(g) Special rule for certain offenses involving children. –

(1) To whom applicable. –If–

(A) the victim of an offense under this section has not attained the age of eighteen years; and

(B) the offender –

(I) has attained such age; and

(ii) is not –

(I) a parent;
(II) a grandparent;
(III) a brother;
(IV) a sister;
(V) an aunt;
(VI) an uncle; or
(VII) an individual having legal custody of the victim;

the sentence under this section for such offense shall be subject to paragraph (2) of this subsection.

(h) As used in this section, the term "parent" does not include a person whose parental rights with respect to the victim of an offense under this section have been terminated by a final court order.

ROBBERY
18 U.S.C. § 2111

Whoever, within the special maritime and territorial jurisdiction of the United States, by force and violence, or by intimidation, takes or attempts to take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years.

AGGRAVATED SEXUAL ABUSE
18 U.S.C. § 2241

(a) By force or threat. – Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly causes another person to engage in a sexual act –

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) By other means.– Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly –

(1) renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby –

(A) substantially impairs the ability of that other person to appraise or control conduct; and

(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(c) With children. – Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least four years younger than the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

(d) State of mind proof requirement.–In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

SEXUAL ABUSE
18 U.S.C. § 2242

Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly –

(1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or

(2) engages in a sexual act with another person if that other person is –

(A) incapable of appraising the nature of the conduct; or

(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;

or attempts to do so, shall be fined under this title and imprisoned for any term of years or for life.

SEXUAL ABUSE OF A MINOR OR WARD
18 U.S.C. § 2243

(a) Of a minor.–Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who –

(1) has attained the age of 12 years but has not attained the age of 16 years; and

(2) is at least four years younger than the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

(b) Of a ward.–Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal Prison, knowingly engages in a sexual act with another person who is –

(1) in official detention; and

(2) under the custodial, supervisory, or disciplinary authority of the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

(c) Defenses.–

(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.

(2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

(d) State of mind proof requirement.–In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew –

(1) the age of the other person engaging in the sexual act; or

(2) that the requisite age difference existed between the persons so engaging.

ABUSIVE SEXUAL CONTACT
18 U.S.C. § 2244

(a) Sexual conduct in circumstances where sexual acts are punished by this chapter.–Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in or causes sexual contact with or by another person, if so to do would violate –

(1) subsection (a) or (b) of section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than ten years, or both;

(2) section 2242 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;

(3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both; or

(4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than six months, or both.

(5) subsection (b) of section 2241 of this title had the sexual contact been a sexual act, shall be fined under title and imprisoned for any term of years or life.

(b) In other circumstances.–Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in sexual contact with another person without that other person's permission shall be fined under this title, imprisoned not more than six months, or both.

(c) Offenses involving young children.–If the sexual contact that violates this section is with an individual who has not attained the age of 12 years, the maximum term of imprisonment that may be imposed for the offense shall be twice that otherwise provided in this section.

SEXUAL ABUSE RESULTING IN DEATH
18 U.S.C. § 2245

A person who, in the course of an offense under this chapter, or section 1591, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, murders an individual, shall be punished by death or imprisoned for any term of years or for life.

SEXUAL ABUSE
Definitions
18 U.S.C. § 2246

As used in this chapter –

(1) the term "prison" means a correctional, detention, or penal facility;

(2) the term "sexual act" means –

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(3) the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(4) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(5) the term "official detention" means –

(A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or

(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation;

but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency; and

(6) the term "State" means a State of the United States, the District of Columbia, and any commonwealth, possession, or territory of the United States.

SEXUAL ABUSE
Repeat Offenders
18 U.S.C. § 2247

(a) Maximum Term of Imprisonment. – The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter.

(b) Prior Sex Offense Conviction Defined. – In this section, the term "prior sex offense conviction" has the meaning given that term in section 2426(b).

INCEST
Mont. Code Ann. § 45-5-507

(1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 4-5-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed $50,000.

(4) If the victim is under 16 years of age and the offender is three or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than four years or more than 100 years and may be fined not more than $50,000.

(5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

BURGLARY[2]
Mont. Code Ann. § 45-6-204

(1) a person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein and:

> **(a)** in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or
>
> **(b)** in effecting entry or in the course of committing the offense or in immediate flight thereafter, he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000 or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed $50,000, or both.

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[2]Prosecution under § 1153 is precluded for the burglary of a building owned by a government agency. *United States v. Belgarde*, 300 F.3d 1177 (9th Cir. 2002). It can be charged under § 1152.

STATUTES – *Other Federal Crimes Prevalent in Indian Country*

ASSAULT ON FEDERAL OFFICER
18 U.S.C. § 111

(a) In general. - Whoever -

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served I as a person designated in section 1114 on account of the performance of official duties during such person's term of service,

shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and in all other cases, be fined under this title or imprisoned not more than 8 years, or both.

(b) Enhanced penalty. - Whoever - in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.

COERCION AND ENTICEMENT
18 U.S.C. § 2422(b)

(b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

FAILURE TO REGISTER AS A SEXUAL OFFENDER
18 U.S.C. § 2250(a)

If a Federal Conviction:

First, the defendant is a sex offender by reason of a conviction under Federal law;

Second, the defendant is a person required to register under the Sex Offender Registration and Notification Act; and

Third, the defendant knowingly failed to register and/or update his/her registration.

If a State Conviction:

First, the defendant is a sex offender by reason of a conviction under state law;

Second, the defendant is a person required to register under the Sex Offender Registration and Notification Act;

Third, the defendant knowingly failed to register and/or update his registration; and

Fourth, the defendant traveled in interstate commerce or entered or left Indian Country.

RECEIPT/DISTRIBUTION OF CHILD PORNOGRAPHY
18 U.S.C. § 2252A(a)(2)

First, that defendant knowingly received/distributed a visual depiction in interstate or foreign commerce by any means, including a computer;

Second, that the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct;

Third, that such visual depiction was of a minor engaging in sexually explicit conduct;

Fourth, that defendant knew that such visual depiction was of sexually explicit conduct; and

Fifth, defendant knew that at least one of the person engaged in sexually explicit conduct in such visual depiction was a minor.

POSSESSION OF CHILD PORNOGRAPHY
18 U.S.C. § 2252A(a)(5)(B)

First, that defendant knowingly possessed computer disks or any other material which defendant knew contained visual depictions of minors engaged in sexually explicit conduct;

Second, defendant knew the visual depictions contained in the computer disks or any other material contained minors engaged in sexually explicit conduct;

Third, defendant knew that production of such visual depictions involved the use of minors in sexually explicit conduct; and

Fourth, that each visual depiction had been either

(a) mailed or shipped or transported in interstate or foreign commerce by any means, including by computer, or

(b) produced using material that had been mailed or shipped or transported in interstate or foreign commerce by any means, including by computer.

TRANSFER OF OBSCENE MATERIAL TO MINORS
18 U.S.C. § 1470

Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.

TRANSPORTATION OF CHILD PORNOGRAPHY
18 U.S.C. § 2252a(A)(2)

(a) Any person who–

(2) knowingly receives or distributes–

(A) any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or

(B) any material that contains child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;

DESTRUCTION OF GOVERNMENT PROPERTY
18 U.S.C. § 1361

Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, or attempts to commit any of the foregoing offenses, shall be punished as follows:

If the damage or attempted damage to such property exceeds the sum of $1,000, by a fine under this title or imprisonment for not more than ten years, or both; if the damage or attempted damage to such property does not exceed the sum of $1,000, by a find under this title or by imprisonment for not more than one year, or both.

NOTE: *United States v. Erroll D., Jr.*, 292 F.3d 1159 (9th Cir. 2002) held that BIA is not a "person"; therefore, the defendant could not be charged under 18 U.S.C. § 1153. This statute should be used if a defendant damages any property that can be tied to the BIA or other agency of the U.S. Government, such as school buildings, police buildings, IHS Hospital, etc.

