



U.S. Department of Justice

United States Attorney  
District of Arizona

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Dear Tribal Leader:

On July 26, President Obama signed into law the long-awaited Tribal Law and Order Act, which provides many changes to the way federal government agencies will deliver public safety services to Indian Country. The United States Department of Justice plans at some point to provide you with a summary of what the new law will do and how it will do it, but it is unclear when that document will issue. Because we understand that you and many of your government agencies already are planning action in light of the new law, and need to know what to expect from it, my Indian Country team has prepared our own brief summary of the features of the Act, a copy of which is enclosed for your reference. Please circulate it as you see fit, and do not hesitate to call me (602-514-7583), Tribal Liaison John Tuchi (602-514-7543), or Deputy Tribal Liaison Marnie Hodahkwen (602-514-7568) with any questions about it.

Additionally, we have prepared for you a more in-depth live presentation on the features of the law, including an analysis of how we believe individual provisions will operate. If you are interested in having John or Marnie come to your offices or chambers to make that presentation and to answer questions, please contact any of us and we will arrange it.

Our goal is to maximize the public safety benefit of the new law to your community, and we believe that is best done by fully informing your expectations as early as possible.

Sincerely,

DENNIS K. BURKE  
United States Attorney  
District of Arizona

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Attachment

## Impact of the Tribal Law and Order Act of 2010 on the United States Attorney's Office

### Indirect Duties Imposed on United States Attorneys by the Tribal Law and Order Act of 2010 (through the Department of Justice)

- (1) Title 1, sec. 101(b)(15): On an annual basis, sharing with the Office of Justice Services all relevant crime data, including the Uniform Crime Reports that the Office of Justice Services prepares and receives from tribal law enforcement agencies on a tribe-by-tribe basis to ensure that individual tribal governments providing data are eligible for programs offered by the Department of Justice
- (2) Title 1, sec. 101(b)(18)(f): No later than 1 year after the date of enactment of this subsection, the Secretary, acting with the Bureau, in coordination with the Department of Justice and in consultation with tribal leaders, tribal courts, tribal law enforcement officers, and tribal corrections officials, shall submit to Congress a long-term plan to address incarceration in Indian country, including-
  - a. A description of proposed activities for-
    - i. The construction, operation, and maintenance of juvenile (in accordance with section 4220(a)(3) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (24 U.S.C. 2453(a)(3)) and adult detention facilities (including regional facilities) in Indian country;
    - ii. Contracting with State and local detention centers, upon approval of affected tribal governments; and
    - iii. Alternatives to incarceration, developed in cooperation with tribal court systems;
  - b. An assessment and consideration of the construction of Federal detention facilities in Indian country; and
  - c. Any other alternatives as the Secretary, in coordination with the Attorney General and in consultation with Indian tribes, determines to be necessary.

### Direct Duties Imposed on United States Attorneys by the Tribal Law and Order Act of 2010

- (1) If a U.S. Attorney declines to prosecute, or acts to terminate prosecution of, an alleged violation of Federal criminal law in Indian country, the U.S. 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.
- (2) *Compilation of Information*: On an annual basis, and by Federal judicial district, U.S. Attorneys shall submit to the Native American Issues Coordinator to compile information regarding all declinations of alleged violations of Federal criminal law that occurred in Indian country that were referred for prosecution by law enforcement agencies, including-
  - a. The types of crimes alleged;
  - b. The statuses of the accused as Indians or non-Indians;
  - c. The statuses of the victims as Indians or non-Indians; and

- d. The reasons for deciding to decline or terminate the prosecutions.

NOTE\*\*Nothing in this section requires any Federal agency or official to transfer or disclose any confidential, privileged, or statutorily protected communication, information, or source to an official of any Indian tribe.

- (3) *Tribal Liaison*: The United States Attorney for each district that includes Indian country shall appoint no less than one assistant United States Attorney to serve as a Tribal Liaison for the district.

- a. Obligations

- i. Coordinate prosecutions of Indian country crime; and
- ii. Develop relationships with residents of Indian country and serve as a link between Indian country residents and the Federal justice process.

