

**DISTRICT OF MONTANA
2020 INDIAN COUNTRY LAW ENFORCEMENT
INITIATIVE OPERATIONAL PLAN**

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 Public Law (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. In December 2019, after a century long battle, the Little Shell Band of Chippewa Indians became a federally recognized tribe. The legislation authorized an 800 acre reservation. It is unknown whether the Little Shell will opt for PL 280 or non PL 280 status.

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. Two of the reservations, Crow and Northern Cheyenne, have delegated tribal law enforcement responsibility to the BIA. Blackfeet has a combination of BIA and tribal law enforcement. The remaining three reservations, Rocky Boy’s, Fort Belknap, and Fort Peck have their own 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 local media and 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.

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

Investigations and Prosecutions: It is crucial that the USAO inform Tribal

Prosecutors about charging decisions, including cases not resolved in federal court. It is equally important that case staffing is discussed by the Tribal Prosecutor and the USAO on a regular basis so that the most appropriate charging decision, both as to the crime and jurisdiction, can be efficiently made.

USAO/Tribal Prosecution Conference: On at least a 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 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.

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 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, a "second look." Our "second look policy" is invoked when the case agent's supervisor asks the Criminal Chief to review the matter for a second opinion.

Sharing Information with Prosecutor: If a case is referred to the Tribal Prosecutor, the lead investigative agency will provide the Tribal Prosecutor with all appropriate reports, evidence, and information available to insure prosecution can be initiated within 10 days from the date of the notice of the referral from the USAO.

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, consistent with federal statutes and regulations.

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 apply to all non-PL 280 reservations in the District of Montana.

- **The roles of the respective law enforcement partners, 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 USAO 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 ensure successful prosecution. Preservation of the crime scene is the primary concern.

On July 11, 2014, the Department of Justice implemented a 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 to consider recording outside of custodial interrogations.

Joint investigations between the FBI and the BIA 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 whether the case is unable to be prosecuted, in order to maximize resources and provide victims with timely justice and closure. It is the goal of the USAO to make a charging decision in the case within three months of receipt of the completed case file.

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, and by providing leadership and training to the AUSAs who prosecute crime that occurs in Indian Country in the District of Montana.

Victim Witness Personnel: It is the role of victim witness specialists to assist victims and witnesses throughout the investigation and/or prosecution of a case. To that end, the USAO employs two victim/witness specialists. Additionally, the FBI and the BIA in the District of Montana employ victim witness specialists that are present on all six reservations under federal jurisdiction. The USAO has a Victim and Witness Assistance Policy for the District of Montana, which includes the USAO Fearless Justice Initiative. That Initiative is intended to instill confidence in victims and witnesses that the legal system can protect them, vindicate their willingness to come forward, and provide them with justice by training law enforcement to pursue tampering and retaliation allegations, and prioritizing prosecution of obstruction crimes.

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.

Tribal SAUSA Programs: To enhance collaboration and cooperation between the USAO and the Tribes, particularly in the areas of domestic violence, violent crime and drug prosecutions, the USAO will encourage Tribal Prosecutors to become Special Assistant United States Attorneys (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.

DOJ Indian Country Fellowship Program: The USAO will continue to support the Indian Country Fellowship Program, and consider for acceptance the successful candidate each year if that candidate chooses to serve the fellowship in Montana, in order to expand the capacity of our Indian Country unit and encourage interest in USAO work in Indian Country. Additionally, because the three-year fellowship includes one year at a tribal prosecutor's office, support for the program will also add capacity to that office, and enhance collaboration and cooperation between that tribal criminal justice system and the USAO.

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 and continues to exercise enhanced jurisdiction and sentencing.

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

The USAO will prosecute all viable federal crimes occurring in Indian Country that meet the prosecution guidelines and threshold requirements of the USAO.

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

There are currently Multidisciplinary Teams (MDTs) operating on all non-PL 280 reservations 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 either in person, by VTC if available, or by phone. The AUSA shall have discretion to appear by phone, VTC, or in person, at a location on the reservation, as long as the AUSA appears in person at least quarterly. The AUSA will then memorialize the highlights of the meeting in a memo to the USA, Deputy Criminal Chief in charge of the Indian Country Unit, and the Tribal Liaison. There is significant spillover 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 all non-PL 280 reservations. 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.

- **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 non PL 280 reservations. The USAO has a SART Protocol and Sexual Violence Response Guidelines.

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

The USAO supports the use of cross-deputation agreements and memorandums of understanding (MOUs) to most effectively use limited law enforcement resources.

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, in conjunction with the National Indian Country Training Initiative, will track the subject, attendees, date, and location of training provided.

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 other federal and local law enforcement to formulate trainings that are specific to the needs of each community.

The USAO will encourage and advise tribal law enforcement of opportunities for training under the Special Law Enforcement Commission and will participate in those 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.