CONTROLLED SUBSTANCES[4]
21 U.S.C. § 841

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally –

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense or possess with intent to distribute or dispense, a counterfeit substance.

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[4]Penalties depend on substance and amount. Other statutes provide enhanced penalties:

21 U.S.C. § 859 - distribution to juveniles
21 U.S.C. § 860 - distribution near schools

CONTROLLED SUBSTANCES
21 U.S.C. § 844

(a) Unlawful acts

It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II of this chapter.

INTERSTATE DOMESTIC VIOLENCE
18 U.S.C. § 2261

(a) Offenses.--

(1) Travel or conduct of offender. –A person who travels in interstate or foreign commerce or enters or leaves Indian Country with the intent to kill, injure, harass, or intimidate a spouse or intimate partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

(2) Causing travel of victim. – A person who causes a spouse or intimate partner to travel in interstate or foreign commerce or to enter, leave or reside in Indian Country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

(b) Penalties.– A person who violates this section or section 2261A shall be fined under this title, imprisoned–

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison; and

(5) for not more than 5 years, in any other case, or both fined and imprisoned.

INTERSTATE STALKING
18 U.S.C. § 2261A

Whoever –

(1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian Country, with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family (as defined in section 115) of that person, or the spouse of intimate partner of that person; or

(2) with the intent –

(A) to kill or injure a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or

(B) to place a person in another State or tribal jurisdiction, or within the special maritime territorial jurisdiction of the United States, reasonable fear of the death of, or seriously bodily injury to –

(I) that person;

(ii) a member of the immediate family (as defined in section 115) of that person; or

(iii) a spouse or intimate partner of that person,

Uses the mail or any facility of interstate or foreign commerce to engage in a course of conduct that places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (I) through (iii).

shall be punished as provided in section 2261(b).

INTERSTATE VIOLATION OF PROTECTIVE ORDER
18 U.S.C. § 2262

(a) Offenses. –

(1) Travel or conduct of offender. – A person who travels in interstate or foreign commerce, or enters or leaves Indian Country, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) Causing travel of victim. – A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian Country by force, coercion, duress, or fraud, and in the course, of as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) Penalties. – A person who violates this section shall be fined under this title, imprisoned –

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case, or both fined and imprisoned.

ELEMENTS

ARSON
18 U.S.C. § 81

1. That either the defendant or the victim is an Indian person,

AND

2. That the crime occurred within Indian Country,

AND

3. That the defendant set or attempted to set fire to or burn any

a) building
b) structure or vessel
c) machinery

OR

d) building materials or supplies

AND

4. That the defendant did so willfully and maliciously.

ASSAULT WITH INTENT TO COMMIT MURDER
18 U.S.C. § 113(a)(1)

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

1. That the defendant intentionally struck or wounded the victim

   OR

   used a display of force that reasonably caused the victim to fear immediate bodily harm,

   AND

2. That the defendant did so with the specific intent to commit murder.

ASSAULT WITH INTENT TO COMMIT ANY FELONY
18 U.S.C. § 113(a)(2)

1. That either the defendant or the victim is an Indian person,

AND

2. That the offense occurred within Indian Country,

AND

3. That the defendant intentionally struck or wounded the victim,

OR

used a display of force that reasonably caused the victim to fear immediate bodily harm,

AND

4. That the defendant did so with the specific intent to commit a felony (except murder or a felony under chapter 109A).

ASSAULT WITH DANGEROUS WEAPON
18 U.S.C. § 113(a)(3)

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

3. That the defendant intentionally struck or wounded the victim

   OR

   used a display of force that reasonably caused the victim to fear immediate bodily harm,

   AND

4. That the defendant acted with the specific intent to do bodily harm,

   AND

5. That the defendant used a weapon.

ASSAULT BY STRIKING, BEATING OR WOUNDING
18 U.S.C. § 113(a)(4)

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

3. That the defendant intentionally struck or wounded the victim.

ASSAULT OF AN INDIVIDUAL UNDER THE AGE OF 16
18 U.S.C. § 113(a)(5)

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

3. That the defendant knowingly assaulted the victim,

   AND

4. That the victim had not attained the age of 16 years.

ASSAULT RESULTING IN SERIOUS BODILY INJURY[5]
18 U.S.C. § 113(a)(6)

1. That either the defendant or the victim is an Indian person,

AND

2. That the crime occurred within Indian Country,

AND

3. That the defendant intentionally struck or wounded the victim,

AND

4. That, as a result, the victim suffered serious bodily injury.

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[5] Although there are many assaults which result in serious bodily injury, it should be noted that this category may encompass cases where an individual has caused serious bodily injury to an individual as the result of a drunk driving crash.

ASSAULT RESULTING IN SUBSTANTIAL BODILY INJURY
18 U.S.C. § 113(a)(7)

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

3. That the defendant intentionally [struck] [wounded] the victim,

   AND

4. That, as a result, the victim suffered serious bodily injury,

   AND

5. That the victim had not attained the age of 16 years.

FELONY CHILD ABUSE
Mont. Code Ann. § 45-5-212

1. The defendant is an Indian person,

   AND

2. The assault occurred in Indian country,

   AND

3. The defendant purposely or knowingly causes bodily injury [makes physical contact of an insulting or provoking nature] [causes reasonable apprehension of bodily injury] to the victim,

   AND

4. The defendant negligently causes bodily injury with a weapon to the victim,

   AND

5. At the time of the offense, the victim had not reached the age of 14 years; and

MAIMING
18 U.S.C. § 114

1. That either the defendant or the victim is an Indian person,

   AND

2. That the offense occurred within Indian Country,

   AND

3. That the defendant with intent to torture, maim or disfigure,

   a) cuts, bites, slits the nose, ear or lip,
   b) cuts out or disables the tongue,
   c) puts out or destroys an eye,
   d) cuts off or disables a limb or any member of another person,

   OR

   e) throws or pours any scalding water, corrosive acid, or caustic substance on another person.

DOMESTIC ASSAULT BY A HABITUAL OFFENDER
18 U.S.C. § 117

1. That the defendant has at least two prior **documented** convictions[6] of any assault, sexual abuse or serious violent felony against a spouse or intimate partner;

   AND

2. The act of any assault, sexual abuse or serious violent felony against a spouse or intimate partner occurred AFTER January 5, 2006.

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[6]The convictions can be documented with written judgments from federal, state or tribal courts.

THEFT
18 U.S.C. § 661

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

3. That the defendant did take and carry away the personal property of another,

   AND

4. That the defendant did so with the intent to steal or purloin,

   AND

5. That the property is of a value of more than $1,000.

MURDER
first degree
18 U.S.C. § 1111

1. That either the defendant or the victim is an Indian person,

AND

2. That the crime occurred within Indian Country,

AND

3. That the defendant unlawfully killed a human being,

AND

4. That the defendant killed with malice aforethought[7],

AND

5. That the killing was premeditated.[8]

---

[7]To kill with malice aforethought means to kill either deliberately and intentionally or recklessly with extreme disregard for human life.

[8]Premeditation means with planning or deliberation. The amount of time needed for premeditation of a killing depends on the person and the circumstances. It must be long enough, after forming the intent to kill, for the killer to have been fully conscious of the intent and to have considered the killing.

MURDER
second degree
18 U.S.C. § 1111

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

3. That the defendant killed a human being,

   AND

4. That the defendant killed with malice aforethought.[9]

---

[9]To kill with malice aforethought means to kill either deliberately and intentionally or recklessly with extreme disregard for human life.

MANSLAUGHTER
voluntary
18 U.S.C. § 1112

1. That either the defendant or the victim is an Indian person,

AND

2. That the crime occurred within Indian Country,

AND

3. That the defendant unlawfully killed a human being,

AND

4. That the defendant either intended to kill the victim but the killing was without malice aforethought, that is, the defendant acted upon a sudden quarrel or heat of passion, or the defendant acted with reckless disregard for human life.

