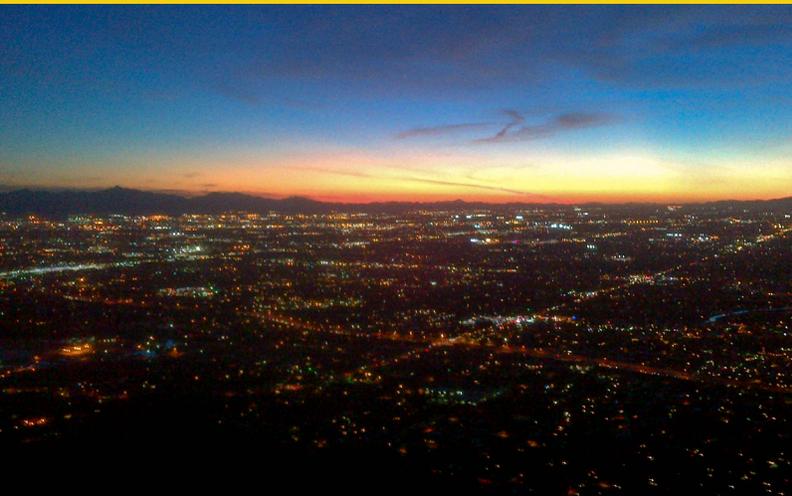


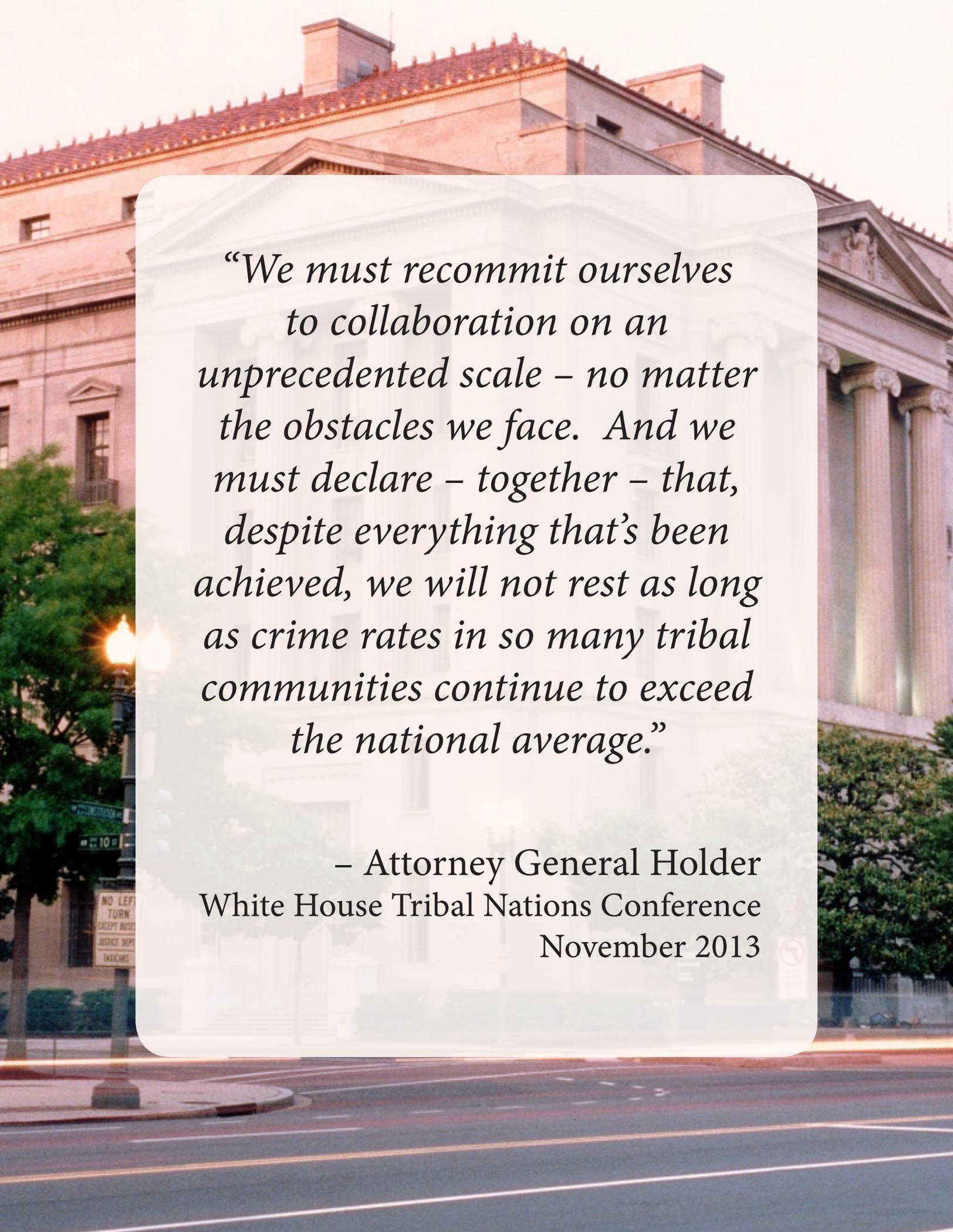


# U.S. Department of Justice

## Indian Country Investigations and Prosecutions

2013





*“We must recommit ourselves to collaboration on an unprecedented scale – no matter the obstacles we face. And we must declare – together – that, despite everything that’s been achieved, we will not rest as long as crime rates in so many tribal communities continue to exceed the national average.”*

– Attorney General Holder  
White House Tribal Nations Conference  
November 2013

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### *Cover Photographs*

Clockwise starting from the Top of Front Cover:

1. View of the Northern Cheyenne Reservation, home to the Northern Cheyenne Nation (Montana).
2. Mandan ceremonial house at the recreated Mandan Village at Fort Abraham Lincoln State Park (North Dakota).
3. View of the sunset from Piastawa Peak (Arizona).

Second Cover:

1. United States Department of Justice, Robert F. Kennedy Building, Washington, D.C.

*“As detailed in this report, the Department of Justice is making good on our commitment to strengthen cooperation with sovereign tribes, reduce violent crime, and ensure justice for every individual. From our work to empower Indian women under the landmark Violence Against Women Reauthorization Act, to the task force we established to safeguard children in Indian country from violence and abuse, we have made significant strides – in close partnership with tribal nations – to bolster the safety and security of all American Indian and Alaska Native communities. As we move forward, we will continue to expand on this critical work; to deepen our ongoing efforts; and to reaffirm our dedication to the promise of equal rights, equal protection, and equal justice for all.”*

— Attorney General Eric Holder

## **Executive Summary**

The Department of Justice is pleased to present its calendar year (CY) 2013 report to Congress on Indian Country Investigations and Prosecutions, as required under Section 212 of the Tribal Law and Order Act (TLOA), which was signed into law by the President on July 29, 2010. Prior to TLOA, in 2009, Attorney General Eric Holder had already launched a Department-wide initiative on public safety for tribal nations with the goal of creating substantial, lasting improvements in public safety for American Indians and Alaska Natives, to undertake reforms to institutionalize the federal commitment to public safety for tribal nations, and to strengthen the ability of tribal justice systems to protect their people and pursue justice.

The fight against domestic violence in Indian country has been an especially important priority for the Department. In 2013, Congress and this administration took an historic step forward with the passage of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), which the President signed into law on March 7, 2013. This important Act improves the ability of federal and tribal authorities to respond to domestic violence offenders and protect victims in three crucial ways. First, it strengthens the statutory language and penalty provisions for certain crimes of domestic violence, such as strangulation and stalking. Second, the Act recognizes the tribes’ inherent authority to exercise “special domestic violence criminal jurisdiction” over those who commit acts of domestic violence or dating violence or who violate certain protection orders in Indian country, regardless of their Indian or non-Indian status. Finally, it contributes to tribal self-determination by recognizing that tribes have full civil jurisdiction to issue and enforce protection orders involving any person in matters arising anywhere in the tribe’s Indian country or otherwise within the tribe’s authority. These provisions, which help hold all perpetrators accountable, were first proposed, and have long been championed, by the Department of Justice.

Congress, through VAWA 2013, provided new tools to fight domestic violence in Indian country, and the Department spared no time utilizing them. From the Act’s effective date, March 7, 2013, through the end of fiscal year 2013, United States Attorney’s Offices (USAO)

with prosecutorial responsibilities in Indian country have charged defendants with the amended provisions of the federal assault statute – §§ 113(a)(7) and (a)(8) – specifically relating to domestic assault offenses. And while the new law’s tribal criminal jurisdiction provision takes effect on March 7, 2015, the Department recently approved three tribes’ applications under VAWA 2013’s voluntary “Pilot Project” authorizing tribes to begin exercising special domestic violence criminal jurisdiction sooner. These tribes – the Pascua Yaqui Tribe of Arizona, the Umatilla Tribes of Oregon, and the Tulalip Tribes of Washington – will be the first tribes in the nation to exercise special criminal jurisdiction over crimes of domestic and dating violence, regardless of the defendant’s Indian or non-Indian status, under VAWA 2013.

The Department of Justice recognizes the United States’ unique legal relationship with federally recognized Indian tribes. As the Attorney General has stated, improving public safety and the fair administration of justice in Indian country is a top priority for the Department of Justice. The Department also recognizes that in many cases the tribal government is best positioned to effectively investigate and prosecute crime occurring in its own community. The Department has supported Congressional efforts to increase tribal courts’ legal authority to address crime in their own jurisdictions, such as the expansion of tribal sentencing authority in TLOA and the enhanced ability of tribal authorities to respond to domestic violence in VAWA 2013. The Department is working towards ensuring that both tribal and federal criminal justice systems are equipped with the authority and resources needed to ensure public safety in Indian country. To this end, the Department continues its work to strengthen relationships with federally recognized tribes, improve the coordination of training and information-sharing, and enhance tribal capacity, so that together the tribal and federal governments can provide effective law enforcement and prosecutions in Indian country.

Strengthening partnerships and tribal self-governance was a major theme of the Attorney General’s message to tribal leaders on November 13, 2013, at the White House Tribal Nations Conference, where he announced a proposed statement of principles to guide the Department’s work with federally recognized tribes. As the Attorney General said, “As a result of these partnerships – and the efforts of everyone here – our nation is poised to open a new era in our government-to-government relationships with sovereign tribes.”

United States Attorneys’ offices are engaged in an unprecedented level of collaboration with tribal law enforcement, consulting regularly with them on crime-fighting strategies in each District, joining in Federal/tribal task forces, sharing case and grant information, training investigators, and cross-deputizing tribal police and prosecutors to enforce Federal law and to allow those deputized individuals to bring cases directly to Federal court. The Department’s enhanced Tribal Special Assistant United States Attorney (SAUSA) program is an important tool contributing to improved collaboration. Tribal SAUSAs, who are cross-deputized tribal prosecutors, are able to prosecute crimes in both tribal court and federal court as appropriate. These Tribal SAUSAs serve to strengthen a tribal government’s ability to fight crime and to increase the USAO’s coordination with tribal law enforcement personnel. The work of Tribal SAUSAs can also help to accelerate a tribal criminal justice system’s implementation of TLOA and VAWA 2013.

The Department's prioritization of Indian country crime and the increase in federal resources are indicative of our efforts to bolster the faith and confidence that tribal leaders and tribal community members have in the criminal justice system. Prior to passage of TLOA, concerns were raised that the Department had not sufficiently shared case information or communicated with tribes concerning cases declined by the U.S. Attorneys' offices, and the Department continues to take these concerns seriously. To that end, the Department, through its collaborative approach, has made strenuous efforts to increase communication and further strengthen the bond of trust between federal and tribal investigators, prosecutors, and other personnel across both criminal justice systems. In due course, we believe it will help make communities safer.

Section 212 of TLOA requires the Attorney General to submit an annual report to Congress detailing investigative efforts by the FBI and dispositions of matters received by United States Attorneys' Offices (USAOs) with Indian country responsibility. The data presented in this report cover only those offenses reported to the FBI and federal prosecutors. Notably absent are the majority of criminal offenses committed, investigated, and prosecuted in tribal communities – namely, those adjudicated in tribal justice systems. In many parts of Indian country, tribal courts are holding lawbreakers accountable, protecting victims, providing youth prevention and intervention programs, and confronting precursors to crime such as alcohol and substance abuse. These efforts are often in partnership with Federal agencies or accomplished by accessing Federal programs and Federal grant dollars.

To satisfy TLOA Section 212, for CY 2013, the FBI and the Executive Office for United States Attorneys (EOUSA) have compiled four types of case-specific information:

- The type of crimes alleged;
- The status of the accused as Indian or non-Indian;
- The status of the victim as Indian or non-Indian; and
- The reason for deciding against referring the investigation for prosecution (FBI) or the reason for deciding to decline or terminate the prosecution (USAOs).

As discussed in the report, certain limitations in the data make it difficult to draw broad conclusions based on this information. The data nevertheless provide a useful snapshot of the Department's current law enforcement work in Indian country. It is our hope that this report will provide helpful context as Congress and the Department work together to improve public safety in Indian country in future years.

