

# **COMMUNITY PROSECUTION STRATEGY**

## **The District of South Dakota**

The District of South Dakota has been an "Indian country district" since territorial days. What is now South Dakota was, and is, home to several different tribes that are commonly and collectively referred to as the "Sioux." In the 1868 Fort Laramie Treaty, all of the land west of the Missouri River, in what is now South Dakota, was designated as the "Great Sioux Reservation." In 1889, Dakota Territory was divided into the separate states of North and South Dakota. At the same time, the remaining land of the Great Sioux Reservation was divided into smaller, separate reservations for various Sioux tribes. These reservations, along with those created east of the Missouri River, exist today as nine distinct Indian reservations within the District of South Dakota.

South Dakota's enabling legislation and state constitution disclaimed state court criminal jurisdiction for cases arising in Indian country. An effort by the state legislature to assert Indian country jurisdiction in 1961 was unsuccessful, and South Dakota remains a non-Public Law 280 State.

The volume of criminal cases arising in Indian country is relatively high. Between 50-60 percent of the criminal caseload for the United States Attorney's Office ("USAO") is comprised of Indian country offenses.

The District is rural in nature. It encompasses the entire state of South Dakota, which has a total of 77,116 square miles, of which over 18 percent are reservation or trust lands. Census data puts the state population at 812,383, and a conservative estimate places the number of Native American residents at 68,976 (8.57 percent). The vast majority of the Native American population resides on the District's nine Indian reservations - each with its own history, culture, characteristics, and challenges.

### **Overview of Community Prosecution Plan**

The USAO's Community Prosecution Strategy is an operational plan for improving public safety in South Dakota's tribal communities. The USAO has a successful history of achieving tangible results in its Indian country prosecutions and bringing hope to victims - some of whom are among the most vulnerable members of our society.

These efforts have received renewed national prominence through the Tribal Law and Order Act of 2010 and an ongoing Department of Justice-wide initiative designed to bring greater safety to Indian country. This

Indian Country Initiative also seeks to place greater emphasis upon addressing violence against women and children in tribal communities. More recently, Congress passed the 2013 Violence Against Women Act reauthorization. Notably, this legislation recognized Tribes' inherent right to prosecute non-Indians for acts of domestic violence committed against Native Americans within their borders. Currently, two tribes (Standing Rock and Sisseton) are exercising this enhanced jurisdiction.

However, there is no one-size-fits-all approach to public safety in Indian country. Our Community Prosecution Strategy is designed to be flexible and reflect the unique characteristics of the District, the USAO, and each of the federally recognized tribes within the District. It is intended to focus on the particular needs of the communities we serve and implement the ideas and suggestions that have come directly from these communities.

The Community Prosecution Strategy is rooted in the "broken-windows" theory of law enforcement - maintaining communities in a well-ordered condition may prevent an escalation into more serious crime. The strategy focuses on having at least one Assistant United States Attorney (AUSA) assigned to each reservation, though in some instances multiple AUSAs will be assigned to fit the needs of the communities we serve.

These AUSAs work closely with tribal prosecutors and other members of the community to identify and address crime trends in that community. The AUSAs also meet on a regular basis with all law enforcement partners in the community (including tribal prosecutors, tribal police, the Bureau of Indian Affairs, and the Federal Bureau of Investigation) to ensure cases are being identified, investigated, and prosecuted as well as to ensure cases are not slipping through jurisdictional cracks in the system.

Our program strengthens the relationship between federal and tribal prosecutors by appointing select tribal prosecutors to serve as Special Assistant United States Attorneys. When directed to do so by the tribe, these prosecutors can prosecute cases shoulder-to-shoulder with federal prosecutors in federal court. As part of this strategy, the USAO explores additional training and cooperative opportunities for South Dakota's tribal prosecutors whenever available. The USAO also makes its technology professionals available to tribal court systems so that existing technology can be reviewed and recommendations made for improvements in technological infrastructure. This includes structural and management audits when sought.