MANSLAUGHTER
involuntary
18 U.S.C. § 1112

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

3. That the defendant committed an unlawful act not amounting to a felony, or committed a lawful act, done either in an unlawful manner or with wanton or reckless disregard for human life, which might produce death,

   AND

4. That the defendant's act was the proximate cause of the death of the victim. A proximate cause is one which played a substantial part in bringing about the death, so that the death was the direct result or a reasonably probable consequence of the defendant's act,

   AND

5. That the killing was unlawful,

   AND

6. That the defendant either knew that such conduct was a threat to the lives of others or knew of circumstances that would reasonably cause the defendant to foresee that such conduct might be a threat to the lives of others.

FAILURE TO REPORT CHILD ABUSE
18 U.S.C. § 1169

1. That the defendant is a person defined in 18 U.S.C. § 1169(a),

AND

2. The defendant knew or had reasonable suspicion that a child was abused in Indian Country

OR

that actions were taken, or going to be taken that would reasonably be expected to result in abuse of a child in Indian Country;

AND

3. The defendant failed to immediate report the abuse or actions to local child protective services agency or local law enforcement agency.

KIDNAPPING
18 U.S.C. § 1201(a)(2)

1. That the defendant is an Indian person,

   AND

2. That the kidnapping occurred within Indian Country,

   AND

3. That the defendant seized, confined, inveigled, decoyed, kidnapped, or abducted the victim,

   AND

4. That the defendant held the victim for ransom, reward or other benefit or purpose.

ROBBERY
18 U.S.C. § 2111

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

3. That the defendant did take, or attempt to take, from the person or presence of another, something of value,

   AND

4. That the defendant did so by force and violence or intimidation.

AGGRAVATED SEXUAL ABUSE
force
18 U.S.C. § 2241(a)

1. That either the defendant or the victim is an Indian person,

AND

2. That the crime occurred within Indian Country,

AND

3. That the defendant knowingly used force

OR

threatened or placed the victim in fear that some person would be subject to death, serious bodily injury or kidnapping,

AND

4. That the defendant caused the victim to engage in a sexual act.

AGGRAVATED SEXUAL ABUSE
other means
18 U.S.C. § 2241(b)

1. That either the defendant or the victim is an Indian person,

AND

2. That the crime occurred within Indian Country,

AND

3. That the defendant knowingly administered a drug, intoxicant or other similar substance to the victim by force or threat of force

OR

without the knowledge or permission of the victim,

AND

4. That as a result, the victim's ability to judge or control conduct was substantially impaired,

AND

5. That the defendant then engaged in a sexual act with the victim.

AGGRAVATED SEXUAL ABUSE
child
18 U.S.C. § 2241(c)

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

3. That the defendant knowingly engaged in a sexual act with the victim,

   AND

4. That at the time, the victim had not yet reached the age of twelve years.

SEXUAL ABUSE
threat
18 U.S.C. § 2242(1)

1. That either the defendant or the victim is an Indian person,

AND

2. That the crime occurred within Indian Country,

AND

3. That the defendant knowingly caused the victim to engage in a sexual act by threatening or placing the victim in fear.

SEXUAL ABUSE
incapacitated or handicapped victim
18 U.S.C. § 2242(2)

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

3. That the defendant knowingly engaged in a sexual act with the victim,

   AND

4. That the victim was incapable of recognizing the nature of the conduct

   OR

   physically incapable of declining participation in

   OR

   or communicating unwillingness to engage in that sexual act.

STATUTORY SEXUAL ABUSE
18 U.S.C. § 2243(a)

1. That either the defendant or the victim is an Indian person,

AND

2. That the crime occurred within Indian Country,

AND

3. That the defendant knowingly engaged in a sexual act with the victim,

AND

4. That the victim had reached the age of twelve years but had not yet reached the age of sixteen years,

AND

5. That the victim was at least four years younger than the defendant.

SEXUAL ABUSE OF A WARD
18 U.S.C. § 2243(b)

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   And

3. That the defendant knowingly engaged in a sexual act with the victim,

   AND

4. That at the time the victim was in official detention at a facility,

   AND

5. That the victim was under the custodial, supervisory or disciplinary authority of the defendant.

ABUSIVE SEXUAL CONTACT
general
18 U.S.C. § 2244(a)

The offenses defined in 18 U.S.C. §§ 2241, 2242 and 2243 as sexual abuse become abusive sexual contact under 18 U.S.C. § 2244 if there was not a "sexual act" but there was a "sexual contact." Those terms are defined in Sections 2246(2) and (3). Accordingly, when it is necessary to instruct a jury on abusive sexual contact, the appropriate sexual abuse instruction should be used with "a sexual contact" substituted for "a sexual act."

Section 2244 does not make it a crime to attempt a sexual contact.

ABUSIVE SEXUAL CONTACT
in other circumstances
18 U.S.C. § 2244(b)

1. That either the defendant or the victim is an Indian person,

AND

2. That the offense occurred within Indian Country,

AND

3. That the defendant knowingly had sexual contact with the victim,

AND

4. That the sexual contact was without the victim's permission.

SEXUAL ABUSE RESULTING IN DEATH
18 U.S.C. § 2245

When it is necessary to instruct a jury on sexual abuse resulting in death, the appropriate sexual abuse instruction should be used with the following element added:

**, that the sexual act resulted in the death of the victim.

INCEST
Mont. Code Ann. § 45-5-507

1. That either the defendant or the victim is an Indian person,

   AND

2. That the offense occurred within Indian Country,

   AND

3. That the defendant knowingly engaged in sexual intercourse with the victim,

   OR

   that the defendant knowingly engaged in sexual contact with the victim,

   AND

4. That the victim was a relation of the defendant.

BURGLARY
Mont. Code Ann. § 45-6-204

1. That either the defendant or the victim is an Indian person,

   AND

2. That the crime occurred within Indian Country,

   AND

3. That the defendant knowingly and unlawfully entered or remained within an occupied structure,

   AND

4. That the defendant did so with the intent to commit a theft or other offense in the premises.

ASSAULT ON FEDERAL OFFICER
18 U.S.C. § 111

5. That either the defendant or the victim is an Indian person,

AND

6. That the crime occurred within Indian Country,

AND

3. That the defendant intentionally used force,

AND

4. That the defendant did so while the federal officer was engaged in, or on account of his/her official duties;

AND

5. That the defendant used a weapon/inflicted bodily injury.

COERCION AND ENTICEMENT
18 U.S.C. § 2422(b)

1. That the defendant used the mail or any facility or means of interstate foreign commerce;

2. To knowingly persuade, induce, entice or coerce;

3. An individual who has not attained the age of eighteen or whom the defendant believed had not attained the age of eighteen;

   AND

4. To engage in a sexual activity for which any person can be charged with a criminal offense or took a substantial step towards doing so.

FAILURE TO REGISTER AS A SEXUAL OFFENDER
18 U.S.C. § 2250(a)

1. That the defendant is a sex offender by reason of a conviction under state law;

   AND

2. That the defendant is a person required to register under the Sex Offender Registration and Notification Act;

   AND

3. That the defendant knowingly failed to register and/or update his registration;

4. That the defendant traveled in interstate or foreign commerce.

POSSESSION OF CHILD PORNOGRAPHY
2252A(a)(5)(B)

1. That the defendant knowingly possessed computer disks or any other material which the defendant knew contained visual depictions of minors engaged in sexually explicit conduct;

   AND

2. That the defendant knew the visual depictions contained in the computer disks or any other material contained minors engaged in sexually explicit conduct;

   AND

3. That the defendant knew that production of such visual depictions involved use of minor in sexually explicit conduct;

   AND

4. That each visual depiction had been either

   (a) mailed or shipped or transported in interstate or foreign commerce by any means, including by computer; or

   (b) produced using material that had been mailed or shipped or transported in interstate or foreign commerce by any means, including by computer.