Despite the data limitations, certain basic facts are clear:

- **A substantial majority of Indian country criminal investigations opened by the FBI were referred for prosecution.**
- **A substantial majority of Indian country criminal cases opened by the United States Attorneys' Offices were prosecuted.**

- **The most common reason FBI Indian country investigations were closed administratively without referral for prosecution was that the investigation concluded that no federal crime had occurred.** Analysis of CY 2013 data indicates that 679 FBI Indian country investigations were closed administratively without referral to a prosecuting authority — approximately 33% of the investigations that were opened. Reasons for non-referral include deaths determined to be the result of natural causes, accident, or suicide (*i.e.*, non-homicides; 20% in CY 2013 of all investigations not referred), and unsupported allegations in which there was insufficient evidence of criminal activity (24% in CY 2013).
- **All but 30 of the 164 death investigations the FBI closed administratively in CY 2013 were closed because the FBI established that the death was due to causes other than homicide – i.e., accidents, suicide, or death due to natural causes.**
- **USAO data for CY 2013 show that 34% (853) of all Indian country submissions for prosecution (2,542) were declined for prosecution. In CY 2012, USAOs declined approximately 31% (965) of all (3145) Indian country submissions for prosecution. USAO data for CY 2011 indicate that just under 37% (1,041) of all Indian country submissions for prosecution (2,840) were declined.**
- **The most common reason for declination by USAOs was insufficient evidence (56% in CY 2013, 52% in CY 2012, and 61% in CY 2011).**
- **The next most common reason for declination by USAOs was referral to another prosecuting authority (21% in CY 2013, 24% in CY 2012, and 19% in CY 2011).**

The 2009 Senate report accompanying TLOA acknowledged that “declination statistics alone do not show the Department’s commitment to combating reservation crime. In fact, they likely reflect difficulties caused by the justice system in place” including the “lack of police on the ground in Indian country” and “shortfalls for training, forensics equipment, [and] personnel.” We agree that declination rates are not the best or only way to measure justice or success. We believe that the Department’s prioritization of and initiatives in Indian country eventually will lead to enhanced public safety and a better quality of life in Indian country, which are far better measures of success in this area. The Department of Justice strives as never before to see that, throughout Indian country, justice shall be done.

## **Tribal Law and Order Act of 2010 Background**

The Tribal Law and Order Act of 2010 was signed into law by President Obama on July 29, 2010. In part, TLOA is intended to establish accountability measures for Federal agencies responsible for investigating and prosecuting violent crime occurring in Indian country. To that

end, Section 212 of TLOA requires the Attorney General to submit annual reports to Congress detailing investigative efforts and prosecutive disposition reports.

The FBI is required to report “by Field Division, information regarding decisions not to refer to an appropriate prosecuting authority cases in which investigations had been opened into an alleged crime in Indian country.” The USAOs are to submit to the Native American Issues Coordinator, located within EOUSA, information by Federal judicial district regarding “all declinations of alleged violations of Federal criminal law that occurred in Indian country that were referred for prosecution by law enforcement agencies.” The FBI and the USAOs’ reporting obligations are as follows:

- A. The type of crime(s) alleged;
- B. The status of the accused as Indian or non-Indian;
- C. The status of the victim as Indian or non-Indian; and
- D. The reason for deciding against referring the investigation for prosecution (FBI) or the reason for deciding to decline or terminate the prosecution (USAOs).

The information the FBI is required to report under TLOA is substantively different from the information reported by the USAOs. Most importantly, the FBI is responsible for *investigating* allegations of Federal crimes in Indian country, while the U.S. Attorneys’ Offices are responsible for *prosecuting* such crimes. The FBI’s data contain cases not referred to USAOs, and EOUSA’s data account for cases referred by various investigative agencies, only one of which is the FBI. As a result, direct comparisons of FBI and EOUSA numbers are not possible.

## **Federal Criminal Responsibilities in Indian Country**

The two main Federal statutes governing Federal criminal jurisdiction in Indian country<sup>1</sup> are 18 U.S.C. § 1152 and § 1153. Section 1153, known as the Major Crimes Act, gives the Federal Government jurisdiction to prosecute certain enumerated offenses, such as murder, manslaughter, rape, aggravated assault, and child sexual abuse, when they are committed by Indians in Indian country. Section 1152, known as the General Crimes Act, gives the Federal Government exclusive jurisdiction to prosecute all crimes committed by non-Indians against Indian victims in Indian country. Section 1152 also grants the Federal Government jurisdiction to prosecute minor crimes by Indians against non-Indians, although that jurisdiction is shared with tribes, and provides that the Federal Government may not prosecute an Indian who has been punished by the local tribe.

To protect tribal self-government, Section 1152 specifically excludes minor crimes between Indians, which fall under exclusive tribal jurisdiction. The Federal Government also has jurisdiction to prosecute Federal crimes of general application, such as drug and financial crimes, when they occur in Indian country unless a specific treaty or statutory provision provides otherwise. On a limited number of reservations, the Federal criminal responsibilities

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<sup>1</sup> “Indian country” is the legal term used to describe reservations and other lands set aside for Indian use, such as Indian allotments, and lands held in trust for Indians or Indian tribes. 18 U.S.C. § 1151.

under Sections 1152 and 1153 have been ceded to the States pursuant to “Public Law 280” or other Federal laws.<sup>2</sup>

The United States Constitution, treaties, Federal statutes, executive orders, and court decisions establish and define the unique legal and political relationship that exists between the United States and Indian tribes. The FBI and the USAOs are two of many Federal law enforcement agencies with responsibility for investigating and prosecuting crimes that occur in Indian country.<sup>3</sup> In addition to the FBI, the Department of the Interior’s Bureau of Indian Affairs (BIA) plays a significant role in enforcing federal law, to include the investigation and presentation for prosecution of cases involving violations of 18 U.S.C. §§ 1152 and 1153. The delineation of responsibilities between the FBI and the BIA was the subject of a Memorandum of Understanding (MOU) made between the DOI and the DOJ in 1993.<sup>4</sup> This MOU also provided that each United States Attorney “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.” In short, numerous Federal and tribal law enforcement agencies are necessary for the effective and efficient administration of criminal justice in Indian country. Determining which law enforcement agency, federal or tribal, has primary responsibility for investigation of a particular crime may depend on the nature of the crime committed and any applicable local guidelines, which vary across jurisdictions.

Indian country case statistics can be drawn from three different jurisdictions: Federal, state, or tribal. The FBI’s Uniform Crime Report (UCR) contains offense data from all three sources, but counts only crimes reported to law enforcement for those agencies that volunteer to submit. Furthermore, UCR does not collect the specific information on declinations and administrative closing required by Section 212 of TLOA. It should also be noted that matters and cases from Public Law (P.L.) 280 jurisdictions do not generally appear in Federal Indian country crime statistics because Federal authority to prosecute most cases in those jurisdictions has been transferred to the state. In addition, this report does not cover cases referred to the Department of the Interior’s Bureau of Indian Affairs or other law enforcement agencies if they were not subsequently referred to a USAO for prosecution. The numbers presented by the FBI and EOUSA in this report include only cases subject to federal jurisdiction and reported to the FBI or referred to a USAO by a federal, state, local, or tribal agency. Thus, this report represents only one piece of the total Indian country violent crime picture – those offenses referred either

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<sup>2</sup> Federal jurisdiction was ceded under Public Law 83-280, 18 U.S.C. § 1162, which required six states to assume jurisdiction over Indian country crimes and divested the Federal Government of jurisdiction to prosecute under the Major and General Crimes Acts in those areas, while giving other states the option to assume that jurisdiction. Congress has also passed a variety of tribe-specific statutes providing for a similar framework of state jurisdiction over crimes in those locations. The Federal Government retains jurisdiction to prosecute generally applicable offenses in P.L. 83-280 areas.

<sup>3</sup> FBI jurisdiction for the investigation of Federal violations in Indian country is statutorily derived from 28 U.S.C. § 533, pursuant to which the FBI was given investigative authority by the Attorney General. Other Federal agencies with criminal jurisdiction in Indian country include the Bureau of Indian Affairs, the United States Marshals Service, the National Park Service, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Bureau of Land Management, the United States Postal Service, and the United States Secret Service, to name a few.

<sup>4</sup> [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm00676.htm](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00676.htm)

to the FBI for investigation or to a USAO for prosecution. A more complete understanding of crime rates in Indian country would require that all reported criminal offenses, whether reported to and/or filed with the tribal, state, or Federal government, be collectively assembled and analyzed. Today, no single system exists that would permit collection and analysis of aggregate Indian country crime and prosecution data across sovereigns. And even if such a system existed, unreported crime would remain outstanding and uncounted.

## Federal Bureau of Investigation TLOA Report

### *FBI Indian Country Investigations*

The FBI has investigative responsibility for federal crimes committed on approximately 200 Indian reservations: this responsibility is shared concurrently with the Bureau of Indian Affairs and other federal agencies with a law enforcement mission in Indian country.<sup>5</sup> This number generally excludes tribes in P.L. 280 states, with the exception of crimes of general applicability (*e.g.*, drug offenses, Indian gaming, and violence-against-women offenses). Currently, there are approximately 119 Special Agents dedicated full-time and 42 FBI Victim Specialists working in support of Indian country investigative matters in over 20 FBI Field Offices. As of January 2014, there were approximately 3,000 open FBI Indian country investigations. Table 1 lists FBI Divisions with Indian country responsibilities.<sup>6</sup>

**Table 1: FBI Divisions with Indian Country Responsibility**

FBI Division Name	FBI Abbreviation	State(s)
<b>Albany</b>	AL	NY
<b>Albuquerque</b>	AQ	NM
<b>Anchorage</b>	AN	AK
<b>Boston</b>	BS	MA, ME, RI
<b>Buffalo</b>	BF	NY
<b>Charlotte</b>	CE	NC
<b>Columbia</b>	CO	SC
<b>Detroit</b>	DE	MI
<b>Denver</b>	DN	WY, CO
<b>El Paso</b>	EP	TX
<b>Indianapolis</b>	IN	IN
<b>Jackson</b>	JN	MS
<b>Kansas City</b>	KC	KS, MO
<b>Las Vegas</b>	LV	NV
<b>Los Angeles</b>	LA	CA
<b>Miami</b>	MM	FL
<b>Memphis</b>	ME	TN

<sup>5</sup> Other Federal law enforcement agencies with a criminal justice mission in Indian country include the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the National Park Service; and the Bureau of Land Management to name a few.

<sup>6</sup> Not all FBI Divisions listed had CY 2013 Indian country investigations to report under TLOA. Some states contain multiple Divisions, and some Divisions overlap multiple states.

FBI Division Name	FBI Abbreviation	State(s)
<b>Mobile</b>	MO	AL
<b>Minneapolis</b>	MP	MN, ND, SD
<b>Milwaukee</b>	MW	WI
<b>New Haven</b>	NH	CT
<b>New Orleans</b>	NO	LA
<b>New York</b>	NYO	NY
<b>Oklahoma City</b>	OC	OK
<b>Omaha</b>	OM	NE, IA
<b>Portland</b>	PD	OR
<b>Phoenix</b>	PX	AZ
<b>San Antonio</b>	SA	TX
<b>Sacramento</b>	SC	CA
<b>Seattle</b>	SE	WA
<b>San Diego</b>	SD	CA
<b>San Francisco</b>	SF	CA
<b>Salt Lake City</b>	SU	UT, MT
<b>Tampa</b>	TP	FL

All FBI investigations are required to follow the Attorney General’s Guidelines for Domestic FBI Operations (AGG-Dom) and the FBI Domestic Investigations and Operations Guide (DIOG). These documents standardize policy to ensure that all FBI investigative activities are conducted in compliance with all relevant laws, policies, and regulations, including those designed to protect civil liberties and privacy. Under the DIOG, FBI investigations regarding allegations of Federal law violation in Indian country include both “Assessments” and “Predicated Investigations.”<sup>7</sup> Therefore, whenever the FBI engages in any substantive investigative activity (e.g., interviewing a complainant or potential victim of a vague or non-specific allegation), this is considered an “investigation” for the purposes of TLOA reporting.

### *FBI Indian Country Assessments*

The two most prevalent examples of Indian country Assessments, resulting in an FBI investigation but not a Predicated Investigation or referral for prosecution, are as follows:

Example A: A non-specific allegation of child sexual abuse is referred to the FBI. The FBI presents the child for a forensic interview and medical examination. The child discloses no allegation of child sexual abuse, and the medical exam and other preliminary investigation reveals no corroborative evidence of sexual abuse. The matter is documented to an FBI Indian country child sexual abuse Assessment file and the investigation is administratively closed.

Example B: The FBI is called to a hospital that reports treating an assault victim from a nearby reservation. During the course of this Assessment, the assault victim, who may

<sup>7</sup> FBI Domestic Investigations and Operations Guide (DIOG), 2011 version.

- **The most common reason FBI Indian country investigations were closed administratively without referral for prosecution was that the investigation concluded that no federal crime had occurred.** Analysis of CY 2013 data indicates that 679 FBI Indian country investigations were closed administratively without referral to a prosecuting authority — approximately 33% of the investigations that were opened. Reasons for non-referral include deaths determined to be the result of natural causes, accident, or suicide (*i.e.*, non-homicides; 20% in CY 2013 of all investigations not referred), and unsupported allegations in which there was insufficient evidence of criminal activity (24% in CY 2013).
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<sup>1</sup> “Indian country” is the legal term used to describe reservations and other lands set aside for Indian use, such as Indian allotments, and lands held in trust for Indians or Indian tribes. 18 U.S.C. § 1151.

under Sections 1152 and 1153 have been ceded to the States pursuant to “Public Law 280” or other Federal laws.<sup>2</sup>

The United States Constitution, treaties, Federal statutes, executive orders, and court decisions establish and define the unique legal and political relationship that exists between the United States and Indian tribes. The FBI and the USAOs are two of many Federal law enforcement agencies with responsibility for investigating and prosecuting crimes that occur in Indian country.<sup>3</sup> In addition to the FBI, the Department of the Interior’s Bureau of Indian Affairs (BIA) plays a significant role in enforcing federal law, to include the investigation and presentation for prosecution of cases involving violations of 18 U.S.C. §§ 1152 and 1153. The delineation of responsibilities between the FBI and the BIA was the subject of a Memorandum of Understanding (MOU) made between the DOI and the DOJ in 1993.<sup>4</sup> This MOU also provided that each United States Attorney “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.” In short, numerous Federal and tribal law enforcement agencies are necessary for the effective and efficient administration of criminal justice in Indian country. Determining which law enforcement agency, federal or tribal, has primary responsibility for investigation of a particular crime may depend on the nature of the crime committed and any applicable local guidelines, which vary across jurisdictions.

