




## Memorandum

Subject	Date
Indian Country Operational Plan	5-6-18
To	From
All employees	 Richard W. Moore United States Attorney Southern District of Alabama

### Introduction:

The Southern District of Alabama includes one federally recognized tribe located in Escambia County, the Poarch Band of Creek Indians. The Poarch Band of Creek Indians became a federally recognized tribe on August 11, 1984 and remains the only such tribe in the state of Alabama. Today, the Tribe includes over 3000 members and approximately 460 acres of reservation or trust land. It operates under a constitution ratified on June 1, 1985, and is primarily governed by its nine member unilateral Tribal Council, elected by the general membership, whose Chairman serves as its chief executive officer. The Tribe also has a judicial branch, composed of a lower court and a supreme court that serves as a court of appeals. The Tribe provides numerous services to its members, including police and fire protection, medical care and other community services. It also owns and manages a number of revenue-generating business enterprises, the most notable of which are its popular gaming facilities.

## **A. Communication**

The United States Attorney's Office for the Southern District of Alabama (USAO-SDAL) believes that our law enforcement partners with the Poarch Band of Creek Indians should be fully informed of all charging decisions related to crimes in Indian Country. Accordingly, the USAO-SDAL will continue its existing policy of providing written notice to the designated case agent of case openings at the USAO-SDAL and the assignment of an Assistant United States Attorney (AUSA) to review the case. The assigned AUSA will then be responsible for communicating ongoing case developments and decisions in a timely manner to the case agent orally or in writing, as deemed appropriate by the United States Attorney or the designated AUSA.

However, all case declinations will be communicated *in writing* to the designated case agent. Further, the USAO-SDAL will strive to advise the Tribe of case declinations within the statute of limitations period for possible legal action in the tribal court system, assuming the case was submitted to the USAO-SDAL reasonably in advance of the expiration of the limitations period.

In addition to communication with the case agent, the Tribe will be notified of all significant case developments, *i.e.* indictments, guilty pleas, jury verdicts and sentencing hearings, through press releases from the USAO-SDAL to appropriate tribal media relations personnel or other designated points of contact.

## **B. Investigations**

The Poarch Band of Creek Indians has its own tribal police force, with over 40 officers, to provide law enforcement services to the tribal community. A number of the officers are both cross-deputized by the Escambia County, Alabama Sheriff's Office and certified by the Bureau of Indian Affairs (BIA) as federal law enforcement agents. The tribal police force is well-trained, well-equipped and more than capable of handling most of the law enforcement needs of the tribal community. However, the Mobile office of the FBI also has designated agents to assist and provide support as needed, and the BIA provides necessary training and additional support, as requested. Should cases arise within the investigative jurisdiction of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), or the United States Marshal's Service (USMS), those agencies all have local offices within this district and can be contacted.<sup>1</sup> Historically however, the USAO-SDAL has typically accepted case referrals relating to criminal activity on tribal lands from both the tribal police department and the FBI. The tribal police department and the USAO-SDAL frequently and openly consult with each other about the appropriate jurisdiction for presenting specific criminal cases as they arise.

Tribal law enforcement officers are typically the first responders to any reported criminal activity occurring on reservation land, and as such, they normally "screen" or direct whether tribal, state or federal jurisdiction will be initially invoked. The Tribe has

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<sup>1</sup> Federal law enforcement contact information is attached.

an agreement with the Escambia County Sheriff's Office, which operates the Escambia County jail, to allow holding or detention of arrestees on state or tribal charges until an initial appearance in court can be held. In the event a subject needs to be held on federal charges, the tribal police force and FBI have contact information for the USAO-SDAL's tribal liaison, who can coordinate the submission of a criminal complaint to a federal magistrate and scheduling of an initial appearance, as necessary.

The USAO-SDAL evaluates criminal case referrals from Indian Country on a case-by-case basis, with due consideration of the applicable jurisdictional framework for Indian Country, the Prosecution Guidelines established by the USAO-SDAL for case referrals by all submitting agencies and the unique needs of the Tribe for enforcing criminal law and maintaining public order. This approach allows flexibility for the USAO-SDAL to accept and prosecute cases from the tribal police department, such as misdemeanor domestic violence cases, that would not otherwise be accepted from other agencies.