RECEIPT/DISTRIBUTION OF CHILD PORNOGRAPHY
18 U.S.C. § 2252A(a)(2)

1. That the defendant knowingly received a visual depiction in interstate or foreign commerce by any means, including a computer;

   AND

2. That the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct;

   AND

3. That such visual depiction was of a minor engaging in sexually explicit conduct;

   AND

4. That the defendant knew that such visual depiction was of sexually explicit conduct;

   AND

5. That the defendant knew that at least one of the persons engaged in sexually explicit conduct in such visual depiction was a minor.

TRANSFER OF OBSCENE MATERIAL TO MINORS
18 U.S.C. § 1470

1. That the defendant used the mail or any facility or means of interstate or foreign commerce;

2. To knowingly transfer obscene material;

   AND

3. To an individual that the defendant knew was under the age of sixteen years.

TRANSPORTATION OF CHILD PORNOGRAPHY
18 U.S.C. § 2252A(a)(1)

1. That the defendant knowingly transported a visual depiction in interstate or foreign commerce by any means, including a computer;

   AND

2. That the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct;

   AND

3. That such visual depiction was of a minor engaged in sexually explicit conduct;

   AND

4. That the defendant knew that such visual depiction was of sexually explicit conduct;

   AND

5. That the defendant knew that at least one of the persons engaged in sexually explicit conduct in such visual depiction was a minor.

SEXUAL EXPLOITATION OF CHILDREN
18 U.S.C. § 2251(a)

1. That at the time, the victim was under the age of eighteen years;

AND

2. That the defendant employed, used, persuaded, induced, enticed or coerced the minor to take part in or had a minor assist any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

AND

3. That the visual depiction was produced using materials that had been mailed, shipped, or transported across state lines or in foreign commerce.

SEXUAL EXPLOITATION OF CHILDREN
by parent or guardian
18 U.S.C. § 2251(b)

1. That at the time, the victim was under the age of eighteen years;

AND

1. That the defendant was the parent, legal guardian or person having custody or control of the minor;

AND

1. That the defendant knowingly permitted such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

AND

1. That the visual depiction was produced using materials that had been mailed, shipped, or transported across state lines or in foreign commerce.

UNLAWFUL POSSESSION OF FIREARM
convicted of felony
18 U.S.C. § 922(g)(1)

1. That the defendant knowingly possessed in or affecting commerce a firearm,

AND

2. That at the time the defendant possessed the firearm he had been convicted of a felony.

UNLAWFUL POSSESSION OF FIREARM
subject to court order
18 U.S.C. § 922(g)(8)

1. That the defendant knowingly possessed in or affecting commerce a firearm,

   AND

2. That at the time the defendant was subject to a qualifying court order.

UNLAWFUL POSSESSION OF FIREARM
convicted of domestic violence
18 U.S.C. § 922(g)(9)[10]

1. That the defendant knowingly possessed a firearm in or affecting commerce,

   AND

2. That prior to that date, the defendant had been convicted of a misdemeanor crime of violence.

JUVENILE IN POSSESSION OF A HANDGUN
18 U.S.C. § 922(x)

1. That the defendant had not attained the age of 18 years,

   AND

2. That the juvenile knowingly possessed a handgun or ammunition that is suitable for use only in a handgun.

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[10] 1. Federal, state, or tribal misdemeanor crime of domestic violence conviction which meets the definition of section 922(33)(A)(ii); and

Remember: Tribal Judges must spell out in their judgments/orders of conviction the following elements for the tribal conviction to qualify:

A. A DEFENDANT IS CONVICTED DOING ONE OF THE FOLLOWING THINGS:

1. use physical force against a victim;
2. attempt to use physical force against a victim; or
3. threaten to use a deadly weapon against a victim.

B. THE DEFENDANT MUST QUALIFY AS ONE OF THE FOLLOWING:

1. a current spouse;
2. a former spouse;
3. a parent;
4. a guardian of the victim;
5. a person with whom the victim shares a child in common;
6. a person who is cohabiting with the victim;
7. a person who "has" cohabited with the victim as a spouse, parent, or guardian; or
8. by a person similarly situated to a spouse, parent, or guardian of the victim.

UNLAWFUL POSSESSION OF FIREARM
sawed off shotgun/machine gun
26 U.S.C. § 5862(d)

1. That the defendant knowingly possessed a shotgun having a barrel or barrels of less than 18 inches in length,

AND

2. That the firearm was not registered to the defendant in the National Firearms Registration and Transfer Record,

AND

3. That the defendant knew the characteristics of the weapon that brought it within the definition of a firearm under the National Firearms Act, that is the defendant knew he possessed a shotgun with a barrel length shorter than 18 inches or with an overall length less than 26 inches,

OR

That the defendant knew the firearm was designed or modified to fire automatically,

AND

4. That the shotgun was capable of being fire, or could be readily restored to do so.

UNLAWFUL POSSESSION OF FIREARM
no serial number
26 U.S.C. § 5862(I)

1. That the defendant knowingly possessed a firearm,

AND

2. That there was no serial number on the firearm.

DESTRUCTION OF GOVERNMENT PROPERTY
18 U.S.C. § 1361

1. That the defendant committed a depredation against property of an agency of the United States,

   AND

2. The defendant did so willfully;

   AND

3. The damage to the property exceeded $1,000.

CONTROLLED SUBSTANCES
distribution
21 U.S.C. § 841(a)(1)

1. That the defendant intentionally delivered [substance] to [_____],

AND

2. That the defendant knew that it was [substance] or some other prohibited drug.

CONTROLLED SUBSTANCES
possession with intent to distribute
21 U.S.C. § 841(a)(1)

1. That the defendant knowingly possessed [substance],

   AND

2. That the defendant possessed it with intent to deliver it to another person.

CONTROLLED SUBSTANCES
distribution to juvenile
21 U.S.C. §§ 841(a)(1), 859

1. That the defendant knowingly delivered [substance] to [_____],

   AND

2. That the defendant knew that it was [substance] or some other prohibited drug,

   AND

3. That the defendant was at least 18 years of age,

   AND

4. [_____] was under 21 years of age.

CONTROLLED SUBSTANCES
distribution near schools
21 U.S.C. §§ 841(a)(1), 860

1. That the defendant intentionally delivered [substance] to [_____],

AND

2. That the defendant knew that it was [marijuana] or some other prohibited drug,

AND

3. The delivery took place in, on or within 1,000 feet of the [schoolyard][campus].

INTERSTATE DOMESTIC VIOLENCE
crossing a state line
18 U.S.C. § 2261(a)(1)

1. That the defendant traveled across a State line

OR

entered/left Indian Country

AND

2. That the defendant did so with the intent to kill, injure, harass, intimidate his spouse or intimate partner,

AND

3. That in the course of or as a result of the defendant's travel he intentionally committed a crime of violence against that spouse or intimate partner.

INTERSTATE DOMESTIC VIOLENCE
causing the crossing of a state line
18 U.S.C. § 2261(a)(2)

1. That the defendant caused his spouse or intimate partner to cross a State line

OR

enter/leave Indian Country,

AND

2. That the defendant did so by force, coercion, duress, or fraud,

AND

3. That in the course of or as a result of the defendant's conduct, he intentionally committed a crime of violence against his spouse or intimate partner.

INTERSTATE STALKING
traveling
18 U.S.C. § 2261A

1. That the defendant traveled across a state line,

OR

Entered/left Indian Country,

AND

2. That the defendant did so with the intent to kill, injure, harass or intimidate another person,

AND

3. That in the course of, or as a result of such travel, the defendant placed that other person in reasonable fear of the death of, or serious bodily injury to that person a member of that person

OR

a member of that person's immediate family

OR

the spouse or intimate partner of that person.

INTERSTATE STALKING
use of mail
18 U.S.C. § 2261A

1. That the defendant used the mail or any facility of interstate or foreign commerce,

   AND

2. That the defendant did so with the intent to kill or injure a person in another state or tribal jurisdiction,

   OR

   Did so with the intent to place a person in another state or tribal jurisdiction in reasonable fear of the death of, or serious bodily injury to

   (i) that person, or
   (ii) a member of the immediate family of the that person, or
   (iii) a spouse or intimate partner of that person

   AND

3. That the defendant thereby placed that person in reasonable fear of, or serious bodily injury to, any of the persons described in (I), (ii), or (iii).