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<sup>2</sup> Federal jurisdiction was ceded under Public Law 83-280, 18 U.S.C. § 1162, which required six states to assume jurisdiction over Indian country crimes and divested the Federal Government of jurisdiction to prosecute under the Major and General Crimes Acts in those areas, while giving other states the option to assume that jurisdiction. Congress has also passed a variety of tribe-specific statutes providing for a similar framework of state jurisdiction over crimes in those locations. The Federal Government retains jurisdiction to prosecute generally applicable offenses in P.L. 83-280 areas.

<sup>3</sup> FBI jurisdiction for the investigation of Federal violations in Indian country is statutorily derived from 28 U.S.C. § 533, pursuant to which the FBI was given investigative authority by the Attorney General. Other Federal agencies with criminal jurisdiction in Indian country include the Bureau of Indian Affairs, the United States Marshals Service, the National Park Service, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Bureau of Land Management, the United States Postal Service, and the United States Secret Service, to name a few.

<sup>4</sup> [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm00676.htm](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00676.htm)

to the FBI for investigation or to a USAO for prosecution. A more complete understanding of crime rates in Indian country would require that all reported criminal offenses, whether reported to and/or filed with the tribal, state, or Federal government, be collectively assembled and analyzed. Today, no single system exists that would permit collection and analysis of aggregate Indian country crime and prosecution data across sovereigns. And even if such a system existed, unreported crime would remain outstanding and uncounted.

## Federal Bureau of Investigation TLOA Report

### *FBI Indian Country Investigations*

The FBI has investigative responsibility for federal crimes committed on approximately 200 Indian reservations: this responsibility is shared concurrently with the Bureau of Indian Affairs and other federal agencies with a law enforcement mission in Indian country.<sup>5</sup> This number generally excludes tribes in P.L. 280 states, with the exception of crimes of general applicability (*e.g.*, drug offenses, Indian gaming, and violence-against-women offenses). Currently, there are approximately 119 Special Agents dedicated full-time and 42 FBI Victim Specialists working in support of Indian country investigative matters in over 20 FBI Field Offices. As of January 2014, there were approximately 3,000 open FBI Indian country investigations. Table 1 lists FBI Divisions with Indian country responsibilities.<sup>6</sup>

**Table 1: FBI Divisions with Indian Country Responsibility**

FBI Division Name	FBI Abbreviation	State(s)
<b>Albany</b>	AL	NY
<b>Albuquerque</b>	AQ	NM
<b>Anchorage</b>	AN	AK
<b>Boston</b>	BS	MA, ME, RI
<b>Buffalo</b>	BF	NY
<b>Charlotte</b>	CE	NC
<b>Columbia</b>	CO	SC
<b>Detroit</b>	DE	MI
<b>Denver</b>	DN	WY, CO
<b>El Paso</b>	EP	TX
<b>Indianapolis</b>	IN	IN
<b>Jackson</b>	JN	MS
<b>Kansas City</b>	KC	KS, MO
<b>Las Vegas</b>	LV	NV
<b>Los Angeles</b>	LA	CA
<b>Miami</b>	MM	FL
<b>Memphis</b>	ME	TN

<sup>5</sup> Other Federal law enforcement agencies with a criminal justice mission in Indian country include the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the National Park Service; and the Bureau of Land Management to name a few.

<sup>6</sup> Not all FBI Divisions listed had CY 2013 Indian country investigations to report under TLOA. Some states contain multiple Divisions, and some Divisions overlap multiple states.

FBI Division Name	FBI Abbreviation	State(s)
<b>Mobile</b>	MO	AL
<b>Minneapolis</b>	MP	MN, ND, SD
<b>Milwaukee</b>	MW	WI
<b>New Haven</b>	NH	CT
<b>New Orleans</b>	NO	LA
<b>New York</b>	NYO	NY
<b>Oklahoma City</b>	OC	OK
<b>Omaha</b>	OM	NE, IA
<b>Portland</b>	PD	OR
<b>Phoenix</b>	PX	AZ
<b>San Antonio</b>	SA	TX
<b>Sacramento</b>	SC	CA
<b>Seattle</b>	SE	WA
<b>San Diego</b>	SD	CA
<b>San Francisco</b>	SF	CA
<b>Salt Lake City</b>	SU	UT, MT
<b>Tampa</b>	TP	FL

All FBI investigations are required to follow the Attorney General’s Guidelines for Domestic FBI Operations (AGG-Dom) and the FBI Domestic Investigations and Operations Guide (DIOG). These documents standardize policy to ensure that all FBI investigative activities are conducted in compliance with all relevant laws, policies, and regulations, including those designed to protect civil liberties and privacy. Under the DIOG, FBI investigations regarding allegations of Federal law violation in Indian country include both “Assessments” and “Predicated Investigations.”<sup>7</sup> Therefore, whenever the FBI engages in any substantive investigative activity (*e.g.*, interviewing a complainant or potential victim of a vague or non-specific allegation), this is considered an “investigation” for the purposes of TLOA reporting.

### *FBI Indian Country Assessments*

The two most prevalent examples of Indian country Assessments, resulting in an FBI investigation but not a Predicated Investigation or referral for prosecution, are as follows:

Example A: A non-specific allegation of child sexual abuse is referred to the FBI. The FBI presents the child for a forensic interview and medical examination. The child discloses no allegation of child sexual abuse, and the medical exam and other preliminary investigation reveals no corroborative evidence of sexual abuse. The matter is documented to an FBI Indian country child sexual abuse Assessment file and the investigation is administratively closed.

Example B: The FBI is called to a hospital that reports treating an assault victim from a nearby reservation. During the course of this Assessment, the assault victim, who may

<sup>7</sup> FBI Domestic Investigations and Operations Guide (DIOG), 2011 version.

have serious bodily injury, chooses not to make a report and does not identify the assailant or describe details of the assault. The FBI documents the matter to an FBI Indian country assault Assessment file and administratively closes the investigation. (NOTE: Documenting the incident permits the FBI to reopen the matter as a Predicated Investigation at a later date, should the victim later wish to make a report.)

By including Assessments in the TLOA investigations data, the FBI seeks to provide further information regarding the breadth and scope of alleged crimes in Indian country. The classification of Assessments involving any substantive investigative activity as “investigations” reflects the commitment of the FBI to accurate and complete reporting under the TLOA. Additionally, ongoing FBI investigations do not preclude tribal law enforcement from continuing an investigation and making a referral to an appropriate prosecuting authority.

### *FBI Predicated (Full) Investigations*

Predicated “Full” Investigations in Indian country are submitted to the Federal, state, or tribal prosecuting authority or are administratively closed after all logical investigation into the alleged crime has been completed by the FBI.

## **FBI TLOA Investigation Data Collection**

This section will provide a description of the data used to generate the tables provided in this report. Most importantly, these figures represent only a fraction of the cases investigated annually by the FBI in Indian country. Approximately two-thirds of all Indian country investigations opened by the FBI are referred for prosecution. As required by TLOA, this report contains detailed information only on the roughly one-third of investigations administratively closed or not referred for prosecution.

### *Measurement of FBI TLOA Requirements*

- 1. Types of crimes alleged** generally follow a hierarchy rule, where the case is classified by the most serious offense, and are determined at case initiation. To protect information regarding sensitive investigations, totals for Financial Crime, Public Corruption, and Civil Rights investigations were combined. Both felony and misdemeanor (if a misdemeanor allegation is made against a non-Indian subject) domestic-violence investigations are included under the “Assault” category.<sup>8</sup> “Property Crime” includes burglary, larceny, theft, arson, and motor-vehicle theft. “Death Investigations” include homicide and vehicular-homicide investigations, along with other investigations of suspicious or unattended deaths. The “Other” category includes offenses such as weapon possession by felons, robbery, counterfeit or trafficking of cultural items, and any other investigations that do not fit into the other nine categories.

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<sup>8</sup> 18 U.S.C. § 113 (Assault) applies to both domestic violence and general assault offenses. An exception to this overlap is 18 U.S.C. § 117 (Domestic Violence by a Habitual Offender).

2. **The status of the victim and subject** as American Indian or non-American Indian is typically recorded in each case file during the course of the investigation and is generally based on self-reported information provided to the FBI or records obtained from tribal authorities.<sup>9</sup> Tribal enrollment or Native American status is verified as an investigation progresses. No victim or subject status is available to report in the following circumstances: the victim or subject was a business; the case was opened with an unknown/unidentified subject; victim and/or subject information was not documented in the case file; there was no identified victim (*e.g.*, drug investigations, public corruption matters); or various other reasons, including duplicate case openings or other administrative errors. For the purposes of this report, “U” indicates the victim or subject status was unknown at the time the investigation was closed.
  
3. **Reasons for non-referral to prosecuting authorities** were developed after narratives for all non-referred FBI Indian country cases were reviewed. Ten categories were created based on patterns observed after examining all individual case circumstances. A list of non-referral categories is provided in Table 2.

*Data Collection and Verification Process*

Because the FBI’s case-management system does not automatically collect TLOA-mandated data, a manual review of every closed file was conducted. Beginning in January 2011, FBI Headquarters was responsible for verifying all Division TLOA data submissions and collating the information on a quarterly basis.

**Table 2: Reasons for FBI Non-Referral for Prosecution in Indian Country**

<b>Non-Referral Category</b>
Death was not a homicide
Does not meet USAO guidelines or statutory definitions <sup>10</sup>
No remaining leads <sup>11</sup>
Victim is unable to identify subject
Unsupported allegation
Victim or witness is unable or unwilling to assist
Interagency cooperation <sup>12</sup>
Cannot be addressed with current resources <sup>13</sup>
Duplicate or case reopened
Subject died

<sup>9</sup> The FBI does not have direct access to tribal enrollment information.

<sup>10</sup> Many investigations closed for this reason are referred to tribal prosecutors, but are nonetheless reported here for the purposes of transparency.

<sup>11</sup> The FBI exhausted all logical investigation, and was unable to present enough facts for a prosecutive opinion.

<sup>12</sup> The FBI may open an investigation solely for the purpose of assisting another agency that is primarily responsible (such as opening an investigation solely to give a subject a polygraph examination). Because the FBI is not the primary investigator, these investigations are administratively closed and not referred.

<sup>13</sup> The selection of this reason is primarily due to the prioritization of violent crimes against persons.

## Data Limitations

The data presented in this report are subject to a number of limitations. FBI computer systems were designed for case-management purposes, not to serve as statistical databases. The following limitations should be considered when reviewing the data presented below:

- The FBI is only able to track allegations reported to the FBI. Allegations investigated only by the Bureau of Indian Affairs (BIA) or tribal law enforcement are not represented in the FBI's data.
- Calculating crime rates using this data is inappropriate due to the wide variation between Divisions regarding local guidelines and agreements and the presence of other agencies (e.g. BIA), which may dramatically impact the number of FBI investigations opened. The number of investigations reported by each Division depends on the number of cases referred, the number of Indian reservations to which each Division responds, and the types of investigations for which the FBI is responsible in each area.<sup>14</sup>
- Non-referral is not necessarily a permanent status. It is possible that a case closed and not referred may be reopened and referred for prosecution if new information is received.
- Each FBI Division collects TLOA data, which is then submitted to FBI Headquarters for validation. Due to this manual process, a small amount of error may be present in the data.

## FBI TLOA Reporting Information

The FBI closed 2,070 Indian country investigations during CY 2013. Each closed investigation was reviewed manually for purposes of this report. Approximately one in three closed investigations was closed administratively, and thus not referred for prosecution; the other two-thirds were referred to Federal, state, or tribal prosecutors.<sup>15</sup> Table 3 shows, by FBI Division, the total number of closed investigations (*i.e.*, both those that were referred for prosecution and those that were administratively closed) in CY 2013. Table 3 also lists the number of investigations that were administratively closed and thus not referred for prosecution (679 for CY 2013). Both overall, and in most FBI Divisions, the total number of cases referred for prosecution exceeded the number of cases administratively closed. Four Indian country Divisions — Phoenix (PX), Minneapolis (MP), Salt Lake City (SU), and Albuquerque (AQ) — accounted for approximately 78% of all FBI Indian country investigation closures during CY 2013.

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<sup>14</sup> The FBI has a Memorandum of Understanding (MOU) with the Bureau of Indian Affairs (BIA) and local agreements based on available resources with other agencies. For example, in some areas but not others, the FBI may work only child sexual abuse cases for victims under age twelve, while the BIA would be responsible for all other sexual abuse and sexual assault investigations, including adult rape.

<sup>15</sup> The omitted category in Table 3, referral for prosecution, can be derived by subtracting administrative closures from total investigation closures. It should be noted that referral for prosecution has two outcomes: a prosecutor may decline a case, or a case may be presented in Federal, state, or tribal court.

**Table 3: Number of FBI Indian Country Criminal Investigations Closed by FBI Division**

Division	Division Name	# Administratively Closed Not Referred for Prosecution	Total Closed Investigations (Referred and Not Referred)
AL	Albany	1	2
AQ	Albuquerque	88	221
BF	Buffalo	0	1
CE	Charlotte	1	7
DE	Detroit	2	59
DN	Denver	20	66
EP	El Paso	1	2
JN	Jackson	0	16
LV	Las Vegas	7	29
MM	Miami	1	1
MP	Minneapolis	112	436
MW	Milwaukee	1	34
NO	New Orleans	0	2
OC	Oklahoma City	3	43
OM	Omaha	6	63
PD	Portland	9	49
PX	Phoenix	355	676
SC	Sacramento	0	4
SE	Seattle	17	76
SF	San Francisco	0	1
SU	Salt Lake City	55	282
	<b>Total</b>	<b>679</b>	<b>2070</b>

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Table 4 lists types of Indian country crimes alleged for all administrative closures by FBI Divisions for CY 2013. Approximately 84% of closed Indian country investigations were violent-crime related, which is consistent with the proportion found in all currently pending FBI Indian country investigations.

