

# U.S. Department of Justice Indian Country Investigations and Prosecutions 2011-2012



United States Department of Justice



# Table of Contents

<b>Executive Summary</b> .....	2
<b>Tribal Law and Order Act (TLOA) Background</b> .....	6
<b>Federal Criminal Responsibilities in Indian Country</b> .....	7
<b>Federal Bureau of Investigation (FBI) TLOA Report</b> .....	9
<i>FBI TLOA Investigation Data Collection</i> .....	11
<i>FBI TLOA Reporting Information</i> .....	14
<b>Executive Office for US Attorneys (EOUSA) TLOA Report</b> .....	24
<i>Data Collection Within the United States Attorneys' Offices</i> .....	31
<i>EOUSA LIONS Information</i> .....	36
<b>Department of Justice Commitment to Indian Country</b> .....	55
<b>Appendix A: Glossary of Terms</b> .....	56
<b>Appendix B: Lead Charges Entered into LIONS in Calendar Year 2011 and 2012</b> .....	57

## *Cover Photographs*

Clockwise starting from the Upper Left Corner:

1. View of the Pacific Ocean from the shore of the Quileute Nation (Washington).
2. U.S. Department of Justice 2011 Cultural Property Law Course field exercise. An archeologist from the National Park Service is instructing students at a mock crime scene on methods for calculating damages at an illegal dig.
3. U.S. Department of Justice's 2011 Indian Country Basic Death Investigation Seminar. Students are practicing proper techniques for fingerprinting crime scenes.
4. Mesa view on Santa Ana Pueblo (New Mexico).

***“Across the country, U.S. Attorneys, the FBI, and our other federal partners have been focused on fighting crime in Indian country and strengthening the bond between federal and tribal law enforcement. This report on federal law enforcement efforts in Indian country shows that***

***we are beginning to see results, but there is more work to be done, and we will continue our commitment to strengthen public safety for tribal nations.”***

— Attorney General Eric Holder

## **Executive Summary**

The Department of Justice recognizes the United States’ unique legal relationship with federally recognized Indian tribes. As the Attorney General has stated, improving public safety and the fair administration of justice in Indian country is a top priority for the Department of Justice. Accordingly, in 2009, the Attorney General launched a Department-wide initiative on public safety for tribal nations. The initiative’s overarching goal is to create substantial, lasting improvements in public safety for American Indians and Alaska Natives, and to undertake reforms to institutionalize the Federal commitment to public safety for tribal nations.

The public safety challenges in Indian country vary widely from district to district – and from tribe to tribe – depending on jurisdictional issues, geography, tribal cultures, and myriad other factors. The ratio of law enforcement officers to population served remains lower on Indian reservations than in other jurisdictions across the country. And, law enforcement agencies in Indian country have the daunting challenge of patrolling large areas of sparsely populated land. In many places, the local Federal Bureau of Investigation (FBI) field office, the United States Attorney’s Office, and the Federal courthouse are located many miles away from where tribal members reside, which only compounds the difficulties facing investigators and prosecutors, as well as victims, witnesses, and defendants involved in a Federal prosecution.

The Department recognizes that in many cases the tribal government is best positioned to effectively investigate and prosecute crime occurring in its own community. That is why the Department has supported Congressional efforts to increase tribal courts’ legal authority to address crime in their own jurisdictions, such as the expansion of tribal sentencing authority in the Tribal Law and Order Act of 2010 (TLOA). The Department envisions a time when the tribal and Federal criminal justice systems are both equipped with the authority and resources needed to properly address crime in Indian country. To this end, the Department continues its work to strengthen relationships with federally recognized tribes, improve the coordination of training and information-sharing, and enhance tribal capacity, so that together the tribal and Federal governments can provide effective law enforcement and prosecutions in Indian country.

The information in this report is provided to Congress in response to TLOA. Section 212 of TLOA requires the Attorney General to submit an annual report to Congress detailing investigative efforts by the FBI and dispositions of matters received by United States Attorneys’ Offices (USAOs) with Indian country responsibility. The data presented in this report cover only those offenses reported to the FBI and Federal prosecutors. Notably absent are the majority of criminal offenses committed, investigated, and prosecuted in tribal communities – namely, those adjudicated in tribal justice systems. In many parts of Indian country, tribal courts are holding lawbreakers accountable, protecting victims, providing youth prevention and intervention programs, and dealing with precursors to crime like alcohol and substance abuse. These efforts are often in partnership with Federal agencies or accomplished by accessing Federal programs

and Federal grant dollars. Prior to passage of TLOA, concerns had been raised that the Justice Department had not sufficiently shared case information or communicated with tribes concerning cases declined by the U.S. Attorney's Offices. We have listened to Congress and to tribal leaders and have taken these concerns seriously. The data in this report, combined with Justice Department efforts in the field, demonstrate our commitment to strengthening public safety in Indian country.

United States Attorneys' Offices are engaged in an unprecedented level of collaboration with tribal law enforcement, consulting regularly with them on crime-fighting strategies in each District, joining in Federal/tribal task forces, sharing case and grant information, training investigators, and cross-deputizing tribal police and prosecutors to enforce Federal law and to allow those deputized individuals to bring cases directly to Federal court. In Montana, for instance, Federal and tribal prosecutors meet every two weeks and consider how best to handle particular cases and which jurisdiction is best positioned to deliver justice for the victim and the community. In Arizona, during the past two years, the United States Attorney's Office has trained over 950 tribal and local police officers, enabling those officers to receive their Special Law Enforcement Commissions (SLECs). SLEC holders are cross-deputized to enforce Federal laws on Indian land — an important “force multiplier” for tribal communities where Federal law enforcement resources may be thin or remotely located. United States Attorneys around the country are also designating tribal prosecutors as Special Assistant U.S. Attorneys, enabling them to bring cases directly to Federal court. And the District of South Dakota pioneered a community-prosecution pilot project placing an Assistant U.S. Attorney on the Pine Ridge Indian Reservation. This Assistant U.S. Attorney works closely with tribal leaders and criminal justice professionals to identify pressing public-safety issues and to help craft solutions to these problems. Community-prosecution pilots are also being developed in the District of New Mexico and the Eastern District of Wisconsin.

The Justice Department's prioritization of Indian country crime and the increase in Federal resources over the past four years have resulted in a notable increase in Indian country cases prosecuted in Federal courts. Caseloads have increased from 1,091 cases filed in fiscal year (FY) 2009, to 1,138 in FY 2010, to 1,547 in FY 2011, and 1,677 in FY 2012. This represents a 54% increase in the Indian country criminal caseload in approximately four years. It will take some time until the full impact of this increase in prosecutions can be measured, but we hope that this increase in enforcement will bolster the faith and confidence that tribal leaders and tribal community members have in the Federal criminal justice system. The increase in collaboration and communication strengthens the bond of trust between Federal and tribal investigators, prosecutors, and other personnel across both criminal justice systems, and it help will make communities safer as a result.

To satisfy TLOA Section 212, for calendar years (CY) 2011 and 2012, the FBI and the Executive Office for United States Attorneys (EOUSA) have compiled four types of case-specific information:

- The type of crimes alleged;
- The status of the accused as Indian or non-Indian;
- The status of the victim as Indian or non-Indian; and

- The reason for deciding against referring the investigation for prosecution (FBI) or the reason for deciding to decline or terminate the prosecution (USAOs).

As discussed in the report, certain limitations in the data make it difficult to draw broad conclusions based on this information. Furthermore, because this is the first time the Department has systematically compiled this information, there is no equally comprehensive data set for previous years that could provide a basis for comparing declinations in CY 2011 and CY 2012 with those in previous calendar years. Nevertheless, the data provide a useful snapshot of the Department's current law enforcement work in Indian country. It is our hope that this first report will provide helpful context as Congress and the Department work together to improve public safety in Indian country in future years.

Despite the data limitations, certain basic facts are clear:

- **Overall, a substantial majority of Indian country criminal investigations opened by the FBI were referred for prosecution.**
- **Overall, a substantial majority of Indian country criminal cases opened by the United States Attorneys' Offices were prosecuted.**
- **The most common reason FBI Indian country investigations were closed administratively without referral for prosecution was that the investigation concluded that no Federal crime had occurred.** Analysis of CY 2011 data indicates that 611 FBI Indian country investigations were closed administratively without referral to a prosecuting authority — approximately 30% of the investigations that were opened. And, 658 FBI Indian country investigations were administratively closed (approximately 35%) in CY 2012. Reasons for non-referral include deaths determined to be the result of natural causes, accident, or suicide (*i.e.*, non-homicides; 21% in CY 2011 and 17% in CY 2012 of all investigations not referred), and unsupported allegations in which there was insufficient evidence of criminal activity (26% in CY 2011 and 22% in CY 2012).
- **All but 20 of the 146 death investigations the FBI closed administratively in CY 2011 were closed because the FBI established that the death was due to causes other than homicide. In CY 2012, all but 19 of the 133 death investigations that were administratively closed were determined to be accidents, suicide, or death due to natural causes.**
- **USAO data for CY 2011 indicate that just under 37% (1,041) of all Indian country submissions for prosecution (2,840) were declined by USAOs. In CY 2012, USAOs declined approximately 31% (965) of all (3145) Indian country submissions for prosecution.**

The 2009 Senate report accompanying TLOA acknowledged that “declination statistics

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### **Tribal Law and Order Act (TLOA) Background**

The Tribal Law and Order Act was signed into law by President Obama on July 29, 2010. In part, TLOA is intended to establish accountability measures for Federal agencies responsible for investigating and prosecuting violent crime occurring in Indian country. To that end, Section

212 of TLOA (amending the Indian Law Enforcement Reform Act, 25 U.S.C. § 2809) requires the Attorney General to submit annual reports to Congress detailing investigative efforts and prosecutive disposition reports.

The FBI is required to report “by Field Division, information regarding decisions not to refer to an appropriate prosecuting authority cases in which investigations had been opened into an alleged crime in Indian country.” And, the USAOs are to submit to the Native American Issues Coordinator, located within EOUSA, information by Federal judicial district regarding “all declinations of alleged violations of Federal criminal law that occurred in Indian country that were referred for prosecution by law enforcement agencies.” The FBI and the USAOs’ reporting obligations are as follows:

- A. The type of crime(s) alleged;
- B. The status of the accused as Indian or non-Indian;
- C. The status of the victim as Indian or non-Indian; and
- D. The reason for deciding against referring the investigation for prosecution (FBI) or the reason for deciding to decline or terminate the prosecution (USAOs).

The information the FBI is required to report under TLOA is substantively different from the information reported by the USAOs. Most importantly, the FBI is responsible for *investigating* allegations of Federal crimes in Indian country, while the U.S. Attorneys’ Offices are responsible for *prosecuting* such crimes. The FBI’s data contain cases not referred to USAOs, and EOUSA’s data account for cases referred by various investigative agencies, only one of which is the FBI. As a result, direct comparisons of FBI and EOUSA numbers are not possible.

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### **Federal Criminal Responsibilities in Indian Country**

The two main Federal statutes governing Federal criminal jurisdiction in Indian country<sup>1</sup> are 18 U.S.C. § 1152 and § 1153. Section 1153, known as the Major Crimes Act, gives the Federal Government jurisdiction to prosecute certain enumerated offenses, such as murder, manslaughter, rape, aggravated assault, and child sexual abuse, when they are committed by Indians in Indian country. Section 1152, known as the General Crimes Act, gives the Federal Government exclusive jurisdiction to prosecute all crimes committed by non-Indians against Indian victims in Indian country. Section 1152 also grants the Federal Government jurisdiction to prosecute minor crimes by Indians against non-Indians, although that jurisdiction is shared with tribes, and provides that the Federal Government may not prosecute an Indian who has been punished by the local tribe.

To protect tribal self-government, Section 1152 specifically excludes minor crimes between Indians, which fall under exclusive tribal jurisdiction. The Federal Government also has jurisdiction to prosecute Federal crimes of general application, such as drug and financial crimes, when they occur in Indian country unless a specific treaty or statutory provision provides otherwise. On a limited number of reservations, the Federal criminal responsibilities under Sections 1152 and 1153 have been ceded to the States under “Public Law 280” or other Federal laws.<sup>2</sup>

The United States Constitution, treaties, Federal statutes, executive orders, and court decisions establish and define the unique legal and political relationship that exists between the United States and Indian tribes. The FBI and the USAOs are two of many Federal law enforcement agencies with responsibility for investigating and prosecuting crimes that occur in Indian country.<sup>3</sup> FBI jurisdiction for the investigation of Federal violations in Indian country is statutorily derived from 28 U.S.C. § 533, pursuant to which the FBI was given investigative authority by the Attorney General. In addition to the FBI, the Department of the Interior’s Bureau of Indian Affairs (BIA) plays a significant role in enforcing federal law, to include the investigation and presentation for prosecution of cases involving violations of 18 U.S.C. §§ 1152 and 1153. The Indian Law Enforcement Reform Act, 25 U.S.C. § 2801 *et seq.*, established the Office of Justice Services (OJS) within BIA, which is responsible for the overall management of BIA’s law enforcement program. OJS has seven areas of activity: Criminal Investigation and Police Services, Detention/Corrections, Inspection/Internal Affairs, Tribal Law Enforcement and Special Initiatives, the Indian Police Academy, Tribal Justice Support, and Program Management. The OJS also provides oversight and technical assistance to tribal law enforcement programs when and where requested. According to BIA’s website, “for fiscal year 2008-2009, OJS funded 191 law enforcement agencies consisting of 42 BIA operated and 149 tribally

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<sup>1</sup> “Indian country” is the legal term used to describe reservations and other lands set aside for Indian use, such as Indian allotments, and lands held in trust for Indians or Indian tribes. 18 U.S.C. § 1151.

<sup>2</sup> Federal jurisdiction was ceded under Public Law 83-280, 18 U.S.C. § 1162, which required six states to assume jurisdiction over Indian country crimes and divested the Federal Government of jurisdiction to prosecute under the Major and General Crimes Acts in those areas, while giving other states the option to assume that jurisdiction. Congress has also passed a variety of tribe-specific statutes providing for a similar framework of state jurisdiction over crimes in those locations. The Federal Government retains jurisdiction to prosecute generally applicable offenses in P.L. 83-280 areas.

<sup>3</sup> Other Federal agencies with criminal jurisdiction in Indian country include the Bureau of Indian Affairs, the United States Marshals Service, the National Park Service, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Bureau of Land Management, the United States Postal Service, and the United States Secret Service, to name a few.



operated under contract, or compact for operation.”<sup>4</sup> The delineation of responsibilities between the FBI and the BIA was the subject of a Memorandum of Understanding (MOU) made between the DOI and the DOJ in late 1993.<sup>5</sup> This MOU also provided that each United States Attorney “whose criminal jurisdiction includes Indian country shall develop local written guidelines outlining responsibilities of the BIA, the FBI, and the Tribal Criminal Investigators, if applicable.” In short, numerous Federal and tribal law enforcement agencies are necessary for the effective and efficient administration of criminal justice in Indian country. Determining which law enforcement agency, federal or tribal, has primary responsibility for investigation of a particular crime may depend on the nature of the crime committed and any applicable local guidelines, which vary across jurisdictions.