## **Government-to-Government Consultations With Tribal Leaders to Formulate a New Strategy**

The USAO continues to hold regular meetings with members of tribal communities, local elected officials, and law enforcement, concerning their law enforcement and coordination concerns, and ideas to increase public safety. These meetings have strengthened the relationships among those committed to the ideal that tribal communities must be made safer.

As a result of these meetings, new and innovative measures have taken shape. Some reservations have chosen to seek partnerships with state officials to battle the methamphetamine epidemic plaguing South Dakota. Most have held individual tribal summits, in partnership with Federal and State authorities, where community members voice their concerns and formulate plans to combat methamphetamine addiction and its effects on local communities and encouraged working cooperatively with the South Dakota Highway Patrol and the Rapid City Police Department. These efforts have recently expanded in an effort to find a cooperative approach involving all nine reservations.

## **Specific Components of Community Prosecution Plan**

### **A. Additional Prosecutors for Indian Country Cases**

The Department of Justice, through the Office of Violence Against Women, annually awards a limited number three-year grants to Tribal governments allowing them to hire tribal prosecutors. The primary focus of this program is to combat domestic violence in tribal communities. The grant also includes a requirement that the selected Tribal prosecutor become cross-designated as a Special Assistant United States Attorney. This designation allows for expedient prosecution of domestic violence matters in either federal or tribal court. The Rosebud Sioux Tribe was awarded this grant in 2019 and the South Dakota U.S. Attorney's Office continues to assist other Tribal governments in their attempts to secure this grant.

### **B. Community Prosecution Program**

The Community Prosecution Project at Pine Ridge recognizes the best way for the USAO to effect change in tribal communities is to become a stronger part of tribal communities, including the police department, prosecutor's office, and tribal court. This is a particular challenge in South Dakota because these communities are often a long distance from the federal courthouses.

Currently, personnel, including AUSAs from the Rapid City USAO office travel to the Pine Ridge Reservation one day each week to staff a satellite office we maintain in the tribal justice center. Top priorities include exploring methods to strengthen the tribal court system, working closely with the tribal prosecutor's office to improve its efficiency and effectiveness, and meeting with members of the public who wish to report crimes, obtain information concerning existing prosecutions, and to voice concerns with the system in a face-to-face setting.

**C. Fostering an ongoing Government-to-Government relationship with federally recognized tribes.**

**United States Attorney:** The United States Attorney serves as the primary contact with South Dakota's nine Indian tribes. In order to fulfill this responsibility and remain informed of tribal concerns, the United States Attorney travels to each reservation as needed. During these visits, the United States Attorney meets with community leaders, elected tribal leaders, tribal judges, tribal prosecutors, and tribal law enforcement personnel, among others.

**Tribal Liaison:** The United States Attorney has a designated Tribal Liaison whose chief responsibility is to foster government-to-government relationships with South Dakota's tribes. The Tribal Liaison, working directly with the United States Attorney, ensures regular communication between the tribe and the USAO.

The Tribal Liaison visits each reservation as needed in order to meet personally with those most affected by the need for greater public safety in Indian country. These visits include meetings with the Tribal Council, law enforcement, and open forum public meetings. Other duties include:

- Outreach to help coordinate the prosecution of Federal crimes that occur in Indian country;
- Consult with assigned AUSAs on long-standing multidisciplinary teams that combat child abuse and domestic and sexual violence offenses;
- Outreach including consultation 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, victims' advocates, and tribal

justice officials to gather information from, and share appropriate information with tribal justice officials;

- As needed, consult with assigned AUSAs to 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; and
- Conduct other activities to address and prevent violent crime in Indian country as the applicable United States Attorney determines to be appropriate.