- b. Duties of Tribal Liaison

- i. Coordinate the prosecution of Federal crimes that occur in Indian country.
- ii. Develop multidisciplinary teams to combat child abuse and domestic and sexual violence offenses against Indians.
- iii. Consult and coordinate with tribal justice officials and victims' advocates to address any backlog in the prosecution of major crimes in Indian country in the district.
- iv. Develop working relationships and maintain communication with tribal leaders, tribal community and victims' advocates, and tribal justice officials to gather information from, and share appropriate information with, tribal justice officials.
- v. Coordinate with tribal prosecutors in cases in which a tribal government has concurrent jurisdiction over an alleged crime, in advance of the expiration of any applicable statute of limitation.
- vi. Provide technical assistance and training regarding evidence gathering techniques and strategies to address victim and witness protection to tribal justice officials and other individuals and entities that are instrumental to responding to Indian country crimes.
- vii. Conduct training sessions and seminars to certify special law enforcement commissions to tribal justice officials and other individuals and entities responsible for responding to Indian country crimes
- viii. Coordinate with the Office of Tribal Justice, as necessary.
- ix. Conduct other activities to address and prevent violent crime in Indian country as the applicable United States Attorney determines to be appropriate.

- (4) In order to enhance prosecution of minor crimes, each United States Attorney serving a district that includes Indian country is authorized and encouraged to-

- a. appoint Special Assistant United States Attorneys (pursuant to section 543(a) of title 28, United States Code) to prosecute crimes in Indian country as necessary to improve the administration of justice, particularly when-
  - i. The crime rate exceeds the national average crime rate; or
  - ii. The rate at which criminal offenses are declined to be prosecuted exceeds the national average declination rate;

- b. In appointing a Special Assistant United States Attorney, a United States Attorney should consult with tribal justice officials of each Indian tribe that would be affected by the appointment.
  - c. coordinate with the applicable United States district courts regarding scheduling of Indian country matters and holding trials or other proceedings in Indian country, as appropriate;
  - d. provide to appointed Special Assistant United States Attorneys appropriate training, supervision, and staff support; and
  - e. provide technical and other assistance to tribal governments and tribal court systems to ensure that the goals of this subsection are achieved.
- (5) *Native American Issues Coordinator*: established in the Executive Office for United States Attorneys of the Department of Justice
- a. Duties:
    - i. Coordinate with the United States Attorneys that have authority to prosecute crimes in Indian country;
    - ii. Coordinate prosecutions of crimes of national significance in Indian country, as determined by the Attorney General;
    - iii. Coordinate as necessary with other components of the Department of Justice and any relevant advisory groups to the Attorney General or the Deputy Attorney General; and
    - iv. Carry out such other duties as the Attorney General may prescribe.

Tribal Law and Order Act of 2010: Duties Required from USAO	Current Functions of USAO in Tribal Communities (from Operations Plan)
<p>If a U.S. Attorney declines to prosecute, or acts to terminate prosecution of an alleged violation of Federal criminal law in Indian country, the U.S. 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.</p>	<ul style="list-style-type: none"> <li>• Upon receiving a referral of an investigation into a criminal matter on one of the tribal nations the USAO will assign an AUSA to monitor the investigation. This AUSA will be responsible for conferring with the appropriate investigating agency within one week of the referral to determine the status of the investigation.</li> <li>• Assigned AUSA will determine whether to charge, decline, or direct specific additional furthering investigation into a matter within 30 days of receipt of final prosecution report from referring agent.</li> <li>• If AUSA declines to prosecute, the AUSA will prepare a written notice of that declination, setting forth the reasons for that declination in sufficient detail that a tribal prosecutor assessing her or his own case under applicable tribal code, would understand those reasons well and would be able to assess whether any evidentiary shortfalls in the contemplated federal case would similarly render a tribal case unviable; the AUSA will send the declination letter to the tribal prosecutor, and if appropriate, the tribal police chief, at the same time as it's sent to the referring federal agent.</li> <li>• With the copy of the declination letter, the AUSA will also invite the tribal prosecutor to visit with the AUSA, to discuss the matter with the AUSA, and to gain access to the evidence in the matter that the AUSA has maintained.</li> <li>• AUSA will encourage the investigating federal agency to share evidence in its possession with the tribal prosecutor, though AUSA cannot compel it to do so.</li> <li>• These practices will give the tribal prosecutor every chance to succeed in that endeavor within the tribal limitations period.</li> </ul>
<p>The United States Attorney for each district that includes Indian country shall appoint no less than one assistant AUSA to serve as a Tribal Liaison for the district. Duties Include:</p> <ul style="list-style-type: none"> <li>• Coordinate the prosecution of Federal crimes that occur in Indian Country.</li> </ul>	<p>In addition to its Tribal Liaison, this District has created the position of Deputy Tribal Liaison to double the attention it pays on a senior management level to tribal affairs.</p> <ul style="list-style-type: none"> <li>• Duties Consistent with Tribal Law and Order Act of 2010: <ul style="list-style-type: none"> <li>➤ The Tribal Liaison and Deputy Tribal Liaison will be</li> </ul> </li> </ul>