**Table 4: Types of Indian Country Criminal Investigations Administratively Closed CY 2013**

	Assault	AFO/KFO <sup>16</sup>	Child Physical Abuse	Child Sexual Abuse	Death Investigations	Drug Crime	Financial Crime/ Public Corruption/Civil Rights	Property Crime	Sexual Assault	Other	Total
AL							1				1
AQ	12		2	25	31	1	5	8	3	1	88
CE					1						1
DE						1		1			2
DN	7	2		4	3				2	2	20
EP						1					1
LV	2			1	2		1	1			7
MM								1			1
MP	11	1		44	26	20	3		4	3	112
MW							1				1
OC					1		1	1			3
OM					2			2	2		6
PD	1			1	3				1	3	9
PX	107	2	17	97	62	10	5	12	28	15	355
SE	4		1	4	2	2	1	2	1		17
SU	7		2	3	31	3		2	5	2	55
<b>Total</b>	<b>151</b>	<b>5</b>	<b>22</b>	<b>179</b>	<b>164<sup>17</sup></b>	<b>38</b>	<b>18</b>	<b>30</b>	<b>46</b>	<b>26</b>	<b>679</b>

<sup>16</sup> Assault of Federal Officer/Killing of a Federal Officer.

<sup>17</sup> As reported in table 6, for all but 30 death investigations administratively closed, the FBI's investigation concluded the death was not the result of homicide.

Table 5 lists the status of victims and subjects in FBI Indian country investigations administratively closed during CY 2013. The majority of victims and subjects in cases administratively closed by the FBI were Native American.

**Table 5: Status of Victim and Subject in Indian Country Investigations Administratively Closed CY 2013**

	American Indian Victim	Non- American Indian Victim	American Indian Subject	Non- American Indian Subject	Business Victim/Subject	Unknown Victim/Subject <sup>18</sup>	Total
AL	1		1				2
AQ	79		43	5	10	18	155
CE						2	2
DE				1	1	2	4
DN	17	2	13	1		3	36
EP						2	2
LV	6	1	4	2			13
MM				1	1		2
MP	96		65	3	1	19	184
MW					1	1	2
OC	2		1	1	1	1	6
OM	4	2	1	2		1	10
PD	4	1	3	1		1	10
PX	365	6	267	10	8	70	726
SE	11	1	8	4	1	5	30
SU	48	2	19	1	1	11	82
<b>Total</b>	<b>633</b>	<b>15</b>	<b>425</b>	<b>32</b>	<b>25</b>	<b>136</b>	<b>1266</b>

<sup>18</sup> Unknown victims or subjects are most common in cases where the identity of the perpetrator is unknown, the victim does not identify the perpetrator, or a child victim may not disclose the identity of his or her abuser.

Table 6 addressed the reasons for non-referral of CY 2013 investigations for prosecution. Of the 679 cases not referred, 134 or 20% of the total were death investigations where it was determined that the victim died due to natural causes, an accident, or suicide. Another 24% were determined to be unsupported allegations, meaning no evidence of criminal activity was uncovered during the investigation. In 2% of investigations, the subject died prior to referral for prosecution.

**Table 6: Reasons FBI Indian Country Investigations Were Administratively Closed, CY 2013**

	Does not meet USAO guidelines or statutory definitions	Death was not a homicide	No Remaining Leads	Victim is unable to identify subject	Unsupported Allegation	Victim or witness is unable or unwilling to assist	Interagency Cooperation	Cannot be addressed with current resources	Duplicate, Case Reopened	Subject Died	Total
AL			1								1
AQ	12	26	8		24	3	12			3	88
CE								1			1
DE	2										2
DN	1	3	3		5	4	1			3	20
EP	1										1
LV		1	2		1	2	1				7
MM			1								1
MP	9	26	14		42	5	11	4		1	112
MW					1						1
OC		1			1		1				3
OM		2	2		2						6
PD	1	2			3			3			9
PX	97	42	52	9	74	64	8	1	5	3	355
SA											0
SC											0
SE	3	2	6		4	1	1				17
SU	5	29	7		5	4	2			3	55
<b>Total</b>	<b>131</b>	<b>134</b>	<b>96</b>	<b>9</b>	<b>162</b>	<b>83</b>	<b>37</b>	<b>1</b>	<b>13</b>	<b>13</b>	<b>679</b>

Table 7 provides additional information on a selection of violent crime investigations for CY 2013 administratively closed by four Indian country FBI Divisions with the largest Indian country caseload.<sup>19</sup> The victim/subject status is provided for each investigation. Information is omitted from this table if no racial identification was documented for either subject or victim (i.e., it cannot fit into one of the categories below), no subject was identified, the subject was a business, or if there were multiple victims and subjects and there were no differences in race between any of them (e.g., the rare occasion when, for example, one Indian and one non-Indian accused a non-Indian of a violent crime).

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<sup>19</sup> Due to low frequencies, only investigations from four Divisions (responsible for 78% of all cases) for the top four violent crimes are represented. Again, this data does not include alleged crimes within these categories that were investigated solely by the BIA or other Federal law enforcement agencies.

**Table 7: Violent Crimes Administratively Closed, Victim and Subject Status, by FBI Division, CY 2013**

<b>Death Investigation<sup>20</sup></b>	Indian Victim, Indian Subject	Indian Victim, Non-Indian Subject	Non-Indian Victim, Indian Subject
AQ	1		
MP			
PX	6		
SU	2		
<b>Total</b>	<b>9</b>	<b>0</b>	<b>0</b>

<b>Child Sexual Assault</b>	Indian Victim, Indian Subject	Indian Victim, Non-Indian Subject	Non-Indian Victim, Indian Subject
AQ	20	2	
MP	33	2	
PX	76	1	
SU	2		
<b>Total</b>	<b>131</b>	<b>5</b>	<b>0</b>

<b>Assault</b>	Indian Victim, Indian Subject	Indian Victim, Non-Indian Subject	Non-Indian Victim, Indian Subject
AQ	8		
MP	7		
PX	71	2	
SU	2		
<b>Total</b>	<b>88</b>	<b>2</b>	<b>0</b>

<b>Sexual Assault</b>	Indian Victim, Indian Subject	Indian Victim, Non-Indian Subject	Non-Indian Victim, Indian Subject
AQ	2	2	
MP	3	2	
PX	19	1	
SU	5		
<b>Total</b>	<b>29</b>	<b>5</b>	<b>0</b>

<sup>20</sup> Most death investigations do not have a victim/subject dynamic because it is determined the victim died as a result of natural causes, an accident, or suicide.

## **Executive Office for US Attorneys (EOUSA) TLOA Report**

Indian country prosecutions, particularly violent crime prosecutions, are an important part of the Department's mission, and it continually works to improve efforts in this area. These cases are a specific district priority for the 49 Federal judicial districts with Indian country responsibility. On January 11, 2010, then-Deputy Attorney General David Ogden issued a memorandum to all United States Attorneys declaring that "public safety in tribal communities is a top priority for the Department of Justice."

The memorandum directed that: (1) every USAO with Indian country in its district, in coordination with our law enforcement partners, engage at least annually in consultation with the tribes in that district; and (2) every newly confirmed U.S. Attorney in such districts conduct a consultation with tribes in his or her district and develop or update the district's operational plan within eight months of assuming office. Every USAO with Indian country responsibility now has an operational plan, and each plan includes certain core elements: communication, to include declination information; law enforcement coordination in investigations; victim advocacy; training; outreach; combating violence against women; and accountability.

In addition to the Indian country work in their own districts, most United States Attorneys with Indian country responsibility sit on the Attorney General's Advisory Committee's Native American Issues Subcommittee (NAIS). The NAIS works to strengthen Federal laws, secure additional resources for prosecutors and investigators, and advise the Attorney General as he shapes national policy to further the Department's efforts in Indian country.

All USAOs with Indian country responsibility have at least one Tribal Liaison to serve as the primary point of contact with tribes in the district. Tribal Liaisons are an important component of the United States Attorneys' Offices' efforts in Indian country. The Tribal Liaison program was first established in 1995 and codified with the passage of TLOA. Tribal Liaisons play a critical and multi-faceted role. In addition to their duties as prosecutors, Tribal Liaisons generally fulfill a number of other functions. Tribal Liaisons often coordinate and train law enforcement agents investigating violent crime and sexual abuse cases in Indian country, as well as Bureau of Indian Affairs (BIA) criminal investigators and tribal police presenting cases in Federal court.

Tribal Liaisons often serve in a role similar to a local district attorney or community prosecutor in a non-Indian country jurisdiction, and are accessible to the community in a way not generally required of other Assistant United States Attorneys (AUSAs). Tribal Liaisons are assigned specific functions dictated by the nature of the district. They serve as the primary point of contact between the USAO and the Indian tribes located in the district. Tribal Liaisons typically have personal relationships and frequent contact with tribal governments, including tribal law enforcement officers, tribal leaders, tribal courts, tribal prosecutors, and social service agency staff.

Tribal Liaisons also know and work well with state and local law enforcement officials from jurisdictions adjacent to Indian country. These relationships enhance information-sharing and assist the coordination of criminal prosecutions, whether Federal, state, or tribal. It is important to note that while the Tribal Liaisons are collectively the most experienced prosecutors of crimes in Indian country, they are not the only AUSAs doing these prosecutions. The volume of cases from Indian country requires these prosecutions in most USAOs to be distributed among numerous AUSAs. Table 8 contains a list of all USAOs with Indian country responsibility.

**Table 8: U.S. Attorneys’ Offices with Indian Country Responsibility**

District Name	District Abbreviation	District Name	District Abbreviation
Middle District of Alabama	ALM	District of Nebraska	NE
Southern District of Alabama	ALS	District of Nevada	NV
District of Alaska	AK	District of New Mexico	NM
District of Arizona	AZ	Eastern District of New York	NYE
Central District of California	CAC	Northern District of New York	NYN
Eastern District of California	CAE	Western District of New York	NYW
Northern District of California	CAN	Western District of North Carolina	NCW
Southern District of California	CAS	District of North Dakota	ND
District of Colorado	CO	Eastern District of Oklahoma	OKE
District of Connecticut	CT	Northern District of Oklahoma	OKN
Middle District of Florida	FLM	Western District of Oklahoma	OKW
Southern District of Florida	FLS	District of Oregon	OR
District of Idaho	ID	District of Rhode Island	RI
Northern District of Indiana	INN	District of South Carolina	SC
Northern District of Iowa	IAN	District of South Dakota	SD
District of Kansas	KS	Western District of Tennessee	TNW
Western District of Louisiana	LAW	Eastern District of Texas	TXE
District of Maine	ME	Western District of Texas	TXW
District of Massachusetts	MA	District of Utah	UT
Eastern District of Michigan	MIE	Eastern District of Washington	WAE
Western District of Michigan	MIW	Western District of Washington	WAW
District of Minnesota	MN	Eastern District of Wisconsin	WIE
Northern District of Mississippi	MSN	Western District of Wisconsin	WIW
Southern District of Mississippi	MSS	District of Wyoming	WY
District of Montana	MT		

## *Overview of how a matter or case is handled in a USAO*

**Referrals:** A referral is simply the mechanism by which the law enforcement agency seeks the involvement or advice of the USAO in a particular matter. A referral may take many forms, ranging from a formal, written presentation by a law enforcement agency to an informal phone call. In addition, how and when a law enforcement agency decides to refer a matter to a USAO depends on many factors, including the nature of the case, the stage of the investigation, and the relationship between the USAO and the law enforcement agency.

**Declinations:** A declination is a decision by a United States Attorney's Office (USAO) not to pursue criminal prosecution of a referral from a law enforcement agency. The fact that a USAO has received a referral does not mean that a prosecutable case exists. As will be discussed later in this report, the vast majority of declinations involve cases in which the USAO lacks sufficient evidence to prosecute. Further, cases that are initially declined may be reopened at a later date and successfully prosecuted.

**Types of Declinations:** There are two types of declinations. An "immediate declination" occurs when the USAO does not open a file on a referral and does not pursue prosecution of the referral. Examples of the types of cases that would be immediately declined are:

- A crime that was thought to be committed on Indian lands, which upon further examination turned out to have been committed on state land. The state – not the Federal Government – would have jurisdiction to prosecute.
- A crime that involves a Native American victim and defendant but that does not violate the Major Crimes Act. The tribal court would have exclusive jurisdiction to prosecute in this instance.
- A crime committed on tribal lands that involves two non-Indians. In this case, the state ordinarily would have exclusive jurisdiction to prosecute.

In these examples, the USAO would likely have been consulted and thus these examples would likely appear as matters that the office had declined, even though there was no authority to prosecute federally.

An example of an immediate declination is as follows:<sup>21</sup>

### ***Sexual Assault Referral***

*A 17-year-old female engaged in consensual sex with a 20-year-old male. Law enforcement learned about the relationship when the young woman became pregnant. This case was declined by the USAO, as the legal age of consent was sixteen.*

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<sup>21</sup> This example represents an actual matter; however, to protect the identity of the parties involved, the name of the reservation where the incident occurred has been omitted.