Specifically, in 2020, in addition to the training set forth in Sections F, G, and H below, training will be provided in the following areas:

- By the USAO for law enforcement and other stakeholders working in Indian Country on how to recognize and investigate cases of human trafficking;
- By the DEA, FBI, BIA and USAO for law enforcement working in Indian Country on how to investigate drug cases;
- By the USAO and National Indian Country Training Coordinator for law enforcement nationwide interested in obtaining a Special Law Enforcement Commission from BIA; and
- By the USAO for new FBI and BIA agents on investigations and prosecutions in Indian Country, including the USAO Fearless Justice Initiative and Native Shield.
- By the USAO, ATF, and FBI for tribal and BIA police officers working in Indian Country on federal firearms laws and how to investigate federal firearms offenses.

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 USA, Tribal Liaison, Deputy Criminal Chief for the Indian Country Unit, and the AUSA point of contact for each reservation will meet with tribal leadership, and law enforcement, at least annually to listen, answer questions, and provide information about the USAO's efforts in Indian Country. Throughout the year, the Tribal Liaison will stay in contact with the Law and Order Committee of each reservation to answer any questions, provide information, and advise the USA of any issues.
- The Tribal Liaison will maintain contact 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.
- The USAO will support prosecutions of drug distribution crimes referred by federal and tribal law enforcement agencies and the MT DOJ Division of Criminal Investigation, and support the formulation of drug task forces or working groups covering all Montana reservations.
- The USAO will use tribal SAUSAs when possible. The District of Montana

currently has two SAUSAs on the Fort Peck Indian Reservation, and one SAUSA on the Blackfeet Indian Reservation.

- The USAO will assist the Tribes in the District of Montana by providing information about grants provided by the Department of Justice.
- The USAO will support the DEA's Drug Take Back program on all reservations.
- The USAO will assist with Sex Offender Registration and Notification Act (SORNA) implementation and enforcement as needed.

E. Support for Viable Crime Prevention Programs

The USAO will support organizational efforts to prevent violence, including but not limited to encouraging Tribes and tribal entities to seek funding opportunities through the Office of Justice Programs, Office of Violence against Women and Community Oriented Policing Services (COPS).

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 best to investigate and document information provided by rape victims.
- Encourage IHS and tribal medical facilities to provide adult victims with access to competent and compassionate medical professionals with the requisite skill to perform forensic medical examinations.

Specific to domestic violence cases, the USAO will–

- Provide training to law enforcement about investigation techniques that will improve the ability to successfully prosecute domestic violence cases.
- Participate on Montana's Native American Domestic Violence Fatality Review Team.

Native Shield: The *Native Shield Initiative* is designed to help protect Indian women from physical and sexual violence. It uses existing federal statutes and jurisdiction to prosecute misdemeanor domestic assaults committed by a non-Indian perpetrator against an Indian victim. The USAO will prosecute cases involving habitual domestic violence offenders under 18 U.S.C. § 117, which permits felony prosecution 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, or a domestic violence or stalking offense under Chapter 110A of the federal code.

In support of the *Native Shield Initiative*, the USAO will provide training to tribal law enforcement partners on how to submit misdemeanor domestic violence cases to the USAO.

G. Missing and Murdered Native Americans

The disappearance and death of Native Americans is far too common. Native Americans, especially women and girls, suffer from high rates of violence, with at least half of native women suffering sexual or intimate partner violence in their lifetime according to a 2016 study by the National Institute of Justice. Montana has had several tragic cases involving the disappearance and death of Native Americans.

In response, in November of 2019, President Trump issued an executive order establishing a presidential task force to help find solutions to address this tragedy. Over the next two years, the task force will:

- Consult with tribal governments on the scope and nature of the problem;
- Develop model protocols and procedures for addressing both new and unsolved cases;
- Establish a multi-disciplinary and multi-jurisdictional team to review cold cases;
- Clear up issues related to roles, authorities, and jurisdiction among federal, tribal, state and local law enforcement agencies; and
- Develop a public awareness, education, and outreach campaign for affected communities.

Also in November of 2019, Attorney General Barr launched a national DOJ strategy. He chose the Flathead Reservation in Montana to make the announcement to recognize that the Montana USAO, and state and tribal partners have been in the forefront of addressing this issue. The Strategy has three parts:

- Make FBI Rapid Deployment Teams more available to local law enforcement agencies for missing persons cases upon their request;

- Perform in-depth analysis of federally supported databases and analyze data collection practices to identify opportunities to improve missing persons data and share the results; and
- Establish Missing and Murdered Native American Coordinators in the USAOs of 11 states. Montana's Coordinator was the first onboard in 2019. That Coordinator will:
 - assist with drafting model national protocols and procedures for responding to reports of missing and murdered Native Americans and deploying FBI Rapid Deployment Teams;
 - in consultation with federal, state, tribal and local law enforcement, tribal and local governments, and other community stakeholders, assist with modifying the model national protocols and procedures to meet the needs of Native American communities in Montana;
 - when a Native American goes missing, ensure the lead law enforcement agency (whether federal, tribal or local) is aware of resources available from federal agencies and other sources; and
 - work with Montana's tribal governments to identify resources/training to increase their capacity to respond to and address missing persons cases.