Alabama is not a Public Law 280 state. Thus, law enforcement on the reservation is subject to the "typical" jurisdictional division of responsibilities between tribal, state and federal law enforcement agencies. Criminal offenses on tribal land by non-Indians that are "victimless" crimes or crimes against another non-Indian are handled in the state court system. Offenses by a non-Indian against the Tribe or an Indian are handled in the federal court system. Offenses by an Indian that are "victimless" crimes are handled in

the tribal court system. Offenses by Indians against another Indian or against a non-Indian are handled by the federal and/or the tribal court system, pursuant to the Major Crimes Act and depending on the severity of the crime. However, the USAO-SDAL has only been presented with one or two Major Crimes Act cases in the last five years.

Due to the relatively small size of the Poarch Creek reservation and tribal population in the SDAL, there are currently no "Indian Country" task forces (e.g. Safe Trails Task Force) operating in the SDAL. As the Tribe expands, its population grows and/or other changes take place, the need for a specially designated "Indian Country" law enforcement task force may arise. In the interim, should a federal child abuse or child sex abuse crime, a mandated violent crime, or a human trafficking crime occur, the resources of Poarch Creek Family Services combined with assistance from the local Child Advocacy Center provide access to a multidisciplinary team for protection of the child or victim and development of the case for prosecution.

The majority of crimes implicating federal jurisdiction are minor infractions that usually occur at the gaming facility – Wind Creek Casino. To combat these crimes, the USAO-SDAL implemented the Central Violations Bureau (CVB) citation process for minor violations on Tribal land. Implementation of this process by the USAO-SDAL on the Tribe's behalf was part of a larger effort undertaken by the United States District Court for the Southern District of Alabama to re-write and update the local rules and orders in this district. The ability to use the CVB citation process provides the Poarch

Creek Tribal Police Department with a useful law enforcement tool to handle non-Indian offenders committing petty offenses on Tribal land.

### **C. Victim Advocacy**

Poarch Creek Indian Family Services offers aid and support to tribal members who are crime victims. This agency is typically the primary provider of victim services to tribal victims from the initial response of law enforcement personnel to a crime scene through sentencing in any successful prosecution. The SDAL has a victim-witness coordinator who provides services to all victims, including Poarch Creek tribal members, as mandated by federal law. However, due to the close-knit nature of the Poarch Creek community, it is anticipated that the services of the SDAL's victim-witness coordinator will often supplement those provided by Poarch Creek Indian Family Services, which will remain the primary and preferred provider of victim services. Contact information and information about the services available from the SDAL's victim-witness coordinator have been provided to Poarch Creek Indian Family Services to better facilitate the coordination of victim services offered to tribal victims.<sup>2</sup>

There are no known language issues related to members of the Poarch Band of Creek Indians, since the reservation is relatively small and the tribal community itself has long been integrated into surrounding non-tribal Alabama communities. There are also no known or anticipated unique tribal restitution needs.

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<sup>2</sup> Family Services contact information is attached.

#### **D. Training**

As stated above, tribal law enforcement officers are typically the first responders to reported criminal activity on the Poarch Creek reservation, and the tribal police department has been included as an active member of the SDAL's Law Enforcement Coordinating Committee (LECC) for a number of years.

The LECC has monthly meetings, which are often attended by the Tribe's director of public safety or chief of police, to discuss issues, trends and developments affecting the district's law enforcement community. Training needs for the member agencies are assessed and regularly discussed during these meetings. The Tribe's director of public safety and police chief also participate in monthly breakfasts hosted by the Baldwin County and Mobile County sheriff's departments, where substantive issues relevant to the area law enforcement community are discussed.

In addition, each year, the LECC holds two annual conferences in the SDAL to provide training for federal, state, tribal and local law enforcement officers. These conferences are typically approved to provide federal and state continuing education credits for participating law enforcement officers to meet yearly continuing education requirements. Additional training sessions for the district's law enforcement community and member agencies are scheduled during the year as needed and/or requested.