A “later declination” occurs when the USAO opens a file on the referral, conducts a more significant amount of work on the matter, but ultimately does not pursue prosecution of the referral. Here is an example of a later declination:<sup>22</sup>

***Sexual Assault Referral***

*Following a party, the complainant awoke in a yard with her shirt off. Law enforcement officers were called, but the complainant was unsure whether she was sexually assaulted and unable to provide many other details. Despite the vagueness of her complaint, a full investigation was initiated. A forensic medical examination was completed and law enforcement obtained DNA samples from everyone at the party. All specimens and samples were sent to the FBI laboratory for analysis. No semen was detected, and no DNA was identified.*

**Prosecutorial Discretion/Guidelines and Ethical Obligations:** While Federal prosecutors have discretion in charging and declining cases, they operate within the confines of the law, Department of Justice policy, and the evidence gathered in the cases. The United States Attorneys’ Manual (USAM) provides guidance as to proper considerations for charging or declining a case. USAM 9-27.200 provides:

If the attorney for the government has probable cause to believe that a person has committed a Federal offense within his/her jurisdiction, he/she should consider whether to: (1) request or conduct further investigation; (2) commence or recommend prosecution; (3) decline prosecution and refer the matter for prosecutorial consideration in another jurisdiction; (4) decline prosecution and initiate or recommend pretrial diversion or other non-criminal disposition; or (5) decline prosecution without taking other action.

Further, USAM 9-27.220 provides:

The attorney for the government should commence or recommend Federal prosecution if he/she believes that the person’s conduct constitutes a Federal offense and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless, in his/her judgment, prosecution should be declined because: (1) no substantial Federal interest would be served by prosecution; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution.

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<sup>22</sup> This example represents an actual matter; however, to protect the identity of the parties involved, the name of the reservation where the incident occurred has been omitted.

## *Communications with Tribes Regarding Declinations*

Communication between the Department of Justice and the tribes is extremely important, especially regarding law enforcement concerns and case coordination. The Department is committed to continuing to improve these communications.

**Current avenues for communications:** As stated previously, each USAO with Indian country in its district has at least one Tribal Liaison. Declination information is regularly communicated to tribal law enforcement through the Tribal Liaison. Current Federal law provides:

If a United States Attorney declines to prosecute, or acts to terminate prosecution of, an alleged violation of Federal criminal law in Indian country, the United States Attorney shall coordinate with the appropriate tribal justice officials regarding the status of the investigation and the use of evidence relevant to the case in a tribal court with authority over the crime alleged.

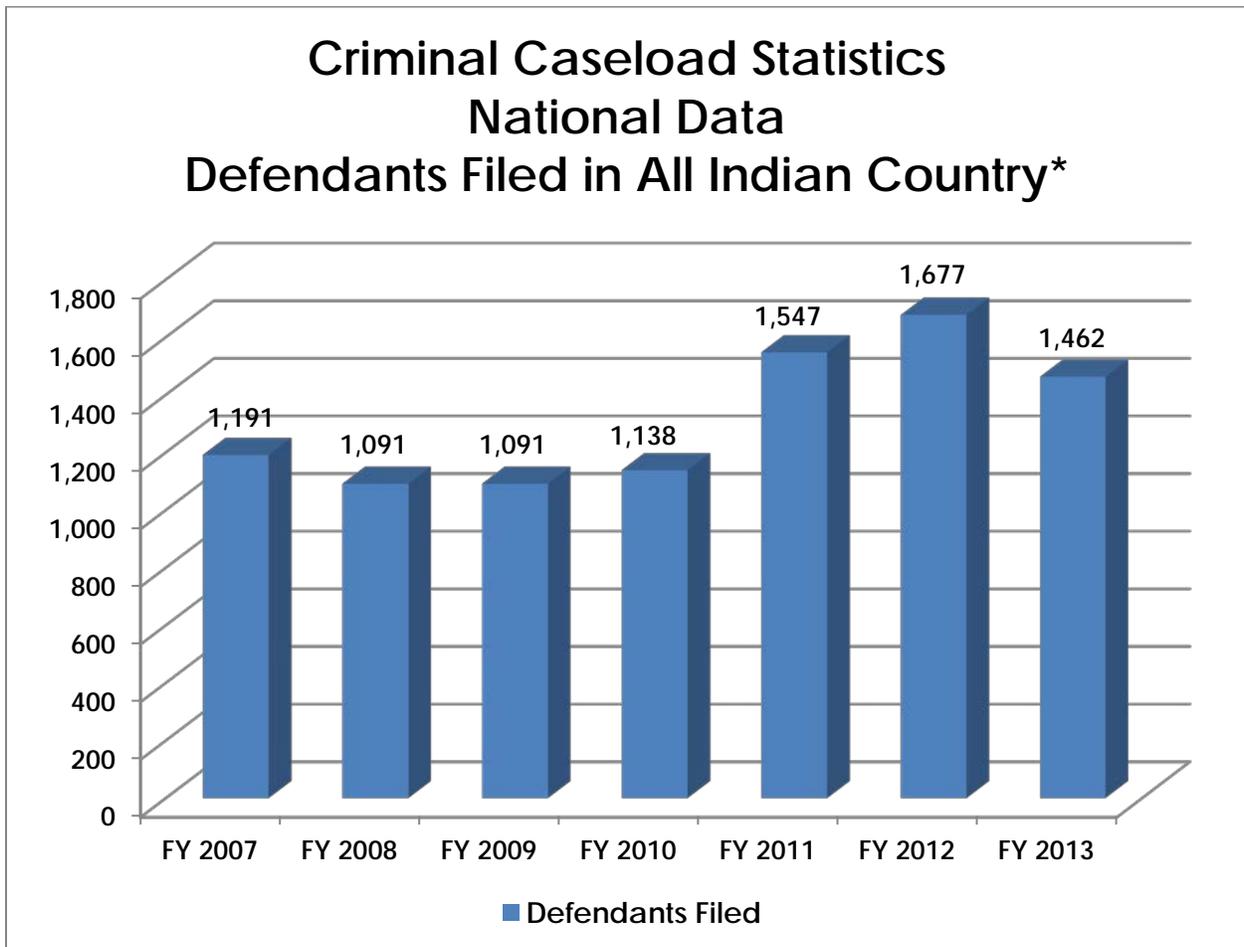
25 U.S.C. § 2809(a)(3). Subsection (d) of section 2809 provides that “[n]othing in this section requires any Federal agency or official to transfer or disclose any confidential, privileged, or statutorily protected communication, information, or sources to an official of any Indian tribe.” However, this statute also provides that reports and information learned during a criminal investigation may be shared with the tribe. The Department has taken the position that sharing appropriate information to enable tribal prosecutors to pursue a criminal matter is in the best interest of justice. Moreover, USAO operational plans address how declination decisions will be communicated to tribal prosecutors, tribal law enforcement, or both, and how case evidence will be shared.

The decision to charge or decline a case is made carefully. Indictments, complaints, and declination decisions are driven by the evidence, applicable law, ethical considerations, and the circumstances of each case. Federal prosecutors take seriously their obligation to pursue justice in Indian country and work diligently to improve the lives of all who live in Indian country. See Figure 1 below.

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**Figure 1: Defendants Filed in All Indian Country, FY 2007-FY 2013**

Two Program Categories are relevant to Indian country cases and this report. “Violent Crime in Indian Country” (Program Category 092) is used to flag violent offenses that occur in Indian country, such as assaults, homicides, and sexual abuse cases. “Indian Offenses” (known as Program Category 065) is used to identify nonviolent offenses occurring in Indian country, such as immigration, fraud, and nonviolent drug offenses.



\* This chart includes data for cases classified under Program Category Code 092 (Violent Crime in Indian Country) and Program Category Code 065 (Non-Violent Indian Offenses).

Between FY 2009 and FY 2012, the number of cases filed against defendants in Indian country increased nearly 54%. While the Department recognizes that an increase in federal prosecutions cannot solve all the public safety challenges in Indian country, the Department has focused on enhancing law enforcement and prosecutions with additional support for tribal criminal justice institutions. Notwithstanding the fiscal impact of the sequester, reduced budgets, and a hiring freeze, federal agents and prosecutors continued to focus their efforts on improving public safety in Indian country. Due to these budgetary challenges, the Department saw the first decrease (13%) in the number of cases filed since it began its Indian country crime

fighting initiative in 2009, although the overall number of cases remains higher than in FY 2008, before the Department's initiative began, with a 34% increase of defendants filed.

**Examples of successfully prosecuted violent crime cases during the reporting period are as follows:**

### ***Sexual Abuse***

*Following an argument and being kicked out of his girlfriend's house, the defendant went to another family member's house. Upon entering the house, the defendant went into the 20-year-old victim's bedroom, where she was passed-out after a night of consuming alcohol. While in the bedroom, the defendant removed the victim's pants and undergarments and engaged in sexual intercourse with her while she was incapable of consenting. During the sexual assault, the victim awoke to find the defendant sexually assaulting her. The victim resisted, pushed off the defendant, and left the bedroom. The victim went to the hospital, where a sexual assault examination was conducted. Following his guilty plea to sexual abuse, the defendant was sentenced to 96 months of incarceration and five years of supervised release.*

### ***Domestic Assault by an Habitual Offender***

*Court records demonstrated that the defendant was convicted of assault resulting in serious bodily injury in federal court in August 1997. The defendant was also convicted of aggravated battery against a household member in state court in October 1997. In March 2011, the defendant assaulted his wife. For this assault, he was charged in federal court with the offense of domestic assault by an habitual offender, due to the defendant's two prior convictions involving assaults against a spouse or intimate partner. The defendant pleaded guilty as charged in 2013, and he was sentenced to 46 months imprisonment and two years of supervised release.*

### ***Child Abuse Resulting in Death***

*In 2013, the defendant's husband gained custody of his two-year-old twin granddaughters who had been previously living elsewhere. Approximately one month after the twins moved in, the defendant was outside her house with her three children, a niece and nephew, and the twin girls. The children observed the defendant push one of the twins down an embankment leading into a ditch area. The girl landed on her back, got up, and began to cry. The defendant then picked up the other twin girl under the arms and threw her down the embankment into the ditch area. After the fall, the second girl was breathing but unresponsive. The child was carried into the residence where the defendant bathed the girl, put pajamas on her, and put her to bed alongside the other twin. During all this time, the child remained unresponsive. The defendant did not seek medical attention for the child and instructed the other children not to tell anybody what had happened to the girl. The following morning, the defendant entered the bedroom to wake up the child and found her "cold and blue." The defendant was sentenced to 30 years of imprisonment, three years of supervised release, and ordered to pay restitution.*

## Data Collection Within the United States Attorneys' Offices

The Executive Office for United States Attorneys (EOUSA) regularly provides case data information to Congress, Department of Justice leadership, the Office of Management and Budget, other Federal agencies, and the general public to demonstrate the tremendous efforts of the USAOs in prosecuting wrongdoers, protecting the public, and defending the interests of the United States. Leadership at every level of the government relies, in part, on these numbers to measure the success of the USAOs in carrying out national and local law enforcement priorities, making effective use of taxpayer dollars, and achieving the goals set by the Department and the Administration. EOUSA relies on case-management information to track the prodigious work of the USAOs and to make important resource-allocation decisions concerning the USAOs. In addition, USAO supervisors use case-management reports as tools to manage their offices and staffing needs. Although data can never fully represent the time, effort, and skill required to prosecute and defend cases, they provide an objective means to measure caseloads and workflows.

### *The Legal Information Office Network System (LIONS)*

The USAOs' portion of this report has been prepared using data from EOUSA's Legal Information Office Network System (LIONS), a case-management system. LIONS is one method used by EOUSA and USAOs to track data related to the work of the 94 United States Attorneys' offices in developing resource-allocation and litigative priorities. The LIONS system is a database with online capabilities that permits the USAOs and EOUSA to compile, maintain, and track case-management information relating to defendants, crimes, criminal charges, court events, and witnesses. Given that all USAOs use LIONS, it was determined that LIONS data would be used to gather the information required by TLOA to be reported to Congress.

"Matters" are referrals from law enforcement that have been opened in LIONS, but where no charges have been filed. Most cases begin as "matters" in LIONS, and are subject to further law enforcement investigation, after which either charges are filed or the matter is declined. The opening of a "matter" in LIONS is an important step at which critical choices must be made about how the matter will be characterized and recorded.

"Declined cases" are matters on which the USAO decides not to pursue a criminal prosecution after referral from a law enforcement agency. All immediate and later declinations must be entered into LIONS. An immediate declination occurs when an investigative agency presents a referral to the USAO that does not warrant Federal prosecution based on the facts and circumstances presented. In such an instance, no further investigation is authorized, no matter is opened, and the referral is declined immediately. A later declination occurs when a matter has been opened in LIONS, and the USAO later decides to close the matter without filing charges. This typically follows some investigation or further consultation with the Assistant United States Attorney assigned to the matter.

Data on Indian country is identified in LIONS through its "Program Category" designation. Program category codes are critical to identifying and characterizing the types of matters

handled by the USAOs.<sup>23</sup> As noted earlier, two Program Categories are particularly relevant to Indian country cases.<sup>24</sup> EOUSA had instructed the USAOs that all cases arising in Indian country must include an Indian country Program Category code in addition to any other code assigned to the case. The Indian country code need not be the primary code.

### *Limitations of the LIONS Data*

The statistics presented in this report are subject to a number of limitations present in the LIONS case-management system.

At the point of case data entry into LIONS, the identification of a Program Category is determined at the discretion of each USAO, after assessing which category or categories are applicable. The office determines who enters the data, how and when the data are entered, and how cases are designated. During data entry, more than one Program Category may be associated with a case, but only one is required. Therefore, TLOA data selected in LIONS may exclude a small number of cases that indeed occurred in Indian country, but were not designated as either Program Category 065 or 092.