In 2019, the Montana legislature created a Missing Indigenous Persons Task Force administered and chaired by the MT DOJ, with members from MT DOJ, and members invited from all tribal governments. At the request of U.S. Attorney Alme, the MT Attorney General appointed the USAO tribal liaison to the task force. The task force is working on several issues, including working with the tribal governments, tribal law enforcement, and other stakeholders to ensure that the MT Missing Persons Clearinghouse is accurately maintained.

Missing person information is entered into the federal and state law enforcement missing persons database (clearinghouse) by local law enforcement, including tribal, BIA, and city police departments, and sheriff's offices. To ensure the information is correctly and timely entered into the databases and alerts such as Amber Alerts are properly used, in 2019 the USAO partnered with the MT DOJ, FBI and BIA to sponsor two statewide trainings for law enforcement on those topics in Montana. The public was also invited to the trainings to learn what they can do when a loved one goes missing.

The US DOJ has granted access to the FBI Criminal Justice Information System databases, including the NCIC Missing Persons File, to the Blackfeet, Chippewa Cree and Ft. Peck Tribes through the Tribal Access Program (TAP). BIA-OJS is in the process of installing TAP nationwide; the Northern Cheyenne Reservation received access in late 2019 and the Crow Reservation is scheduled to receive TAP in the fall of 2020. BIA's program provides access for law enforcement, as well as social services and foster care

placement. The Chippewa Cree and Confederated Salish and Kootenai Tribes have access to the Missing Persons File through the MT Attorney General's Office.

In addition, in 2019, the USAO worked with Montana's tribal governments to provide training on all seven reservations to the public on what to do when a loved one goes missing. The training included presentations by the National Missing and Unidentified Persons System (NamUs), which is the only national database available to the public to enter or learn about information on missing persons. The USAO stands ready to provide additional trainings in 2020 and beyond at the request of any tribal government. The USAO also produced a Public Service Announcement informing the public on what to do if a loved one goes missing.

H. Accountability

The USAO will provide periodic training to USAO personnel:

- on entering accurate and timely information on Indian Country matters and cases into its case management system; and
- on recording time under the appropriate USA-5/5A categories, including the use of Indian Country under 5A.

I. Guardians Project

The Guardians Project is intended to curb fraud and corruption associated with federally funded programs in Montana. The Project brings together many federal agencies with responsibility to conduct audits and investigations regarding those funds. The Project also offers training to tribal personnel on how to properly administer federal grant funds and to report fraudulent activity.

J. Crime Strategies and Trends

In addition to violent crime involving women and children in Indian Country, after consultation with Tribal leadership and law enforcement, and federal law enforcement (FBI, BIA, DEA, and ATF), the USAO has identified two leading crime trends in Indian Country in Montana. Methamphetamine abuse leads to violent and property crime. Additionally, violent crime involving firearms is more prevalent today. To address these trends and reduce substance abuse, violent crime, and gun violence, under the Project Safe Neighborhoods and Project Guardian Initiatives, the USAO stands ready to prosecute any cases involving drug and gun offenders.

K. Agencies by Reservation

The lead investigating agency, tribal law enforcement agencies, child protective services, and victim services for the reservations in Montana, and MOUs are as follows:

Blackfeet Indian Reservation:

Lead Investigating Agency: FBI and BIA

Tribal Law Enforcement Agency: Blackfeet Law Enforcement Services

Child Protective Services: BIA Social Services

Victim Services: FBI, BIA, and USAO

MOU: Between the Blackfeet Tribe and the Montana Highway Patrol

Rocky Boy's Indian Reservation:

Lead Investigating Agency: FBI

Tribal Law Enforcement Agency: Chippewa Cree Law Enforcement Services

Child Protective Services: Tribal Social Services

Victim Services: FBI and USAO

Fort Belknap Indian Reservation:

Lead Investigating Agency: FBI

Tribal Law Enforcement Agency: Fort Belknap Law Services

Child Protective Services: Tribal Social Services

Victim Services: FBI and USAO

Fort Peck Indian Reservation:

Lead Investigating Agency: FBI

Tribal Law Enforcement Agency: Fort Peck Tribes Department of Law and Justice

Child Protective Services: BIA Social Services

Victim Services: FBI and USAO

MOU: Establishing the West Central Montana Drug Task Force

Northern Cheyenne Indian Reservation:

Lead Investigating Agency: FBI and BIA

Tribal Law Enforcement Agency: N/A

Child Protective Services: BIA Social Services

Victim Services: FBI, BIA, and USAO

Crow Indian Reservation:

Lead Investigating Agency: FBI and BIA

Tribal Law Enforcement Agency: Crow Highway Safety Officers and Game Wardens

Child Protective Services: BIA Social Services

Victim Services: FBI, BIA, and USAO