INTERSTATE VIOLATION OF PROTECTIVE ORDER
crossing a state line
18 U.S.C. § 2262(a)(1)

1. That the defendant traveled across a state line

OR

entered/left Indian Country,

AND

2. That the defendant did so with the intent to engage in conduct that would violate the portion of a protective order that involves protection against threats, violence, harassment, contact or communication to the person or persons for whom the protection order was issued,

AND

3. That the defendant subsequently engaged in such conduct.

INTERSTATE VIOLATION OF PROTECTIVE ORDER
causing the crossing of a state line
18 U.S.C. § 2262(a)(2)

1. That the defendant caused another person to travel across a state line

   OR

   enter/leave Indian country,

   AND

2. That the defendant did so by force, coercion, duress or fraud,

   AND

3. That in the course of or as a result of that conduct, the defendant engaged in conduct that would violate the portion of a protective order that involves protection against threats, violence, harassment, contact or communication to the person or persons for whom the protection order was issued,

   AND

4. That the defendant subsequently engaged in such conduct.

ATTACHMENT A

cc: CER
KAM
EVC
LHS
RJF
KGA

Memorandum

Subject:	Date:
IMPLEMENTATION OF INDIAN COUNTRY FEDERAL CRIME CASE TRACKER	October 10, 2008 WWM:SKF

To:

Tribal Chairs
Tribal Judges
Tribal Prosecutors
Tribal Police Chiefs
Victim-Witness Personnel in Indian Country
Domestic Violence Prevention/ Advocacy Personnel in Indian Country
Tribal Social Services Personnel
Indian Health Service/Tribal Health Board Unit Directors

From:

Bill Mercer Bill Mercer
United States Attorney
P.O. Box 1478
Billings, MT 59103
bill.mercer@usdoj.gov
Phone: (406) 247-4639
FAX: (406) 657-6055

Maylinn Smith, Director MS by WWM
Indian Law Clinic
School of Law
The University of Montana
Missoula, MT 59812-6552
maylinn.smith@umontana.edu
Phone: (406) 243-2544
FAX: (406) 243-2132

In 2008, the U.S. Attorney's Office and the Indian Law Clinic began on-going discussions regarding the creation of a mechanism to ensure that matters which appear to you to constitute federal crimes are identified by individuals in tribal departments and programs in regular disclosures to the U.S. Attorney, whether or not you believe the FBI or BIA is already investigating the matter.

In its work, the Indian Law Clinic hears from tribal members and tribal government personnel regarding their views about perceived inattention to matters which merit federal investigation and prosecution. In the course of your work, you may become aware of matters which should be referred to investigative agencies and the U.S. Attorney's Office for investigation and possible federal prosecution. With respect to Indian Country crimes, it is fairly rare that the U.S. Attorney's Office becomes aware of investigations or potential investigations unless an investigative agency forwards a report to the U.S. Attorney seeking a prosecution or a report which explains why a prosecution should not be undertaken.

After discussions with the Indian Law Clinic, we concluded that there would be value in creating a monthly reporting mechanism from Tribes directly to the U.S. Attorney to ensure all potential federal crimes, particularly violent crimes, are known to the U.S. Attorney's Office for follow-up and tracking with the appropriate investigative agencies. This type of information will enhance accountability for federal law enforcement efforts within Indian Country and will be invaluable in interactions between the U.S. Attorney's Office and federal investigators. **AS SHOULD BE EVIDENT, THIS IS NOT A SUBSTITUTE FOR REGULAR AND TIMELY REPORTING OF CRIMES TO TRIBAL POLICE, BIA AND THE FBI. THIS NEW PROCESS IS DESIGNED TO FACILITATE THE INTERAGENCY TRACKING OF CRIMINAL MATTERS.**

Attached is a copy of the tracking form developed to facilitate this communication. If you wish to submit this information to the U.S. Attorney electronically, please call or e-mail Sally Frank (sally.frank@usdoj.gov or (406) 247-4638) and she will e-mail the report template to you. You may instead fax the form to the U.S. Attorney's Office at (406) 657-6055 or mail it to the address listed above.

We have attached a summary of the federal offenses and the elements necessary to prove each of the crimes if they (1) occur in Indian Country and (2) an Indian person is the perpetrator and/or the victim. Even if you have extensive experience in this area, I urge you to review the document because Congress has created a number of new crimes applicable to Indian Country in two recently adopted laws, the Adam Walsh Act and the reauthorization of the Violence Against Women Act.

With twenty-four Assistant U.S. Attorneys, you should also assume that the U.S. Attorney's Office in Montana is committed to the prosecution of viable cases for most of the statutes listed in the summary, including all cases under the Major Crimes Act.

It is our belief that submission of this form by the appropriate tribal departments and programs on a regular basis will help to ensure that all potential federal crimes in Indian Country are investigated in a timely fashion and referred for prosecution where the investigation yields adequate evidence to prove the crime beyond a reasonable doubt. If you believe other individuals should be invited to participate in this reporting process, please let either one of us know.

Submit monthly by mail to the Office of the U.S. Attorney, District of Montana, P.O. Box 1478, Billings, Montana 59103, or by fax ((406) 657-6055), or by e-mail (bill.mercer@usdoj.gov).

Case Information						Tribal Court Information (if subject was prosecuted for the same act in Tribal Court)					
							Prosecution Disposition			Sentencing	
Name of Subject	Name of Victim	Date of Offense	Federal Offense Committed by statute	Subject Criminal History	Lead Investigative Agency/Other Agency	Offenses Charged	Guilty	Acquited	Pre-Trial Diversion	# Months of Incarceration	Other Sentencing Outcomes (Note)
Joe Smith	Jan Smith	2/29/2008	18 USC 1153	N/A	BIA						

Date Submitted _____

ATTACHMENT B

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS
AND THE
UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

I. PURPOSE

This Memorandum of Understanding (MOU) is made by and between the United States Department of Interior (DOI) and the Department of Justice (DOJ) pursuant to the Indian Law Enforcement Reform Act (Act), 25 U.S.C. 2801 *et seq*. The purpose of this MOU is to establish guidelines regarding the respective jurisdictions of the Bureau of Indian Affairs (BIA) and the Federal Bureau of Investigation (FBI) in certain investigative matters, and to provide for the effective and efficient administration of criminal investigative service in Indian country.

II. BUREAU OF INDIAN AFFAIRS JURISDICTION

The Act establishes a Branch of Criminal Investigations within the Division of Law Enforcement (DLE) of the BIA, which shall be responsible for providing, or for assisting in the provision of, law enforcement services in Indian country. The responsibilities of the DLE shall include, inter alia, the enforcement of federal law and, with the consent of the Indian tribe, Tribal law; and in cooperation with appropriate federal and Tribal law enforcement agencies, the investigation and presentation for prosecution of cases involving violations of 18 U.S.C. 1152 and 1153 within Indian country(and other federal offenses for which the parties have jurisdiction). In addition, the Act authorizes the Secretary of the Interior to develop interagency agreements with the Attorney General and provides for the promulgation of prosecutorial jurisdictional guidelines by United States Attorneys (USA).

III. FEDERAL BUREAU OF INVESTIGATION JURISDICTION

The FBI derives its investigative jurisdiction in Indian country from 28 U.S.C. 533, pursuant to which the FBI was given investigative responsibility by the Attorney General. Except as provided in 18 U.S.C. 1162 (a) and (c), the jurisdiction of the FBI includes, but is not limited to, certain major crimes committed by Indians against the persons or property of Indians and non-Indians, all offenses committed by Indians against the persons or property of non-Indians and all offenses committed by non-Indians against the persons of property of Indians. *See* 18 U.S.C. 1152 and 1153.