- Develop multidisciplinary teams to combat child abuse and domestic and sexual violence offenses against Indians.
- Consult and coordinate with tribal justice officials and victims' advocates to address any backlog in the prosecution of major crimes in Indian country in the district
- Develop working relationships and maintain communication with tribal leaders, tribal community and victims' advocates, and tribal justice officials to gather information from, and share appropriate information with tribal justice officials.
- Coordinate with tribal prosecutors in cases in which a tribal government has concurrent jurisdiction over an alleged crime, in advance of the expiration of any applicable statute of limitation.
- Provide technical assistance and training regarding evidence gathering techniques and strategies to address victim and witness protection to tribal justice officials and other individuals and entities that are instrumental to responding to Indian country crimes.
- Conduct training sessions and seminars to certify special law enforcement commissions to tribal justice officials and other individuals and entities responsible for responding to Indian country crimes.
- Coordinate with the Office of Tribal Justice, as necessary.
- Conduct other activities to address and prevent violent crime in Indian country as the applicable United States Attorney determines to be appropriate.

responsible for communicating with tribal officials at all levels about general matters of importance to the tribes, as well as conveying appropriate information about specific cases and their statuses.

- Each AUSA having Indian Country responsibility will also undertake liaison duties with their assigned tribe to address specific case-related matters with tribal law enforcement, tribal prosecution, and related tribal government agencies.
- Each AUSA and victim advocate in the USAO will be assigned to at least one multidisciplinary ("MDT") team.
- Each AUSA assigned to a tribe will be responsible for attending all MDT meetings for that jurisdiction. If that MDT ceases to function meaningfully, the AUSA is responsible for making concerted efforts to revive that MDT.
- AUSAs are also strongly encouraged to seek the establishment of MDTs for all other violent crimes on their assigned reservations.
- Each AUSA will make visits to his/her assigned reservation to gain familiarity with the reservation and its government. Such visits might include, for example, observing proceedings in tribal court or meetings with tribal police and prosecutors to discuss the training needs of the agencies and to market our availability to provide that training.
- Keep tribal leaders and the public in general informed of significant events in criminal justice matters through the media and public outreach.
- AUSAs are in contact with federal case agents, tribal police (where applicable) and tribal prosecutors to consider whether prosecution under the tribal code on one hand, or pursuant to the Major Crimes Act or Indian Country Crimes Act or assimilated state statutes, on the other, is more appropriate.

	<ul style="list-style-type: none"> <li>➤ This office has assumed responsibility for conducting all training of tribal officers under the Special Law Enforcement Commission (SLEC) program, and staffs approx. six, three-day-long training sessions throughout the calendar year.</li> <li>➤ This Office supports and encourages the following federal-state-tribal task forces in Indian Country and the Office will pursue similar new opportunities in order to address and prevent violent crime in Indian Country : <ul style="list-style-type: none"> <li>○ FBI's Project Safe Trails on Navajo</li> <li>○ Project Safe Neighborhoods Pilot on the Tohono O'odham Nation</li> <li>○ La Paz County Task Force</li> </ul> </li> <li>➤ The office will develop a pilot program for the appointment of tribal prosecutors from participating tribes as SAUSAs to address criminal issues of particular interest to the participating communities.</li> <li>➤ The Tribal Liaison will pursue expansion of cross-deputization agreements with county and state law enforcement to make more trained and certified officers available for patrol and operations on those tribal communities who want them.</li> <li>➤ The operational plan heavily emphasizes a program of standardized and customized training of tribal police, delivered by Indian Country AUSAs and federal agents, principally at tribal police facilities to maximize attendance.</li> <li>➤ Indian Country AUSAs have developed and will continue to develop presentation materials for topics that include: crime scene and evidence preservation, witness interviews, report writing, suspect interviews, chain of custody, search and seizure, sex crime investigation, federal criminal procedure, and advice of rights under both federal law and ICRA.</li> <li>• Additional Duties per Operational Plan</li> </ul>
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|  | <ul style="list-style-type: none"><li>➤ Flagstaff Branch Chief will perform informal liaison duties between the representatives of tribal governments in the five northern Arizona counties and the USAO.</li><li>➤ Tucson office's Branch Chief and Section Chief for Violent Crimes will perform informal liaison duties between the representatives of the Tohono O'odham and Pascua Yaqui tribes and the USAO.</li><li>➤ Tribal Liaison and Deputy Tribal Liaison will develop and maintain at least one close contact, where possible, with a member of each of the following entities within each tribe, nation, or community: the tribal council, the tribal Executive's Office (where it's distinct from the Council), the Tribal Prosecutor's Office, and the Tribal Police Chief.</li><li>➤ Tribal Liaison, Deputy Tribal Liaison, Flagstaff and Tucson Branch Chiefs and all Indian Country AUSAs and supervisors will maintain a same-day call-back policy for inquiries or requests for assistance from tribal representatives, even if the return call is only to say that the AUSA or manager received the request and is working on it.</li><li>➤ The Tribal Liaison, Deputy Tribal Liaison, Law Enforcement Coordinator or an Indian Country AUSA will attend all monthly Indian Country Intelligence Network (ICIN) meetings and will use those meetings to solicit input and concerns about law enforcement issues from police chiefs, to gauge and respond to training needs, and to share updates with the chiefs about federal criminal law and USAO activities of interest to them. The USAO representative will make regular presentations at the ICIN meetings on topics requested by the ICIN membership.</li><li>➤ The Tribal Liaison, Deputy Tribal Liaison or both will attend all quarterly Arizona Tribal Prosecutors' Association (AZTPA) meetings and will use those</li></ul> |
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	<p>meetings to solicit concerns about law enforcement issues from the prosecutors and to share updates with them about federal criminal law and USAO activities of interest to them. The USAO representative will make regular presentations at the AZTPA meetings on topics requested by the membership.</p> <ul style="list-style-type: none"> <li>➤ This office will petition the department of the Interior, Indian Police Academy to allow the Tribal Liaison to revise the curriculum and examination for the SLEC course, so that tribal officers can receive training that is more aligned with the needs of federal criminal investigations. In addition, the U.S. Attorney, Tribal Liaison, Deputy Tribal Liaison, and all Indian Country supervisors and AUSAs will actively market to tribal police departments, whether SLEC-certified or not, the availability of standard or customized training presentations on any law enforcement topic they desire.</li> <li>➤ Tribal Liaison will review the status of all existing MOUs and, after consulting with the federal agencies and seeking input from the affected tribes, will recommend to the United States Attorney on a reservation-by-reservation basis, whether the creation of a new MOU allocating the responsibilities of the federal agencies is warranted and if so, how they should be apportioned.</li> <li>➤ This office will encourage that tribes utilize the Central Violations Bureau (CVP) citation process to address minor offenses by non-Indians in Indian Country.</li> </ul>
<p>In order to enhance prosecution of minor crimes, each United States Attorney serving a district that includes Indian country is authorized and encouraged to-</p> <ul style="list-style-type: none"> <li>• appoint Special Assistant United States Attorneys (pursuant to section 543(a) of title 28, United States Code) to prosecute crimes in Indian country as necessary to improve the administration of justice, particularly when- <ul style="list-style-type: none"> <li>➤ The crime rate exceeds the national average crime rate;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• To address criminal issues of particular interest to Tribal nations, the Office has developed a pilot program for the appointment of tribal prosecutors as SAUSAs. Tribes have expressed a desire to use federal criminal law to reduce domestic violence, violence against women in general, drug and bootlegging crime, and minor crimes against tribal casinos and other tribal facilities.</li> <li>• This District will aggressively pursue the Attorney General's</li> </ul>

<p>or</p> <ul style="list-style-type: none"> <li>➤ The rate at which criminal offenses are declined to be prosecuted exceeds the national average declination rate;</li> <li>• In appointing a Special Assistant United States Attorney, a United States Attorney should consult with tribal justice officials of each Indian tribe that would be affected by the appointment.</li> <li>• coordinate with the applicable United States district courts regarding scheduling of Indian country matters and holding trials or other proceedings in Indian country, as appropriate;</li> <li>• provide to appointed Special Assistant United States Attorneys appropriate training, supervision, and staff support; and</li> <li>• provide technical and other assistance to tribal governments and tribal court systems to ensure that the goals of this subsection are achieved.</li> </ul>	<p>priority of reducing violence against women and children in Indian Country. According to the Tribal Law and Order Act of 2010 sec. 2(a)(5)(A), “domestic and sexual violence against American Indian and Alaska Native women has reached epidemic proportions.” Because of the gravity of this issue, it may be advisable that USAO appoint a Special Assistant United States Attorney to prosecute these crimes.</p>
<p><i>Native American Issues Coordinator:</i> established in the Executive Office for United States Attorneys of the Department of Justice</p> <ul style="list-style-type: none"> <li>• Duties: <ul style="list-style-type: none"> <li>➤ Coordinate with the United States Attorneys that have authority to prosecute crimes in Indian country;</li> <li>➤ Coordinate prosecutions of crimes of national significance in Indian country, as determined by the Attorney General;</li> <li>➤ Coordinate as necessary with other components of the Department of Justice and any relevant advisory groups to the Attorney General or the Deputy Attorney General; and</li> <li>➤ Carry out such other duties as the Attorney General may prescribe.</li> </ul> </li> </ul>	
<p>On an annual basis, and by Federal judicial district, U.S. Attorneys shall submit to the Native American Issues Coordinator to compile information regarding all declinations of alleged violations of Federal criminal law that occurred in Indian country that were referred for</p>	<p>Operations plan des not discuss this requirement.</p>

<p>prosecution by law enforcement agencies, including-</p> <ul style="list-style-type: none"> <li>• The types of crimes alleged;</li> <li>• The statuses of the accused as Indians or non-Indians;</li> <li>• The statuses of the victims as Indians or non-Indians; and</li> <li>• The reasons for deciding to decline or terminate the prosecutions.</li> </ul>	
	<p>Additional USAO functions:</p> <ul style="list-style-type: none"> <li>• The USAO continues its annual Indian Country Report, which summarizes violent felony, narcotics, bootlegging, white collar and public corruption prosecutions in Indian Country, both District-wide and by reservation. The Report highlights reportable events on cases of particular interest, including tribal law enforcement training accomplished.</li> <li>• USAO's Victim Witness Advocate Unit has extensive and well-defined procedures for servicing victims of violent crimes.</li> <li>• The Office's Law Enforcement Coordinator and Community Outreach Coordinator, along with the U.S. Attorney and other senior management will actively seek out and develop worthwhile outreach efforts in order to strengthen tribal communities and their governments to reduce and avoid criminal behavior.</li> <li>• Respective criminal chiefs and violent crime section supervisors maintain statistics on each Indian Country AUSA's total number of files opened, number of cases and defendants charged, number of pleas, sentencings, trials, declinations and appeals achieved month-by-month.</li> <li>• District is actively engaged in notifying tribal governments of all opportunities for governmental grants, which it does through direct contact and through the Inter-Tribal Council of Arizona. Additionally, the Office will seek to act as a clearinghouse to monitor the status of tribes' pending grant applications within DOJ components and report that status to the inquiring tribes.</li> </ul>