**Assistant United States Attorneys:** AUSAs who have been designated to serve as points of contact for specific tribes assist the United States Attorney and the Tribal Liaison in the continuing effort to foster intergovernmental relationships with South Dakota's tribes. These AUSAs serve as initial points of contact between the USAO and tribal leaders, prosecutors, and law enforcement, most often in instances involving specific, ongoing prosecutions or investigations. The AUSAs assigned to each tribe are responsible for holding regular monthly meetings with their tribal partners to ensure matters arising in Indian country are being handled appropriately and expeditiously.

**D. Improving communications with each tribe, including the timely transmittal of charging decisions to tribal law enforcement officials**

**Updated Performance Work Plans:** In an effort to improve communication with tribal officials, the United States Attorney years ago updated Performance Work Plans (PWP) for Indian country AUSAs to reflect their critical and wide-ranging duties. The PWP for tribal points of contact and other AUSAs who work in Indian country were amended to allow for the appraisal of an AUSA's efforts to communicate with tribal prosecutors and

officials on topics related to public safety and about the status of Indian country matters referred to the USAO. Specifically, the PWPs include the following work plan standards:

- a. Assist in the development of multi-disciplinary teams to monitor child abuse cases in Indian country.
- b. When requested, provide and coordinate information and training to tribal leaders, law enforcement, and other appropriate tribal, state, local, and federal personnel on legal issues affecting Indian tribes.
- c. Handle contacts and correspondence with tribal officials professionally, promptly, and effectively, with an eye toward the USAO's strategic goal of improving public safety in Indian country.

**Case Referral and Non-Prosecution Decisions:** The USAO continues to work with tribal and state partners to determine the appropriate forum for the prosecution of criminal cases arising in and around Indian country. Circumstances arise when a criminal matter is sent to our office for review, but it is determined that for any number of reasons cases should be brought in tribal or state court.

For instance, the USAO may exercise its discretion to decline to prosecute a particular case where, in its judgment, there is insufficient admissible evidence to obtain and sustain a conviction, or a determination that a tribal resolution satisfactorily meets the ends of justice and/or comports with jurisdictional parameters. Decisions in this regard will be guided and informed by the Principles of Federal Prosecution contained in the United States Attorney's Manual and the memorandum on Federal Prosecution Priorities from Attorney General Sessions, dated May 10, 2017, setting forth the Department Policy on Charging and Sentencing.

The USAO continues its practice of providing written notice to the tribal or state prosecutor when a case is being referred to that sovereign. Additionally, the office continues the practice of providing an explanation of why the matter is not being prosecuted by the USAO, at the discretion of the AUSA and Office Supervisor, in consultation with the Criminal Chief. Situations may arise, however, where the interests of justice, including the privacy rights of the victim or the need to protect witnesses, prevents this office from providing a detailed reason of why a case is not appropriate for federal prosecution. In these situations, the AUSA will provide a short summary letter indicating why a particular decision was reached, in lieu of a more detailed letter. Finally, AUSAs should keep both tribal and federal statute of limitations in mind when making decisions on the disposition of matters.

**Annual Reporting of Crime Statistics and Declinations:** On an annual basis, the USAO submits an annual report to the Native American Issues Coordinator. The report details all declinations of alleged violations of Federal criminal law occurring in Indian country that were referred to the USAO for prosecution. The report includes information on the types 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 reasons for declining or terminating the prosecution.

**Monthly Law Enforcement Meetings:** The USAO continues to lead Multi-Disciplinary Team (MDT) meetings with each tribe on a monthly basis to discuss investigations involving violence against children. Aside from these MDT meetings, AUSA should conduct law enforcement meetings with tribal and federal officials to discuss and track reports of violence involving adult victims. These monthly law enforcement meetings include a review of all ongoing investigations involving cases of domestic violence and sexual assault.

