




U.S. Department of Justice

*United States Attorney
District of Montana*

MEMORANDUM

Subject: DISTRICT OF MONTANA INDIAN COUNTRY LAW ENFORCEMENT INITIATIVE OPERATIONAL PLAN	Date: December 14, 2016 (Revised)
To: Indian Country Unit	From:  Michael W. Cotter U.S. Attorney 901 Front Street, Suite 1100 Helena, Montana 59626

Introduction: Montana Reservations –Prosecution and Law Enforcement
Resources – Mission

Montana is a vast state with seven Indian Reservations occupying in excess of eight million acres in its northern and eastern regions. The Flathead Reservation is the only PL 280 reservation. The other six reservations are non-PL 280. They are: the Blackfeet Reservation; the Rocky Boy's Reservation; the Fort Belknap Reservation; the Fort Peck Reservation; the Crow Reservation; and the Northern Cheyenne Reservation.

Federal crimes from Blackfeet, Rocky Boy's, Fort Belknap and Fort Peck are currently prosecuted at Great Falls. Federal crimes from Crow and Northern Cheyenne are prosecuted at Billings.

The FBI investigates major crimes on all six reservations. Three of the reservations, Blackfeet, Crow, and Northern Cheyenne have delegated tribal law enforcement responsibility to the BIA. The other three reservations, Rocky Boy's, Fort Belknap, and Fort Peck have their own 638 tribal law enforcement.

OPERATIONAL PLAN

A. Communication

General: It is important that Tribal leaders, Department of Justice leadership, and congressional members have information about the USAO's efforts to combat crime in Indian

Country. The USAO will provide press releases about indictments, dispositions, and sentences to the Department of Justice to be published in the Tribal Justice News publication, and continue, through email and liaison visits, to provide district-specific and national information to Tribal leaders about Indian Country issues and cases.

The USAO website will provide links to press releases, opinion editorials, and open letters relevant to Indian issues.

Investigations and Prosecutions: It is crucial that the USAO inform tribal law enforcement about charging decisions, including cases not resolved in federal court. It is equally important that cases are staffed by the Tribe and the USAO on a regular basis so that the most appropriate charging decision, both crime and jurisdiction, is made as quickly as possible.

USAO/Tribal Prosecution Conference: On a bi-monthly basis, the AUSA(s) assigned to a particular reservation, the tribal prosecutor(s), and representatives from federal and tribal law enforcement will staff cases in person or by phone that have arisen on that reservation by talking about potential charges and whether the case is most appropriately prosecuted in tribal court, federal court, or both courts. A permanent record of cases staffed will be maintained by the USAO. Efforts will be made to assure that CaseView accurately reflects those cases that are referred to the tribal system.

Written Resolution of Cases: Cases that are referred for federal prosecution, and later resolved by referral to the tribal court, or declined because of an inability to prosecute in either court, must be resolved in writing before the Tribe's statute of limitations period expires, if possible. The resolution letter will be provided by the AUSA to the referring agency. The resolution letter will also be provided to the tribal prosecutor to inform him or her of the decision. The investigating agency or victim of a crime can obtain a review of that decision. Our "second look policy" is invoked when the investigating agency or the victim of a crime that has been resolved other than by federal prosecution asks the USA to review the matter for a second opinion. Additionally, the AUSA with primary responsibility as tribal liaison for cases arising on a particular reservation is always available to answer questions and provide legal advice.

Sharing Information with Tribal Prosecutor: If a case is not appropriate for federal prosecution and is referred to tribal court, the lead investigative agency will, within 10 days from the date of the notice that federal prosecution is not appropriate, provide the tribal prosecutor with all appropriate reports, evidence, and information available to insure successful prosecution. The USAO will provide all pertinent case file information.

Sharing Information Among Investigative Agencies: Investigators rely on databases to conduct investigations. Agencies must share information by computer through databases and other on-line services. It is important that all investigative agencies working in

Indian Country have access to software and computers that allow them to share information with each other.

Federal Agent Cooperation with Tribal Court: Federal agents working in Indian Country have a responsibility to the Tribal Court to cooperate by honoring subpoenas and providing evidence and testimony for proceedings in tribal court.