The LIONS data system is furthermore not designed to check entries for accuracy and internal consistency. It does not require entry in fields (for example, by forcing a case to be identified as either being in Indian country or not), and does not cross-check entry fields or funnel data-entry options based on previous responses. This means that a case can be classified with incorrect information and LIONS does not reject these entries or force them to be corrected. LIONS does not automatically flag the submission as incorrect and the entry will remain in LIONS until it is detected and manually corrected within the fiscal year in which the case or matter was opened.

LIONS data represent a “snapshot in time.” Thus, all declinations, matters, and cases reported in a given calendar year are not necessarily crimes that occurred in that year or law enforcement referrals made to a USAO in that year. For example, a USAO may show eight murder declinations in CY 2013, yet not have had any murders referred for prosecution in CY 2013. Rather, these eight declinations may represent referrals received in previous years where the investigation was completed in CY 2012 and where the prosecutor concluded that there was insufficient evidence to prosecute the cases. This is further complicated by referrals with multiple suspects. For example, if a murder referred for prosecution was declined and had four suspects, four declinations would show in LIONS. Accordingly, no conclusions can be drawn from this report that, for example, five declinations equal five different criminal

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<sup>23</sup> There are nearly 100 Program Categories listed in LIONS; for example, there are designations for corporate fraud, health care fraud, mortgage fraud, domestic terrorism, wildlife protection, drug trafficking, child pornography, firearms offenses, and domestic violence. LIONS can capture more than one program area in a single case through the use of multiple Program Category codes. For example, if one case involved drug trafficking, money laundering, and immigration offenses, the matter should be coded using all three Program Category codes. More than one Program Category may be selected when entering cases into LIONS, but only one category designation is required.

<sup>24</sup> “Violent Crime in Indian Country” (Program Category 092) is used to flag violent offenses that occur in Indian country, such as assaults, homicides, and sexual abuse cases; “Indian Offenses” (Program Category 065) is used to identify nonviolent offenses occurring in Indian country, such as fraud and nonviolent drug offenses.

offenses. Eight declinations for murder in CY 2013 can in fact be two murders that occurred in CY 2012, with one of the murders having seven suspects.

The uniformity of LIONS data and its suitability for statistical analysis are affected by the variances among districts and by the discretion afforded the 93 individual United States Attorneys to use the system to manage their offices to meet local priorities and needs. A change in a LIONS-generated declination rate may be entirely attributable to a change in the office's policy rather than any changes in the crime rate or prosecution practices or capabilities in that district.

### *Methodology for Generating Declination Data*

Persons inputting data into the LIONS system currently choose from among 33 subcategories under "Criminal Immediate Declination" when recording the reason for a case declination. The subcategories are not defined and persons inputting the data may enter any of the available declination codes, without an automatic verification by the system. Accordingly, it is difficult to know the extent of any misclassification errors without cross-checking against the hard-copy case files.

For purposes of this report, the 33 declination subcategories were reviewed and merged into six categories based on legal commonality. These six merged categories, as well as the 33 declination subcategories, are displayed in Table 9.

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**Table 9: LIONS Declination Merged Categories**

<b>New Category Name</b>	<b>Description</b>
LIONS List Subcategory	
<b>Legally Barred</b>	<i>Cases where the United States has no choice but to decline a case because legally the United States lacks jurisdiction to file charges.</i>
JUVP	Jurisdiction or Venue Problems
NFOE	No Federal Offense Evident
NKSU	No Known Suspect
OEOE	Opened in Error/Office Error
STAL	Staleness
STLM	Statute of Limitations
<b>Insufficient Evidence</b>	<i>Cases where the United States declines a case because of an inability to prove the case in court beyond a reasonable doubt.</i>
LECI	Lack of Evidence of Criminal Intent
WKEV	Weak or Insufficient Admissible Evidence
WTPR	Witness Problems
<b>Defendant Unavailable</b>	<i>Cases where the defendant is physically unavailable or where the prosecutor exercises prosecutorial discretion based on defendant's circumstances.</i>
AHPR	Offender's Age, Health, Prior Record, or Personal Matter
SUDC	Suspect Deceased
SUDP	Suspect Deported
SUFU	Subject a Fugitive
<b>Matter Referred to Another Jurisdiction</b>	<i>Cases where the defendant is not prosecuted by the Federal Government but is subject to the authority of another jurisdiction.</i>
JUVN	Juvenile Suspect
PEPO	Petite Policy <sup>25</sup>
RECU	Recusal
SPOA	Suspect to be Prosecuted by Other Authorities
SRSC	Suspect Referred for Prosecution Decision in State/Local/Military Court
SRTC	Suspect Referred for Prosecution Decision in Tribal Court
SPOC	Suspect Being Prosecuted on Other Charges

<sup>25</sup> The Department of Justice's *Petite* policy generally precludes the initiation or continuation of a federal prosecution, following a prior state or federal prosecution based on substantially the same act(s) or transaction(s). USAM 9-2.031. This policy does not apply to successive tribal/federal prosecutions. However, successive tribal/federal prosecutions should not be undertaken unless there is a compelling federal interest. "In determining where federal interests have been satisfied, consideration should be given to the limitations in tribal sentencing power measured against the seriousness of the offense." DOJ Criminal Resource Manual 682.

New Category Name	Description
LIONS List Subcategory	
<b>Alternative to Federal Prosecution Appropriate</b>	<i>Cases where the defendant could have been prosecuted by the Federal Government but an alternative to prosecution was viewed by the United States, within its discretion, as appropriately serving the ends of justice.</i>
CADA PTDR REST SUCO	Civil, Administrative, or Other Disciplinary Alternative Pretrial Diversion Completed Restitution/Arrearage Payments Made or Being Made Suspect Cooperation
<b>Prioritization of Federal Resources and Interests</b>	<i>Cases where the case is declined because of existing DOJ or USAO policy.</i>
AGRE DEPO GWDA LKIR LKPR LOAG MFIN OFPO SSSE	Agency Request Department Policy Declined per Instructions from DOJ Lack of Investigative Resources Lack of Prosecutive Resources Local Agency Referral Presented by Federal Agency Minimal Federal Interest or No Deterrent Value Office Policy (Fails to Meet Prosecutive Guidelines) Suspect Serving Sentence

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## EOUSA LIONS Information

Based on the methodology outlined above, aggregate declination data for calendar year 2013– by reason – is displayed by Federal judicial district in Table 10.<sup>26</sup>

**Table 10: Indian Country Declinations, by USAO, by Reason, CY 2013**

	Legally Barred	Insufficient Evidence	Defendant Unavailable	Referred to Different Jurisdiction	Alt. to Federal Prosecution	Prioritization of Fed. Resources and Interests	Total
AK		1				3	4
AZ	11	159	3	14	2	13	202
CAE		2					2
CAS						1	1
CO	2	3		1			6
FLS		1					1
ID		23		11		3	37
KS						4	4
LAW	2	1					3
MIE	7	20		14		4	45
MIW	1	12	1	4		6	24
MN		6		1			7
MT	16	8		34	1	3	62
NCW		1					1
ND	14	23	1	13	1		52
NE	3	8		10			21
NM	21	54		11		1	87
NV		11		5		2	18
NYE		1					1
NYN	1	1		2		12	16
OKE	4	2		1	1	3	11
OKN	2	5		8	1	2	18
OKW	1	11		2	1	3	18
OR		8		1		5	14
PAE <sup>27</sup>	2						2

<sup>26</sup> This table excludes USAOs that did not report any declinations for CY 2013.

<sup>27</sup> The Eastern District of Pennsylvania does not have any federally recognized tribes. Use of an Indian Country program category code was made in error, but the USAO did not indicate that the matter was opened in error; instead, the matter was declined as legally barred and then closed.

	Legally Barred	Insufficient Evidence	Defendant Unavailable	Referred to Different Jurisdiction	Alt. to Federal Prosecution	Prioritization of Fed. Resources and Interests	<b>Total</b>
SD	11	75	2	32	4		124
UT		14		2		1	17
WAE	5	3		1		3	12
WAW		5		3		6	14
WIE		16		5			21
WIW	1					2	3
WY	2			2	1		5
<b>Total</b>	<b>106</b>	<b>474</b>	<b>7</b>	<b>177</b>	<b>12</b>	<b>77</b>	<b>853</b>

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## *Explanation of “Referred to Different Jurisdiction”*

The declination category of “referred to different jurisdiction” requires additional explanation. This number is oftentimes the result of how USAOs staff Indian country cases. Many districts hold meetings to review Indian country cases with law enforcement personnel. These meetings, conducted in phone or in person, may involve an AUSA, tribal prosecutor, and Federal and tribal law enforcement. During the meetings, cases arising on a particular reservation are discussed. The decision about which jurisdiction – Federal or tribal – will prosecute a particular case is considered and discussed by the Federal and tribal prosecutor, with input from investigative law enforcement agencies. Therefore, a case opened in LIONS with a subsequent referral to the tribe for prosecution will appear in LIONS as a declination, even if the case is being prosecuted by the tribe at the tribe’s request.

This collaboration was contemplated by TLOA’s amending of 25 U.S.C. 2809(a)(3), the Indian Law Enforcement Reform Act. It also confirms the Department’s January 2010 directive that “tribal governments have the ability to create and institute successful programs when provided with the resources to develop solutions that work best for their communities.”<sup>28</sup>

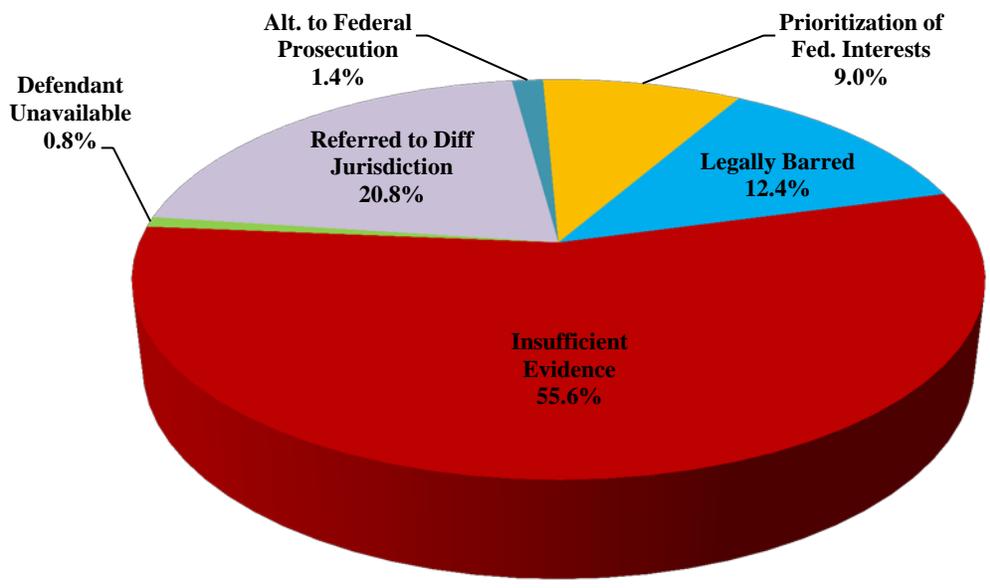
Tribal police, prosecutors, and courts are essential parts of the response to these crimes. TLOA amended the Indian Civil Rights Act (ICRA) and restored to tribal courts limited felony sentencing authority. Tribal courts can now sentence Indian offenders for up to three years per offense, provided defendants are given proper procedural protections, including appointed counsel for indigent defendants. Multiple tribes now have all of the ICRA requirements in place to allow them to impose prison sentences of more than one year.

The passage of TLOA with its provision of enhanced sentencing authority for certain tribal governments means that more cases may be referred to tribal court for prosecution. These referrals are typically done at the request or with the consent of the tribe’s law enforcement authorities. While deemed a declination in LIONS, such a referral of a criminal matter for prosecution in tribal court is, in fact, a realization of successful tribal self-governance.

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<sup>28</sup> <http://www.justice.gov/dag/dag-memo-indian-country.html>.