IV. GENERAL PROVISIONS

1. Each USA whose criminal jurisdiction includes Indian country shall develop local written guidelines outlining responsibilities of the BIA, the FBI, and the Tribal Criminal Investigators, if applicable. Local USA guidelines shall cover 18 U.S.C. 1152 and 1153 offenses and other federal offenses within the investigative jurisdiction of the parties to this MOU.

2. Any other agreements that the DOI, DOJ, and Indian Tribes may enter into with or without reimbursement of personnel or facilities of another federal, Tribal, state, or other government agency to aid in the enforcement of criminal laws of the United States shall be in accord with this MOU and applicable federal laws and regulations.

3. The Secretary will ensure that law enforcement personnel of the BIA receive adequate training, with particular attention to report writing, interviewing techniques and witnesses statements, search and seizure techniques and preservation of evidence and the crime scene. Successful completion of the basic Criminal Investigator course provided by the Department of the Treasury at the Federal Law Enforcement Training Center or its equivalent shall constitute the minimum standard of acceptable training. The BIA may consult with the FBI and other training sources with respect to such additional specialized training as may be desirable. United States Attorneys may also require, and participate in, training at the field level.

4. Any contracts awarded under the Indian Self-Determination Act to perform the function of the BIA, Branch of Criminal Investigators, must comply with all standards applicable to the Branch of Criminal Investigators, including the following:

    a. Local USA guidelines must be followed.

    b. Criminal Investigators must be certified Peace Officers and must have satisfactorily completed the basic Criminal Investigator course provided by the Department of Treasury at the Federal Law Enforcement Training Center, or an equivalent course approved by the Commissioner of Indian Affairs. Criminal Investigators will receive a minimum of 40 hours in-service training annually to keep abreast of developments in the field of criminal investigations.

    c. Compensation for Criminal Investigators must be comparable to that of BIA Criminal Investigators.

    d. Criminal Investigators must be United States citizens.

    e. Criminal Investigators must possess a high school diploma or its equivalent.

    f. No Criminal Investigator shall have been convicted of a felony offense or crime involving moral turpitude.

    g. Criminal Investigators must have documentation of semi-annual weapons qualifications.

    h. Criminal Investigators must be free from physical, emotional, or mental conditions which might adversely affect their performance as law enforcement officers.

i. Criminal Investigators must be certified by Tribal officials as having passed a comprehensive background investigation, including unannounced drug testing. Such examinations must be documented and available for inspection by the BIA.

j. Appropriate procedures shall be devised to provide adequate supervision of Criminal Investigators by qualified supervisory personnel to ensure that investigative tasks are properly completed.

k. When a tribe is awarded a contract under the Indian Self-Determination Act, 25 U.S.C. 450 (a), there must be a "phase-in" period of not less than 180 days so as to ensure an orderly transition from one law enforcement agency to another. When a Tribe retrocedes its contract for the Criminal Investigator function, there must be a one-year time period from the date of request for retrocession, or a date mutually agreed upon by the BIA and the Tribe, for the BIA to prepare for reassuming the Criminal Investigation responsibility. All case files, evidence, and related material and documents associated with active and closed investigations must be turned over to the receiving criminal investigative agency, whether it be the BIA or a Tribe.

l. Appropriate procedures shall be established with respect to the storage, transportation and destruction of, and access to, case files, evidence, and related documents and other material, with particular attention directed to the confidentiality requirements of 18 U.S.C. 3509(d) and Rule 6(e) of the Federal Rules of Criminal Procedure. Criminal Investigators shall follow these procedures at all times. Access to such material will be for official use only.

m. Before any Tribe contracts for the Criminal Investigator function, the BIA and the Tribe must ensure that there is sufficient funding to cover the costs of a Criminal Investigator program including salary, equipment, travel, training, and other related expenses arising during both the investigation stage and the litigation stage of any case or matter covered by the contract.

n. Tribal contractors must agree, and the BIA shall ensure, that there is an audit and evaluation of the overall contracted Criminal Investigator program at least every two years. Continuation of the contract shall be contingent upon successful completion of each audit and evaluation.

o. Criminal Investigators are prohibited from striking, walking off the job, feigning illness, or otherwise taking any job action that would adversely affect their responsibility and obligation to provide law enforcement services in their capacity as Criminal Investigators.

5. Any individual who is a holder of a BIA Deputy Special Officer Commission and performing duties as a Criminal Investigator must comply with the standards applicable to Criminal Investigators set forth in the preceding paragraph.

6. When either the FBI or the BIA receives information indicating a violation of law falling within the investigative jurisdiction of the other agency, the agency receiving the information will notify the other agency. If either the FBI or the BIA declines to investigate a matter within the jurisdiction of both agencies, the other agency will be notified. The FBI and the BIA will attempt to resolve jurisdictional disputes at the field level. In the event the

dispute cannot be resolved, it will be reviewed by each agency's respective headquarters for resolution.

7. With respect to the use of sensitive investigative techniques, such as the nonconsensual interception of wire, oral or electronic communications and undercover operations involving any sensitive circumstance (as defined in the Attorney General's Guidelines for FBI Undercover Operations), and the investigation of organized crime matters, the FBI shall be the agency primarily responsible. Undercover operations involving sensitive circumstances shall be conducted in accordance with the Attorney General's Guidelines for FBI Undercover Operations. This paragraph is not intended to prohibit the BIA from conducting consensual eavesdropping or undercover operations not involving a sensitive circumstance or utilizing other nonsensitive investigative techniques after proper training and when authorized by the appropriate United States Attorney.

8. Nothing in this MOU is intended to change any existing cooperative relationships and responsibilities between the BIA and the FBI, and nothing in this MOU shall invalidate or diminish any law enforcement authority or responsibility of either agency.

9. Consistent with the availability of resources, the FBI will offer specialized training to the BIA.

10. Consistent with limitations regarding confidentiality, the requirements of the Privacy Act and any other applicable laws, and respective policies and procedures, the BIA and the FBI will cooperate on investigative matters of mutual interest, exchange intelligence, and investigative reports, as appropriate.

11. To the extent possible and in consideration of limited resources, the FBI will continue to assist the BIA in its investigative matters by providing investigative support services through the Identification Division, Training Division, Criminal Investigative Division and Laboratory Division.

This document constitutes the full and complete agreement between the BIA and the FBI. Modifications to this MOU will have no force and effect unless and until such modifications are reduced to writing and signed by an authorized representative of the parties thereto. This MOU will, at regular intervals, be subjected to a thorough review to determine if changes are appropriate.

The provisions set forth in this MOU are solely for the purpose of internal guidance of components of the Department of the Interior and the Department of Justice. This MOU does not, is not intended to, shall not be construed to, and may not be relied upon to, create any substantive or procedural rights enforceable at law by any party in any matter, civil, or criminal. This MOU does not, is not intended to, and shall not be construed to, exclude, supplant or limit otherwise lawful activities of the Department of Interior or the Department of Justice.

By subscription of their signatures below, the parties acknowledge that they have read, understand, and will abide by the foregoing statements.

Bruce Babbitt
Secretary
United States Department of Interior

September 3, 1993

Janet Reno
Attorney General
United States Department of Justice
November 22, 1993

ATTACHMENT C

BIA-OFFICE OF JUSTICE SERVICES
DEPUTY DIRECTOR'S BULLETIN

Date:: 06/30/2008
Bulletin # 08-01

Distribution to:: All OJS Personnel

OJS INFORMATION BULLETIN

June 30, 2008
Bulletin number 08-01

To: All Office of Justice Services and Tribal Police Personnel

Subject: Charges for Domestic Violence, Crimes Against Children, and Sexual Offenses

It has been brought to my attention that some victims of the above listed offenses may be told they have to "press charges" or asked if they will press charges in order for an arrest or charge to be filed against the offender.

Personnel are reminded that these offenses are violations of federal, state, or tribal law and do not require a victim to press charges. Officers shall not make an arrest of an offender contingent upon a victim pressing or agreeing to press charges. Victims will not be asked if they will press charges or given any indication that prosecution is their responsibility. Their role is simply that of a victim/witness of the offense.