**Tribal Town Hall Meetings:** The USAO hosts “Town Hall Meetings” or training symposiums throughout South Dakota. These meetings often focus on violent crime, domestic assault, methamphetamine, tribal housing, gangs or other areas of mutual concern. Further, meetings take place with tribal leaders, and public safety officials to discuss drug and violent crime trends and ways to effectively reduce those concerns. State, local, and federal law enforcement officers are encouraged to attend those meetings. Further, the USAO holds recurring training sessions in Indian country, to provide updates or refresher training to law enforcement officers in Indian country. Topics include search and seizure, search warrants, report writing, courtroom testimony, photography, evidence collection, relevant statutes, and best practices regarding responding to firearm offenses, sexual assaults, or other violent crimes.

**Technology Collaboration:** The USAO has worked to improve cooperation with tribal prosecutor offices in the area of information technology resources. The initial phase will feature collaboration efforts in connection with the pilot project at the Pine Ridge Reservation.

**South Dakota Tribal Prosecutors' Association:** The USAO fully supports a South Dakota Tribal Prosecutor’s Association, and has offered to provide training to our partners as requested.

**E. Cross-deputization, Special Law Enforcement Commission (SLEC) training, and a Tribal Special Assistant United States Attorney (SAUSA) program**

**Mutual Assistance Agreements:** In an attempt to strengthen law enforcement effectiveness, upon request from interested tribes, the USAO encourages and facilitates the implementation of mutual assistance agreements among state, local, and tribal law enforcement agencies. When asked to do so, the USAO provides law enforcement training on matters related to jurisdiction of law enforcement agencies involved in these mutual assistance agreements.

**SLEC Training:** The USAO has initiated a program to encourage tribal, state, and local law enforcement officers to obtain Special Law Enforcement Commissions (SLECs) through the BIA. Law enforcement members possessing SLECs have broader authority to enforce federal criminal laws in tribal communities. Wider use of SLECs increases the number of officers authorized to enforce federal law.

Through an agreement with the BIA, the USAO undertakes the primary responsibility for providing the SLEC training. In a given year, one or two classes and testing sessions take place in South Dakota, among the various tribes on a rotating basis. AUSAs serve as SLEC instructors and provide the training at local sites within Indian country. They continue working to develop and improve the SLEC training curriculum and the format of the examination with the DOJ's National Indian Country Training Initiative.

**Tribal Special Assistant United States Attorneys (SAUSA) Program:** The USAO has implemented a tribal SAUSA program. Tribal prosecutors who are licensed and in good standing with the South Dakota Bar Association may apply to participate in this program if they receive the support of their tribal council. After completing a background check and the execution of a memorandum of understanding between the tribe and the USAO, the tribal prosecutor is cross-designated as a SAUSA. In this capacity, the SAUSA has the opportunity to participate in grand jury proceedings and, potentially, try cases in federal court with an AUSA. Additional training is also available to tribal prosecutors who become SAUSAs. Currently two reservations have tribal prosecutors who have been cross-designated, with several other tribes considering such a designation.

**F. Training for United States Attorney staff and all relevant criminal justice personnel on issues related to Indian country criminal jurisdiction and prosecutions.**

**Diversity Plan:** The USAO believes that diversity is a strength and has created a new diversity plan for the office. This plan includes annual cultural awareness training, as well as new strategies for promoting and encouraging diversity in the workplace. For example, this office notifies the Native



American Bar Association whenever there is an attorney vacancy within the office. In addition, the USAO has held district-wide retreats on the Crow Creek, Lower Brule, and Pine Ridge reservations. These retreats have brought our office a greater understanding of the communities we serve. The retreats have included a community service aspect in which office staff has picked up trash from blighted areas, weather-proofed elders' residences ahead of the harsh South Dakota winters, painted a youth community center, and other tasks identified as needed.

**Training Programs:** In an effort to foster greater awareness of the unique cultural and historic characteristics of each tribe, the USAO encourages training program to increase familiarity with tribal history and culture for office personnel working on or affiliated with a particular reservation. The United States Attorney encourages annual training in this regard.