B. Investigation and Prosecution

A primary goal of the District of Montana's Operational Plan is to enhance law enforcement coordination in Indian Country investigations. The following guidelines are applicable to all of the Tribes in the District of Montana.

- **The roles of the respective law enforcement partners, police, prosecutors, and victim advocates.**

Law Enforcement: The investigating agency (or "lead" agency), will be responsible for conducting and coordinating the investigation, presenting the case to the USAO, and assisting the USA at all stages of prosecution. If the agency that has primary responsibility under these guidelines for an investigation is unable to conduct or complete the investigation, other agencies may undertake the investigation.¹

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

Because of the evidentiary challenges faced in prosecuting Indian Country cases, the USAO will encourage the recording, both video and audio, of witness interviews, particularly interviews of potential defendants and domestic violence victims. Recordings of defendant interviews will decrease the ability of a defendant to claim coercion or duress and will encourage pretrial resolutions. Recordings of other witnesses, particularly domestic violence victims, will memorialize pretrial statements and ensure a better quality of evidence at trial, lessening the chance that witnesses will materially change their statements at trial.

On July 11, 2014, the Department of Justice implemented a new policy concerning the recording of statements. The policy establishes a presumption in favor of electronically recording custodial interviews, with certain exceptions, and encourages agents and prosecutors

¹ The Memorandum of Understanding (MOU) between the Department of Interior and the Department of Justice, dated September 3, 1993, sets forth the guidelines for the respective investigative responsibilities of the FBI, BIA, and Tribal law enforcement entities. That MOU is attached for ease of reference.

to consider taping outside of custodial interrogations. A copy of that policy is attached for ease of reference.

The USAO will work with dispatchers on every reservation to assure that even if the 911 calls are handled by a neighboring municipality, the 911 calls are recorded and properly preserved for prosecution purposes.

Joint investigations involving the FBI are mandated in cases involving death, sexual abuse, rape, kidnapping, arson, assault, and crimes involving weapons. Each agency will share information, provide timely copies of reports, and fully communicate with the other agency concerning all matters relevant to an investigation. To the extent possible, resources of one agency will be made available to the other to assist in case investigation.

Prosecution: It is the role of the AUSA and tribal prosecutor to make a timely determination whether a case will be prosecuted in federal or tribal court, or unable to be prosecuted, in order to maximize resources and provide victims with justice and closure as soon as possible. It is the goal of the USAO to resolve a case within three months of the commission of the crime or the disclosure of the crime. Meeting this goal is dependent upon the timely receipt of the investigation and any forensic testing results.

The District of Montana has a unit of AUSAs dedicated specifically to Indian Country violent crime, led by a Deputy Criminal Chief. The Indian Country Deputy Criminal Chief will assist the Criminal Chief by supervising the district's Indian Country Unit by providing leadership and training to the AUSAs who prosecute crime that occurs in Indian Country in the District of Montana.

Trials in or near Indian Country: The USA will meet with the United States Magistrate Judges with Indian Country responsibility and with the Clerk of Court to identify cases that can be tried in or near Indian Country.

Victim Witness Personnel: It is the role of victim witness coordinators to assist victims and witnesses throughout the investigation and/or prosecution of a case. To that end, the USAO employs two victim/witness coordinators and a contract assistant. Additionally, the FBI and the BIA in the District of Montana employ victim witness coordinators that are present on all six reservations under federal jurisdiction. Attached to this Plan is the Victim and Witness Assistance Policy for the District of Montana first implemented February 1, 2012, and revised August 1, 2015.

Fearless Justice Initiative: In November 2010, the USAO implemented an initiative to promote justice, particularly in Indian Country. *Fearless Justice* expressly acknowledged that victims and witnesses to crime are often the subject of intimidation, pressure from family or friends, threats, shunning, and other types of corrupt coercion, in an effort to get those witnesses to change their story, lie, refuse to cooperate with law enforcement, or not show up

to court. In order to instill confidence in victims and witnesses that the legal system can protect them, vindicate their willingness to come forward, or provide them with the justice they have a right to expect from the system, *Fearless Justice* was designed to confront this problem on three levels.