OJS employees are directed to review section 2-30-Domestic Violence, 2-31-Child Abuse and Neglect, and 2-43-Sexual Assault Investigations found in the second edition of the Law Enforcement Handbook which will be published and distributed in the near future.

W. PATRICK RAGSDALE

Deputy Director, OFFICE OF JUSTICE SERVICES

Distribute to: U.S. Attorneys for Indian Country
Victim Witness Coordinators (All Jurisdictions)
Federal Bureau of Investigation, Indian Country, Washington, DC

ATTACHMENT D

INVESTIGATIVE REPORT CHECKLIST

Case Name: _____ **Case Agent:** _____

Agency File #: _____

☐ **SUMMARY:** The report contains a summary of the facts (__). A summary has been included in the cover letter accompanying the report (__).

☐ **ELEMENTS:** Elements of proposed charges have been reviewed in the *Big Book of Elements* (__) or reviewed with the AUSA (__). Report addresses each element and identifies proof.

☐ **STATEMENTS OF DEFENDANT:** [Rule 16(a)(1)(A)] The subject(s) has not given any statements (__). All statements of the subject(s), located in any agency file, have been included (__). The rough notes of the subject interview(s) are provided in a separate envelope (__).

☐ **LAB REPORTS/*CURRICULUM VITAE* OF EXPERT WITNESSES:** [Rule 16(a)(1)(D,E)] There were no forensic tests conducted in this case (__). All laboratory reports are included in report (__). Evidence was submitted on _____ and reports have been promised by _____ (__). The qualifications of the expert(s) are included (__).

☐ **PHYSICAL EVIDENCE:** [Rule 16(a)(1)(C)] All warrant applications, warrants, and inventories are included in the report ( ). All evidence, whether included with the report or retained by the agency, is inventoried on page _____of the report. All physical evidence reasonably capable of being reproduced (documents, tapes, photographs, etc.) is included in the report (__).

☐ **OUTSTANDING EVIDENCE:** There are no investigative reports or interview memoranda not included in the report (__). The report is missing the items described on page _____ of this report. Those missing items will be forwarded no later than _____.

☐ **VICTIM AND LOSS INFORMATION:** [42 U.S.C. § 10606] There is no victim and no loss (__). A Victim and Loss information (VALI) form has been completed for each victim and accompanies the report (__).

☐ **AGENCY IDENTIFICATION & COLLATERAL FILE SEARCH:** No other agency was involved in the investigation of this matter (__). All agencies who were involved in the investigation are identified in the summary. All collateral files, including administrative files and files of other state, local or federal agencies ***a)*** are incorporated in the report (__) ***b)*** have been thoroughly reviewed and contain no discoverable information (__).

☐ **OTHER ACTS EVIDENCE:** [Rule 404(b)] There is no other acts type of evidence (__). Evidence of other crimes which tend to show intent, motive, association or method of operation have been included at page ___ of this report (__).

☐ **EXCULPATORY EVIDENCE:** [*Brady* & *Giglio*] There is no known evidence that exculpates the defendant (__). No witness received any promise or benefit in exchange for their assistance (__). All evidence which tends to exculpate the defendant has been included in the report at page ___. All benefits promised or given to any witness has been included in the memorandum of interview of the witness or listed separately on page ___ of the report (__).

☐ **FORFEITURE:** No forfeiture (__). Forfeitable property is listed on page ___ of the report (__).

☐ **TWO COPIES OF THE REPORT HAVE BEEN PRODUCED AND FORWARDED TO THE U.S. ATTORNEY IN BILLINGS.**

ATTACHMENT E

VICTIM AND LOSS INFORMATION
District of Montana

Case/Subject(s) Name: _____

Description of Offense: _____

Case Agent: _____ Agency File #: _____

Name of Victim (No. ___ of ___): _____

(If more than one victim in this case, complete separate sheet for each victim. Duplicate pages as necessary.)

IF VICTIM IS AN INDIVIDUAL PLEASE COMPLETE THIS SECTION

SSN: _____ DOB: _____

Mailing Address: _____ Work Name: _____

_____ Work Address: _____

_____ _____

E-mail Address: _____ _____

Home Telephone: _____ Work Telephone: _____

Next of Kin/Contact Name: _____ Relationship: _____

Mailing Address: _____ Work Name: _____

_____ Work Address: _____

_____ _____

Home Telephone: _____ Work Telephone: _____

IF VICTIM IS A FINANCIAL INSTITUTION, BUSINESS OR GOVERNMENT ENTITY, COMPLETE THIS SECTION

Contact Person: _____ Title: _____

Tax ID No.: _____ Telephone: _____

Address: _____ Fax: _____

_____ _____

LOSS TO VICTIM

Personal Injury:	Yes ___	No ___	Amount of Loss/Claimed* _____/_____
Property:	Yes ___	No ___	Amount of Loss/Claimed* _____/_____
Misc. Expenses:	Yes ___	No ___	Amount of Loss/Claimed* _____/_____

* The amount of loss may be greater than the amount claimed in cases where pre-indictment restitution has been made or where property is returned. **For Example,** if a robbery involved $2,500 but all the property was retrieved and returned, this section should read "$2,500/0." If an insurance company made the victim whole then restitution will be made to the third party and this section should read "$2,500/$2,500" with a note that the insurance company is entitled to the restitution.

ATTACHMENT F

Drug Violation Intake Summary
[FGJ Summary Review]

Request for Prosecution of _____

_____

_____

Request for ___ Complaint ___ Search Warrant ___ Indictment

Submitted by _____

Date _____

(Information in this section to be completed by USAO)

Upon review of the attached information, a case regarding the defendant(s) listed herein is to be opened and assigned to AUSA _____

_____

_____

(Date)

_____040 Drug Trafficking (All)
_____045 Simple Drug Possession
_____047 OCDETF (All) _____OCDETF #
_____053 Operation Triggerlock (924(c))
_____055 Immigration
_____065 Reservation drug case (secondary entry)
(Specify reservation) _____

Case opened _____ , # _____ , and forwarded to AUSA _____

_____

1 - case management file
1 - assigned AUSA (office file)
☐ ATTF coordinator/analyst (for tracking)

I. **Summary of Offense Conduct:** (Identify trafficking pattern and ultimate known source)

II. **Date of Offense**: (If conspiracy, start and end date) _____

III. **Most Serious Readily Provable Violation(s):**

21 USC § 841 (distribution, possession, manufacture) _____
21 USC § 846 (attempt/conspiracy) _____
18 USC § 924(c) (use, carry, possession of firearm) _____
18 USC § 922(g)(1) (felon in possession of firearm) _____
18 USC § 843 (use of communication facility in drug trafficking _____
18 USC § 1956 (Money Laundering) _____
21 USC § 853 (Forfeiture) _____
21 USC § 952 (Importation) _____
Other Statutes (Specify) _____
Protected location (Specify) _____

IV. **Offense Level Based on Drug Quantity** (See Chapter 2, Offenses Involving Drugs, attached hereto)

Sum

A. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or

	Conspiracy	§ 2D1.1	_____
B.	Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy	§ 2D1.2	_____
C.	Continuing Criminal Enterprise; Attempt or Conspiracy Extreme	§ 2D1.5	_____
D.	Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy	§ 2D1.6	_____
E.	Unlawful Sale or Transportation of Drug Paraphernalia; Attempt or Conspiracy	§ 2D1.7	_____
F.	Renting or Managing a Drug Establishment; Attempt or Conspiracy	§ 2D1.8	_____
G.	Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances; Attempt or Conspiracy	§ 2D1.9	_____
H.	Endangering Human Life While Illegally Manufacturing a Controlled Substance; Attempt or Conspiracy	§ 2D1.10	_____
I.	Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy	§ 2D1.11	_____
J.	Unlawful Possession, Manufacture, Distribution, Transportation, Exportation, or Importation of Prohibited Flask, Equipment, Chemical, Product, or Material; Attempt or Conspiracy	§ 2D1.12	_____
K.	Structuring Chemical Transactions or Creating a Chemical Mixture to Evade Reporting or Recordkeeping Requirements;		