#### **G. Violence Against Women and Native American Youth**

The USAO is committed to prosecuting all provable cases of domestic violence where federal courts have jurisdiction. New procedures have been initiated in our office to ensure that cases involving domestic violence are evaluated in conjunction with tribal prosecutors to ensure that an appropriate resolution is achieved, whether in Federal or Tribal court. We have also expanded the responsibilities of the AUSA in our office designated as the Violence Against Women coordinator. This individual is responsible for training AUSAs on an annual basis regarding the unique aspects of domestic violence cases and works with domestic violence shelters to ensure that these cases remain a top priority in the office.

Specific to sexual assault cases, the USAO encourages the Indian Health Service to provide adult victims with access to medical professionals who possess the necessary expertise to perform forensic medical examinations and are available to testify, if necessary. The USAO also follows up with Indian Health Service to ensure cases of sexual assault and domestic violence are being properly reported to law enforcement and prosecution authorities. We will also continue to examine existing memoranda of understanding and investigative guidelines that assign responsibility to various federal law enforcement agencies for investigating sexual assault cases to ensure that there are no gaps in coverage, and they are understood and followed so that cases of sexual assault and domestic violence are investigated in a timely manner.

**Domestic Violence Involving Non-Indian Offenders:** Supervisory AUSAs, including the United States Attorney and Criminal Division Chief, review all matters of domestic violence perpetrated by non-Indians upon

Indian victims in tribal communities. The USAO has exclusive jurisdiction over these matters, on reservations that have not adopted the enhanced prosecution authority granted by VAWA, and their prosecution remains a top priority so the matters do not slip between the cracks. In recent history, to that end, the USAO accepts investigative reports directly from tribal police and BIA law enforcement without the necessity of FBI involvement.

**Juvenile Justice:** The USAO is committed to the prosecution of juveniles who commit serious criminal offenses or prey on innocent people as part of an organized gang in Indian country. The USAO is committed to the rehabilitative aspects of federal prosecution of juvenile offenders. The United States Attorney will consider any information or materials submitted by a tribe bearing upon the determination of whether a particular juvenile case should be certified and prosecuted federally or more appropriately handled at the tribal court level. The USAO recognizes that tribal prosecution may often be the most effective method of handling juvenile misconduct in some cases. The more severe the case, or the more recidivist the offender, however, the greater the odds the case will be prosecuted in federal court.

#### **H. Supporting the FBI's Northern Plains Safe Trails Drug Enforcement Task Force**

The FBI has been a leader in addressing crime in South Dakota's tribal communities. One particularly strong effort has been the creation of the Northern Plains Safe Trails Drug Enforcement Task Force. This organization is comprised of federal, tribal, state, and local law enforcement. The mission of the task force has been to investigate drug conspiracies in South Dakota. This mission was recently expanded to include the investigation of violent crime. Our office will continue to promote tribal involvement on the task force and will continue to designate AUSAs to support this organization.

#### **I. Individual Tribal Law Enforcement Assessment and Assistance**

The USAO has been reaching out to all tribes in South Dakota to discuss their specific law enforcement challenges, realizing and recognizing the challenges that exist on one reservation may not exist on another reservation. The USAO works side by side, in partnership with the various tribes, in identifying potential issues and solutions. This Community Prosecution Strategy will not identify each issue and challenge faced by each of South Dakota's nine tribes, as these issues are unique and fluid. The USAO is available, however, for any tribe that wishes for our office to undertake an assessment of its particular law enforcement efforts and to make recommendations regarding potential strengths, weaknesses or

solutions. These assessments are often conducted by a management team from the South Dakota USAO overseen by the United States Attorney.

#### **J. Victim Services and Accountability**

The District of South Dakota has three full time victim witness coordinators and one fact witness contractor. Victim witness staff provides services to victims of Federal crimes on each of South Dakota's nine Indian reservations. The victim witness staff is responsible for ensuring victims are afforded their rights pursuant to the Crime Victims' Rights Act of 2005 and the Victims' Rights and Restitution Act of 1990.