**Figure 2: Declination Reasons for Indian Country Crimes, CY 2013**

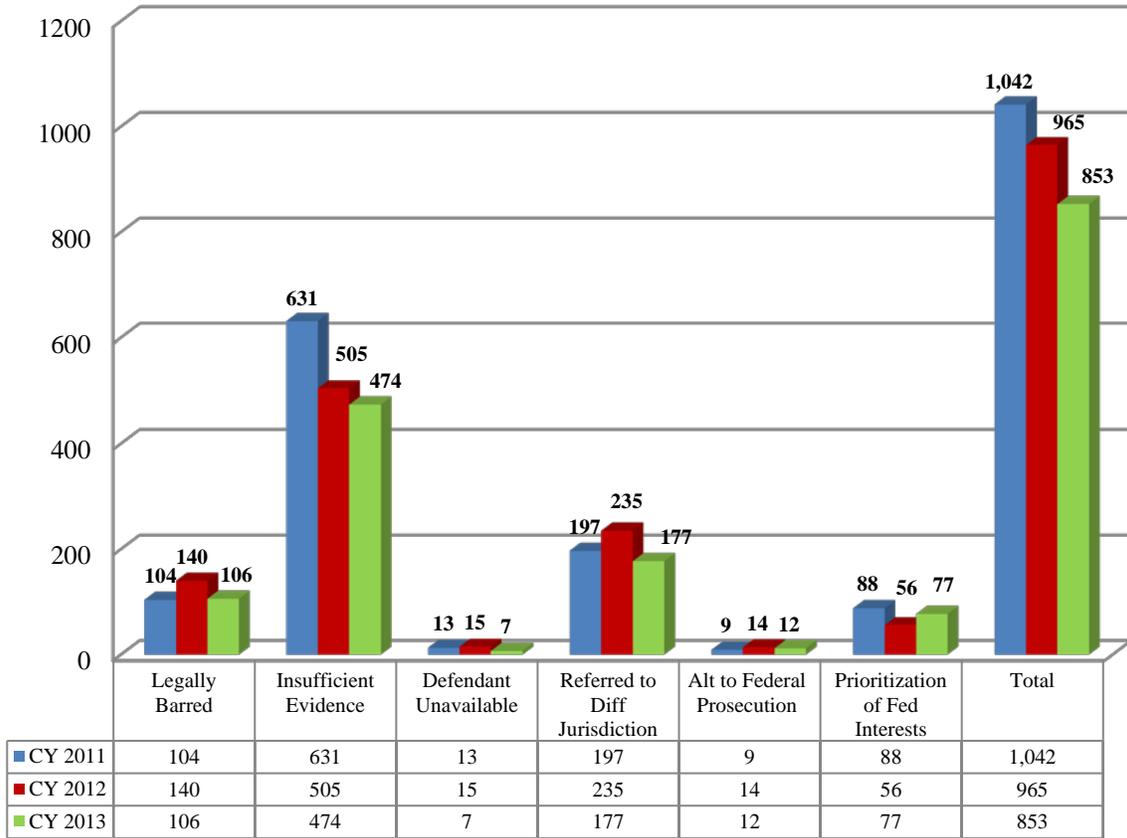


As demonstrated in Figure 2, the majority of all declined cases for CY 2013 were declined due to insufficient evidence. The insufficient-evidence category includes circumstances where there is a lack of evidence of criminal intent, weak or insufficient evidence, or witness problems. Figure 3, on the following page, provides a comparison of declination categories selected for CY 2011, CY 2012, and CY 2013 Indian country cases. In matters where there is insufficient evidence, the government cannot sustain its burden of proof beyond a reasonable doubt, and the prosecutor has no choice but to decline these matters. If additional evidence is developed at a later time, however, the matter may be reopened and successfully prosecuted.

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**Figure 3: Declination Reasons in Indian Country Crimes: CY 2011, CY 2012, CY 2013 Comparison**

### Declination Reasons in Indian Country Crimes CY 2011 to CY 2013 Comparison



### *Methodology for Generating Type of Crime Data*

USAOs enter matters within a LIONS Program Category by the lead charge code or type of crime. The LIONS User Manual states that the lead charge is the substantive statute that is the primary basis for the referral. Given the number of Federal criminal code sections and the ability to assimilate state law for certain crimes occurring in Indian country (under the Assimilative Crimes Act, 18 U.S.C. § 13), this report assigns the lead charge to broad categories based on case commonality. All lead criminal statutes appearing in CY 2013 Indian country cases (those assigned Program Category code 065 or 092) were reviewed and grouped into six categories. The six crime type categories reported here are the following: assault (including threats to a Federal officer or public or foreign officials, as well as Violence Against Women Act violations); murder; sexual assault (including child and adult victims); drug, alcohol, and other offenses; financial crimes, public corruption, and fraud; jurisdictional, penalty, or state statutes.<sup>29</sup>

### *Aggregate Declination Data by Type of Crime*

Table 11 reports aggregate declinations by type of crime and Federal judicial district.

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<sup>29</sup> A complete list of all lead criminal charges used in CY 2013, as assigned to one of the six categories created for purposes of this report, can be found at Appendix B.

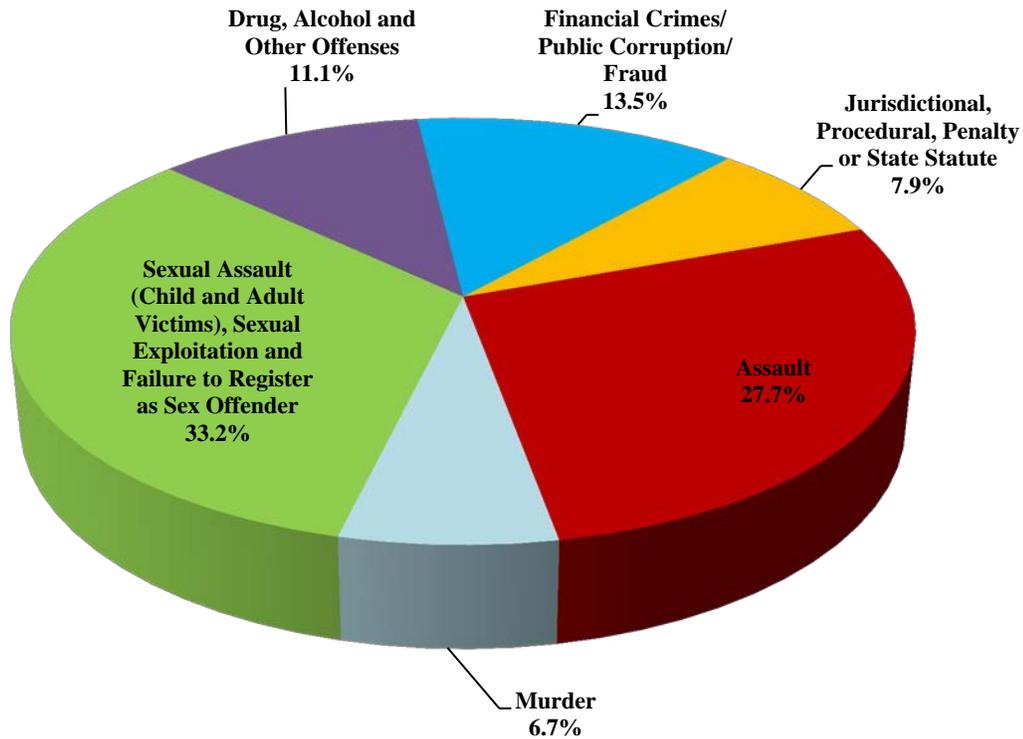
**Table 11: Indian Country Defendants Declined, by USAO, by Type of Crime, CY 2013<sup>30</sup>**

	Assault	Murder	Sexual Assault (Child and Adult Victims)	Drug, Alcohol, and Other Offenses	Financial Crimes/ Public Corruption/ Fraud	Jurisdictional, Penalty, or State Statute	Total
AK				4			4
AZ	54	25	68	14	20	21	202
CAE					2		2
CAS					1		1
CO		1	2	1	2		6
FLS				1			1
ID	17		8	8	2	2	37
KS				1	3		4
LAW	1		1			1	3
MIE	22		10	2	7	4	45
MIW	7		7	6	1	3	24
MN		2	4			1	7
MT	15	3	40	2	2		62
NCW			1				1
ND	13	6	24	3	4	2	52
NE	12		4	5			21
NM	28	12	38	2	2	5	87
NV	6		3	3	6		18
NYE					1		1
NYN				13	1	2	16
OKE		1	1	1	5	3	11
OKN			2	5	10	1	18
OKW	4		4		6	4	18
OR	3		2	4	5		14
PAE <sup>31</sup>				2			2
SD	25	3	48	12	20	16	124
UT	8	2	4		3		17
WAE	4		4	1	1	2	12
WAW	1	1	3	1	8		14
WIE	15	1	3	1	1		21
WIW				3			3
WY	1		2		2		5
<b>Total</b>	<b>236</b>	<b>57</b>	<b>283</b>	<b>95</b>	<b>115</b>	<b>67</b>	<b>853</b>

<sup>30</sup> This table excludes USAOs that did not report any declinations for CY 2013.

<sup>31</sup> The Eastern District of Pennsylvania does not have any federally recognized tribes. Use of an Indian Country program category code was made in error.

**Figure 4: Indian Country Declinations, by Investigative Charge, CY 2013**



The majority of declinations involve physical assaults or sexual assaults. This is not unique to the Federal system. Unfortunately, for myriad reasons, these types of crimes are very difficult to prosecute, regardless of whether they arise in Indian country. Sexual assault crimes typically are committed outside the presence of witnesses and some rapes, including child molestation crimes, frequently lack corroborating physical evidence. Adult and adolescent victims of sexual assault may blame themselves for the crime, which may make them reluctant to immediately report the offense or to testify in court. The assailant is, more often than not, a person known to the victim and may be someone the victim loved or trusted. A victim may fear retribution or being ostracized by friends and family if the sexual assault is reported to law enforcement. If the victim was using drugs or alcohol prior to the assault, the victim's recollection of the assaultive event may be vague, or the victim may fear being kicked out of tribal housing if the assault is reported because drug or alcohol use may be in violation of the tribal housing rules. Delayed reporting of the crime or insufficient first-responder resources in tribal communities may further contribute to prosecutors' challenges to receiving a case referral that meets the Principles of Federal Prosecution or, in other words, where the guilt of the defendant can be proven beyond a reasonable doubt.

Although none of these difficulties in prosecuting sexual assault and child molestation cases is unique to Indian country, structural barriers in Indian country may compound the challenges. Victims and witnesses of these types of personal and sensitive crimes may be reluctant to travel long distances outside of their community to the Federal courthouse to testify. In addition,

Federal investigators and prosecutors may not be able to build the rapport and trust needed to encourage a victim to see a case through, because federal investigators and prosecutors are often not co-located in the community in the same way that a local law enforcement officer is.

**Table 12: Indian Country Defendants Declined by Type of Crime and Declination Reason, CY 2013**

	Legally Barred	Insufficient Evidence	Defendant Unavailable	Referred to Different Jurisdiction	Alt. to Federal Prosecution	Prioritization of Fed. Resources and Interests	Total
Assault	21	140		61	4	10	<b>236</b>
Murder	20	27		6	1	3	<b>57</b>
Sexual Assault (Child and Adult victims)	35	183	3	53	1	8	<b>283</b>
Drug, Alcohol, and Other Offenses	12	39	3	17		24	<b>95</b>
Financial Crimes/Public Corruption/Fraud	7	51	1	24	6	26	<b>115</b>
Jurisdictional, Penalty, or State Statute	11	34		16		6	<b>67</b>
<b>Total</b>	<b>106</b>	<b>474</b>	<b>7</b>	<b>177</b>	<b>12</b>	<b>77</b>	<b>853</b>

Declinations alone do not provide an accurate accounting of the USAOs’ involvement in Indian country criminal cases. To provide context to the declination number, Table 13, on the following page, lists for each Federal judicial district the “total Indian country matters resolved” — that is, the sum total of Indian country program codes for immediate declinations, suspect counts, defendants in matters terminated, and defendants filed.<sup>32</sup>

An “immediate declination” occurs when the USAO does not open a file on a referral and does not pursue prosecution of the referral. A “suspect count” refers to those individuals identified as wrongdoers in an open matter. A “matter terminated” is defined as a proceeding closed during the reporting period without ever having attained case status. “Defendants filed” includes a count of the defendant or defendants associated with each case filed. A “case filed” is defined as a proceeding for which a significant paper has been filed in court during the reporting period, regardless of the reporting period in which the proceeding was opened as a criminal matter in LIONS. Significant papers include indictments and informations filed in

<sup>32</sup> Please note that LIONS is not self-correcting and that a USAO can, in error, report an Indian country declination even though the district has no federally recognized tribes.

Federal District Court. U.S. Magistrate Court filings and U.S. Court of Appeals filings are not included in these counts.

For example, Table 13, on the next page, shows that for the District of South Dakota, there were 470 total Indian country matters resolved for CY 2013. This number includes the 124 declinations previously reported in Tables 10 and 11. It also includes an additional 346 Indian country cases that the District of South Dakota resolved in CY 2013.

Similarly, for all districts combined, 2,542 Indian country matters were resolved, in one form or another, in CY 2013. This number includes the 853 declinations reported in Tables 10 and 11. It also includes 1,689 matters in Indian country that were resolved in CY 2013 by means other than a declination.

**Table 13: Total Indian Country Matters Resolved, by USAO, CY 2013<sup>33</sup>**

District	Matters Resolved	Total IC Declinations
Alaska	13	4
Arizona	733	202
California Eastern	2	2
California Southern	5	1
Colorado	17	6
Florida Southern	1	1
Idaho	62	37
Kansas	5	4
Louisiana Western	5	3
Michigan Eastern	112	45
Michigan Western	45	24
Minnesota	36	7
Montana	200	62
North Carolina Western	16	1
North Dakota	146	52
Nebraska	71	21
New Mexico	210	87
Nevada	32	18
New York Eastern	1	1
New York Northern	16	16
Oklahoma Eastern	28	11
Oklahoma Northern	54	18
Oklahoma Western	54	18

<sup>33</sup> This table excludes USAOs that did not report any Indian country matters for CY 2013. USAO data account for cases referred by various investigative agencies, only one of which is the FBI. Please also note that the Eastern District of Pennsylvania does not have any federally recognized tribes. Use of an Indian Country program category code was made in error.

<b>District</b>	<b>Matters Resolved</b>	<b>Total IC Declinations</b>
Oregon	44	14
Pennsylvania Eastern	2	2
South Dakota	470	124
Utah	28	17
Washington Eastern	32	12
Washington Western	23	14
Wisconsin Eastern	33	21
Wisconsin Western	3	3
Wyoming	32	5
<b>Total</b>	<b>2,542</b>	<b>853</b>

### *Defendant and Victim Indian/non-Indian Status*

TLOA requires that USAOs record the Indian/non-Indian status of the defendant(s) and victim(s). Historically, this information was not a required field in LIONS. Starting in 2001, USAO personnel were instructed to enter victim information, for all cases including Indian country cases, only in the Department of Justice’s Victim Notification System (VNS), rather than in LIONS.<sup>34</sup>

To comply with TLOA, the Director of EOUSA sent a memorandum in September 2011 directing that USAOs are to record the Indian/non-Indian status of victims and defendants in the “individual participant” section of LIONS. In order to capture this information, USAOs have to use the “long form” in LIONS. The historical general practice is that the “long form” is not used if a case is going to be immediately declined. USAO personnel entering information into LIONS typically are assigned this task for all criminal cases and not just Indian country cases. Because of this historical practice, there were cases in which the long form was not used and the required Indian or non-Indian status information was not recorded. In spite of this new reporting requirement, it became evident in preparing this report that the Indian/non-Indian defendant or victim status information included in CY 2013 LIONS declination data was incomplete or in some cases inaccurate. Given the number of cases, it was not practical to review all relevant files to conduct a complete hand-count of the information. Accordingly, the Department has not included the Indian or non-Indian status of defendant(s) and victim(s) in the USAO data in the CY 2013 Indian country declination report. The Department continues to work to develop a new case management system that will include this data in the future.