	Presenting False or Fraudulent Identification to Obtain a Listed Chemical; Attempt or Conspiracy	§ 2D1.13	_____

Unlawful Possession

L.	Unlawful Possession; Attempt or Conspiracy	§ 2D2.1	_____
M.	Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge; Attempt or Conspiracy	§ 2D2.2	_____
N.	Operating or Directing the Operation of a Common Carrier Under the Influence of Alcohol or Drugs	§ 2D2.3	_____

Regulatory Violations

O.	Regulatory Offenses Involving Registration Numbers; Unlawful Advertising Relating to Schedule I Substances; Attempt or Conspiracy	§ 2D3.1	_____
P.	Regulatory Offenses Involving Controlled Substances or Listed Chemicals; Attempt or Conspiracy	§ 2D3.2	_____

V. Sentencing Enhancements (See Chapter 3, Adjustments, attached hereto)

			Sum
A.	Victim Related Adjustments (See Chapter 3, Part A)	§ _____	_____
B.	Role in Offense Adjustment (See Chapter 3, Part B)	§ _____	_____
C.	Obstruction Adjustment (See Chapter Three, Part C)	§ _____	_____
D.	Multiple Counts (See Chapter 3, Part D)	§ _____	_____
E.	Acceptance of Responsibility		

(See Chapter 3, Part E) § _____ _____

VI. Departures (See Chapter 5K, Other Grounds for Departure, Policy Statements, attached hereto)

			Applies
A.	Death	§ 5K2.1	_____
B.	Physical Injury	§ 5K2.2	_____
C.	Extreme Psychological Injury	§ 5K2.3	_____
D.	Abduction or Unlawful Restraint	§ 5K2.4	_____
E.	Property Damage or Loss	§ 5K2.5	_____
F.	Weapons and Dangerous Instrumentalities	§ 5K2.6	_____
G.	Disruption of Governmental Function	§ 5K2.7	_____
H.	Extreme Conduct	§ 5K2.8	_____
I.	Criminal Purpose	§ 5K2.9	_____
J.	Victim's Conduct	§ 5K2.10	_____
K.	Lesser Harms	§ 5K2.11	_____
L.	Coercion and Duress	§ 5K2.12	_____
M.	Diminished Capacity	§ 5K2.13	_____

VII. Defendants: (List in order of perceived culpability)

FULL NAME	RBC	DOB	SSN	Most Serious Readily Provable Violation	OP	PF

FULL NAME	RBC	DOB	SSN	Most Serious Readily Provable Violation	OP	PF

RBC: Check if represented by counsel
OP: Check if on paper
PF: Check if has prior felony convictions

VIII. Defendant Statements:

The following defendants have been interviewed by law enforcement:

Defendant	Law Enforcement Officer	Date

Tape recorded _____ Yes_____ No
Transcript Prepared _____ Yes_____ No
Consensual Recording _____ Yes_____ No
Transcript Prepared _____ Yes_____ No

IX. 851 Information(s)*

Defendant Name	Prior Conviction(s)

*Provide copies of all judgments and charging documents for all 851 eligible offenses.

404(b) (other crimes evidence) (explain)

_____

_____

_____

X. Type of Drug (Estimate most readily provable amount)

Methamphetamine: _____ Estimated Quantity: _____
(80% = Ice)

Cocaine: _____ _____

Cocaine Base: _____ _____

Heroin: _____ _____

Marijuana: _____ _____

Other: _____ _____

Clan Lab: _____ Est. Production: _____

Source of Supply (If known): _____

Point of Origin in Eastern Washington (Specify): _____

XI. Potential Witnesses

NAME	REPORT OF INTERVIEW (Y/N) AND DATE	DOB	SSN	HAS CRIMINAL HISTORY

XII. Scientific Evidence

Field Test Performed: Yes _____ No _____

Drug Analysis: DEA Lab: _____ State Lab: _____

Lab Report: Received _____ Pending _____

Anticipated date _____

Fingerprint Exam: Yes _____ No _____

Report: Received _____ Pending _____

Handwriting Exam: Yes _____ No _____

Report: Received _____ Pending _____

Other: (Specify) _____

XIII. Expert Witnesses

Chemist: _____ Vitae Attached: Yes _____ No _____
Contact Address: _____
Phone Numbers: _____

Firearm: _____ Vitae Attached: Yes _____ No _____
Contact Address: _____
Phone Numbers: _____

Computer: _____ Vitae Attached: Yes _____ No _____
Contact Address: _____
Phone Numbers: _____

Other: _____ Vitae Attached: Yes _____ No _____
Contact Address: _____
Phone Numbers: _____

XIV. Exhibits:

Drug Exhibits: (List UCA buys/Seizures)

DEFENDANT NUMBER	AMOUNT BOUGHT /SEIZED	DATE	LOCATION	C/I BY NUMBER	BODY WIRE/ VIDEO/ OTHER	TRANSCRIPT DONE (Y/N)	WITNESS TO VERIFY TRANSCRIPT

Firearms:

Type	Caliber	Model	Serial #	Brandished/ Discharged

Wire Transfers:

DATE	TYPE	SENDER	CONTROL NUMBER	RECEIVER	AMOUNT

Other Evidence:

Toll Records _____ Financial Records _____ Photographs _____

Documents seized in search _____ Documents obtained by FGJ _____

Physical evidence (describe): _____

_____

_____

XV. Financial Investigation

Have you begun a financial investigation? Yes____ No____

If you have not yet begun the financial investigation, please explain why not:

_____

_____

If yes, what financial investigative steps have you pursued? (Check all that apply)

- ☐ All witness debriefings inquired about nature of assets and proceeds of the organization
- ☐ All witness debriefings inquired about methods of moving/laundering proceeds
- ☐ Commercial database checks
- ☐ Grand jury subpoenas for credit reports, bank account information and other financial records
- ☐ Requests for records of wire transfers, money order purchases or other financial transactions
- ☐ Public sources review (i.e.; bankruptcy filings, divorce proceedings, articles of incorporation)
- ☐ Mail cover
- ☐ Trash search or search warrant related to financial records/money laundering activity
- ☐ Suspicious Activity Report (SAR) review
- ☐ Ex Parte Tax Order

- ☐ Net Worth Analysis
- ☐ Asset Tracing
- ☐ Financial/Money Laundering undercover operation

- ☐ Other (specify): _____

XVI. Assets Subject to Forfeiture

Real Estate (Specify) _____

Conveyances (Specify) _____

Currency(Specify) _____

Other: _____

Preseizure Planning with USM: Yes _____ No _____

Who has physical custody of the asset at present? _____

_____

_____

Is defendant receiving welfare benefits? Yes _____ No _____

XVII. Search and Seizure

Evidence seized pursuant to local warrant: Yes _____ No _____
(Copy of local warrant must be attached)

Consent _____

Search Incident to Arrest _____

Exigent circumstances _____

Other _____

XVIII. Agency Requesting Prosecution:

Submitting Agency Information:

Submitting Agency: _____

Lead Agent: _____

Office Phone: _____ Cell Phone: _____

Pager: _____ Fax: _____

Home Phone: _____

Other Relevant Contact Numbers: _____

Federal Agency Notified: Yes___ No___

Lead Agent _____

Federal Agency File Number _____

Office Phone: _____ Cell Phone: _____

Pager: _____ Fax: _____

Home Phone: _____

Other Relevant Contact Numbers: _____

Other Agencies Involved: _____

XIX. Are you aware of any information favorable to any defendant or witness (Brady/Giglio) (Explain)

_____

_____

_____

_____

XX. Victim and Loss Information Sheet Attached _____ Yes _____ No
(Include drug cleanup costs)

I further understand that the duty to disclose this information continues until the case is fully and finally resolved including any appeal.

DATED this _____ day of _____, 200___

_____
AGENT/INVESTIGATOR