Indian country crime presents unique challenges and communication with victims can be difficult. Whenever possible, victim witness staff accompanies Assistant U.S. Attorneys to meet with victims in order to assure victims fully understand their role in the process and the services available to them throughout the prosecution process. The goal of the victim witness program is to assure that victims are afforded their statutory rights and are treated with fairness, dignity, and respect.

#### **K. Additional Components of the Community Prosecution Strategy**

- The USAO has revised and initiated a pro-active and aggressive file opening policy with respect to matters referred and cases accepted by this office. Reports of potential criminal activity received from non-law enforcement sources is reviewed with the appropriate law enforcement investigative agency to determine if the matter should be investigated and a file opened by the United States Attorney's Office.
- The United States Attorney will continue to meet with South Dakota's Attorney General, state's attorneys, tribal prosecutors, and tribal leaders to discuss the creation of mutual cooperation agreements and extradition agreements between the State of South Dakota and the tribes. Building upon efforts that are already under way, the USAO continues to facilitate this discussion while being sensitive to the unique status of Indian nations.
- The USAO will work with the BIA to promote the full staffing of all assigned positions in Indian country in all aspects and facets of the criminal justice system, including police, courts, and corrections. Additionally, the office will work with the BIA to ensure that background checks for law enforcement personnel are handled in a

timely fashion and encourage the immediate assignment of personnel to vacant positions.

- The United States Attorney currently serves on the Attorney General's Native American Issues Subcommittee (NAIS). The United States Attorney will continue to serve on this committee during his term in office and will regularly consult with South Dakota's tribal leaders about issues that should be brought to the attention of the Attorney General and will communicate with tribal leaders regarding the actions taken by the NAIS and the Department of Justice that impact Indian country.
- The USAO recognizes the importance of properly documenting all time spent on Indian country matters to ensure that these matters remain a priority within the office. Accordingly, annual guidance will be provided to office personnel on entering timely and accurate information on Indian country matters and cases into the CaseView case management system. The guidance will also direct office personnel to continue to record time spent on Indian country matters on a weekly basis under the appropriate Indian country categories of the USA-5 timekeeper system.
- The USAO aggressively seeks restitution from criminal defendants for their victims. This includes an office policy encouraging AUSA's to address the issue of restitution as part of the plea negotiation process and advocating for restitution for victims at the sentencing. The USAO will continue to support a fully staffed and aggressive Financial Litigation Unit which will pursue available legal remedies, including the potential of utilizing the Treasury Offset Program to obtain restitution for victims of crime. The USAO continually reviews existing policies and procedures to ensure that all available legal options are being pursued on behalf of victims of crime.
- The USAO hosts an annual multi-state conference on victim advocacy. We will encourage participation in the conference from tribal leaders who work on behalf of crime victims, as well as from the USAO personnel and law enforcement.
- The USAO will continue to seek new and innovative avenues for bringing tribal communities together with state and local communities to foster greater awareness and understanding.
- The USAO conducts an annual review of the Community Prosecution Strategy to identify areas of potential improvement and innovation.

## **Summary**

The South Dakota USAO is dedicated to reducing crime and improving public safety in Indian Country. Our commitment in this area is reflected in our annual review and assessment of programs, emphasis areas, prosecutions, and public input. Our Community Prosecution Strategy evolves when circumstances call for it. Our emphasis, though, always focuses on the importance of communication and collaboration with tribal communities. It represents not the completion of our work with the tribes, but rather an ongoing relationship.

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These offices provide principal coverage for matters arising at the following reservations:

RESERVATION	USAO OFFICE
Cheyenne River Sioux Tribe	Pierre
Crow Creek Sioux Tribe	Pierre
Flandreau Sioux Tribe	Sioux Falls
Lower Brule Sioux Tribe	Pierre
Oglala Sioux Tribe (Pine Ridge)	Rapid City
Rosebud Sioux Tribe	Pierre
Sisseton Sioux Tribe	Sioux Falls
Standing Rock Sioux Tribe	Pierre
Yankton Sioux Tribe	Sioux Falls