The USAO-SDAL conducted training seminars in 2014 and 2015 for Poarch Creek tribal employees involved in the care of minors specifically concerning federal

child abuse reporting requirements on tribal lands. The USAO-SDAL has also regularly provided the approved two and a half day Criminal Jurisdiction in Indian Country (CJIC) class to Poarch Creek tribal police officers, as well as tribal officers from other tribes/districts who wish to attend. The USAO-SDAL taught the class at the Poarch Creek reservation in February 2017 and in January 2018.

The training seminars and conferences listed above are part of the USAO-SDAL's strategy to offer quality training opportunities to all law enforcement agencies in this district. By offering such training, we hope to meet the training needs of those agencies and their officers and to improve the quality of law enforcement provided to the public.

The USAO-SDAL includes cultural sensitivity training for its employees as a part of its Diversity Management Program. Additional training concerning jurisdictional issues, federal trust responsibility and consultation principles is provided for staff of the USAO-SDAL's criminal division through the district's monthly criminal division meetings. These (typically) hour-long meetings are conducted on a monthly basis covering a variety of topics relevant to the duties and responsibilities of AUSA's working in the SDAL. Periodic training concerning Indian Country matters is included in these sessions.

#### **E. Outreach**

Through the Poarch Creek tribal police department, the Poarch Band of Creek Indians enjoys the protection and service of a relatively large, well-trained and well-



equipped police force. The Tribe does not suffer from the lack of resources that reportedly plague some other tribal communities in their efforts to provide effective law enforcement services to their members and communities. Due to the tribal police department's effectiveness as well as the relatively small size of the Tribe and the reservation, there are no formal joint federal-tribal law enforcement task forces in the SDAL. Use of a tribal SAUSA or participation in Department-funded pilot projects is not deemed necessary or advisable at this time.

Nonetheless, the Tribe does enjoy good relationships with the FBI and the BIA as well as the support of those agencies in its law enforcement efforts. Further, members of the tribal police department are actively involved in the USAO-SDAL's LECC meetings, training and/or other activities. The Tribe itself also has maintained a good relationship with the local communities surrounding the reservation, including county authorities.

There have been some documented tensions and issues with state authorities, primarily concerning the Tribe's gaming operations. The Tribe has worked with the BIA, the National Indian Gaming Commission (NIGC) and the USAO-SDAL, as appropriate, to assist in resolving any such disagreements. Use of the DOJ's Community Relations Service has also been considered by the Tribe. In 2015, the Tribe received a favorable decision from the 11<sup>th</sup> Circuit Court of Appeals, affirming the dismissal of a lawsuit filed by the State of Alabama against the Tribe attempting to enjoin the Tribe's casino operations on trust land. Alabama opted not to appeal that decision, ending the

action. In 2016, the Tribe obtained a favorable decision against the Escambia County, Alabama Tax Assessor, enjoining attempts to levy state property taxes against the Tribe.

The Tribe actively pursues federal grants to increase the services and opportunities made available to its members. The Poarch Creek Planning Department oversees much, if not all, of the Tribe's grant writing activity. Historically, for example, the Tribe has obtained grants through DOJ's Community Oriented Policing Services Office (COPS), the Office on Violence Against Women (OVW) and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART). The USAO-SDAL forwards information it receives about DOJ grant opportunities to the Tribe through its tribal liaison.

#### **F. Violence Against Women**

The USAO-SDAL firmly supports the decision of USDOJ to aggressively prosecute violent crimes against women and children in Indian Country. The USAO-SDAL has prosecuted domestic violence cases directly referred from the Poarch Creek tribal police department and will continue to do so. Fortunately, however, the Poarch Creek reservation has not experienced the high incidence of violence against women and children reported on some other reservations.

Misdemeanor level domestic violence crimes committed by non-Indian offenders against Indian victims are referred directly from the Poarch Creek tribal police department to the USAO-SDAL through the tribal liaison. These cases are evaluated on

a case by case basis with no guideline or threshold that must be met before submission to the USAO-SDAL. Lethality risks and victim safety consideration are typically addressed through protection from abuse orders issued by the tribal court and exclusion orders from reservation land issued by the Tribal Council. Those have proven to be sufficient in the past to prevent a reoccurrence of violence against victims. However, if necessary, the USAO-SDAL is willing to seek a criminal complaint against the non-Indian offender with a motion for detention to ensure that the victim does not suffer any further harm.