First, training of Indian Country law enforcement — FBI, BIA, and tribal officers — to embrace and pursue tampering or retaliation allegations with the same level of commitment that they would the underlying crime. Any suggestion that a witness is being pressured or threatened should be treated as a serious and significant crime. Similarly, any witness who seeks to obstruct the proper administration of justice should also be investigated and prosecuted.

Second, to focus on the prosecution resources of the USAO on obstruction crimes, elevate them in priority, and pursue them zealously as substantive prosecutions and as sentencing enhancements.

Third, by achieving the first two steps, show the community that they are safe and secure in their decision to cooperate with law enforcement and if they cooperate they will be protected. Similarly, if victims or witnesses lie to the police, perjure themselves, or absent themselves to defeat the criminal justice process, there will also be significant consequences in terms of separate prosecution. The outreach to the community takes the form of the serious pursuit of obstruction crimes. Resolve and results change the culture.

Reentry Program: Punishment within the federal system includes a period of supervised release after the defendant serves a prison sentence, or a term of probation if a custodial sentence is not imposed. Supervised release and probation require the defendant to comply with conditions of release. The purpose of the reentry plan is to improve the success rate of Indian Country defendants on federal supervision. The USAO will appoint a Reentry Coordinator to meet with tribal leaders across the state to encourage the development of tribal reentry teams. Those teams will work directly with the State of Montana's Department of Corrections and the United States Probation Office to ensure that each tribal community is aware when offenders are returning and is able to utilize available resources as effectively as possible to assist offenders in their transition. Team members will focus on resources related to housing, employment, substance abuse treatment, transportation and family services. Additionally, offender screening and evaluation by the Department of Corrections and the United States Probation Office will be an important tool to assist the tribes in preparing for the return of individual offenders. This screening will also be valuable in determining which offenders are the best candidates for immediate employment by the tribes or private employers. The designated points of contact for each tribe will greatly assist in the flow of information from corrections and probation officers to the tribes and their reentry teams. The USAO will also help to facilitate training for reentry team members on the many issues confronting returning offenders. The USAO is committed to the development of these tribal reentry programs and will continue to

assist the tribes as long as necessary to help these communities reap all the benefits such programs will provide.

Tribal SAUSA Programs: To enhance collaboration and cooperation between the USAO and the Tribes, particularly in the area of domestic violence prosecutions, the USAO will encourage Tribal Prosecutors to become SAUSAs and prosecute select cases in federal court. Tribal SAUSAs will be able to take advantage of the training opportunities at the National Advocacy Center, and will be supervised and supported by the USAO. Through the Office Violence Against Women (OVW), there are grants available for Tribal Prosecutors to become SAUSAs and focus on the prosecution of domestic violence cases in tribal and federal court.

Enhanced Sentencing/Tribal SAUSA Pilot Project: The USAO will support the efforts of all Tribes able to participate in enhanced sentencing and prosecution of non-Indians for domestic violence offenses by providing training and assistance. The Fort Peck Reservation was selected as one of the Tribes to take part in a pilot project for the prosecution of domestic violence cases.

- **Prosecution guidelines or threshold requirements for Indian Country cases.**

The USAO will prosecute all viable federal crimes occurring in Indian Country.

- **Child Protection or Multidisciplinary Teams (18 U.S.C. § 3509(g)) convened to investigate or provide case management for child abuse and/or child sexual abuse cases.**

There are currently Multidisciplinary Teams (MDTs) operating on all six reservations under federal jurisdiction in the District of Montana. It is a priority for the AUSA(s) assigned to each reservation to attend the monthly meeting of the MDT on their assigned reservation. There is significant spill-over crime among the tribal communities and neighboring counties, especially crimes involving children. To that end, several MDTs have members that are employed by neighboring counties.