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<sup>34</sup> Where possible, all victim information and notifications in criminal cases that have been accepted for prosecution are made available by VNS. This computer-based system provides federal crime victims with information on scheduled court events, as well as the outcome of those court events. It also provides victims with information on the offender's custody status and release. These victim notifications are required by the Crime Victims’ Rights Act, 18 U.S.C. 3771. USAO personnel were instructed to include victim information in VNS rather than LIONS to avoid duplicate data entry and to ensure that all statutorily required notifications were made to victims.

## Department of Justice Commitment to Indian Country

As previously noted, in January 2010, the Deputy Attorney General issued a memorandum declaring public safety in tribal communities a top priority for the Department of Justice and outlining the responsibilities of the United States Attorneys' offices to Federally recognized tribes in their districts.<sup>35</sup> This same memorandum, entitled the *Indian Country Law Enforcement Initiative*, also stated that "addressing violence against women and children in Indian country is a Department of Justice priority." Unfortunately, high incidences of violence against women and children, including sexual assault and domestic violence, are reported on many reservations. Vigorous investigation and prosecution of these crimes is essential to the safety of women and children in Indian country.

Tribes share the Federal Government's goal of increasing public safety and improving the fair administration of justice. The Department of Justice has worked to strengthen relationships with Federally recognized tribes; improve the coordination of information, statistics, training, and research and development; enhance tribal capacity; and further Federal law enforcement and prosecution efforts.

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*"Our role as the primary prosecutor of serious crimes makes our responsibility to citizens in Indian country unique and mandatory. Accordingly, public safety in tribal communities is a top priority for the Department of Justice."*  
—U.S. Deputy Attorney General

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Indian country prosecutions are an important part of the Department's mission and it continually strives to improve efforts in this area. Successful multi-jurisdictional investigations and prosecutions require collaborative working relationships. In partnership with tribes, the Department's goal is to find and implement solutions addressing immediate and long-term public safety challenges in Indian country. The United States Attorneys reinforce this goal by conducting tribal consultations and developing operational plans to address public safety issues in Indian country.

The success of the Department of Justice's *Indian Country Law Enforcement Initiative* depends largely on the dedicated efforts of the FBI and the USAOs. Those efforts are reflected through their collaborative work with their tribal law enforcement partners, by their increased presence in tribal communities, and by their dedicated work in the field and in the courtroom.

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<sup>35</sup> The Deputy Attorney General's memorandum to USAOs concerning the Indian Country Law Enforcement Initiative can be found online at <http://www.justice.gov/dag/dag-memo-indian-country.html>.

## Appendix A: Glossary of Terms

**Matters Received** – all proceedings on which AUSAs spend one hour or more of time and that districts open in LIONS after the beginning of the reporting period are counted as Matters Received for that reporting period. Matters Received includes criminal referrals from investigative agencies, and matters that may be handled as misdemeanor cases in U.S. Magistrate Court. Matters Received does not include criminal miscellaneous matters (requests for arrest warrants, search warrants, etc.), petty offenses or infractions, or matters that are immediately declined.

**Defendants in Matters Received** – a count of the suspect(s) associated with each Matter Received.

**Matters Terminated** – all proceedings terminated (closed) during the reporting period without ever having attained case status are counted as Matters Terminated. Matters Terminated includes Later Declinations, No True Bills, and criminal matters that are handled as misdemeanor cases in U.S. Magistrate Court.

**Defendants in Matters Terminated** – a count of the suspect(s) who were terminated. Note that a count is not added to Matters Terminated, above, until all suspects associated with the matter are terminated.

**Matters Pending** – all proceedings that were opened in LIONS during the current or a prior reporting period which have not yet attained case status or which were not terminated as matters during that time.

**Defendants in Matters Pending** – a count of the suspect or suspects associated with or remaining with each Matter Pending.

**Cases Filed** – all proceedings for which a significant paper has been filed in court during the reporting period and regardless of the reporting period in which the proceeding was opened as a criminal matter in LIONS. Significant papers include indictments and informations filed in district court. U.S. Magistrate Court and U.S. Appeals Court filings are not included in these counts.

**Defendants in Cases Filed** – a count of the defendant or defendants associated with each Case Filed. Note that if at least one defendant is in case status, the proceeding is counted as a case even though one or more additional suspects may remain in matter status.

**Cases Terminated** – all proceedings terminated (closed) during the reporting period that were classified as cases at the time of termination are counted as Cases Terminated, regardless of when they attained case status. Terminations include guilty pleas, guilty verdicts, dismissals, acquittals, transfers and other terminations. Note that a case is not counted as terminated until all defendants associated with the case are terminated.

**Defendants in Cases Terminated** – a count of the defendant or defendants who were terminated.

**Cases Pending** – all proceedings which were in case status and pending (still open) at the end of the reporting period, regardless of when they attained case status.

**Defendants in Cases Pending** – a count of the defendant or defendants who were in case status and pending (still open) as of the end of the reporting period, regardless of when they attained cases status.

**Matters Handled** – sum of matters pending at the end of the prior fiscal year, added to matters received during the current fiscal year.

Cases Handled – sum of cases pending at the end of the prior fiscal year, added to cases filed during the current fiscal year.

Suspect Counts – refers to those individuals identified as wrongdoers in an open matter.

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## Appendix B: Lead Charges Entered into LIONS in Calendar Year 2013

<b>Assault</b>	
18 U.S.C. 111	Assaulting, resisting, or impeding certain officers or employees
18 U.S.C. 111a	Assaulting, resisting, or impeding certain officers or employees
18 U.S.C. 111a1	Assaulting, resisting, or impeding certain officers or employees
18 U.S.C. 112	Assault of foreign official
18 U.S.C. 113a1	Assault with the intent to commit murder
18 U.S.C. 113a2	Assault with the intent to commit a felony
18 U.S.C. 113a3	Assault with a dangerous weapon
18 U.S.C. 113a4	Assault by striking, beating, or wounding
18 U.S.C. 113a5	Simple assault
18 U.S.C. 113a6	Assault resulting in serious bodily injury
18 U.S.C. 113a7	Assault resulting in substantial bodily injury to a person less than 16
18 U.S.C. 113a8	Assault by strangulating, suffocating, or attempt to do so
18 U.S.C. 1169	Reporting of child abuse
18 U.S.C. 117	Domestic assault by an habitual offender
18 U.S.C. 2261A	Stalking
<b>Murder</b>	
18 U.S.C. 1111	Murder
18 U.S.C. 1112	Manslaughter
18 U.S.C. 1113	Attempt to commit murder or manslaughter
18 U.S.C. 2332	Homicide outside United States
<b>Sexual Assault (Child and Adult Victims), Sexual Exploitation and Failure to Register as Sex Offender</b>	
18 U.S.C. 2241	Aggravated sexual abuse
18 U.S.C. 2241a	Aggravated sexual abuse by force or threat
18 U.S.C. 2241c	Aggravated sexual abuse with a child less than 12
18 U.S.C. 2242	Sexual abuse
18 U.S.C. 2242(1)	Sexual abuse by threats or placing in fear
18 U.S.C. 2242(2)	Sexual abuse where victim is either incapable of appraising nature of the conduct, or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act
18 U.S.C. 2243	Sexual abuse of a minor or ward
18 U.S.C. 2243a	Sexual abuse of a minor
18 U.S.C. 2243a1	Sexual abuse of a minor who is at least 12 but less than 16
18 U.S.C. 2244	Abusive sexual contact

18 U.S.C. 2251	Sexual exploitation of children
18 U.S.C. 2252A	Child Exploitations/Child Pornography

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**Drug, Alcohol, and Other Offenses**

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15 U.S.C. 2614	Toxic substances control
16 U.S.C. 3372	Illegally take fish & wildlife
16 U.S.C. 668	Wildlife protection (eagle feathers)
18 U.S.C. 1155	Intoxicants dispensed on school site
18 U.S.C. 1156	Intoxicants possessed unlawfully
18 U.S.C. 1201	Kidnapping
18 U.S.C. 1363	Malicious destruction of building or property within Special Maritime and territorial jurisdiction
18 U.S.C. 1512	Tampering with a witness, victim, or an informant
18 U.S.C. 1855	Fire on public land
18 U.S.C. 1951	Interference with commerce by threats or violence (racketeering chapter)
18 U.S.C. 1951a	Interference with commerce by threats or violence (racketeering chapter and subsection)
18 U.S.C. 2111	Robbery within special maritime and territorial jurisdiction
18 U.S.C. 2312	Transportation of stolen vehicles
18 U.S.C. 2332f	Bombing of public place
18 U.S.C. 241	Conspiracy against rights
18 U.S.C. 81	Arson within special maritime and territorial jurisdiction
18 U.S.C. 842a1	Unlawful business in explosive materials
18 U.S.C. 922a1A	Controlled substances
18 U.S.C. 922a3	Firearms/Unlawful acts
18 U.S.C. 922g1	Felon in possession of a firearm
18 U.S.C. 922j	Firearms
18 U.S.C. 922k	Firearm with obliterated serial number
18 U.S.C. 922x1B	Firearms
21 U.S.C. 841	Prohibited Acts A (drug abuse prevention and control)
21 U.S.C. 841a1	Manufacture, distribute, dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance
21 U.S.C. 846	Attempt and conspiracy
21 U.S.C. 952	Importation of controlled substances
21 U.S.C. 952a	Importation of controlled substances
26 U.S.C. 5861d	Receipt or possession of an unregistered firearm

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**Financial Crimes/Public Corruption/Fraud**

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18 U.S.C. 1005	Fraud/False Statements
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18 U.S.C. 1006	Fraud/False Statements
18 U.S.C. 1028a	Identify theft
18 U.S.C. 1035	False statements
18 U.S.C. 1163	Embezzlement and theft from Indian tribal organizations
18 U.S.C. 1168	Theft by officers or employees of gaming establishments on Indian lands
18 U.S.C. 1341	Frauds and swindles
18 U.S.C. 1342	Fraud
18 U.S.C. 1343	Fraud by wire, radio, or television
18 U.S.C. 1361	Government property or contracts
18 U.S.C. 1622	Subornation of perjury
18 U.S.C. 1709	Theft of mail
18 U.S.C. 19	Petty offense defined
18 U.S.C. 1955	Illegal gambling
18 U.S.C. 1956	Laundering of monetary instruments
18 U.S.C. 201c1B	Bribery
18 U.S.C. 641	Public money, property, or records
18 U.S.C. 661	Theft of personal property within special maritime and territorial jurisdiction
18 U.S.C. 666	Theft or bribery concerning programs receiving Federal funds
18 U.S.C. 666a1	Theft or bribery concerning programs receiving Federal funds by an agent of an organization, or of a State, local, or Indian tribal government
25 U.S.C. 450d	Criminal Acts regarding grants

#### **Jurisdictional, Procedural, Penalty, or State Statute**

01S:265.22	Rape, first and second degree – 21 Okla. St. Ann. 1114 (2008)
12.1S:12.1-32-01(6)	Criminal trespass – NDCC 12.1-32-01(6) (penalty provision)
13AS:13A-6-24a	Endangerment – A.R.S. 13-1201
13S:13-3623	Child or vulnerable adult abuse; emotional abuse – A.R.S. 13-3623
14S:14-09-22b	Abuse or neglect of child – NDCC 14-09-22
14S:14-09-22c	Abuse or neglect of child – NDCC 14-09-22
14T:01701	Rape, first and second degree – 21 Okla. St. Ann. 1114 (2008)
18 U.S.C. 1153	Major Crimes Act
18 U.S.C. 13	Assimilative Crimes Act
18 U.S.C. 1365	Tampering with consumer products – definition of “serious bodily injury” and “bodily injury”
18 U.S.C. 7	Special maritime and territorial jurisdiction defined
18 U.S.C. 844e	Penalty for using the mail, telephone, telegraph, or other instrument of interstate or foreign commerce to threaten to kill, injure, intimidate or to damage property by fire or explosive

18 U.S.C. 924c1Ai	Enhanced penalty provision for possessing a firearm during a crime of violence or drug trafficking crime
18S:18-1401	Burglary – I.C. 18-1401 (1997)
18S:2232.1	Burglary, first degree – SDCL 22-32-1
18S:2232.8	Burglary, third degree – SDCL 22-32-8
18S:2610.1	Abuse of or cruelty to minor as felony – SDCL 26-10-1
21 U.S.C. 844	Penalties for simple possession
30S:30-15-1	Criminal damage to property – N.M.S.A. 30-15-1 (1978)
30S:30-6-1D1	Tribal Code
42 U.S.C. 408a7B	Penalty section for law on Federal old-age survivors and disability insurance benefits
750S:750.136b3	Child Abuse, second degree – M.C.L.A. 750.136b(3)
750S:750.136b5	Child Abuse, third degree – M.C.L.A. 750.136b(5)
8 U.S.C. 1324a1Ai	Penalty provisions for crime of bringing in and harboring certain aliens
MCL 750.110a(4)	Definitions; breaking and entering a dwelling; crime of home invasion; third degree