Sexual assault cases committed by non-Indian offenders against Indian victims are likewise referred directly from the Poarch Creek Tribal Police Department and/or the FBI to the USAO-SDAL. The tribal police department has rape kits available onsite and has access to the same medical facilities and personnel available to state and local law enforcement authorities for forensic medical examinations, collection of evidence and use/preparation of the kits. Analysis of the rape kits and other forensic evidence will be handled through the Alabama Department of Forensic Sciences or the FBI Laboratory.

As with most other offenses occurring on the reservation, the Poarch Creek Tribal Police Department would typically be the first responder for sexual assault offenses, and the tribal police department is well equipped and trained for handling these types of cases. In 2016, the USAO-SDAL, in collaboration with the FBI, BIA and the Poarch Band of Creek Indians Tribal Police Department, developed System-Wide Response

Guidelines to Sexual Assault in Indian Country to detail the resources available and the general approach each partner agency in this district takes upon a disclosure of sexual violence in violation of federal law.

#### **G. Accountability**

The USAO-SDAL recognizes that accurate and timely entry of data into CaseView concerning the district's handling of Indian Country matters is an important part of measuring the district's efforts and successes on behalf of the Poarch Band of Creek Indians. Likewise, the USAO-SDAL believes it is essential that staff members accurately record time spent on Indian Country matters in the USA-5/5A data entry system. To that end, training emphasizing the importance of accurately entering the requested data in both CaseView and the USA-5/5A system has been included in the criminal division meetings as well as office-wide staff meetings.

**PRIMARY INDIAN COUNTRY LAW ENFORCEMENT CONTACTS  
IN SOUTHERN DISTRICT OF ALABAMA**

**Richard W. Moore, U.S. Attorney**  
**Southern District of Alabama**  
**U.S. Attorney's Office**  
**63 South Royal Street, Suite 600**  
**Mobile, AL 36602**  
**251-441-5845**  
**Indian Country Contact: AUSA Gina Vann – 251-415-7137**

**James E. Jewell, SAC**  
**Federal Bureau of Investigation**  
**200 N. Royal Street**  
**Mobile, AL 36602**  
**251-438-3674**  
**Contact – SA Mike Burton**  
**251-423-7734**

**Mike Messinger, RAC**  
**Alcohol, Tobacco and Firearms**  
**41 West Interstate 65 Service Rd. North, Suite 350**  
**Mobile, AL 36608**  
**251-706-8540**  
**251- 583-1712 – cell**  
**Escambia County agents: SA Kirk Slay 251-487-0922**  
**SA Wade Vittitow 251-583-9378**

**Don DeSalvo, RAC**  
**Drug Enforcement Administration**  
**900 Western America Circle # 501**  
**Mobile, AL 366609**  
**251-441-5831**  
**Contact: DEA TFO Brad Barnhill**  
**251-423-7734**

**Charles E. Andrews, U.S. Marshal**  
**U.S. Marshals Service**  
**113 St. Joseph Street**  
**Mobile, AL 36602**  
**251-690-2841**  
**Contact: Chief Vernon Johnson**  
**251-690-2931**

**James Jimmy Gibson, SAC District VI**  
**Bureau of Indian Affairs (BIA)**  
**Eastern Regional Office**  
**Bureau of Indian Affairs**  
**545 Marriott Drive, Suite 700**  
**Nashville, TN 37214**  
**615-564-6500**

**Human Trafficking Contacts:**

**FBI SA Jason Brown, 251-438-3674, Adult Victim Crime**  
**FBI SA Carolyn Middleton 251-415-3247, Crimes Against Children**  
**AUSA Maria Murphy- 215-415-7148**  
**AUSA Christopher H. Baugh – 251-415-7122**

**POARCH BAND OF CREEK INDIANS**

**PUBLIC SAFETY**

Lee, Bruce – Chief Public Safety Officer Division Director-----251-368-9136 Ext 2623  
Mills, Rebecca – Public Safety Division Executive Assistant-----251-368-9136 Ext 2262