Indian country case statistics can be drawn from three different jurisdictions: Federal, state, or tribal. The FBI’s Uniform Crime Report (UCR) contains offense data from all three sources, but counts only crimes reported to law enforcement for those agencies that volunteer to submit. Furthermore, UCR does not collect the specific information on declinations and administrative closing required by Section 212 of TLOA. It should also be noted that matters and cases from Public Law (P.L.) 280 jurisdictions do not generally appear in Federal Indian country crime statistics because Federal authority to prosecute most cases in those jurisdictions has been transferred to the state. In addition, this report does not cover cases referred to the Department of the Interior’s Bureau of Indian Affairs or other law enforcement agencies if they were not subsequently referred to a USAO for prosecution. The numbers presented by the FBI and EOUSA in this report include only cases subject to federal jurisdiction and reported to the FBI or referred to a USAO by a federal, state, local, or tribal agency. Thus, this report represents only one piece of the total Indian country violent crime picture – those offenses referred either to the FBI for investigation or to a USAO for prosecution. A more complete understanding of crime rates in Indian country would require that all reported criminal offenses, whether reported to and/or filed with the tribal, state, or Federal government, be collectively assembled and analyzed. Today, no single system exists that would permit collection and analysis of aggregate Indian country crime and prosecution data across sovereigns. And even if such a system existed, unreported crime would remain outstanding and uncounted.

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## **Federal Bureau of Investigation TLOA Report**

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<sup>4</sup> <http://www.bia.gov/WhoWeAre/BIA/OJS/index.htm>

<sup>5</sup> [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm00676.htm](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00676.htm)

*FBI Indian Country Investigations*

The FBI has investigative responsibility for federal crimes committed on approximately 200 Indian reservations: this responsibility is shared concurrently with the Bureau of Indian Affairs and other federal agencies with a law enforcement mission in Indian country.<sup>6</sup> This number generally excludes tribes in P.L. 280 states, with the exception of crimes of general applicability (e.g., drug offenses, Indian gaming, and violence-against-women offenses). Currently, there are about 115 Special Agents dedicated full-time and 42 FBI Victim Specialists working in support of Indian country investigative matters in over 20 FBI Field Offices. As of January 1, 2013, there were approximately 3,000 open FBI Indian country investigations. Table 1 lists FBI Divisions with Indian country responsibilities.<sup>7</sup>

**Table 1: FBI Divisions with Indian Country Responsibility**

<b>FBI Division Name</b>	<b>FBI Abbreviation</b>	<b>State(s)</b>
Albany	AL	NY
Albuquerque	AQ	NM
Anchorage	AN	AK
Boston	BS	MA, ME, RI
Buffalo	BF	NY
Charlotte	CE	NC
Columbia	CO	SC
Detroit	DE	MI
Denver	DN	WY, CO
El Paso	EP	TX
Indianapolis	IN	IN
Jackson	JN	MS
Kansas City	KC	KS, MO
Las Vegas	LV	NV
Los Angeles	LA	CA
Miami	MM	FL
Mobile	MO	AL
Minneapolis	MP	MN, ND, SD
Milwaukee	MW	WI
New Haven	NH	CT
New Orleans	NO	LA
Oklahoma City	OC	OK
Omaha	OM	NE, IA
Portland	PD	OR
<b>FBI Division Name</b>	<b>FBI Abbreviation</b>	<b>State(s)</b>

<sup>6</sup> Other Federal law enforcement agencies with a criminal justice mission in Indian country include the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the National Park Service; and the Bureau of Land Management to name a few.

<sup>7</sup> Not all FBI Divisions listed had CY 2011 or CY 2012 Indian country investigations to report under TLOA. Also, some states contain multiple Divisions, and some Divisions overlap multiple states.

Phoenix	PX	AZ
San Antonio	SA	TX
Sacramento	SC	CA
Seattle	SE	WA
San Diego	SD	CA
San Francisco	SF	CA
Salt Lake City	SU	MT, ID, UT
Tampa	TP	FL

All FBI investigations are required to follow the Attorney General’s Guidelines for Domestic FBI Operations (AGG-Dom) and the FBI Domestic Investigations and Operations Guide (DIOG). These documents standardize policy, to ensure that all FBI investigative activities are conducted in compliance with all relevant laws, policies, and regulations, including those designed to protect civil liberties and privacy. Under the DIOG, FBI investigations regarding allegations of Federal law violation in Indian country include both “Assessments” and “Predicated Investigations.”<sup>8</sup> Therefore, whenever the FBI engages in any substantive investigative activity (*e.g.*, interviewing a complainant or potential victim of a vague or non-specific allegation), this is considered an “investigation” for the purposes of TLOA reporting.

#### *FBI Indian Country Assessments*

The two most prevalent examples of Indian country Assessments, resulting in an FBI investigation but not a Predicated Investigation or referral for prosecution, are as follows:

Example A: A non-specific allegation of child sexual abuse is referred to the FBI. The FBI presents the child for a forensic interview and medical examination. The child discloses no allegation of child sexual abuse, and the medical exam and other preliminary investigation reveals no corroborative evidence of sexual abuse. The matter is documented to an FBI Indian country child sexual abuse Assessment file and the investigation is administratively closed.

Example B: The FBI is called to a hospital that reports treating an assault victim from a nearby reservation. During the course of this Assessment, the assault victim, who may have serious bodily injury, chooses not to make a report and does not identify the assailant or describe details of the assault. The FBI documents the matter to an FBI Indian country assault Assessment file and administratively closes the investigation. (NOTE: Documenting the incident permits the FBI to reopen the matter as a Predicated Investigation at a later date, should the victim later wish to make a report.)

By including Assessments in the TLOA investigations data, the FBI seeks to provide further information regarding the breadth and scope of alleged crimes in Indian country. The classification of Assessments involving any substantive investigative activity as “investigations” reflects the commitment of the FBI to accurate and complete reporting under the TLOA.

<sup>8</sup> FBI Domestic Investigations and Operations Guide (DIOG), 2011 version.

Additionally, ongoing FBI investigations do not preclude tribal law enforcement from continuing an investigation and making a referral to tribal court.

### *FBI Predicated (Full) Investigations*

Predicated “Full” Investigations in Indian country are submitted to the Federal, state, or tribal prosecuting authority or are administratively closed after all logical investigation into the alleged crime has been completed by the FBI.

### **FBI TLOA Investigation Data Collection**

This section will provide a description of the data used to generate the tables provided in this report. Most importantly, these figures represent only a fraction of the cases investigated annually by the FBI in Indian country. Approximately two-thirds of all Indian country investigations opened by the FBI are referred for prosecution. As required by TLOA, this report contains detailed information only on the roughly one-third of investigations administratively closed or not referred for prosecution.

### *Measurement of FBI TLOA Requirements*

- 1. Types of crimes alleged** generally follow a hierarchy rule, where the case is classified by the most serious offense, and are determined at case initiation. To protect information regarding sensitive investigations, totals for Financial Crime, Public Corruption, and Civil Rights investigations were combined. Both felony and misdemeanor (if a misdemeanor allegation is made against a non-Indian subject) domestic-violence investigations are included under the “Assault” category.<sup>9</sup> “Property Crime” includes burglary, larceny, theft, arson, and motor-vehicle theft. “Death Investigations” include homicide and vehicular-homicide investigations, along with other investigations of suspicious or unattended deaths. The “Other” category includes offenses such as weapon possession by felons, robbery, counterfeit or trafficking of cultural items, and any other investigations that do not fit into the other nine categories.
- 2. The status of the victim and subject** as American Indian or non-American Indian is typically recorded in each case file during the course of the investigation and is generally based on self-reported information provided to the FBI or records obtained from tribal authorities.<sup>10</sup> Tribal enrollment or Native American status is verified as an investigation progresses. No victim or subject status is available to report in the following circumstances: the victim or subject was a business; the case was opened with an unknown/unidentified subject; victim and/or subject information was not documented in the case file; there was no identified victim (*e.g.*, drug investigations, public corruption matters); or various other reasons, including duplicate case openings or other administrative errors. For the purposes of this report, “U” indicates the victim or subject status was unknown at the time the investigation was closed.

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<sup>9</sup> 18 U.S.C. § 113 (Assault) applies to both domestic violence and general assault offenses. An exception to this overlap is 18 U.S.C. § 117 (Domestic Violence by an Habitual Offender).

<sup>10</sup> The FBI does not have direct access to tribal enrollment information.

3. **Reasons for non-referral to prosecuting authorities** were developed after narratives for all non-referred FBI Indian country cases were reviewed. Ten categories were created based on patterns observed after examining all individual case circumstances. A list of non-referral categories is provided in Table 2.

*Data Collection and Verification Process*

Because the FBI’s case-management system does not automatically collect TLOA-mandated data, a manual review of every closed file was conducted. Beginning in January 2011, FBI Headquarters was responsible for verifying all Division TLOA data submissions and collating the information on a quarterly basis.

**Table 2: Reasons for FBI Non-Referral for Prosecution in Indian Country**

Non-Referral Category
Does not meet USAO guidelines or statutory definitions <sup>11</sup>
Victim is unable to identify subject
Victim or witness is unable or unwilling to assist
Cannot be addressed with current resources <sup>14</sup>
Subject died

*Data Limitations*

The data presented in this report are subject to a number of limitations. FBI computer systems were designed for case-management purposes, not to serve as statistical databases. The following limitations should be considered when reviewing the data presented below:

- The FBI is only able to track allegations reported to the FBI. Allegations investigated only by the Bureau of Indian Affairs (BIA) or tribal law enforcement are not represented in the FBI’s data.
- Calculating crime rates using this data is inappropriate due to the wide variation between Divisions regarding local guidelines and agreements and the presence of other agencies (e.g. BIA), which may dramatically impact the number of FBI investigations opened. The

<sup>11</sup> Many investigations closed for this reason are referred to tribal prosecutors, but are nonetheless reported here for the purposes of transparency.

<sup>12</sup> The FBI exhausted all logical investigation, and was unable to present enough facts for a prosecutive opinion.

<sup>13</sup> The FBI may open an investigation solely for the purpose of assisting another agency that is primarily responsible (such as opening an investigation solely to give a subject a polygraph examination). Because the FBI is not the primary investigator, these investigations are administratively closed and not referred.

<sup>14</sup> Primarily due to the prioritization of violent crimes against persons.

number of investigations reported by each Division depends on the number of cases referred, the number of Indian reservations each Division responds to, and the types of investigations the FBI is responsible for in each area.<sup>15</sup>

- Non-referral is not necessarily a permanent status. It is possible that a case closed and not referred may be reopened and referred for prosecution if new information is received.
- Each FBI Division collects TLOA data, which is then submitted to FBI Headquarters for validation. Due to this manual process, a small amount of error may be present in the data.

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<sup>15</sup> The FBI has a Memorandum of Understanding (MOU) with the Bureau of Indian Affairs (BIA) and local agreements based on available resources with other agencies. For example, in some areas but not others, the FBI may work only child sexual abuse cases for victims under age 12, while the BIA would be responsible for all other sexual abuse and sexual assault investigations, including adult rape.

## **FBI TLOA Reporting Information**

The FBI closed 2,020 Indian country investigations during CY 2011 and closed 1,908 investigations in CY 2012. Each closed investigation was reviewed manually for purposes of this report. Approximately one in three closed investigations were closed administratively, and thus not referred for prosecution; the other two-thirds were referred to Federal, state, or tribal prosecutors.<sup>16</sup> Table 3 shows, by FBI Division, the total number of closed investigations (*i.e.*, both those that were referred for prosecution and those that were administratively closed) in CY 2011 and CY 2012. Table 3 also lists the number of investigations that were administratively closed and thus not referred for prosecution for each year (611 in CY 2011 and 658 in CY 2012). Both overall, and in most FBI Divisions, the total number of cases referred for prosecution exceeded the number of cases administratively closed. Four Indian country Divisions — Phoenix (PX), Minneapolis (MP), Salt Lake City (SU), and Albuquerque (AQ) — accounted for approximately 75% of all FBI Indian country investigation closures during CY 2011 and CY 2012.

**Table 3: Number of Indian Country Criminal Investigations Closed, by FBI Division, CY 2011-2012**

Division	Division Name	# Administratively Closed/ Not Referred for Prosecution		Total Closed Investigations (Referred and Not Referred)	
		CY 2011	CY 2012	CY 2011	CY 2012
AL	Albany	1	0	2	0
AQ	Albuquerque	85	63	270	188
BF	Buffalo	0	1	0	1
CE	Charlotte	2	7	6	17
DE	Detroit	1	0	46	31
DN	Denver	37	30	81	89
JN	Jackson	2	3	22	18
LV	Las Vegas	27	5	63	34
MM	Miami	3	1	4	2
MO	Mobile	0	0	1	0
MP	Minneapolis	120	124	449	410
MW	Milwaukee	3	5	18	25
NO	New Orleans	0	0	0	3
OC	Oklahoma City	9	7	44	65
OM	Omaha	26	16	95	67
PD	Portland	7	7	30	26
PX	Phoenix	202	304	451	553
SA	San Antonio	0	1	5	2
SC	Sacramento	2	3	9	7

<sup>16</sup> The omitted category in Table 3, referral for prosecution, can be derived by subtracting administrative closures from total investigation closures. It should be noted that referral for prosecution has two outcomes: a prosecutor may decline a case, or a case may be presented in Federal, state, or tribal court.

Division	Division Name	# Administratively Closed/ Not Referred for Prosecution		Total Closed Investigations (Referred and Not Referred)	
		CY 2011	CY 2012	CY 2011	CY 2012
SE	Seattle	12	13	74	69
SF	San Francisco	1	0	3	0
SU	Salt Lake City	71	68	347	301
<b>Total</b>		<b>611</b>	<b>658</b>	<b>2020</b>	<b>1908</b>

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Table 4 lists types of Indian country crimes alleged for all administrative closures by FBI Divisions for CY 2011. Approximately 80% of closed Indian country investigations were violent-crime related, which is consistent with the proportion found in all currently pending FBI Indian country investigations.

**Table 4: Types of Indian Country Criminal Investigations Administratively Closed, by FBI Division, CY 2011**

Types of Crime											
	Assault	AFO/KFO <sup>17</sup>	Child Physical Abuse	Child Sexual Abuse	Death Investigation	Drug Crime	Financial Crime/ Public Corruption/ Civil Rights	Property Crime	Sexual Assault	Other	Total
AL							1				1
AQ	13		4	34	20	2	2	2	8		85
CE								2			2
DE					1						1
DN	11			5	10		3	1	5	2	37
JN								1		1	2
LV	4	2	1	5	3	4	4	1	2	1	27
MM					1					2	3
MP	12		3	45	22	17	13		5	3	120
MW							2	1			3
OC	1				2		2	2		2	9
OM	6			3	8	2	2	1	4		26
PD	2		2	2	1						7
PX	38	3	4	73	47	5	2	4	14	12	202
SC							2				2
SE	1				6	1	1		1	2	12
SF							1				1
SU	12		1	12	25	12	1	3	2	3	71
<b>Total</b>	<b>100</b>	<b>5</b>	<b>15</b>	<b>179</b>	<b>146<sup>18</sup></b>	<b>43</b>	<b>36</b>	<b>18</b>	<b>41</b>	<b>28</b>	<b>611</b>

<sup>17</sup> Assault of a Federal Officer/Killing of a Federal Officer.

<sup>18</sup> As reported in Table 8, for all but 20 death investigations administratively closed, the FBI's investigation concluded the death was not the result of homicide.

Table 5 lists types of Indian country crimes alleged for all administrative closures by FBI Divisions for CY 2012. Approximately 83% of closed Indian country investigations were violent-crime related, which is consistent with the proportion found in all currently pending FBI Indian country investigations.

**Table 5: Types of Indian Country Criminal Investigations Administratively Closed, by FBI Division, CY 2012**

Types of Crime											
	Assault	AFO/KFO <sup>19</sup>	Child Physical Abuse	Child Sexual Abuse	Death Investigation	Drug Crime	Financial Crime/ Public Corruption/ Civil Rights	Property Crime	Sexual Assault	Other	Total
AQ	7	1	2	30	20		1			2	63
BF					1						1
CE	4		1	2							7
DN	10			4	5		1	3	5	2	30
JN				1	1			1			3
LV			1		1			3			5
MM								1			1
MP	10		2	41	23	24	5	3	12	4	124
MW						5					5
OC				2		1		2		2	7
OM	6		1	1	3		2	2	1		16
PD	2			2	2		1				7
PX	95	6	22	100	42	6	4	6	16	7	304
SA								1			1
SC							3				3
SE	1			1	4	3	1	1	1	1	13
SU	3	1	4	16	31	6	1	5	1		68
<b>Total</b>	<b>138</b>	<b>8</b>	<b>33</b>	<b>200</b>	<b>133<sup>20</sup></b>	<b>45</b>	<b>19</b>	<b>28</b>	<b>36</b>	<b>18</b>	<b>658</b>

<sup>19</sup> Assault of a Federal Officer/Killing of a Federal Officer.

<sup>20</sup> As reported in Table 9, for all but 19 death investigations administratively closed, the FBI's investigation concluded the death was not the result of homicide.

Table 6 lists the status of victims and subjects in FBI Indian country investigations administratively closed during CY 2011. These numbers represent a count of all victims and subjects, not a count of investigations. Some investigations may have multiple victims and subjects, while others may have no identified subject (e.g. death investigations determined to be suicides). Investigations in which victim or subject status was not applicable (e.g., drug or public corruption investigations) will not contribute to the totals represented below. Overall, the majority of victims and subjects in cases administratively closed by the FBI were Native American.

**Table 6: Status of Victim and Subject in Indian Country Investigations Administratively Closed, by FBI Division, CY 2011**

<b>Status of Victim and Subject</b>							
	American Indian Victim	Non-American Indian Victim	American Indian Subject	Non-American Indian Subject	Business Victim/Subject	Unknown Victim/Subject <sup>21</sup>	Total
<b>AL</b>						1	1
<b>AQ</b>	83	1	61	4	4	9	162
<b>CE</b>					2	2	4
<b>DE</b>	1					1	2
<b>DN</b>	36	4	38		2	2	82
<b>JN</b>	3		1			1	5
<b>LV</b>	13	1	15	5	4	8	46
<b>MM</b>	3	1		3	1		8
<b>MP</b>	94		81	8	10	22	215
<b>MW</b>					2	4	6
<b>OC</b>	2	1	3		6	6	18
<b>OM</b>	19		12		2	6	39
<b>PD</b>	7		5	1		2	15
<b>PX</b>	202	4	129	4	6	47	392
<b>SC</b>			2	1	1		4
<b>SE</b>	4		3		1	13	21
<b>SF</b>							0
<b>SU</b>	56	1	32	4	1	25	119
<b>Total</b>	523	13	382	30	42	149	<b>1139</b>

<sup>21</sup> Unknown victims or subjects are most common in cases where the identity of the perpetrator is unknown, the victim does not identify the perpetrator, or a child victim may not disclose the identity of his or her abuser.

Table 7 lists the status of victims and subjects in FBI Indian country investigations administratively closed during CY 2012. As in CY 2011, the majority of victims and subjects in cases administratively closed by the FBI were Native American.

**Table 7: Status of Victim and Subject in Indian Country Investigations Administratively Closed, by FBI Division, CY 2012**

Status of Victim and Subject							
	American Indian Victim	Non-American Indian Victim	American Indian Subject	Non-American Indian Subject	Business Victim/Subject	Unknown Victim/Subject <sup>22</sup>	Total
<b>AQ</b>	63		30		1	17	111
<b>BF</b>	1					1	2
<b>CE</b>	7		6			1	14
<b>DN</b>	36	3	19	1	3	12	74
<b>JN</b>	3			2		1	6
<b>LV</b>	1	1	6			4	12
<b>MM</b>					1	1	2
<b>MP</b>	108	2	90	12	6	23	241
<b>MW</b>			4			1	5
<b>OC</b>	3		4	1	4	2	14
<b>OM</b>	13		10	1	4	7	35
<b>PD</b>	3		2			11	16
<b>PX</b>	311	8	213	9	7	88	636
<b>SA</b>					1	1	2
<b>SC</b>			1	1	3	1	6
<b>SE</b>	7		6	2	2	3	20
<b>SU</b>	54	4	32	8	2	14	114
<b>Total</b>	610	18	423	37	34	188	1310

<sup>22</sup> Unknown victims or subjects are most common in cases where the identity of the perpetrator is unknown, the victim does not identify the perpetrator, or a child victim may not disclose the identity of his or her abuser.

Table 8 addresses the reasons for non-referral of CY 2011 investigations for prosecution. Of the 611 cases not referred, 126 or 21% of the total were death investigations in which it was determined that the victim died due to natural causes, an accident, or suicide. Another 26% were determined to be unsupported allegations, meaning no evidence of criminal activity was uncovered during the investigation. In 2% of investigations, the subject died prior to referral for prosecution.

**Table 8: Reasons FBI Indian Country Investigations Were Administratively Closed, by Division, CY 2011**

	Closure Reasons										
	Does not meet USAO guidelines or statutory definitions	Death was not a homicide	No Remaining Leads	Victim is unable to identify subject	Unsupported Allegation	Victim or witness is unable or unwilling to assist	Interagency Cooperation	Cannot be addressed with current resources	Duplicate or Case Reopened	Subject Died	Total
AL							1				1
AQ	7	19	10	4	26	8	8	1		2	85
CE							2				2
DE			1								1
DN	4	8	5	2	7	7	2		1	1	37
JN			2								2
LV	2	2	3	1	11	2	2	2	1	1	27
MM		1	1							1	3
MP	9	20	15	6	43	10	6	6	2	3	120
MW			1		2						3
OC		1	3		4					1	9
OM	3	7	3		5	2	1		3	2	26
PD	1	1	2	1	1	1					7
PX	41	40	29	6	44	26	10	2	1	3	202
SC			1		1						2
SE		5		1	2	1	2		1		12
SF									1		1
SU		22	17		14	12	3		3		71
<b>Total</b>	67	126	93	21	160	69	37	11	13	14	<b>611</b>

Table 9 addresses the reasons for non-referral of CY 2012 investigations for prosecution. Of the 658 cases not referred, 114 or 17% of the total were death investigations where it was determined that the victim died due to natural causes, an accident, or suicide. Another 22% were determined to be unsupported allegations, meaning no evidence of criminal activity was uncovered during the investigation. In 2% of investigations, the subject died prior to referral for prosecution.

**Table 9: Reasons FBI Indian Country Investigations Were Administratively Closed, by Division, CY 2012**

Closure Reasons											
	Does not meet USAO guidelines or statutory definitions	Death was not a homicide	No Remaining Leads	Victim is unable to identify subject	Unsupported Allegation	Victim or witness is unable or unwilling to assist	Interagency Cooperation	Cannot be addressed with current resources	Duplicate or Case Reopened	Subject Died	Total
AQ	13	18	7		15	3	4			3	63
BF							1				1
CE			1					6			7
DN	5	5	4	2	4	7	1		1	1	30
JN		1			1				1		3
LV	3	1	1								5
MM					1						1
MP	13	23	27	1	37	4	10	1	6	2	124
MW			5								5
OC	1		3						1	2	7
OM	4	3	5		2				2		16
PD		1	2		1	1				2	7
PX	68	35	47	7	69	51	16	2	8	1	304
SA							1				1
SC					1	2					3
SE	1	2	4		3		2		1		13
SU	11	25	11		8	4	2	2	1	4	68
<b>Total</b>	<b>119</b>	<b>114</b>	<b>117</b>	<b>10</b>	<b>142</b>	<b>72</b>	<b>37</b>	<b>11</b>	<b>21</b>	<b>15</b>	<b>658</b>

Table 10 provides additional information on a selection of violent crime investigations for CY 2011 administratively closed by the four Indian country FBI Divisions with the largest Indian country caseload.<sup>23</sup> The victim/subject status is provided for each investigation. Information is omitted from this table if no racial identification was documented for either subject or victim (i.e., it cannot fit into one of the categories below), no subject was identified, the subject was a business, or if there were multiple victims and subjects and there were differences in race between any of them (e.g., the rare occasion when, for example, one Indian and one non-Indian accused a non-Indian of a violent crime).

**Table 10: Violent Crimes Administratively Closed, Victim and Subject Status, by FBI Division, CY 2011**

	Types of Crime					
	Assault			Child Sexual Abuse		
	Indian Victim, Indian Subject	Indian Victim, Non- Indian Subject	Non-Indian Victim, Indian Subject	Indian Victim, Indian Subject	Indian Victim, Non-Indian Subject	Non-Indian Victim, Indian Subject
AQ	11			20		
MP	10			30		
PX	29			51	2	
SU	6	1		6		
<b>Total</b>	56	1	0	107	2	0

	Types of Crime					
	Death Investigation <sup>24</sup>			Sexual Assault		
	Indian Victim, Indian Subject	Indian Victim, Non- Indian Subject	Non-Indian Victim, Indian Subject	Indian Victim, Indian Subject	Indian Victim, Non-Indian Subject	Non-Indian Victim, Indian Subject
AQ	8			4	1	1
MP	2			4		
PX	3			10		
SU	2			2		
<b>Total</b>	15	0	0	20	1	1

<sup>23</sup> Due to low frequencies, only investigations from four Divisions (responsible for 75% of all cases) for the top four violent crimes are represented. Again, this data does not include alleged crimes within these categories that were investigated solely by the BIA or other Federal law enforcement agencies.

<sup>24</sup> Most death investigations do not have a victim/subject dynamic because it is determined the victim died as a result of natural causes, an accident, or suicide.

Table 11 provides additional information on a selection of violent crime investigations for CY 2012 administratively closed by the four Indian country FBI Divisions with the largest Indian country caseload.<sup>25</sup> The victim/subject status is provided for each investigation. Information is omitted from this table if no racial identification was documented for either subject or victim (i.e. it cannot fit into one of the categories below), no subject was identified, the subject was a business, or if there were multiple victims and subjects and there were differences in race between any of them (*e.g.*, the rare occasion when, for example, one Indian and one non-Indian accused a non-Indian of a violent crime).

**Table 11: Violent Crimes Administratively Closed, Victim and Subject Status, by FBI Division, CY 2012**

	Types of Crime					
	Assault			Child Sexual Abuse		
	Indian Victim, Indian Subject	Indian Victim, Non- Indian Subject	Non-Indian Victim, Indian Subject	Indian Victim, Indian Subject	Indian Victim, Non-Indian Subject	Non-Indian Victim, Indian Subject
AQ	5			19		
MP	4			33		
PX	44	1		67	2	1
SU	3			10		1
<b>Total</b>	56	1	0	129	2	2

	Types of Crime					
	Death Investigation <sup>26</sup>			Sexual Assault		
	Indian Victim, Indian Subject	Indian Victim, Non- Indian Subject	Non-Indian Victim, Indian Subject	Indian Victim, Indian Subject	Indian Victim, Non-Indian Subject	Non-Indian Victim, Indian Subject
AQ	2					
MP	3			6	1	
PX	7	1		13	1	
SU	2			1		
<b>Total</b>	14	1	0	20	2	0

<sup>25</sup> Due to low frequencies, only investigations from four Divisions (responsible for 75% of all cases) for the top four violent crimes are represented. Again, this data does not include alleged crimes within these categories that were investigated solely by the BIA or other Federal law enforcement agencies.

<sup>26</sup> Most death investigations do not have a victim/subject dynamic because it is determined the victim died as a result of natural causes, an accident, or suicide.



## **Executive Office for US Attorneys (EOUSA) TLOA Report**

Indian country prosecutions, particularly violent crime prosecutions, are an important part of the Department's mission, and it continually works to improve efforts in this area. These cases are a specific district priority for the 48 Federal judicial districts with Indian country responsibility. On January 11, 2010, then-Deputy Attorney General David Ogden issued a memorandum to all United States Attorneys declaring that "public safety in tribal communities is a top priority for the Department of Justice."

The memorandum directed that: (1) every USAO with Indian country in its district, in coordination with our law enforcement partners, engage at least annually in consultation with the tribes in that district; and (2) every newly confirmed U.S. Attorney in such districts conduct a consultation with tribes in his or her district and develop or update the district's operational plan within eight months of assuming office. Every USAO with Indian country responsibility now has an operational plan, and each plan includes certain core elements: communication, to include declination information; law enforcement coordination in investigations; victim advocacy; training; outreach; combating violence against women; and accountability.

In addition to the Indian country work in their own districts, most United States Attorneys with Indian country responsibility sit on the Attorney General's Advisory Committee's Native American Issues Subcommittee (NAIS). The NAIS works to strengthen Federal laws, secure additional resources for prosecutors and investigators, and advise the Attorney General as he shapes national policy to further the Department's efforts in Indian country.

All USAOs with Indian country responsibility have at least one Tribal Liaison to serve as the primary point of contact with tribes in the district. Tribal Liaisons are an important component of the United States Attorneys' Offices' efforts in Indian country. The Tribal Liaison program was first established in 1995 and codified with the passage of TLOA. Tribal Liaisons play a critical and multi-faceted role. In addition to their duties as prosecutors, Tribal Liaisons generally fulfill a number of other functions. Tribal Liaisons often coordinate and train law enforcement agents investigating violent crime and sexual abuse cases in Indian country, as well as Bureau of Indian Affairs (BIA) criminal investigators and tribal police presenting cases in Federal court.

Tribal Liaisons often serve in a role similar to a local district attorney or community prosecutor in a non-Indian country jurisdiction, and are accessible to the community in a way not generally required of other Assistant United States Attorneys (AUSAs). Tribal Liaisons are assigned specific functions dictated by the nature of the district. They serve as the primary point of contact between the USAO and the Indian tribes located in the district. Tribal Liaisons typically have personal relationships with tribal governments, including tribal law enforcement officers, tribal leaders, tribal courts, tribal prosecutors, and social service agency staff.

Tribal Liaisons also know and work well with state and local law enforcement officials from jurisdictions adjacent to Indian country. These relationships enhance information-sharing and assist the coordination of criminal prosecutions, whether Federal, state, or tribal. It is important to note that while the Tribal Liaisons are collectively the most experienced prosecutors of crimes in Indian country, they are not the only AUSAs doing these prosecutions. The volume of cases

from Indian country requires these prosecutions in most USAOs to be distributed among numerous AUSAs. Table 12 contains a list of all USAOs with Indian country responsibility.

**Table 12: U.S. Attorneys’ Offices with Indian Country Responsibility**

District Name	District Abbreviation	District Name	District Abbreviation
Middle District of Alabama	ALM	District of Montana	MT
Southern District of Alabama	ALS	District of Nebraska	NE
District of Alaska	AK	District of Nevada	NV
District of Arizona	AZ	District of New Mexico	NM
Central District of California	CAC	Eastern District of New York	NYE
Eastern District of California	CAE	Northern District of New York	NYN
Northern District of California	CAN	Western District of New York	NYW
Southern District of California	CAS	Western District of North Carolina	NCW
District of Colorado	CO	District of North Dakota	ND
District of Connecticut	CT	Eastern District of Oklahoma	OKE
Middle District of Florida	FLM	Northern District of Oklahoma	OKN
Southern District of Florida	FLS	Western District of Oklahoma	OKW
District of Idaho	ID	District of Oregon	OR
Northern District of Indiana	INN	District of Rhode Island	RI
Northern District of Iowa	IAN	District of South Carolina	SC
District of Kansas	KS	District of South Dakota	SD
Western District of Louisiana	LAW	Eastern District of Texas	TXE
District of Maine	ME	Western District of Texas	TXW
District of Massachusetts	MA	District of Utah	UT
Eastern District of Michigan	MIE	Eastern District of Washington	WAE
Western District of Michigan	MIW	Western District of Washington	WAW
District of Minnesota	MN	Eastern District of Wisconsin	WIE
Northern District of Mississippi	MSN	Western District of Wisconsin	WIW
Southern District of Mississippi	MSS	District of Wyoming	WY

*Overview of how a matter or case is handled in a USAO*

**Referrals:** A referral is simply the mechanism by which the law enforcement agency seeks the involvement or advice of the USAO in a particular matter. A referral may take many forms, ranging from a formal, written presentation by a law enforcement agency to an informal phone call. In addition, how and when a law enforcement agency decides to refer a matter to a USAO depends on many factors, including the nature of the case, the stage of the investigation, and the relationship between the USAO and the law enforcement agency.

**Declinations:** A declination is a decision by a United States Attorney’s Office (USAO) not to pursue criminal prosecution of a referral from a law enforcement agency. The fact that a USAO has received a referral does not mean that a prosecutable case exists. As will be

discussed later in this report, the vast majority of declinations involve cases in which the USAO lacks sufficient evidence to prosecute. Further, cases that are originally declined may be reopened at a later date and successfully prosecuted.

Types of Declinations: There are two types of declinations. An “immediate declination” occurs when the USAO does not open a file on a referral and does not pursue prosecution of the referral. Examples of the types of cases that would be immediately declined are:

- A crime that was thought to be committed on Indian lands, which upon further examination turned out to have been committed on state land. The state – not the Federal Government – would have jurisdiction to prosecute.
- A crime that involves a Native American victim and defendant but that does not violate the Major Crimes Act. The tribal court would have exclusive jurisdiction to prosecute in this instance.
- A crime committed on tribal lands that involves two non-Indians. In this case, the state ordinarily would have exclusive jurisdiction to prosecute.

In these examples, the USAO would likely have been consulted and thus these matters would likely appear as cases that the office had declined even though there was no authority to prosecute any of these cases federally.

Examples of immediate declinations are as follows:<sup>27</sup>

#### ***Assault Referral***

*After three days of drinking, two men ended up in a fight with one receiving serious injuries after being struck in the head and face with a post. There were no eyewitnesses to the fight, and the more seriously injured of the two men had no memory of the incident. The lesser-injured man claimed to have acted in self-defense. Both men were transported to the hospital for treatment of their injuries. Investigators were unable to determine the primary aggressor and both the Federal and the tribal prosecutors declined the case for weak or insufficient evidence.*

#### ***Sexual Assault Referral***

*A 17-year-old female engaged in consensual sex with a 20-year-old male. Law enforcement learned about the relationship when the young woman became pregnant. This case was declined by the USAO, as the legal age of consent was sixteen.*

A “later declination” occurs when the USAO opens a file on the referral, conducts a more significant amount of work on the matter, but ultimately does not pursue prosecution of the referral. Here is an example of a later declination:<sup>28</sup>

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<sup>27</sup> These examples represent actual cases; however, to protect the identity of the parties involved, the name of the reservation where the crime occurred has been omitted.

<sup>28</sup> This example represents an actual case; however, to protect the identity of the parties involved, the name of the reservation where the crime occurred has been omitted.

### ***Sexual Assault Referral***

*The complainant alleged that she had been raped. The complainant was unable to provide investigators with many details of the alleged assault. Despite the vagueness of her complaint, a full investigation was initiated. A forensic medical examination was completed and sent to the FBI laboratory for analysis. The suspect was interviewed and stated that he and the complainant had engaged in consensual sexual touching, but he denied that sexual intercourse happened. The complainant's boyfriend was also interviewed by investigators. The boyfriend said that he and the complainant had consensual sexual intercourse at her home a few days prior to the events in question. The DNA examination revealed the presence of semen; however, the suspect was excluded as a match.*

Prosecutorial Discretion/Guidelines and Ethical Obligations: While Federal prosecutors have discretion in charging and declining cases, they operate within the confines of the law, Department of Justice policy, and the evidence gathered in the cases. The United States Attorneys' Manual (USAM) provides guidance as to proper considerations for charging or declining a case. USAM 9-27.200 provides:

If the attorney for the government has probable cause to believe that a person has committed a Federal offense within his/her jurisdiction, he/she should consider whether to: (1) request or conduct further investigation; (2) commence or recommend prosecution; (3) decline prosecution and refer the matter for prosecutorial consideration in another jurisdiction; (4) decline prosecution and initiate or recommend pretrial diversion or other non-criminal disposition; or (5) decline prosecution without taking other action.

Further, USAM 9-27.220 provides:

The attorney for the government should commence or recommend Federal prosecution if he/she believes that the person's conduct constitutes a Federal offense and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless, in his/her judgment, prosecution should be declined because: (1) no substantial Federal interest would be served by prosecution; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution.

### ***Communications with Tribes Regarding Declinations***

Communication with the tribes is extremely important, especially regarding law enforcement concerns and case coordination. The Department is committed to continuing to improve our communications.

Current avenues for communications: As stated previously, each USAO with Indian country in its district has a Tribal Liaison. Declination information is regularly communicated to tribal law enforcement through the Tribal Liaison. Current Federal law provides:

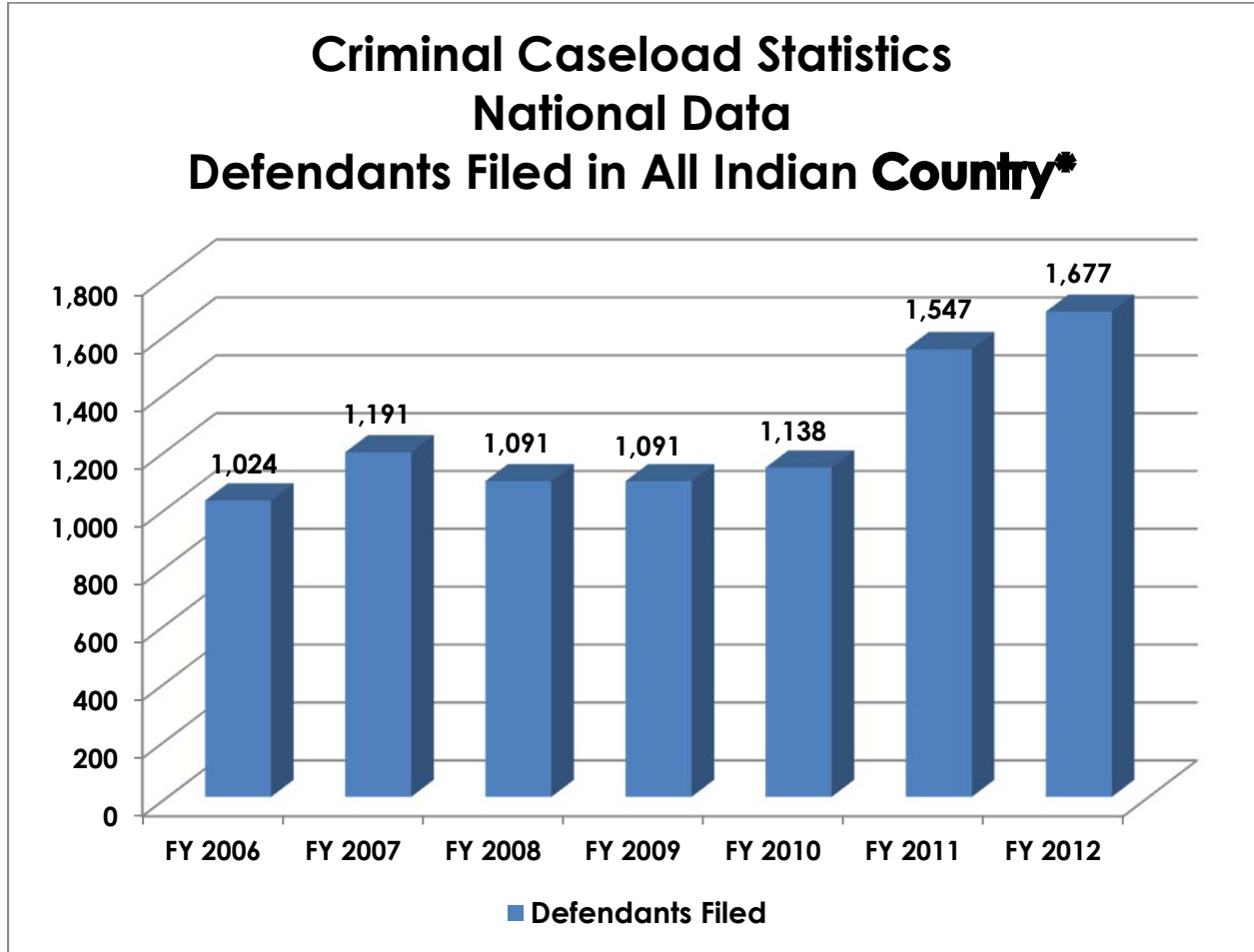
If a United States Attorney declines to prosecute, or acts to terminate prosecution of, an alleged violation of Federal criminal law in Indian country, the United States Attorney shall coordinate with the appropriate tribal justice officials regarding the status of the investigation and the use of evidence relevant to the case in a tribal court with authority over the crime alleged.

25 U.S.C. § 2809(a)(3). Subsection (d) of section 2809 provides that “[n]othing in this section requires any Federal agency or official to transfer or disclose any confidential, privileged, or statutorily protected communication, information, or sources to an official of any Indian tribe.” This statute provides that reports and information learned during a criminal investigation may be shared with the tribe. Moreover, USAO operational plans address how declination decisions will be communicated to tribal law enforcement and how case evidence will be shared.

The decision to charge or decline a case is made carefully. Indictments, complaints, and declination decisions are driven by the evidence, applicable law, ethical considerations, and the circumstances of each case. Federal prosecutors take seriously their obligation to pursue justice in Indian country and work diligently to improve the lives of Native Americans. The Department’s focus on crimes in Indian country is demonstrated by the increased number of defendants charged and convicted for committing crimes in tribal communities. *See* Figure 1 below.

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**Figure 1: Defendants Filed in All Indian Country, FY 2006-FY 2012**



\* This chart includes data for cases classified under Program Category Code 092 (Violent Crime in Indian Country) and Program Category Code 065 (Non-Violent Indian Offenses).

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Two Program Categories are relevant to Indian country cases and this report. “Violent Crime in Indian Country” (Program Category 092) is used to flag violent offenses that occur in Indian country, such as assaults, homicides, and sexual abuse cases. “Indian Offenses” (known as Program Category 065) is used to identify nonviolent offenses occurring in Indian country, such as immigration, fraud, and nonviolent drug offenses.

**Examples of successfully prosecuted violent crime cases during the reporting period are as follows:**

***Fort Berthold Sexual Assault Case***

*In November 2009, the defendant physically and sexually assaulted a woman inside a vehicle after leaving a party. The victim suffered life-threatening injuries. The defendant was convicted at trial of multiple offenses. He was sentenced to 30 years’ imprisonment. The sentencing judge noted that the conduct involved was the worst case of sexual abuse the judge had ever seen. The defendant had a criminal history for previous abuse committed against the victim.*

***Rocky Boy’s Indian Reservation Sexual Assault Case***

*Defendant, 34 years of age, was sentenced on July 28, 2011, to 39 months’ imprisonment following his guilty plea to sexual abuse of a minor. The defendant met the teenage victim while working as a camp counselor at an Indian Youth Christian summer camp. After the camp ended, the defendant started texting the victim and eventually met up with her at a summer pow-wow. The defendant provided alcohol to the victim and had sex with her in the back seat of his car.*

***Crow Creek Reservation Domestic Assault by an Habitual Offender Case***

*The defendant got into a verbal and physical altercation with his pregnant wife. During the assault, the defendant hit the victim in the face and body with a closed fist multiple times. The assault took place at two different residences and in the road outside of their home. The victim suffered serious bodily injury during the assault. At the time of the assault, the defendant had been convicted on three separate occasions of Domestic Violence Assault in the State of South Dakota and had served time in state prison. He has also been placed on supervised release for the crime of assaulting a Federal officer only 23 days prior to beating his wife. Defendant received an 87-month term of imprisonment following his conviction of Domestic Assault by an Habitual Offender.*

***Spirit Lake Tribe Child Physical Abuse Case***

*The defendant beat her four-year-old son with a plastic clothes hanger. She did not stop hitting the child until the hanger broke. The child was taken to the hospital for treatment of severe bruising which covered his back and arms. The defendant was indicted in September 2010 for felony child abuse and neglect. She pled guilty in December 2010 and was sentenced in February 2011 to a term of 84 months’ imprisonment and \$2,869.00 in restitution. At sentencing, the Federal district judge granted an upward departure due to the fact that the defendant had been previously prosecuted for child abuse against a child less than two years of age.*

## **Data Collection Within the United States Attorneys' Offices**

The Executive Office for United States Attorneys (EOUSA) regularly provides case data information to Congress, Department of Justice leadership, the Office of Management and Budget, other Federal agencies, and the general public to demonstrate the tremendous efforts of the USAOs in prosecuting wrongdoers, protecting the public, and defending the interests of the United States. Leadership at every level of the government relies, in part, on these numbers to measure the success of the USAOs in carrying out national and local law enforcement priorities, making effective use of taxpayer dollars, and achieving the goals set by the Department and the Administration. EOUSA relies on case-management information to track the prodigious work of the USAOs and to make important resource-allocation decisions concerning the USAOs. In addition, USAO supervisors use case-management reports as tools to manage their offices and staffing needs. Although data can never fully represent the time, effort, and skill required to prosecute and defend cases, they provide an objective means to measure caseloads and workflows.

### **The Legal Information Office Network System (LIONS)**

The USAOs' portion of this report has been prepared using data from EOUSA's Legal Information Office Network System (LIONS), a case-management system. LIONS is one method used by EOUSA and USAOs to track data related to the work of the 94 United States Attorneys' Offices in developing resource-allocation and litigative priorities. The LIONS system is a database with online capabilities that permits the USAOs and EOUSA to compile, maintain, and track case-management information relating to defendants, crimes, criminal charges, court events, and witnesses. Given that all USAOs use LIONS, it was determined that LIONS data would be used to gather the information required by TLOA to be reported to Congress.

"Matters" are referrals from law enforcement that have been opened in LIONS, but where no charges have been filed. Most cases begin as "matters" in LIONS, and are then investigated further, after which either charges are filed or the case is declined. The opening of a "matter" in LIONS is an important step at which critical choices must be made about how the matter will be characterized and recorded.

"Declined cases" are matters for which the USAO decides not to pursue a criminal prosecution after referral from a law enforcement agency. All immediate and later declinations must be entered into LIONS. An immediate declination occurs when an investigative agency presents a referral to the USAO that does not warrant Federal prosecution based on the facts and circumstances presented. In such an instance, no further investigation is authorized, no matter is opened, and the referral is declined immediately. A later declination occurs when a matter has been opened in LIONS, and the USAO later decides to close the matter without filing charges. This typically follows some investigation or further consultation with the Assistant United States Attorney.

Data on Indian country is identified in LIONS through its "Program Category" designation. Program category codes are critical to identifying and characterizing the types of matters handled by the USAOs. There are nearly 100 Program Categories listed in LIONS, for example, corporate fraud, health care fraud, mortgage fraud, domestic terrorism, wildlife protection, drug trafficking, child pornography, firearms offenses, and domestic violence. LIONS can capture



more than one program area in a single case through the use of multiple Program Category codes. For example, if one case involved drug trafficking, money laundering, and immigration offenses, the matter should be coded using all three Program Category codes. More than one Program Category may be selected when entering cases into LIONS, but only one category designation is required. Two Program Categories are particularly relevant to Indian country cases. “Violent Crime in Indian Country” (Program Category 092) is used to flag violent offenses that occur in Indian country, such as assaults, homicides, and sexual abuse cases. “Indian Offenses” (known as Program Category 065) is used to identify nonviolent offenses occurring in Indian country, such as immigration, fraud, and nonviolent drug offenses. EOUSA had instructed the USAOs that all cases arising in Indian country must include an Indian country Program Category code in addition to any other code assigned to the case. The Indian country code need not be the primary code.

### Limitations of the LIONS Data

The statistics presented in this report are subject to a number of limitations present in the LIONS case-management system.

At the point of case data entry into LIONS, the identification of a Program Category is determined at the discretion of each USAO, after assessing which category or categories are applicable. The office determines who enters the data, how and when the data are entered, and how cases are designated. During data entry, more than one Program Category may be associated with a case, but **only one is required**. Therefore, TLOA data selected in LIONS may exclude a small number of cases that indeed occurred in Indian country, but were not designated as either Program Category 065 or 092.

The LIONS data system is furthermore not designed to check entries for accuracy and internal consistency. It does not require entry in fields (for example, by forcing a case to be identified as either being in Indian country or not), and does not cross-check entry fields or funnel data-entry options based on previous responses. This means that a case can be classified with incorrect information and LIONS does not reject these entries or force them to be corrected. An examination of case data for Calendar Year 2011 revealed a number of cases where the primary offense charge listed in the LIONS case-management system refers to a statute that is not a criminal offense. In some cases the primary charge referred to a jurisdictional statute (for example, 18 U.S.C. § 1153, the Major Crimes Act, or a statute related to sentencing provisions). Or a USAO can enter a case into LIONS using one of the Indian country Program Category codes even though the district has no federally recognized tribes.<sup>29</sup> LIONS does not automatically flag the submission as incorrect and the entry will remain in LIONS until it is detected and manually corrected.

LIONS data represent a “snapshot in time.” This means that all declinations, matters, and cases reported in a given calendar year are not necessarily crimes that occurred in that year or law enforcement referrals made to a USAO in that year. For example, a USAO may show eight murder declinations in CY 2011, yet not have had any murders referred for prosecution in CY

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<sup>29</sup> For example, a review of CY 2011 declination data in LIONS showed one Indian country declination for the Western District of Kentucky. The Western District of Kentucky does not have any federally recognized tribes. Use of an Indian country program category code was in error. Consequently, this particular declination has been deleted for the tables that follow in this report.

2011. Rather, these eight declinations may represent referrals received in previous years where the investigation was completed in CY 2011 and where the prosecutor concluded that there was insufficient evidence to prosecute the cases. This is further complicated by referrals with multiple suspects. For example, if a murder referred for prosecution was declined and had four suspects, four declinations would show in LIONS. Thus, no conclusions can be drawn from this report that, for example, five declinations equal five different criminal offenses. Eight declinations for murder in CY 2011 can in fact be two murders that occurred in CY 2010, with one of the murders having seven suspects.

The uniformity of LIONS data and its suitability for statistical analysis are affected by the variances among districts and by the discretion afforded the 93 individual United States Attorneys to use the system to manage their offices to meet local priorities and needs. A change in a LIONS-generated declination rate may be entirely attributable to a change in the office's policy rather than any changes in the crime rate or prosecution practices or capabilities in that district. For example, in 2007, the District of South Dakota examined their use of LIONS. It was determined that many cases were opened simply to track matters for future reference. Department of Social Services officials were routinely sending referrals directly to the USAO on a variety of issues. Some of these referrals may have been made in an effort to satisfy mandatory child-abuse reporting requirements. However, this practice resulted in referrals on cases that would never result in a Federal prosecution, such as the report of a child being spanked by a parent. In addition, files were sometimes opened on simple Notice of Allegation (NOA) forms from BIA or tribal investigators, even though no other law enforcement reports were submitted with the NOA. The USAO discovered that some of these NOAs were being sent in by investigators on matters that were not Federal crimes, such as an unattended death. When NOAs, like an unattended death, were submitted, the USAO properly entered an immediate declination into LIONS.

Starting in 2007, the South Dakota USAO embarked on a series of meetings to discuss District case intake and LIONS practices. Following these discussions, the office stopped opening files on Department of Social Services referrals or on every NOA. Moreover, the USAO discontinued its practice of opening files to track issues or individuals for future reference. The District's file-opening policy was formalized in September 2010. Comparing immediate and later declinations in 2005 with 2009, the District of South Dakota experienced a reduction in declinations of approximately 74%. However, the District of South Dakota is still one of the USAOs with the highest number of Indian country prosecutions. This example demonstrates why LIONS data and declination rates cannot properly be used to draw significant conclusions about a District's, or the Department's, commitment to prosecuting crime in Indian country.

#### *Methodology for Generating Declination Data*

Persons inputting data into the LIONS system currently choose from among 31 subcategories under "Criminal Immediate Declination" when recording the reason for a case declination. The subcategories are not defined and persons inputting the data may enter any of the available declination codes, without an automatic verification by the system. Accordingly, it is difficult to know the extent of any misclassification errors without cross-checking against the hard-copy case files.

For purposes of this report, the 31 declination subcategories were reviewed and merged into six categories based on legal commonality. These six merged categories, as well as the 31 declination subcategories, are displayed in Table 13.

**Table 13: LIONS Declination Merged Categories**

<b>New Category Name</b>	<b>Description</b>
LIONS List Subcategory	
<b>Legally Barred</b>	<i>Cases where the United States has no choice but to decline a case because legally the United States lacks jurisdiction to file charges.</i>
JUVP	Jurisdiction or Venue Problems
NFOE	No Federal Offense Evident
NKSU	No Known Suspect
OEOE	Opened in Error/Office Error
STAL	Staleness
STLM	Statute of Limitations
<b>Insufficient Evidence</b>	<i>Cases where the United States declines a case because of an inability to prove the case in court beyond a reasonable doubt.</i>
LECI	Lack of Evidence of Criminal Intent
WKEV	Weak or Insufficient Admissible Evidence
WTPR	Witness Problems
<b>Defendant Unavailable</b>	<i>Cases where the defendant is physically unavailable or where the prosecutor exercises prosecutorial discretion based on defendant's circumstances.</i>
AHPR	Offender's Age, Health, Prior Record, or Personal Matter
SUDC	Suspect Deceased
SUDP	Suspect Deported
SUFU	Subject a Fugitive
<b>Matter Referred to Another Jurisdiction</b>	<i>Cases where the defendant is not prosecuted by the Federal Government but is subject to the authority of another jurisdiction.</i>
JUVN	Juvenile Suspect
PEPO	Petite Policy <sup>30</sup>
RECU	Recusal
SPOA	Suspect To Be Prosecuted by Other Authorities
SPOC	Suspect Being Prosecuted on Other Charges

<sup>30</sup> The Department of Justice's petite policy generally precludes the initiation or continuation of a federal prosecution, following a prior state or federal prosecution based on substantially the same act(s) or transaction(s). USAM 9-2.031. This policy does not apply to successive tribal/federal prosecutions. However, successive tribal/federal prosecutions should not be undertaken unless there is a compelling federal interest. "In determining where federal interests have been satisfied, consideration should be given to the limitations in tribal sentencing power measured against the seriousness of the offense." DOJ Criminal Resource Manual 682.

<b>New Category Name</b>	<b>Description</b>
LIONS List Subcategory	
<b>Alternative to Federal Prosecution Appropriate</b>	<i>Cases where the defendant could have been prosecuted by the Federal Government but an alternative to prosecution was viewed by the United States, within its discretion, as appropriately serving the ends of justice.</i>
CADA	Civil, Administrative, or Other Disciplinary Alternative
PTDR	Pretrial Diversion Completed
REST	Restitution/Arrearage Payments Made or Being Made
SUCO	Suspect Cooperation
<b>Prioritization of Federal Resources and Interests</b>	<i>Cases where the case is declined because of existing DOJ or USAO policy.</i>
AGRE	Agency Request
DEPO	Department Policy
GWDA	Declined per Instructions from DOJ
LKIR	Lack of Investigative Resources
LKPR	Lack of Prosecutive Resources
LOAG	Local Agency Referral Presented by Federal Agency
MFIN	Minimal Federal Interest or No Deterrent Value
OFPO	Office Policy (fails to meet prosecutive guidelines)
SSSE	Suspect Serving Sentence

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## EOUSA LIONS Information

Based on the methodology outlined above, aggregate declination data for calendar year 2011– by reason – is displayed by Federal judicial district in Table 14.<sup>31</sup>

**Table 14: Indian Country Declinations, by USAO, by Reason, CY 2011**

	Legally Barred	Insufficient Evidence	Defendant Unavailable	Referred to Different Jurisdiction	Alt to Federal Prosecution	Prioritization of Fed Resources and Interests	Total
AK		1					1
AZ	17	162	2	8	1	8	198
CAE		1					1
CO	1	4	1			1	7
CT	1						1
FLS	1						1
IAN		1					1
ID	3	29		5			37
KS		1					1
ME		2					2
MIE	8	39		6	3	3	59
MIW	2	9		5		8	24
MN	3	11				2	16
MSS		6				22	28
MT	6	40	1	90		4	141
NCW		3		1		1	5
ND	6	15	1	15		1	38
NE	6	27	1	13	1		48
NM	12	90	1	5		1	109
NV	1	13		7		2	23
NYN				1		1	2
NYW		3					3
OKE	6	7				8	21

<sup>31</sup> This table excludes USAOs that did not report any declinations for CY 2011.

	Legally Barred	Insufficient Evidence	Defendant Unavailable	Referred to Different Jurisdiction	Alt to Federal Prosecution	Prioritization of Fed Resources and Interests	Total
OKN	2	6		2		7	17
OKW	4	9		1	1	2	17
OR	1	9		1		6	17
SD	15	107	3	33	2	4	164
TXW		7		1			8
UT	1	4					5
WAE	1	11		2		2	16
WAW	3	4	1			1	9
WIE		2					2
WIW		1					1
WY	4	7	2	1	1	3	18
<b>Total</b>	104	631	13	197	9	87	<b>1,041</b>

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Aggregate declination data for calendar year 2012– by reason – is displayed by Federal judicial district in Table 15.<sup>32</sup>

**Table 15: Indian Country Declinations, by USAO, by Reason, CY 2012**

	Legally Barred	Insufficient Evidence	Defendant Unavailable	Referred to Different Jurisdiction	Alt to Federal Prosecution	Prioritization of Fed Resources and Interests	Total
AK		2				1	3
AZ	25	171	4	9	1	7	217
CAE		9					9
CO	3	1		4		1	9
IAN	1						1
ID	1	17	1	12	1	1	33
KS				1		3	4
LAW		1					1
ME	1	1					2
MIE	7	22		15		5	49
MIW		12		2		4	18
MN		4					4
MSS		2					2
MT	11	56	1	53	2	1	124
NCW		2		2			4
ND	17	19	4	21			61
NE	1	16		8			25
NM	16	35		35	1	3	90
NV		19	1	4			24
NYE		1					1
NYN		2		6		6	14
OKE	1	14		4	3	11	33
OKN	8	6		8		2	24
OKW	7	5	2	1	2	3	20
OR		6	1	1		1	9

<sup>32</sup> This table excludes USAOs that did not report any declinations for CY 2012.

	Legally Barred	Insufficient Evidence	Defendant Unavailable	Referred to Different Jurisdiction	Alt to Federal Prosecution	Prioritization of Fed Resources and Interests	Total
SD	23	56	1	33		1	114
TXW	2						2
UT		4				4	8
WAE		5		1			6
WAW	10	9		7		1	27
WIE		4		2			6
WIW						1	1
WY	6	4		6	4		20
<b>Total</b>	<b>140</b>	<b>505</b>	<b>15</b>	<b>235</b>	<b>14</b>	<b>56</b>	<b>965</b>

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### *Explanation of Referred to Different Jurisdiction*

The declination category of “referred to different jurisdiction” requires additional explanation. Table 14 shows the District of Montana recorded the highest number of declinations in the “referred to different jurisdiction” category for CY 2011. This number is the result of how the office staffs their Indian country cases. Since April 2010, the District of Montana has implemented a bi-monthly meeting to review Indian country cases. These meetings, conducted in phone or in person, involve an AUSA, tribal prosecutor, and Federal and tribal law enforcement. During the meetings, cases arising on a particular reservation during the preceding two-week period are discussed. The decision about which jurisdiction – Federal or tribal – will prosecute a particular case is jointly considered and discussed by the Federal and tribal prosecutor, with input from law enforcement. Therefore, a case opened in LIONS with a subsequent referral to the tribe for prosecution will appear in LIONS as a declination, even if the case is being prosecuted by the tribe at the tribe’s request.

According to the Montana United States Attorney, this system has greatly improved communication between the USAO and the tribes in Montana. The United States Attorney states that “scarce resources are used more efficiently and effectively as all are held accountable for the pace of the investigations and prosecutions.” The Montana approach to Indian country cases is one example of the importance of context when considering the raw data.

The Department notes that other districts also work with local tribal prosecutors and law enforcement to determine which jurisdiction is best suited to provide justice in a particular case. For example, CY 2011 LIONS data from the Southern District of Mississippi shows that 22 cases were declined for the reason of “prioritization of Federal resources and interests.” These declinations represent cases where the USAO met with Federal and tribal law enforcement officials and a mutual decision was made that justice would be best served if the cases were prosecuted in tribal court. This collaboration was contemplated by TLOA’s amending of 25 U.S.C. 2809(a)(3), the Indian Law Enforcement Reform Act. It also confirms the Department’s January 2010 directive that “tribal governments have the ability to create and institute successful programs when provided with the resources to develop solutions that work best for their communities.”<sup>33</sup> In short, the Districts of Montana and Southern Mississippi both transferred cases to the tribe; however, different declination reasons were entered into LIONS. This illustrates the difficulty of drawing conclusions based on LIONS data.

Tribal police, prosecutors, and courts are essential parts of the response to these crimes. TLOA amended the Indian Civil Rights Act (ICRA) and restored to tribal courts limited felony sentencing authority. Tribal courts can now sentence Indian offenders for up to three years per offense, provided defendants are given proper procedural protections, including appointed counsel for indigent defendants. Several tribes now have all of the ICRA requirements in place to allow them to impose prison sentences of more than one year.

The passage of TLOA with its provision of enhanced sentencing authority for certain tribal governments means that more cases may be transferred to tribal court for prosecution. These

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<sup>33</sup> <http://www.justice.gov/dag/dag-memo-indian-country.html>.

transfers are typically done at the request or with the consent of the tribe. While deemed a declination in LIONS, such a transfer, in reality, is a realization of the success of tribal self-governance.

Examples of cases during the reporting period referred by the USAO to the tribe for prosecution include the following:

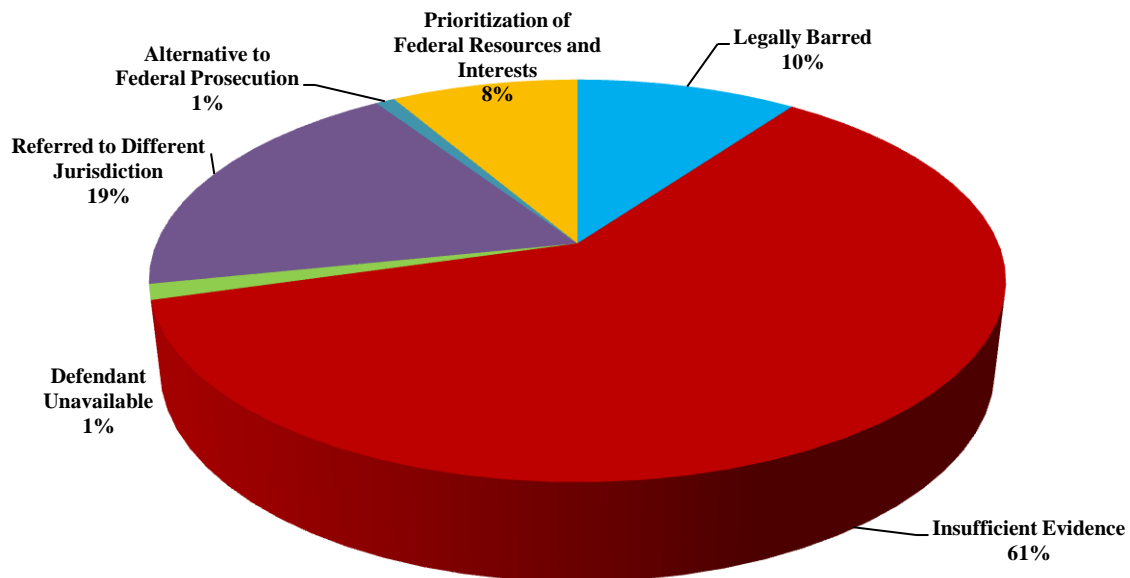
***Vehicular Homicide Case***

*Following a late-night outdoor party, the suspect backed his car over the deceased, a tribal member who had fallen asleep immediately behind the car. Both the State Patrol and the FBI responded to the scene and a full investigation was conducted. The USAO actively participated in the investigation. Because Federal law does not address the facts of this case, the AUSA looked to the possibility of assimilating state law. However, based on the results of the investigation, it was determined that the AUSA could not overcome a superseding intervening cause defense that the defendant was entitled, under state law, to raise in Federal court. Therefore, the USAO referred the case back to the tribe and provided the tribal prosecutor with evidence developed by the FBI and State Patrol as is permitted by TLOA. The tribal prosecutor successfully prosecuted the driver for vehicular homicide and driving while intoxicated.*

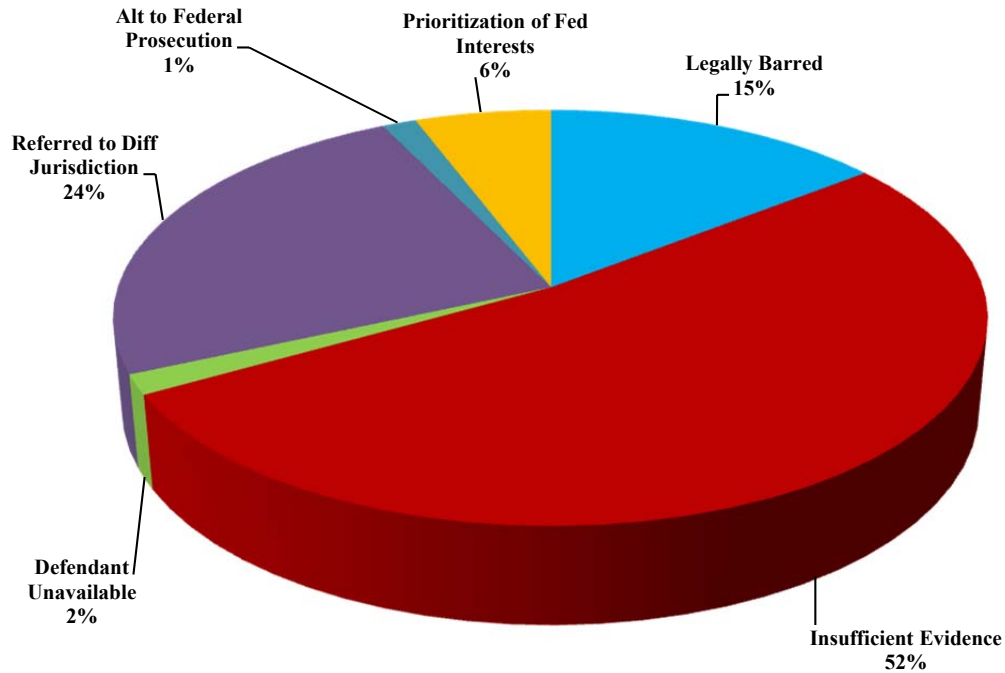
***Juvenile Arson Prosecution***

*On April 23, 2011, a 12-year-old committed arson of a relative's house on the reservation. Tribal investigators and FBI agents investigated and ultimately referred reports to the USAO. By May 5, 2011, all case reports were referred to the tribal prosecutor. On November 2, 2011, the juvenile admitted to arson in tribal court.*

**Figure 2: Declination Reasons for Indian Country Crimes, CY 2011**



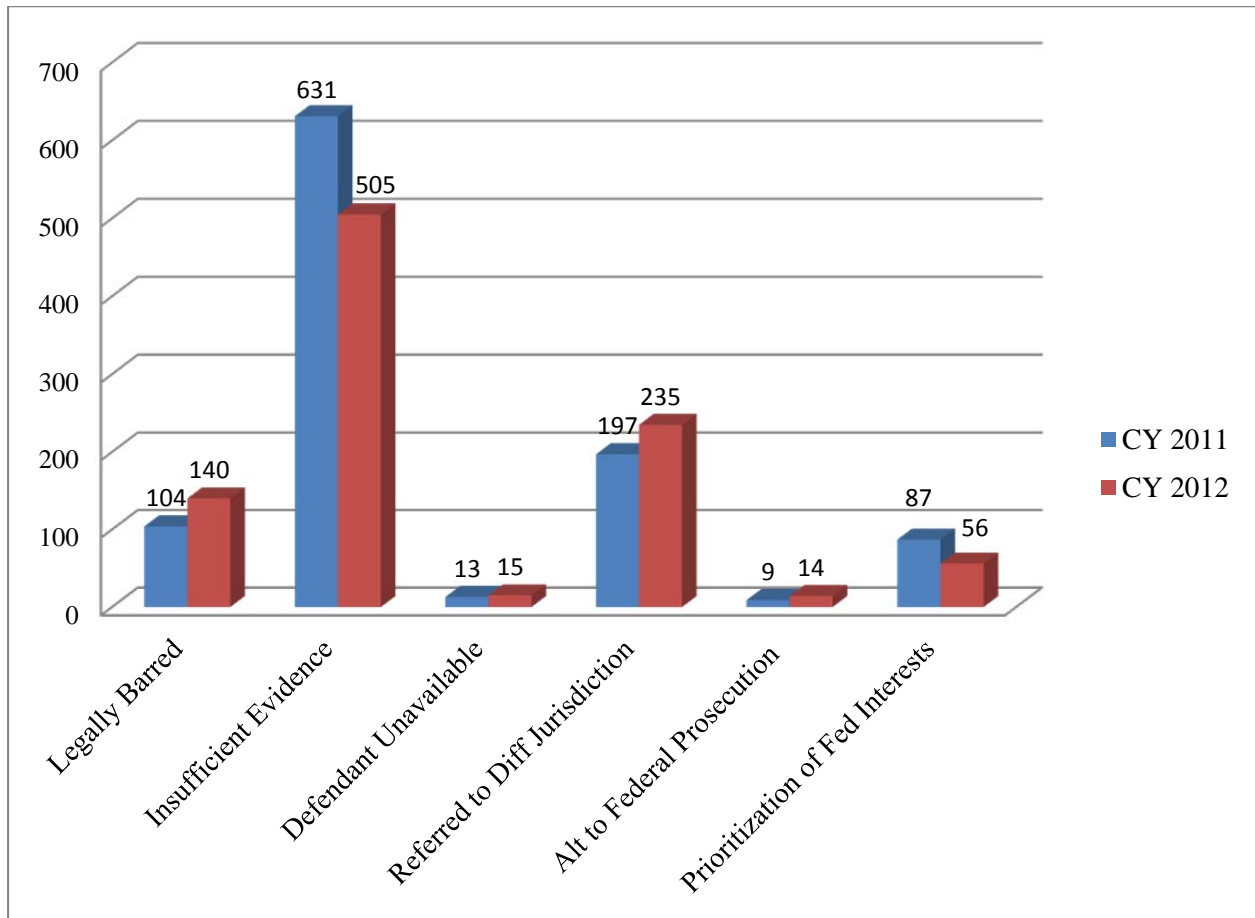
**Figure 3: Declination Reasons for Indian Country Crimes, CY 2012**



As demonstrated in Figures 2 and 3, the majority of all declined cases for CY 2011 and CY 2012 were declined due to insufficient evidence. The insufficient-evidence category includes circumstances where there is a lack of evidence of criminal intent, weak or insufficient evidence, or witness problems. Figure 4 below provides a comparison of declination categories selected for CY 2011 and CY 2012 Indian country cases. Figure 5 below illustrates the circumstances of insufficient-evidence by reason for both CY 2011 and CY 2012. In cases where there is insufficient evidence, the government cannot sustain its burden of proof beyond a reasonable doubt, and the prosecutor has no choice but to decline these cases. If additional evidence is developed at a later time, however, the case may be reopened and successfully prosecuted.

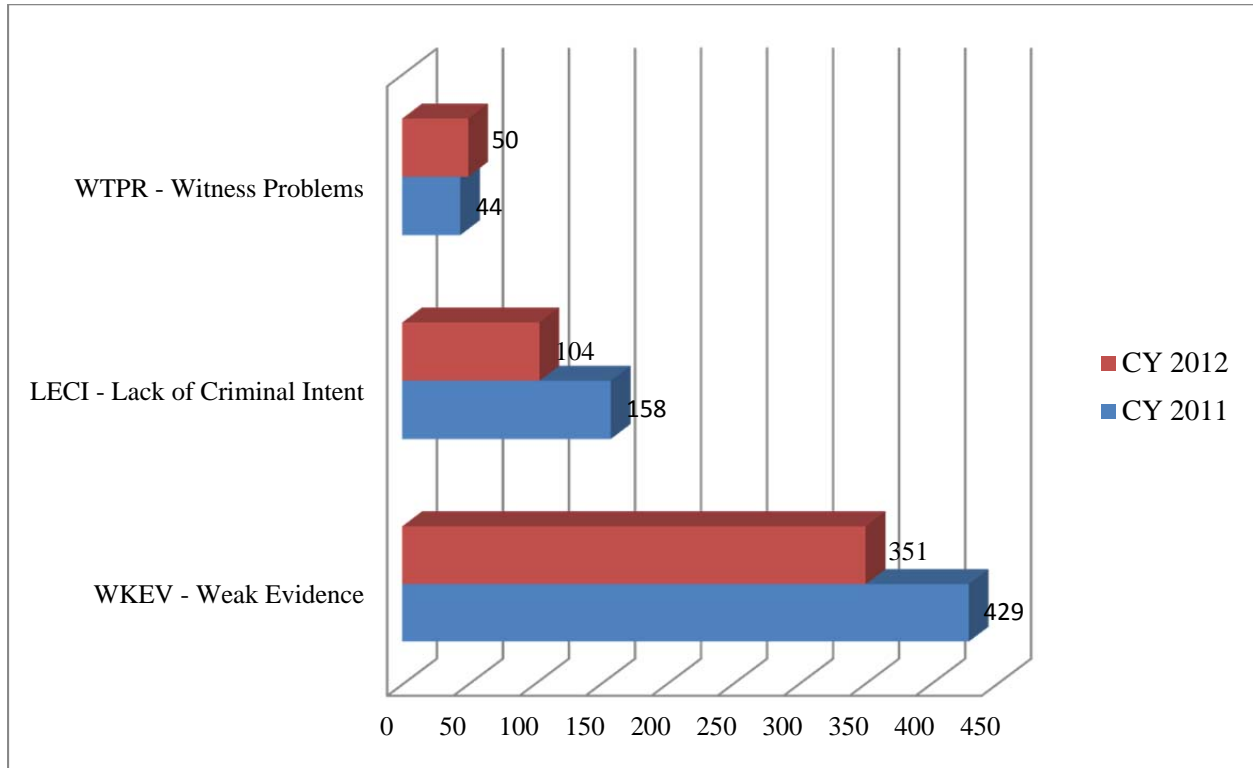
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**Figure 4: Declination Reasons in Indian Country Crimes: CY 2011 and CY 2012 Comparison**



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**Figure 5: Comparison of Insufficient Evidence Declination Categories, CY 2011 and CY 2012**



*Methodology for Generating Type of Crime Data*

USAOs enter matters within a LIONS Program Category by the lead charge code or type of crime. The LIONS User Manual states that the lead charge is the substantive statute that is the primary basis for the referral. Given the number of Federal criminal code sections and the ability to assimilate state law for certain crimes occurring in Indian country (under the Assimilative Crimes Act, 18 U.S.C. § 13), this report assigns the lead charge to broad categories based on case commonality. All lead criminal statutes appearing in CY 2011 and CY 2012 Indian country cases (those assigned Program Category code 065 or 092) were reviewed and grouped into six categories. The six crime type categories reported here are the following: assault (including threats to a Federal officer or public or foreign officials, as well as Violence Against Women Act violations); murder; sexual assault (including child and adult victims); drug, alcohol, and other offenses; financial crimes, public corruption, and fraud; jurisdictional, penalty, or state statutes.<sup>34</sup>

*Aggregate Declination Data by Type of Crime*

Table 16 reports aggregate declinations by type of crime and Federal judicial district.

<sup>34</sup> A complete list of all lead criminal charges used in CY 2011 and CY 2012, as assigned to one of the six categories created for purposes of this report, can be found at Appendix B.

**Table 16: Indian Country Defendants Declined, by USAO, by Type of Crime, CY 2011<sup>35</sup>**

	Assault	Murder	Sexual Assault (Child and Adult Victims)	Drug, Alcohol, and Other Offenses	Financial Crimes/ Public Corruption/ Fraud	Jurisdictional, Penalty, or State Statute	<b>Total</b>
<b>AK</b>				1			1
<b>AZ</b>	89	18	72	12	3	4	198
<b>CAE</b>					1		1
<b>CO</b>	2	5		0			7
<b>CT</b>					1		1
<b>FLS</b>				1			1
<b>IAN</b>	1						1
<b>ID</b>	13	2	14	3	2	3	37
<b>KS</b>					1		1
<b>ME</b>					2		2
<b>MIE</b>	29		6	5	10	9	59
<b>MIW</b>	12	1	6	4	1		24
<b>MN</b>	7		5	1	1	2	16
<b>MSS</b>	2		8	1	16	1	28
<b>MT</b>	53	6	62	7	5	8	141
<b>NCW</b>			1	2	2		5
<b>ND</b>	11	3	16	4	2	2	38
<b>NE</b>	23		12	2	4	7	48
<b>NM</b>	28	16	50	3	6	6	109
<b>NV</b>	11		3	6	3		23
<b>NYN</b>				1	1		2
<b>NYW</b>					3		3
<b>OKE</b>	2	1	3	3	12		21
<b>OKN</b>	1	1	2	3	9	1	17
<b>OKW</b>	5		2	2	8		17
<b>OR</b>	4	1	5	5	1	1	17
<b>SD</b>	57	4	44	14	30	15	164
<b>TXW</b>	1				6	1	8
<b>UT</b>	2	1	3				6

<sup>35</sup> This table excludes USAOs that did not report any declinations for CY 2011.

	Assault	Murder	Sexual Assault (Child and Adult Victims)	Drug, Alcohol, and Other Offenses	Financial Crimes/ Public Corruption/ Fraud	Jurisdictional, Penalty, or State Statute	Total
<b>WAE</b>	8		3		4		15
<b>WAW</b>	3		3		2	1	9
<b>WIE</b>	1		1				2
<b>WIW</b>				1			1
<b>WY</b>	2	2	9	1	3	1	18
<b>Total</b>	367	61	330	82	139	62	<b>1,041</b>

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**Table 17: Indian Country Defendants Declined, by USAO, by Type of Crime, CY 2012<sup>36</sup>**

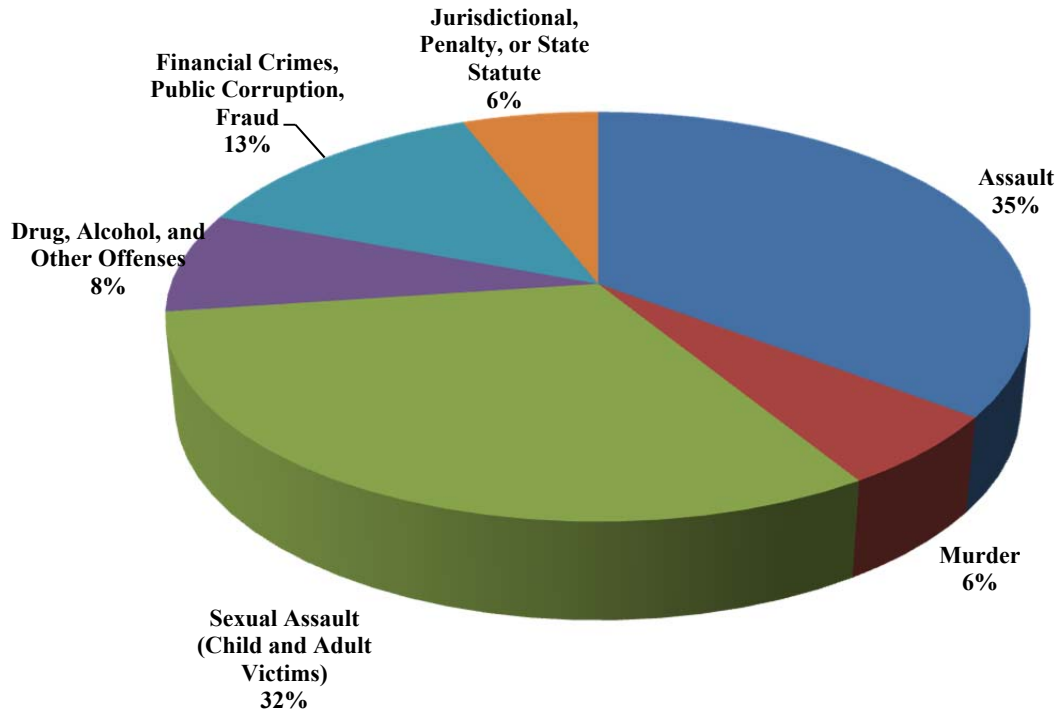
	Assault	Murder	Sexual Assault (Child and Adult Victims)	Drug, Alcohol, and Other Offenses	Financial Crimes/ Public Corruption/ Fraud	Jurisdictional, Penalty, or State Statute	<b>Total</b>
<b>AK</b>				3			3
<b>AZ</b>	64	19	92	23	6	13	217
<b>CAE</b>				3	6		9
<b>CO</b>	3	2		3		1	9
<b>IAN</b>				1			1
<b>ID</b>	12	3	8	3	3	4	33
<b>KS</b>			1		3		4
<b>ME</b>				2			2
<b>LAW</b>						1	1
<b>MIE</b>	26		4	5	10	4	49
<b>MIW</b>	3	1	4	2	6	2	18
<b>MN</b>	1		3				4
<b>MSS</b>			2				2
<b>MT</b>	48	4	47	17	5	3	124
<b>NCW</b>	1		1	1	1		4
<b>ND</b>	16	4	23	8	5	5	61
<b>NE</b>	14	2	5	2		2	25
<b>NM</b>	29	6	34	15	2	4	90
<b>NV</b>	10		9	5			24
<b>NYE</b>						1	1
<b>NYN</b>	1			9	2	2	14
<b>OKE</b>	4				20	9	33
<b>OKN</b>	3	1		4	11	5	24
<b>OKW</b>	3		2	2	13		20
<b>OR</b>	1	2	2	1	2	1	9
<b>SD</b>	43	1	39	13	13	5	114
<b>TXW</b>			2				2
<b>UT</b>	4	1	3				8
<b>WAE</b>	2	1		3			6

<sup>36</sup> This table excludes USAOs that did not report any declinations for CY 2012.

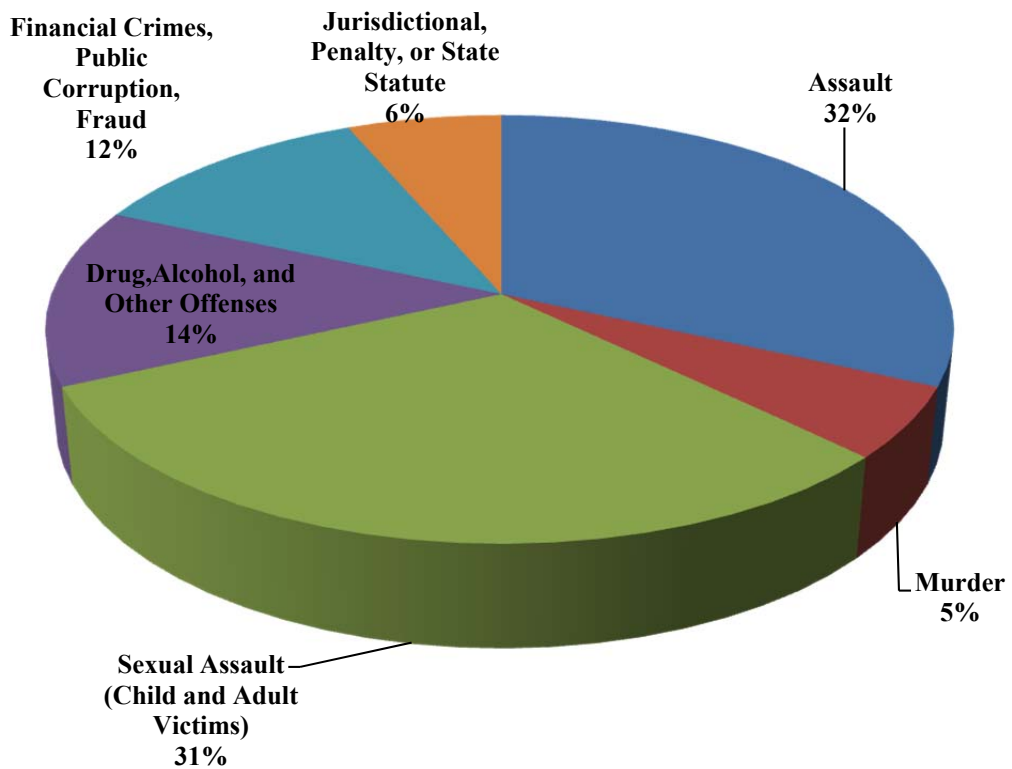


	Assault	Murder	Sexual Assault (Child and Adult Victims)	Drug, Alcohol, and Other Offenses	Financial Crimes/ Public Corruption/ Fraud	Jurisdictional, Penalty, or State Statute	Total
<b>WAW</b>	8	2	15	2			27
<b>WIE</b>	2		2	1	1		6
<b>WIW</b>				1			1
<b>WY</b>	9	3	1	1	6		20
<b>Total</b>	307	52	299	130	115	62	965

**Figure 6: Indian Country Declinations, by Investigative Charge, CY 2011**



**Figure 7: Indian Country Declinations, by Investigative Charge, CY 2012**



The majority of declined cases involve physical assaults or sexual assaults. This is not unique to the Federal system. Unfortunately, for myriad reasons, these types of crimes are very difficult to prosecute, regardless of whether they arise in Indian country. Sexual assault crimes typically are committed outside the presence of witnesses and some rapes, including child molestation crimes, frequently lack corroborating physical evidence. Many adult and adolescent victims of sexual assault blame themselves for the crime, which may make them reluctant to immediately report the offense or to testify in court. The assailant is, more often than not, a person known to the victim and may be someone the victim loved and trusted. A victim may fear retribution or being ostracized by friends and family if the sexual assault is reported to law enforcement. If the victim was using drugs or alcohol prior to the assault, the victim's recollection of the assaultive event may be vague, or the victim may fear being kicked out of tribal housing if the assault is reported because drug or alcohol use may be in violation of the tribal housing rules. Delayed reporting of the crime, inexperienced law enforcement officers untrained in how to effectively investigate a sexual assault case, or insufficient first-responder resources in tribal communities may further contribute to prosecutors' challenges to receiving a case referral that meets the Principles of Federal Prosecution or, in other words, where the guilt of the defendant can be proven beyond a reasonable doubt.

Although, as noted above, none of these difficulties in prosecuting sexual assault and child molestation cases is unique to Indian country, structural barriers in Indian country may compound the challenges. Victims and witnesses of these types of personal and sensitive crimes may be reluctant to travel long distances outside of their community to the Federal courthouse to testify. In addition, Federal investigators and prosecutors may not be able to build the rapport and trust needed to encourage a victim to see a case through, because they are not co-located in the community in the same way that a local law enforcement officer would be.

**Table 18: Indian Country Defendants Declined by Type of Crime and Declination Reason, CY 2011**

	Legally Barred	Insufficient Evidence	Defendant Unavailable	Referred to Different Jurisdiction	Alt to Federal Prosecution	Prioritization of Fed Res and Interests	Total
Assault	32	238	2	76	3	16	367
Murder	15	33	4	8		1	61
Sexual Assault (Child and Adult victims)	26	230	2	60		12	330
Drug, Alcohol, and Other Offenses	10	37	1	19	2	13	82
Financial Crimes/Public Corruption/Fraud	15	64	2	15	1	42	139
Jurisdictional, Penalty, or State Statute	6	29	2	19	3	3	62
<b>Total</b>	<b>104</b>	<b>631</b>	<b>13</b>	<b>197</b>	<b>9</b>	<b>87</b>	<b>1041</b>

**Table 19: Indian Country Defendants Declined by Type of Crime and Declination Reason, CY 2012**

	Legally Barred	Insufficient Evidence	Defendant Unavailable	Referred to Different Jurisdiction	Alt to Federal Prosecution	Prioritization of Fed Res and Interests	Total
Assault	47	147	4	101		8	307
Murder	11	36		3		2	52
Sexual Assault (Child and Adult victims)	37	183	6	63		10	299
Drug, Alcohol, and Other Offenses	17	63	3	37	1	9	130
Financial Crimes/Public Corruption/Fraud	23	49	1	14	13	15	115
Jurisdictional, Penalty, or State Statute	5	27	1	17		12	62
<b>Total</b>	<b>140</b>	<b>505</b>	<b>15</b>	<b>235</b>	<b>14</b>	<b>56</b>	<b>965</b>

Declinations alone do not provide an accurate accounting of the USAOs’ involvement in Indian country criminal cases. To provide context to the declination number, below is a table that lists for each Federal judicial district the “total Indian country matters resolved” — that is, the sum of the total number of Indian country program codes for immediate declinations, suspect counts, defendants in matters terminated, and defendants filed.<sup>37</sup>

An “immediate declination” occurs when the USAO does not open a file on a referral and does not pursue prosecution of the referral. A “suspect count” refers to those individuals identified as wrongdoers in an open matter. A “matter terminated” is defined as a proceeding closed during the reporting period without ever having attained case status. And “defendants filed” includes a count of the defendant or defendants associated with each case filed. A “case filed” is defined as a proceeding for which a significant paper has been filed in court during the reporting period, regardless of the reporting period in which the proceeding was opened as a criminal matter in LIONS. Significant papers include indictments and informations filed in Federal District Court. U.S. Magistrate Court filings and U.S. Court of Appeals filings are not included in these counts.

For example, Table 20, below, shows that for the District of Arizona there were 838 total Indian country matters resolved for CY 2011. This number includes the 198 declinations previously reported in Table 14. It also includes an additional 640 Indian country cases that the District of Arizona resolved in CY 2011.

Similarly, for all districts combined, 2,840 Indian country matters were resolved, in one form or another, in CY 2011. This number includes the 1,041 declinations reported in Tables 14 and 16. It also includes 1,799 matters in Indian country that were resolved in CY 2011 by means

<sup>37</sup> Please note that LIONS is not self-correcting and that a USAO can, in error, report an Indian country declination even though the district has no federally recognized tribes.

other than a declination. In CY 2012, for all districts combined, 3,145 Indian country matters were resolved, to include 965 declinations; this means that 69% of all Indian country cases (2,180) were resolved by means other than a declination.

**Table 20: Total Indian Country Matters Resolved, by USAO, CY 2011 and 2012<sup>38</sup>**

District	Total IC Matters Resolved		Total IC Declinations <sup>39</sup>	
	CY 2011	CY 2012	CY 2011	CY 2012
Alabama Southern	4	0	0	0
Alaska	6	15	1	3
Arizona	838	1,231	198	217
California Eastern	1	13	1	9
California Southern	1	0	0	0
Colorado	24	21	7	9
Connecticut	4	0	1	0
Florida Southern	5	0	1	0
Idaho	51	51	37	33
Iowa Northern	3	1	1	1
Kansas	1	4	1	4
Louisiana Western	1	2	0	1
Maine	4	3	2	2
Michigan Eastern	134	108	59	49
Michigan Western	42	35	24	18
Minnesota	36	29	16	4
Mississippi Southern	36	10	28	2
Montana	276	227	141	124
Nebraska	75	60	48	25
Nevada	43	46	23	24
New Mexico	230	202	109	90
New York Northern	10	24	2	14
New York Western	4	0	3	0
New York Eastern	0	1	0	1
North Carolina Western	30	25	5	4

<sup>38</sup> This table excludes USAOs that did not report any Indian country matters for CY 2011 and CY 2012. USAO data account for cases referred by various investigative agencies, only one of which is the FBI.

<sup>39</sup> In December 2010, the Government Accountability Office (GAO) submitted to the Senate Committee on Indian Affairs a report titled “U.S. Department of Justice Declinations of Indian Country Criminal Matters.” GAO reported that for FYs 2005 through 2009 the Justice Department declined 52% of violent crime and 40% of nonviolent crime. Some readers of this report will naturally want to compare the GAO report with the data reported herein. For a number of reasons, no comparison is possible. First, the GAO report is based on a fiscal year and the TLOA report is based on calendar year data. Second, in the GAO report, “if a matter was received in fiscal year 2006 and was declined in fiscal year 2008, it was also included in the declination rate for fiscal year 2006 matters.” In this TLOA report, a matter opened in 2010, but declined in 2011, is reported as a declination in 2011.

District	Total IC Matters Resolved		Total IC Declinations	
	CY 2011	CY 2012	CY 2011	CY 2012
North Dakota	161	146	38	61
Oklahoma Eastern	46	39	21	33
Oklahoma Northern	41	58	17	24
Oklahoma Western	45	49	17	20
Oregon	48	59	17	9
South Dakota	457	529	164	114
Texas Western	10	2	8	2
Utah	30	26	5	8
Washington Eastern	33	27	16	6
Washington Western	24	40	9	27
Wisconsin Eastern	26	16	2	6
Wisconsin Western	1	1	1	1
Wyoming	59	45	18	20
<b>Total</b>	<b>2,840</b>	<b>3,145</b>	<b>1,041</b>	<b>965</b>

#### *Defendant and Victim Indian/non-Indian Status*

TLOA requires that USAOs record the Indian/non-Indian status of the defendant(s) and victim(s). Historically, this information was not a required field in LIONS, and in fact, starting in 2001, USAO personnel had been instructed to enter victim information, for all cases including Indian country cases, only in the Department of Justice’s Victim Notification System (VNS), rather than in LIONS.<sup>40</sup>

To comply with TLOA, the Director of EOUSA sent a memorandum in September 2011 directing that USAOs are to record the Indian/non-Indian status of victims and defendants in the “individual participant” section of LIONS. In order to capture this information, USAOs have to use the “long form” in LIONS. The historical general practice is that the “long form” is not used if a case is going to be immediately declined. USAO personnel entering information into LIONS typically are assigned this task for all criminal cases and not just Indian country cases. Because of this historical practice, there were cases where the long form was not used and the required Indian or non-Indian status information was not recorded. USAOs were asked to update Indian country cases already entered in LIONS to include this information. In spite of nascent efforts to comply with this new reporting requirement, it became evident in preparing this report, that the Indian/non-Indian defendant or victim status information included in CY 2011 and CY 2012 LIONS declination data was incomplete or in some cases inaccurate. Given the number of cases and years spanned, it was not practical to review all relevant files to conduct a complete hand

<sup>40</sup> Where possible, all victim information and notifications in criminal cases that have been accepted for prosecution are made available by VNS. This computer-based system provides federal crime victims with information on scheduled court events, as well as the outcome of those court events. It also provides victims with information on the offender's custody status and release. These victim notifications are required by the Crime Victims’ Rights Act (18 U.S.C. 3771). USAO personnel were instructed to include victim information in VNS rather than LIONS to avoid duplicate data entry and to ensure that all statutorily required notifications were made to victims.

count of the information. Accordingly, the Department has not included the Indian or non-Indian status of defendant(s) and victim(s) in the USAO data in the CY 2011 and CY 2012 Indian country declination report. The Department is working to develop a new case management system that will allow it to include this data in the future.

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## **Department of Justice Commitment to Indian Country**

As previously noted, in January 2010, the Deputy Attorney General issued a memorandum declaring public safety in tribal communities a top priority for the Department of Justice and outlining the responsibilities of the United States Attorneys' Offices to Federally recognized tribes in their districts.<sup>41</sup> This same memorandum, entitled the *Indian Country Law Enforcement Initiative*, also stated that "addressing violence against women and children in Indian country is a Department of Justice priority." Unfortunately, high incidences of violence against women and children, including sexual assault and domestic violence, are reported on many reservations. Vigorous investigation and prosecution of these crimes is essential to the safety of women and children in Indian country.

Tribes share the Federal Government's goal of increasing public safety and improving the fair administration of justice. The Department of Justice has worked to strengthen relationships with Federally recognized tribes; improve the coordination of information, statistics, training, and research and development; enhance tribal capacity; and further Federal law enforcement and prosecution efforts.

Indian country prosecutions are an important part of the Department's mission and it continually strives to improve efforts in this area. Successful multi-jurisdictional investigations and prosecutions require collaborative working relationships. In partnership with tribes, the Department's goal is to find and implement solutions addressing immediate and long-term public safety challenges in Indian country. The United States Attorneys reinforce this goal by conducting tribal consultations and developing operational plans to address public safety issues in Indian country.

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*"Our role as the primary prosecutor of serious crimes makes our responsibility to citizens in Indian country unique and mandatory. Accordingly, public safety in tribal communities is a top priority for the Department of Justice."*

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*—U.S. Deputy Attorney General*

The success of the Department of Justice's *Indian Country Law Enforcement Initiative* depends largely on the dedicated efforts of the FBI and the USAOs. Their

focus is reflected in an increased number of defendants investigated, charged, and convicted for committing crimes in Indian country.

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<sup>41</sup> The Deputy Attorney General's memorandum to USAOs concerning the Indian Country Law Enforcement Initiative can be found online at <http://www.justice.gov/dag/dag-memo-indian-country.html>.



## **Appendix A: Glossary of Terms**

**Matters Received** – all proceedings on which AUSAs spend one hour or more of time and that districts open in LIONS after the beginning of the reporting period are counted as Matters Received for that reporting period. Matters Received includes criminal referrals from investigative agencies, and matters that may be handled as misdemeanor cases in U.S. Magistrate Court. Matters Received does not include criminal miscellaneous matters (requests for arrest warrants, search warrants, etc.), petty offenses or infractions, or matters that are immediately declined.

**Defendants in Matters Received** – a count of the suspect(s) associated with each Matter Received.

**Matters Terminated** – all proceedings terminated (closed) during the reporting period without ever having attained case status are counted as Matters Terminated. Matters Terminated includes Later Declinations, No True Bills, and criminal matters that are handled as misdemeanor cases in U.S. Magistrate Court.

**Defendants in Matters Terminated** – a count of the suspect(s) who were terminated. Note that a count is not added to Matters Terminated, above, until all suspects associated with the matter are terminated.

**Matters Pending** – all proceedings that were opened in LIONS during the current or a prior reporting period which have not yet attained case status or which were not terminated as matters during that time.

**Defendants in Matters Pending** – a count of the suspect or suspects associated with or remaining with each Matter Pending.

**Cases Filed** – all proceedings for which a significant paper has been filed in court during the reporting period and regardless of the reporting period in which the proceeding was opened as a criminal matter in LIONS. Significant papers include indictments and informations filed in district court. U.S. Magistrate Court and U.S. Appeals Court filings are not included in these counts.

**Defendants in Cases Filed** – a count of the defendant or defendants associated with each Case Filed. Note that if at least one defendant is in case status, the proceeding is counted as a case even though one or more additional suspects may remain in matter status.

**Cases Terminated** – all proceedings terminated (closed) during the reporting period that were classified as cases at the time of termination are counted as Cases Terminated, regardless of when they attained case status. Terminations include guilty pleas, guilty verdicts, dismissals, acquittals, transfers and other terminations. Note that a case is not counted as terminated until all defendants associated with the case are terminated.

**Defendants in Cases Terminated** – a count of the defendant or defendants who were terminated.

**Cases Pending** – all proceedings which were in case status and pending (still open) at the end of the reporting period, regardless of when they attained case status.

**Defendants in Cases Pending** – a count of the defendant or defendants who were in case status and pending (still open) as of the end of the reporting period, regardless of when they attained cases status.

**Matters Handled** – sum of matters pending at the end of the prior fiscal year, added to matters received during the current fiscal year.

**Cases Handled** – sum of cases pending at the end of the prior fiscal year, added to cases filed during the current fiscal year.

**Suspect Counts** - refers to those individuals identified as wrongdoers in an open matter.

## Appendix B: Lead Charges Entered into LIONS in Calendar Year 2011 and 2012

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18 U.S.C. 111 – Assaulting, resisting, or impeding certain officers or employees  
18 U.S.C. 111a – Assaulting, resisting, or impeding certain officers or employees  
18 U.S.C. 111a1 – Assaulting, resisting, or impeding certain officers or employees  
18 U.S.C. 1114 – Protection of officers and employees of the United States  
18 U.S.C. 112a – Protection of foreign officials, official guest, and internationally protected persons  
18 U.S.C. 113 – Assaults within maritime and territorial jurisdiction  
18 U.S.C. 113a1 – Assault with the intent to commit murder  
18 U.S.C. 113a2 – Assault with the intent to commit a felony  
18 U.S.C. 113a3 – Assault with a dangerous weapon  
18 U.S.C. 113a4 – Assault by striking, beating, or wounding  
18 U.S.C. 113a5 – Simple assault  
18 U.S.C. 113a6 – Assault resulting in serious bodily injury  
18 U.S.C. 113a7 – Assault resulting in substantial bodily injury to a person less than 16  
18 U.S.C. 115 – Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member  
18 U.S.C. 117 – Domestic assault by an habitual offender  
18 U.S.C. 871 – Threats against President and successors to the Presidency  
18 U.S.C. 873 – Blackmail  
18 U.S.C. 1169 – Reporting of child abuse  
18 U.S.C. 2261A – Stalking  
18 U.S.C. 2261a1 – Interstate domestic violence/travel of conduct of offender  
18 U.S.C. 2262 – Interstate violation of protection order

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18 U.S.C. 1111 – Murder  
18 U.S.C. 1112 – Manslaughter  
18 U.S.C. 1113 – Attempt to commit murder or manslaughter  
18 U.S.C. 1121 – Killing persons aiding Federal investigations or State correctional officers

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18 U.S.C. 1591a1 – Sex trafficking of children  
18 U.S.C. 2241 – Aggravated sexual abuse  
18 U.S.C. 2241a – Aggravated sexual abuse by force or threat  
18 U.S.C. 2241c – Aggravated sexual abuse with a child less than 12  
18 U.S.C. 2242 – Sexual abuse  
18 U.S.C. 2242(1) – Sexual abuse by threats or placing in fear  
18 U.S.C. 2242(2) – Sexual abuse where victim is either incapable of appraising nature of the conduct, or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act  
18 U.S.C. 2243 – Sexual abuse of a minor or ward  
18 U.S.C. 2243a – Sexual abuse of a minor  
18 U.S.C. 2243a1 – Sexual abuse of a minor who is at least 12 but less than 16  
18 U.S.C. 2243b – Sexual Abuse of a Ward  
18 U.S.C. 2244 – Abusive sexual contact

18 U.S.C. 2250 – Failure to register as a sex offender  
18 U.S.C. 2250a – Failure to register as a sex offender  
18 U.S.C. 2251 – Sexual exploitation of children  
18 U.S.C. 2252 – Certain activities relating to material involving the sexual exploitation of minors  
18 U.S.C. 2258 – Failure to report child abuse

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16 U.S.C. 470eea – Archeological Resources Protection Act/unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources  
18 U.S.C. 81 – Arson within Special Maritime and Territorial Jurisdiction  
18 U.S.C. 241 – Conspiracy Against Rights  
18 U.S.C. 242 – Civil Rights/Deprivation of rights under color of law  
18 U.S.C. 611 – Voting by aliens  
18 U.S.C. 704 – Military medals or decorations  
18 U.S.C. 875 – Interstate communications  
18 U.S.C. 875b – