



# Indian Country Community Safety Strategy





Wendy J. Olson  
*United States Attorney, D. Idaho*

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**United States Attorney's Office  
District of Idaho**

**Indian Country Community Safety Strategy  
2012 Update**

The United States Attorney's Office for the District of Idaho's Community Safety Strategy, first issued in February 2011, is designed to improve public safety in Idaho's tribal communities. Idaho's U.S. Attorney's Office has a long history of meaningful involvement in Indian Country<sup>1</sup> prosecutions. Idaho's U.S. Attorney's Office also has a long history of tribal liaison work with each of Idaho's five federally recognized tribes. Public safety in Indian Country requires collaboration between the U.S. Attorney's Office, tribal law enforcement, tribal leaders and tribal communities. This 2012 update to the Indian Country Community Safety Strategy reaffirms the steps put into place a year ago, highlights successes, and identifies areas for U.S. Attorney's Office improvement in its public safety work in Indian Country. This update is accompanied by the 2012 U.S. Attorney Report on Indian Country.

**Indian Country and Idaho**

The federal government's relationship with the tribes of what became the State of Idaho began in the fall of 1805 with Lewis and Clark's Corps of Discovery and the Shoshone and Nez Perce tribes. As is well known, these two tribes played crucial roles in the Corps' success, with Shoshone guiding, interpreting and facilitating peaceful interaction with other tribes. When the early snows of high country came, the Nez Perce provided crucial food, canoes and directions.

Over the next two hundred years, the relationships between the states and the tribes have ebbed and flowed from state to state and tribe to tribe. Likewise, the relationship between the federal government and the tribes have navigated a minefield of federal laws addressing tribes' status, resources and ability to police their own lands. One aspect of the relationship, however, has remained constant. The federal government has treaty and trust obligations to ensure public safety for Native Americans. The United States Attorney's Office for the District of Idaho seeks, through this strategy, to fulfill those public safety obligations in Indian Country in Idaho.

Idaho became the 43rd state in 1890, by which time many of the tribes in the territory had already signed treaties with the federal government. Idaho's enabling legislation and state constitution disclaimed state court criminal jurisdiction for cases arising in Indian Country.

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<sup>1</sup> Federal statutes refer to land within the geographical boundaries of reservations as "Indian Country." Since most of the U.S. Attorney's Office's work with tribal communities is based on these statutory definitions of "Indian Country," this document also will use that phrase.

Passed in 1953, Public Law 280 (PL 280) gave jurisdiction over criminal offenses involving Indians in Indian Country to certain states and allowed other states to assume jurisdiction. Subsequent legislation allowed states to retrocede jurisdiction, which has occurred in some areas. In 1973, the State of Idaho assumed Public Law 280 jurisdiction for seven subject areas: compulsory school attendance; juvenile delinquency and youth rehabilitation; dependent, neglected, and abused children; insanity and mental illness; public assistance; domestic relations; and the operation and management of motor vehicles upon highways and roads maintained by the county or state. The state did not, however, assume Public Law 280 jurisdiction for general crimes. Thus, under 18 U.S.C. §§ 1152, 1153 and generally applicable federal criminal statutes, the United States Attorney's Office for the District of Idaho has jurisdiction over major crimes committed in Indian Country in Idaho.

The District of Idaho is vast, generally sparsely populated and rural. It encompasses the entire state, a total of 83,574 square miles, making it the 14th largest state geographically. With just 19 people per square mile, Idaho is the 46th least densely populated state. According to the 2010 Census, the population for Idaho is 1,587,582, of which approximately 1.6 percent is Native American.

### **Overview of Federally Recognized Tribes in Idaho**

Five federally recognized tribes are located in Idaho: the Shoshone-Bannock, the Shoshone-Paiute, the Coeur d'Alene, the Kootenai, and the Nez Perce. The vast majority of the Native American population resides on four of five reservations, the Fort Hall Reservation (Shoshone-Bannock Tribes), the Coeur d'Alene Reservation, the Kootenai Reservation and the Nez Perce Reservation. The District shares the Duck Valley Reservation (Shoshone-Paiute Tribes) with Nevada, where most of the Duck Valley population resides. The culture and history of each tribe is as varied as the lands they inhabit.

### **The Shoshone-Bannock Tribes/Fort Hall Reservation**

The Shoshone-Bannock tribes are located on the Fort Hall Reservation in Southeast Idaho. It is eight miles north of the United States Attorney's Office's Pocatello branch office. The Fort Hall Reservation was established by the Fort Bridger Treaty of 1868 as a 1.8 million acre homeland for four distinct bands of the Shoshone and one Northern Paiute band, the Bannock, that once inhabited the region. By 1932, the reservation was reduced to its present approximately 544,000 acres, of which the tribes own 97 percent. Fort Hall, Idaho, along Interstate 15, is the reservation's largest population center, with 3,193 of the reservation's 5,762 residents. The majority of Fort Hall residents are tribal members. The reservation is divided into several districts, each of which has a community center, or a lodge. Several southeast Idaho cities lie within land ceded by the Tribes, including Pocatello, Lava Hot Springs and McCammon.

The Shoshone-Bannock Tribes adopted a constitutional form of government in 1936 that established the seven-member Fort Hall Business Council. The Business Council is elected by

tribal members living on the reservation. It established its initial law-and-order code ordinance in 1938, and since then has updated the code and established other ordinances to regulate business and other activities on the reservation.

Tribal members engage in agricultural, construction, retail and service businesses. The Shoshone-Bannock Tribes employed nearly 900 people in June 2010, making the tribes the fourth largest employer in the area. Many tribal members work for the tribes in the tribal enterprise system and for the tribal government. The Tribe's Land Use Department, Fish & Wildlife Department, and Water Resources and Water Quality Program work to preserve and protect reservation resources. On the reservation, the Tribes operate a grocery store, a clothing store, a museum, a buffalo herd, farms, service stations, and casinos. A new casino/hotel is under construction. The Shoshone-Bannock Junior/Senior High School was constructed in 1995, and classes opened in 1996. Nearly 1,200 Native American children attend the school, as well as nearby public and private schools and off-reservation boarding schools.

The Tribes also have the Shoshone-Bannock Tribal Bar Association, which evolved in 1977 as a means to regulate those who practice in tribal court. In February 2010, the tribes dedicated their new Justice Center, a state-of-the art facility that houses the tribal police department, courts, and adult and juvenile corrections. Local artists' work decorates the halls of the Tribal Justice Center. The *Sho-Ban News* is the weekly newspaper of the Shoshone-Bannock Tribes. Published every Thursday, the *Sho-Ban News* covers local, regional and national Native American news.

### **The Nez Perce Reservation**

The Nez Perce Reservation, approximately 770,453 acres, is centered in Lapwai, Idaho, on a rural, mountainous two-lane highway. The reservation is approximately 127 miles south of the United States Attorney's Office's three-attorney branch office in Coeur d'Alene. The tribe or its members own 13 percent of the total acreage. The reservation's population is 17,806; about 1,800 enrolled tribal members live on the reservation. Total tribal membership is 3,347. The reservation's largest community is the city of Orofino, with 3,247 residents. Lapwai, with 1,134 residents, is the seat of tribal government.

The nine-member Nez Perce Tribal Executive Committee (NPTEC) governs the tribe and reservation. The General Council, which includes all voting-age members of the tribe, elects the NPTEC's members. Each NPTEC member serves a three-year term and elections are held annually for three of the nine positions. In addition to the NPTEC, many departments carry out the duties and responsibilities of tribal government. The departments include Education, Administration, Finance, Fisheries, Natural Resources, and Social Services. Legal advice is provided by the in-house Office of Legal Counsel. Criminal matters are handled by the Nez Perce tribal court, police and prosecutors.

The Nez Perce Tribe continues to prioritize the management of land and natural resources. The tribe historically hunted and fished on land that totaled between 13 and 15 million acres. The Treaty of 1855 between the Nez Perce and the United States set aside 7.5 million acres. The reservation was diminished to 750,000 acres as a result of the Treaty of 1863. The Dawes Allotment Act in 1887 further reduced Nez Perce ownership to approximately 250,000 acres while opening the remaining 500,000 acres to white settlement. The tribe continues in its efforts to purchase available real estate within its boundaries to return it to its 1863 status.

The tribe's strong fish program employs nearly 50 full-time and part-time workers. The Fisheries program works throughout the ceded lands with offices in Powell, Red River, Grangeville, Orofino, McCall, Sweetwater, and Lapwai, Idaho, and Joseph, Oregon. The Fisheries Program coordinates and interacts with state, federal and tribal agencies, committees and private entities to assess and implement fish recovery and restoration plans. The Fisheries Department monitors fish populations and provides recommendations and overview on Endangered Species Act (ESA) issues as well as recommendations for restoration and protection of critical habitat for fish populations. It also protects fish and wildlife resources through conservation actions. The tribe co-manages wildlife and fisheries with the State, and tribal scientists advise regional decision-makers about issues that affect reservation and tribal activities, particularly fish and wildlife management and dam operations on the Columbia, Snake, Tucannon, Grande Ronde, Imnaha, Clearwater and Salmon drainages. Tribal members fish the Clearwater, Columbia, Rapid and Selway rivers.

### **The Coeur d'Alene Reservation**

The Coeur d'Alene Tribe once inhabited more than 3.5 million acres in what is now northern Idaho, northeastern Washington and western Montana. In 1873, President Grant issued an Executive Order setting aside a reservation for the tribe, which presently encompasses approximately 345,000 acres. The reservation runs from farmlands to the south and west to Lake Coeur d'Alene to the north, and the St. Joe River to the east. The tribe's headquarters are located in Plummer, Idaho, near Coeur d'Alene. There are nearly 2,200 enrolled tribal members; approximately 1,500 reside on the reservation.

The tribe employs more than 1,500 people in 18 government departments and tribal enterprises. Tribal enterprises include the Coeur d'Alene Casino Resort/Hotel and Circling Raven Golf Course north of Worley, Idaho, and the Benewah Medical Center and Wellness Center, which provides primary care, holistic healing and preventive care to all members of the community. Profits from the tribe's gaming enterprise help fund government programs, social and welfare programs, environmental stewardship and economic development activities. A portion of the tribe's gaming proceeds are directly contributed to local schools, educational organizations and community programs throughout the region. The tribe also operates the Benewah Automotive Center, the Benewah Market and Hardware store, the Tribal Farm and Echelon Manufacturing.

The Coeur d'Alene Tribal Council consists of seven members who are elected by the tribal membership. Ballots are cast at tribal headquarters; there are no absentee or mail-in ballots. Each seat is a three-year term and elections are staggered. (Three seats are up for election in 2012 and two seats in 2013.) After the general election in May, the elected Tribal Council elects the tribal chair to serve a one-year term. The chairperson does not have veto power over the Council. In addition to the Council, there are 16 tribal departments, which comprise the tribal government. Each department head reports directly to the Tribal Council. The departments include Finance, Education, Enrollment, Gaming, Public Works, Public Affairs and Law Enforcement. The Coeur d'Alene Tribe has its own police department, courts, prosecutor and public defenders services.

The Coeur d'Alene Tribe is an active participant in regional recreational development and environmental protection in the Idaho panhandle. The Tribal Natural Resources Department oversees the work of programs such as fisheries, wildlife and forestry. The Tribal Lake Management Department was created in 2003 and promotes environmental protections of the lake and watershed. The Coeur d'Alene Lake is a beautiful part of Idaho. In 2001, the United States Supreme Court upheld the District Court ruling which quieted title to the United States as trustee, and the tribe as beneficiary, to the bed and banks of the lake and the river within the reservation. In addition to environmental concerns, the Tribal Lake Management Department provides boating, fishing and dock licenses for the portion of Lake Coeur d'Alene within the reservation boundaries. The Trail of the Coeur d'Alenes is a 72-mile non-motorized paved trail used by hikers and bicyclists. The trail follows the path of the old Union Pacific Railroad tracks and the eastern trail head begins on the reservation in Plummer, Idaho. The Coeur d'Alene Tribe and the State of Idaho Department of Parks and Recreation are the recognized managers of the trail. The Recreation Management Program —part of the Lake Management Department —is responsible for the overall management and day- to- day operations and maintenance on approximately 15 miles of this trail.

### **The Kootenai Reservation**

The Kootenai Reservation lies in central Boundary County, Idaho, approximately 25 miles south of the Canadian border, and about two miles west-northwest of the city of Bonners Ferry. It has a land area of 18,922 acres and approximately 176 members.

The Kootenai Tribe of Idaho was once part of a larger Kootenai Tribe in Montana and Canada. However, when the Kootenai Tribe of Montana entered into the Treaty of Hellgate in 1855, the Idaho Kootenai were not represented, even though their land was ceded in the treaty. On September 21, 1974, the Kootenai tribe, headed by Chairwoman Amy Trice, declared war on the United States government. Its first act was to post soldiers at each end of the highway that runs through Bonners Ferry. These soldiers forced people to pay a toll to drive through the area that had been the tribe's aboriginal land. The money was to be used to house and care for elderly tribal members. Tribes generally are prohibited by treaty to declare war on the United States government; however, the Kootenai Tribe never signed a treaty. The dispute resulted in

concession by the United States government and a land grant that became the Kootenai Reservation. Ms. Trice, a long-time tribal leader, mentor and role model, died on July 21, 2011.

The Kootenai Tribe is governed by a nine-member council, each of whom serves a four-year term. The council oversees much of the tribes's daily governance. The Kootenai Tribe contracts with local law enforcement to provide law enforcement services. Criminal tribal matters are heard in tribal court and presented by the tribal prosecutor.

The tribe maintains a health clinic that provides medical attention to tribal members. The tribe also takes great pride in its Fish and Wildlife Program. The tribe has worked with state and federal agencies and the Bonneville Power Administration to recover the Kootenai River White Sturgeon. The program also focuses on conservation aquaculture, as well as the restoration of the Kootenai River ecosystem.

In 1986, the Kootenai Tribe celebrated a major step in economic independence with the establishment of the Kootenai River Inn, now the Kootenai River Inn Casino and Spa.

### **The Duck Valley Reservation**

The Duck Valley (Shoshone and Paiute Tribes) Reservation is home to approximately 1,700 of the just more than 2,000 members of the Western Shoshone and Northern Paiute Tribes. The reservation was established in 1877 by Executive Order. Acreage was added in 1886 and 1910. The reservation is located 96 miles north of Elko, Nevada, on the high desert in northeastern Nevada and southwestern Idaho. The reservation consists of nearly 290,000 acres, with 144,274 acres in Nevada and 145,545 acres in Idaho. There are also 3,982 acres of public land at Wildhorse Reservoir, to the southeast of the main reservation.

The Shoshone and Paiute Tribes formed a constitutional government at Duck Valley in 1936. The Shoshone-Paiute Tribes of Duck Valley are governed by a seven-member Business Council. Members are elected for three-year terms. The Business Council directs the tribal government. The chairman manages the operation of tribal government. Farming and ranching are still mainstays on the reservation. Tribal programs include the Wildlife and Parks Program, the Recreation Program, the Housing Authority, the Stop Violence Against Women program, Cultural Preservation, Economic Development, Behavioral Health and Health Clinic and Hospital.

### **Overview of the U.S. Attorney's Office**

The United States Attorney's Office for the District of Idaho is the lead federal law enforcement entity in Idaho. Its mission is to litigate on behalf of one of the most powerful clients in the world, the United States of America. Its jurisdiction covers federal crimes committed in whole or in part in Idaho. It also represents federal agencies and employees in civil proceedings in Idaho. The Office has 55 attorneys and support staff working at its three locations— the headquarters office in Boise and branch offices in Coeur d'Alene and Pocatello.

The Boise office has 18 attorneys; the Coeur d'Alene branch office has three, and the Pocatello branch office has two.<sup>2</sup> Many U.S. Attorney's Office employees have responsibilities in Indian Country. The branch manager of the Coeur d'Alene office serves as tribal liaison to the three tribes covered by that office, the Nez Perce, the Coeur d'Alene and the Kootenai. The branch manager of the Pocatello office serves as tribal liaison to the Shoshone-Bannock tribe. The Criminal Chief, who is located in Boise, serves as tribal liaison for the Duck Valley reservation.

### **Overview of Community Safety Strategy**

The United States Attorney's Office for the District of Idaho's Community Safety Strategy, first issued in February 2011, is designed to improve public safety in Idaho's tribal communities. This Community Safety Strategy reflects our commitment to aggressively prosecuting violent crimes, ensuring that tribal lands do not become a refuge for non-tribal member criminals, and protecting victims—some of whom are among society's most vulnerable members. This renewed commitment is part of the United States Department of Justice's broader efforts to bring greater safety to Indian Country. Both this Office and the Department of Justice particularly focus on addressing violence against women and children in tribal communities.

Of course, the diverse historical backgrounds, cultural experiences, geographic location, size and political structure of Idaho's five federally recognized tribes require this Community Safety Strategy to be flexible. The Strategy attempts to match the jurisdictional role that the U.S. Attorney's Office must play in all of Indian Country to the unique characteristics of each tribe. The strategy is designed to focus on the particular needs of the tribal communities that the U.S. Attorney's Office serves, and to implement to the fullest extent possible under the law the ideas and suggestions that have come directly from these communities.

The key elements of this Community Safety Strategy are communication and collaboration between the U.S. Attorney's Office and each tribe. The U.S. Attorney's Office is part of the executive branch of the federal government. As a component of the Department of Justice, we are law enforcement officers. Accordingly, our most direct communications and collaboration will be with tribal law enforcement representatives—tribal police departments and tribal prosecutors. We will work with our tribal law enforcement counterparts to ensure that criminal conduct on Indian reservations is prosecuted most efficiently and most effectively. However, a key component of the Community Safety Strategy is building strong government-to-government relations with the tribes. Accordingly, the United States Attorney, First Assistant United States Attorney, Criminal Chief, and Assistants United States Attorney (AUSAs) who serve as tribal liaisons will meet and consult with tribal governing bodies on a regular basis, and at least twice a year. Where appropriate, the U.S. Attorney's Office also will invite tribal law

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<sup>2</sup> An Assistant United States Attorney left the Pocatello branch office at the end of December 2011 when she was named a state court judge. The U.S. Attorney's Office has received hiring authority to replace the AUSA and anticipates having three attorneys in its Pocatello office by June 2012.



enforcement representatives to participate in cooperative law enforcement projects. For example, tribal resource officers will be invited to participate in the U.S. Attorney's Office's environmental crimes task force.

This Community Safety Strategy also emphasizes collaboration on training and other public safety issues. It envisions increased cooperation. With enactment of the Tribal Law and Order Act in July 2010, tribes whose criminal justice systems and detention facilities meet certain requirements can bring charges with penalties of up to three years imprisonment. This Community Safety Strategy is designed to implement the Tribal Law and Order Act to the fullest extent possible in conjunction with the desires of each tribe.

### **Ongoing Consultation with Tribal Leaders**

Prior to announcing its initial Community Safety Strategy in February 2011, the United States Attorney's Office engaged in consultations and listening sessions with tribal leaders, tribal law enforcement officers and tribal communities about their law enforcement concerns and ideas. In 2011, U.S. Attorney's Office staff continued these consultations. Tribal leaders and tribal members have continued to be candid about their concerns. In some instances, tribal leaders are concerned about their tribes' relationship with federal agencies other than the U.S. Attorney's Office and the Department of Justice. In other instances, tribal leaders have continued to express public safety concerns and their concerns about how the U.S. Attorney's Office has performed its duties in Indian Country. While many positive steps were taken in 2011, much remains to be done. The U.S. Attorney's Office remains committed to improving.

During U.S. Attorney's Office staff initial consultation sessions in 2010, each tribal governing body expressed concerns unique to the needs of the tribe they govern. They also expressed common concerns on the following issues: (1) domestic violence against female tribal members; (2) non-tribal members trespassing on reservation lands; (3) non-tribal members committing minor criminal offenses on reservation lands and then failing to respond to tribal citations; (4) criminals, including drug traffickers, hiding on reservation lands, or treating the reservations as a safe haven from arrest and prosecution; and (5) at times inadequate or delayed communication from the U.S. Attorney's Office regarding the progress of criminal investigations and prosecutions. The Indian Country Community Safety Strategy's components are designed to address these concerns.

In 2011, the United States Attorney conducted the following in-person consultation sessions with the five federally recognized tribes in Idaho. In March and May of 2011, the U.S. Attorney, First Assistant United States Attorney and Criminal Chief joined with the U.S. Attorney for the District of Nevada and/or his staff to meet with the Shoshone-Paiute Tribes Business Council. As set forth above, the Duck Valley Indian Reservation, home to the Shoshone-Paiute Tribes, is located in both Idaho and Nevada, creating additional jurisdictional and venue challenges. The Districts of Idaho and Nevada are working together as is necessary to ensure that the federal prosecutors' office response meets the community safety needs of the Shoshone-Paiute Tribes. In May of 2011, the U.S. Attorney met with the Nez Perce Tribal

Executive Committee, including its newly elected members. Also in May of 2011, the U.S. Attorney and the Criminal Chief met with the Shoshone-Bannock Tribes Business Council. In September of 2011, the U.S. Attorney and Coeur d'Alene branch manager/tribal liaison met with the Coeur d'Alene Tribal counsel. In November 2011, the U.S. Attorney addressed representatives from all of Idaho's tribes at the tribal summit held in Boise. In addition to these in-person meetings, the United States Attorney and U.S. Attorney's Office staff met with other tribal representatives and tribal law enforcement representatives throughout the year. Those specific activities are set out in more detail in the United States Attorney's 2011 Indian Country report.

### **Specific Components of Community Safety Strategy**

#### **A. Communication and Cooperation in Indian Country Prosecutions**

##### **1. Improving Communications with Each Tribe**

The United States Attorney, First Assistant United States Attorney, Criminal Chief and Assistants United States Attorney who serve as tribal liaisons are committed to meet and consult regularly with tribal governing bodies. Regular meetings and consultations regarding the U.S. Attorney's Office's law enforcement responsibilities in Indian Country are essential to public safety. Through these meetings, we are developing and improving effective case referral practices to ensure that crimes committed on the reservations are reported to the appropriate investigative agencies, that investigative reports are referred to and reviewed by the appropriate prosecution entities and that each case is staffed by qualified victim advocates. This Community Safety Strategy recognizes that tribal and federal law enforcement and tribal and federal prosecutors must work together to ensure that criminal conduct is properly investigated and prosecuted.

The primary communications occur between the assigned tribal liaison AUSAs and tribal law enforcement agencies. In consultation with each tribal law enforcement agency, they will meet on a regular basis, but no less than twice yearly, to review all potential federal criminal matters. The meetings will occur more regularly, as often as monthly, with some tribes. These regular law enforcement meetings will include a review of all ongoing domestic violence and sexual assault investigations. These meetings are consistent with the "best practices" recommended by the Native American Issues Subcommittee, Declinations Working Group, comprised of U.S. Attorneys, Assistant U.S. Attorneys and staff from U.S. Attorney's Offices with Indian Country jurisdiction throughout the United States. U.S. Attorney for Idaho, Wendy Olson, is a member of this working group.

##### **2. Improving Federal Investigation and Prosecution Review Procedures**

Increased community safety requires strengthened communication and collaboration at all levels of investigation and prosecution. In most instances, tribal police will be the first to respond to a crime scene. They will secure the scene; gather available evidence; interview

witnesses and/or victims; ensure victims receive appropriate forensic and medical attention; detain subjects when appropriate; and coordinate initially with tribal prosecutors regarding possible tribal charges or search warrants. For any case appearing to meet the elements of a federal crime, the United States Attorney's Office encourages tribal police to immediately notify the FBI. Once notified, the FBI will take appropriate follow-up investigative steps and consult with the U.S. Attorney's Office's tribal liaison assigned to the reservation. The FBI and the tribal liaison may ask the tribal police to assist with the follow-up investigation.

Once the FBI and U.S. Attorney's Office are involved in a matter initially investigated by tribal police, tribal police will provide their written reports detailing the initial investigation to the FBI and the U.S. Attorney's Office. Tribal officers should anticipate being called as witnesses in pretrial proceedings or at trial in federal cases. Similarly, in any case where federal charges are declined, but tribal charges are still viable, federal investigators should be prepared to make their reports available to the tribal prosecutors and to testify in tribal court when required.

In any case involving potential federal charges, the tribal liaison and investigative officers ordinarily will use federal investigative tools, including federal search warrants, to gather additional evidence. However, where a case initially was investigated solely for tribal law violations and involved tribal search warrants, the FBI and the U.S. Attorney's Office are committed to adopting those warrants. The tribal liaison will confer with all involved law enforcement agencies to determine which additional investigative tools to use.

The assigned tribal liaison AUSA and tribal prosecutors should discuss the appropriate prosecution forum early in the investigation. In cooperatively making a determination with his or her tribal prosecutor partner, the assigned tribal liaison AUSA will consider and discuss the available charging options, the elements of each possible charge, evidence available to prove the elements, the strength of the evidence, the likely sentence, the victim and any other remedy available under law. Where a case is a misdemeanor at the tribal and federal level, prosecution ordinarily will be in tribal court.

AUSA and tribal prosecutor consultation is particularly important where the defendant is an Indian and the victim is non-Indian. Title 18, United States Code, Section 1152 prohibits federal prosecution of an Indian who has already been punished under tribal law. When a defendant who will be prosecuted federally is in tribal custody, and continued detention of the defendant is warranted, the assigned tribal liaison AUSA will ask his/her tribal prosecutor partner to defer dismissing tribal charges until after federal charges are filed.

The U.S. Attorney's Office's review of Indian Country referrals will be completed as expeditiously as possible. In some cases, review will include a U.S. Attorney's Office request to either the FBI or tribal police for follow-up investigation. The U.S. Attorney's Office will make every effort to expedite charging decisions where necessary to ensure that dangerous offenders are arrested and continuously detained. Ordinarily, the decision to charge should be made within 60 days of receiving a completed investigation. Because it is often difficult to determine the

viability of a case until follow-up investigation is completed, tribal liaison AUSAs will keep their tribal counterparts apprised of the progress of the investigation.

Once a case is charged, AUSAs will notify the FBI, tribal police and tribal prosecutor of the charges within a reasonable time. In addition, the tribal liaison AUSAs will maintain a list of filed Indian Country cases and will review that list with tribal prosecutors and tribal police chiefs at their regular meetings. Moreover, tribal liaisons, FBI special agents, tribal prosecutors and/or tribal police should periodically review crime data from the reservations to ensure that reported crimes are being prosecuted in the appropriate forum and that the community safety needs of the reservations are being met. The U.S. Attorney's Office will continue to issue press releases relating to the filing of federal charges and the sentencing of any federal defendant for all crimes committed in Indian Country.

### 3. Declinations

U.S. Attorney's Office declinations of Indian Country matters are timely made and communicated in writing to tribal prosecutors and law enforcement officers. U.S. Attorney's Office declinations will set forth a summary of the case and the reasons for declination. Within 60 days of receiving a completed investigation, the U.S. Attorney's Office will charge, decline, or provide the investigating agent or tribal officer with a specific list of additional investigative work which, in the assigned AUSA's judgment, is necessary before a charging decision can be made. All U.S. Attorney's Office Indian Country declinations must be approved by the Criminal Chief.

The U.S. Attorney's Office anticipates that the declination rate for Indian Country cases will be higher than the declination rate for many other cases. The U.S. Attorney's Office is committed to making a searching review of all possible federal crimes in Indian Country. This searching review will involve opening cases where considerable additional investigative work needs to be done. Moreover, some of this additional investigative work may need to be done to determine whether the federal government even has jurisdiction, or whether a federal crime has been committed. In these circumstances, because many more incidents will be examined for possible criminal prosecution, more also will be declined. The U.S. Attorney's Office for the District of Idaho, consistent with recommendations made by the Native American Issues Subcommittee, Declinations Working Group, is also more closely tracking matters that are referred to the tribal prosecutor for prosecution in tribal court rather than in federal court.

## **B. Tribal/Federal Partnerships in Public Safety**

Improving Indian Country public safety requires not only strengthened procedures for federal prosecution and declination but also strengthened tribal law enforcement and prosecution resources. The U.S. Attorney's Office must play an active and collaborative role in strengthening these resources.

## 1. Cross-deputization of Tribal Law Enforcement

**Mutual Assistance Agreements.** After consultation with individual tribes, the U.S. Attorney's Office will encourage and facilitate the implementation of mutual assistance agreements among state, local, and tribal law enforcement agencies. The U.S. Attorney's Office also will encourage and facilitate cooperation among tribal, state, county and municipal law enforcement agencies and prosecutors' offices on jurisdictional matters even where no mutual assistance agreement is in place. Throughout 2011, the U.S. Attorney's Office has provided and will continue to provide law enforcement training on matters related to jurisdiction of law enforcement agencies in and near Indian Country.

The U.S. Attorney's Office, along with the FBI, will arrange and conduct training of tribal officers to assist the cross-deputization process for federal offenses. The U.S. Attorney's Office's goal is to see all tribes achieve cross-deputization. Well trained tribal police with federal law enforcement capabilities is a force multiplier. Under this strategy, the assigned tribal liaison AUSAs will pursue expansion of cross-deputization agreements with county and state law enforcement to make more trained and certified officers available for patrol and operations on those tribal communities who want them. Expanded cross-deputization will increase the pool of well-trained, available investigators of federal offenses. Targeted and frequent training will improve cross-deputized officers' investigative skills. The U.S. Attorney's Office also will encourage sheriff's offices to participate in the cross-deputization program. These steps, coupled with frequent communication and coordination between all participants, will improve public safety throughout Indian Country.

**Central Violations Bureau ("CVB").** Tribal governing bodies continue to express concern about non-Indians cited for violating tribal laws on the reservation. They indicated that non-Indians often failed to respond to tribal court or pay fines because tribal authorities had no ability to compel their appearance in tribal court. To ensure uniform compliance with the law by all who violate tribal laws, the U.S. Attorney's Office is assisting the tribes to pursue tribal law enforcement participation in the CVB citation program to address minor offenses by non-Indians in Indian Country. Three of Idaho's five federally recognized tribes have specifically requested that a CVB program be developed for their reservations. The U.S. Attorney's Office is working with the Chief United States Magistrate Judge for the federal courts in Idaho to develop the CVB program. The U.S. Attorney's Office will facilitate any necessary certification for tribal police officers participating in the program.

Establishing tribal participation in the CVB program is a detailed process that will take considerable time to complete. Nonetheless, the U.S. Attorney's Office hopes the CVB program for the three reservations that requested participation in it will be running by the end of 2012.

## 2. Tribal Special Assistant United States Attorney

The U.S. Attorney's Office is implementing a new tribal Special Assistant United States Attorney (SAUSA) program for interested tribes. Tribal prosecutors who are licensed and in

good standing with the Idaho State Bar may apply to participate in this program if they receive the support of their tribe's governing body. All SAUSAs must undergo a background check. In addition, the participating tribal prosecutor's tribe must enter into a memorandum of understanding with the U.S. Attorney's Office. Once a tribal prosecutor is approved as a SAUSA, the tribal prosecutor will have the opportunity to try cases in federal court with an AUSA. Additional training will be available to tribal prosecutors who become SAUSAs. In September 2011, the U.S. Attorney's Office for the District of Idaho designated its first tribal prosecutor as a SAUSA, Marty Raap of the Coeur d'Alene Tribe's prosecutor's office. The U.S. Attorney's Office also conducted his initial training. We anticipate that in 2012, he will appear in federal court on Indian Country matters.

### 3. U.S. Attorney's Office Requests for Additional Personnel Resources

Additional staff resources would facilitate implementation of this Community Safety Strategy. The U.S. Attorney's Office requested one additional victim-witness position to assist in developing this plan. However, the U.S. Department of Justice implemented a hiring freeze in 2011, and did not allocate these positions. We do not anticipate any additional personnel resources to be allocated within the next few years. The District has two AUSA positions allocated in 1995 to address Indian Country issues. The U.S. Attorney's Office's request for a third position in 2010 was denied. The U.S. Attorney's Office is fully committed to increasing the service it provides in Indian Country even without additional personnel resources. The new tribal SAUSA program is part of that commitment.

### 4. Training

The United States Attorney's Office recognizes that law enforcement and tribal prosecutor training in Indian Country are essential to tribal community safety. Thus, targeted training is an essential component of this community safety strategy.

#### a. Training Needs Assessment

A formal training needs assessment is an integral part of this community safety strategy. The U.S. Attorney's Office did not conduct a formal survey of Indian Country law enforcement training needs in 2011. Rather, the U.S. Attorney's Office's Law Enforcement Coordinator (LEC), tribal liaisons, U.S. Attorney and FBI obtained information regarding training needs through their many contacts with tribal leaders, tribal law enforcement and tribal court personnel. Initial training needs include report writing, questioning of juveniles, understanding addictions and addictive behaviors, domestic violence investigation, and testifying. The formal training needs assessment still needs to be done. The LEC sent a letter soliciting training needs from tribal police chiefs in February 2012.

b. Training Plan

The LEC, tribal liaisons and Victim-Witness Coordinators (VWC) will plan and host training events and conferences at various venues in Indian Country and, where appropriate, other locations in and near Idaho. Most significantly, in September 2011, the U.S. Attorney's Office joined with other regional U.S. Attorney's Offices to sponsor and host the Northwest Indian Country Conference at the Northern Quest Casino in Eastern Washington. The conference's primary objective was to provide tribal communities with tools to reduce violence on reservations. Speakers addressed issues such as the causes and consequences of violence, violence prevention, teen suicide, trafficking of Indian women and girls, gang violence and domestic violence. Speakers also provided updates on the Tribal Law and Order Act and tribal compliance with SORNA. Representatives from the Coeur d'Alene, Nez Perce, Shoshone-Bannock and Shoshone-Paiute tribes attended.

U.S. Attorney's Office staff will continue to plan and host training events with topics relevant to current issues in Indian Country, e.g., domestic abuse, sexual abuse including sexual abuse of children, violence against women, and victim issues. These training events, when appropriate, also will include state and local officers with law enforcement responsibility adjacent to Indian Country. The LEC and the VWC will be responsible for providing notice of these trainings and conferences to the tribal governing bodies, tribal law enforcement chiefs, and tribal service providers. Reasonable efforts will be made to ensure tribal law enforcement personnel have ample opportunity to attend these trainings and conferences. When possible, tuition costs for tribal law enforcement will be reduced or eliminated.

This training strategy emphasizes improving the quality of Indian Country criminal investigations. Improved Indian Country criminal investigations will increase the number of cases charged in federal court. The strategy also will improve coordination, communication and trust between federal and tribal law enforcement agencies. In addition, USAO staff will spend time on reservations learning and communicating not only with law enforcement officers, but also with community leaders and members. A training program that blends standardized and customized training of tribal police, delivered by Indian Country AUSAs and federal agents, will maximize community safety in Indian Country. This training strategy also emphasizes community response to public safety issues within Indian Country, including victim services.

**C. U.S. Attorney's Office Accountability in Indian Country**

1. Updated Performance Work Plans

In an effort to improve U.S. Attorney's Office staff accountability and to recognize the work of AUSAs in Indian Country, the United States Attorney has updated Performance Work Plans (PWP) for Indian Country AUSAs to reflect their critical and wide-ranging duties. The PWP for tribal liaisons and other AUSAs who work in Indian Country have been 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 U.S. Attorney's Office. Specifically, the new PWP's 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 U.S. Attorney's Office's strategic goal of improving public safety in Indian Country.

## 2. Report to Indian Country

In a further effort to be fully accountable for implementation of the U.S. Attorney's Office's Indian Country Community Safety Strategy, the U.S. Attorney will issue an annual report to Indian Country on the Office's efforts. The report will include information on tribal consultation, prosecutions, declinations, and any other programs that affect Indian Country. The 2012 annual report will be issued as a companion to this Indian Country Community Safety Strategy update.

## 3. Use of Resources in Indian Country

U.S. Attorney's Office staff with Indian Country responsibility, including management level staff, have been trained on the proper use of the USA-5/5A system and its Indian Country categories. Additionally, the Criminal Chief maintains statistics on each Indian Country AUSA's total number of files opened, number of cases and defendants charged, number of pleas, sentencing, trials, declinations, and appeals achieved month-by-month. The Criminal Chief oversaw internal U.S. Attorney's Office data collection procedures designed to increase the Office's statistical reporting on Indian Country cases. The Office now tracks tribal membership for defendants and victims and on which reservation the criminal offense occurred. The Criminal Chief, First Assistant United States Attorney and United States Attorney use these statistics to evaluate performance and as benchmarks to monitor and provide feedback to AUSAs and to themselves on their performance of their special duties in Indian Country. The U.S. Attorney's Office also reported these statistics to the Executive Office for United States Attorneys as part of the U.S. Department of Justice's compliance with the Tribal Law and Order Act.

## **D. Violence Against Women and Children in Tribal Communities**

Addressing violence against women and children in Indian Country is a Department of Justice and U.S. Attorney's Office priority. We recognize our duty to investigate and prosecute serious crimes in Indian Country, including crimes against women and children. We also



recognize that often the federal government alone has authority to prosecute certain violent crimes against Native Americans where the offender is non-Indian. This authority carries with it the responsibility to obtain meaningful punishment for any serious offender. In those circumstances, only U.S. Attorney's Offices can pursue justice for the victim and the community. Accordingly, we will ask the FBI to investigate all reports of sexual assault or domestic violence in Indian Country wherever allegations on their face suggest a violation of federal law. Moreover, AUSAs will continue to pursue cases where credible evidence exists even where the victim is reluctant to support the prosecution, so long as there is a reasonable assessment that the elements can be proven.

Where federal jurisdiction exists, the responsibility to investigate and prosecute violence against women in Indian Country also extends to misdemeanor assaults committed by non-Indian offenders against Native American women on federally recognized reservations. Because tribal courts have no jurisdiction over non-Indians, federal charges, even if they are misdemeanors, are the only avenue for interrupting cyclical violence and removing the perpetrator from the community and his victim. Effective immediately, the United States Attorney and Criminal Chief will review and prioritize all cases of domestic violence perpetrated by non-Indians upon Indian victims in tribal communities. Additionally, effective immediately, the United States Attorney's Office will accept investigative reports directly from tribal police and BIA law enforcement without the necessity of FBI involvement.

The Idaho Coordinated Response to Domestic and Sexual Violence, of which this Office is a member, has developed a one-page law enforcement risk assessment form for domestic violence. The U.S. Attorney's Office will provide training on use of this risk assessment form for interested tribal law enforcement agencies. The U.S. Attorney's Office also will encourage adoption of this form by tribal law enforcement agencies and courts.

In addition, in all tribal domestic violence matters of which the U.S. Attorneys' Office becomes aware, the U.S. Attorney's Office will request the perpetrator's prior criminal history to determine whether the subject has a prior domestic violence conviction as that term is defined in 18 U.S.C. § 2265A. If so, the U.S. Attorney's Office will give priority to reviewing the new matter for federal prosecution.

We will work with tribes and tribal law enforcement agencies to review incidents of sexual assault to ensure that all viable criminal cases are pursued. In so doing, we will encourage Indian Health Service administrators to promote programs like SANE, which ensure that emergency room nurses have adequate quantities of rape kits and are trained to use, store and transmit them properly.

We will also be expanding the responsibilities of the AUSA in our Office designated as the Violence Against Women Coordinator. This individual will be responsible for training AUSAs on an annual basis regarding the unique aspects of domestic violence cases and will work with domestic violence shelters to ensure that these cases remain a top priority in the Office.

## **E. Improvements Needed in Implementation**

This Indian Country Community Safety Strategy sets out broad and important U.S. Attorney's Office responsibilities in Indian Country. The U.S. Attorney and staff have taken important steps in implementing this strategy. However, some parts of the strategy have not yet been met, or significant progress has not been made in implementing them. In 2012, the U.S. Attorney's Office will focus on those steps.

### **1. In-Person Tribal Consultations**

The United States Attorney did not meet in person with the tribal chair or council of the Kootenai Tribe. Renewing this in-person relationship is a priority for 2012.

### **2. Mutual Assistance Agreements/Jurisdictional Disputes**

No tribe and surrounding state, local or municipal jurisdiction reached a mutual assistance agreement in 2011. One tribe—the Coeur d'Alene tribe—has an ongoing mutual assistance agreement with one of the counties in which it is located, Kootenai County. The U.S. Attorney, First AUSA and tribal liaisons will continue to explore with tribes and surrounding communities the need for and advantages of such mutual assistance agreements. Some Idaho counties are engaged in jurisdictional disputes with tribes on a number of issues. The U.S. Attorney's Office will continue to assist in resolving such disputes and in convening meetings to address the issues.

### **3. Formal Training Assessment**

The U.S. Attorney's Office did not conduct a formal training assessment, instead relying on its consistent communications with tribes to develop trainings on an ad hoc basis. The U.S. Attorney's Office LEC already has initiated this assessment in 2012.

### **4. Domestic Violence/Sexual Assault Training**

With some tribes, the U.S. Attorney's Office did conduct significant work aimed at reducing domestic violence and sexual assault. For example, AUSA Traci Whelan, who is the tribal liaison for the three federally recognized tribes in northern and central Idaho, became an active member of the Coeur d'Alene Tribe's Sexual Assault Response Team. AUSA Whelan also partnered with another member of the SART team to provide training on domestic violence in Indian Country at the November 2011 statewide summit on domestic violence. Approximately 1,000 people attended the statewide summit, which was held in Boise. In 2012, the U.S. Attorney's Office must bring domestic violence and sexual assault training to more tribes. Planning is under way for a training program to be held at the Fort Hall Indian reservation.

5. Non-tribal Community Outreach

Non-tribal community outreach was not a specific component of the U.S. Attorney's Office's initial Indian Country Community Safety Strategy. However, land within Idaho's tribes' reservation boundaries is sometimes owned in fee by non-tribal members. In addition, some municipalities not governed by the tribes are located within tribal boundaries. Moreover, federal regulatory agencies that work cooperatively with tribal regulatory agencies sometimes have difficult relationships with the county and local governments that operate in the same area. Since many issues affecting tribal community public safety involve non-tribal members, the U.S. Attorney will make more formalized non-tribal community outreach on Indian Country issues part of this community safety strategy. As will other parts of this community safety strategy, the U.S. Attorney's non-tribal community outreach will occur in consultation with tribal leaders.