- **Child-Advocacy Centers (CARE)**

The District of Montana will continue to advocate for centers on every reservation under federal jurisdiction. CARE is a child advocacy center that is housed in existing facilities, such as IHS clinics and BIA office space. Representatives from many disciplines meet on a regular basis to discuss and make decisions about the treatment, investigation, and prosecution of child abuse cases. CARE is also focused on the treatment of the victim and family to prevent further victimization of children.

The first CARE center in the District of Montana is an IHS based center that has been operating on the Crow Reservation for the last ten years. It is a model for how successful such centers can be in combating and preventing child sexual and physical abuse.

- **Sexual Assault Awareness**

The District of Montana regards sexual abuse as a top priority for the office. The USAO has Sexual Assault Response Teams (SARTs) operational on each of the six reservations under federal jurisdiction. Attached to this Plan is the SART Protocol for AUSAs assigned to Indian Country implemented by the USAO in April 2015. Additionally, in August 2016, after consultation with the FBI and the BIA, the USAO implemented Sexual Violence Response guidelines that are attached to the Plan.

- **Tribal, state, and local cross-deputization agreements/memorandums of understanding (MOUs) or ongoing efforts or plans to encourage such agreements.**

Currently one reservation in the District of Montana – Fort Peck – has a cross-deputization agreement with Roosevelt County, a neighboring county. It is the position of the USAO that such agreements should be used by every Tribe in Montana to most effectively use limited law enforcement resources. The USAO will provide model cross deputation agreements and extradition agreements to interested governments. Further, the USAO will facilitate discussions about cooperative agreements amongst governments.

C. Training

There is a need for regularly scheduled training for Indian Country law enforcement, USAO personnel working in Indian Country, Tribal Court personnel, and Tribal leadership.

The USAO has determined that some of our most effective trainings are conducted on the reservations. The USAO will continue to work with the FBI and local law enforcement to put together trainings that are specific to the needs of each community. For example, the USAO will conduct trainings on report writing, case law update, and domestic violence.

The USAO will participate in the Montana-Wyoming tribal judges' association trainings.

The Montana Law Enforcement Academy (MLEA) has requested the USAO provide training for recruits attending the MLEA who come from or around Indian reservations. The class will be considered an elective course that will be three hours. Course topics include, jurisdiction, Indian status, and tribal law and order code.

The USAO will encourage and advise tribal law enforcement of opportunities for training under the Special Law Enforcement Commission and will participate in these trainings, as appropriate.

The USAO's Indian Country Crime Unit meets periodically. Components of the meetings shall include training specific to the dynamic nature of the practice; including best trial practices, tribal law updates, and federal case updates.

D. Outreach

The USAO recognizes that prevention, training, and other grassroots intervention efforts are essential to improving public safety in Indian Country. To that end, the USAO will:

- Require the Tribal Liaison to meet with tribal leadership, law enforcement, tribal court personnel, and county leadership in counties bordering Indian Country in person on a quarterly basis to listen, to answer questions, and to provide information about the USAO's efforts in Indian Country. Meet with State officials, including the Montana Department of Justice Office of Consumer Protection and Victim Services, to assure that a coordinated effort is made on issues in common. Meet with county, state, and tribal organizations to listen, to answer questions, and to provide relevant information regarding public safety in Indian Country.
- The USAO has one prosecutor dedicated to drug crimes on reservations. The USAO will support prosecutions of drug crimes, including supporting existing Safe Trails Task Forces and any other task forces and work with the FBI to form Safe Trails Task Forces, or their equivalent, on all reservations in the District of Montana.
- Use tribal SAUSAs when possible. The District of Montana currently has SAUSAs on the Fort Belknap and Fort Peck Indian Reservations.
- Assist the Tribes in the District of Montana by providing information about all grants provided by the Department of Justice. All tribes in the District of Montana are grant recipients at varying levels.
- Coordinate a Drug Take Back program on all reservations.
- Provide specific information regarding Tribal Law and Order Act implementation to affected communities.
- Encourage appropriate tribal entities to participate in the USAO's Environmental Working Group.

- Work with tribes in assessing need and identifying resources for detention facilities.
- Assist with Sex Offender Registration and Notification Act (SORNA) implementation.
- Assist tribal partners in assessing IT and other retrieval data.

E. Support for Viable Crime Prevention Programs

Universally, tribal governments have raised concerns about the need for viable, community-based crime prevention efforts. The USAO will support organizational efforts to prevent violence, including but not limited to advising tribes and entities about funding opportunities through the Office of Juvenile Justice and Delinquency Program and the Office of Justice Programs.

Tribes and local law enforcement has acknowledged a gang presence on reservations. The USAO will continue to work with the tribal and local officials so that gang presence does not escalate into a gang problem.

F. Violence Against Women

The USAO is committed to vigorous investigation and prosecution of domestic violence and other crimes against women and children in Indian Country. The USAO will prosecute all such viable cases.

Specific to sexual assault cases, the USAO will work in conjunction with the FBI and BIA to –

- Provide training to medical professionals and law enforcement personnel about how to best investigate and document information provided by rape victims, and ensure that rape kits are readily available.
- Encourage IHS to provide adult victims with access to competent and compassionate medical professionals with the requisite skill to perform forensic medical examinations.
- Encourage additional forensic laboratories so that evidence, such as rape kits and other forensic evidence, will be timely analyzed.
- Ensure that existing memorandums of understanding (MOUs) that assign responsibility to federal agencies for investigating sexual assault cases are understood and followed so that cases are investigated in a timely fashion.

Specific to domestic violence cases, the USAO will–

- Provide training to first responder officers about investigation techniques that will greatly improve the ability to successfully prosecute domestic violence cases.
- Encourage cross-deputization agreements and MOUs between the Tribes and state law enforcement to help address the lethality risks and victim safety considerations in domestic violence cases by providing more law enforcement and custodial resources.
- Coordinate with the Office of Violence Against Women (OVW) grantees to assure that USAO's efforts in domestic violence are consistent with OVW grantee goals.
- Participate on Montana's Domestic Violence Fatality Review Commission.

Native Shield: In November 2011, the USA created the *Native Shield Initiative* in partnership with tribal and county authorities in Montana. The *Native Shield Initiative* is designed to help protect Indian women from physical and sexual violence. It is designed to use existing federal statutes and jurisdiction to prosecute misdemeanor domestic assaults committed by a non-Indian perpetrator against an Indian victim, specifically, prosecutions of habitual domestic violence offenders under 18 U.S.C. § 117, which can lead to substantial sentences in federal prison if a defendant already has at least two prior federal, state, or tribal convictions for an assault, sexual abuse or serious violent felony committed against a spouse or intimate partner.

In support of the *Native Shield Initiative*, the USAO will provide training to tribal and county law enforcement partners on how to submit misdemeanor domestic violence cases to the USAO, the investigation and prosecution of crimes against women, and how collaborative agreements between tribal and county law enforcement may also help protect Indian women from violence.

G. Accountability

The USAO will provide annual training to USAO personnel:

- on entering accurate and timely information on Indian Country matters and cases into CaseView;

- on recording time on a weekly basis under the appropriate USA-5/5A categories, including the “Management and Administration” category and the use of Indian Country under 5A;
- on the amended Evaluations and Review Staff (EARS) management strategy for Indian Country.

H. Risk Management Assessment – Civil Liability (IHS, DOI)

The IHS and jail facilities currently located on the reservations in the District of Montana are the locations for numerous lawsuits defended by the USAO civil division every year. The Civil division will continue to meet with tribal officials to discuss “best practices” in preventing liability, including training on appropriate protocols.

I. Guardian Project

In 2011, the District of Montana launched a ground-breaking prosecution initiative to curb fraud and corruption associated with federally funded programs in Indian Country in Montana. The initiative brought together agencies from the Department of Interior, Internal Revenue Service, the Federal Bureau of Investigation, the Department of Housing and Urban Development, the Department of Health and Human Services, Department of Agriculture, Federal Emergency Management Agency, and the Department of Education. To date, this initiative has resulted in 52 indictments, 46 convicted individuals and entities, including many tribal leaders, and restitution ordered in the amount of approximately \$12,300, 000, and fines ordered in the amount of approximately \$ 1,000,000.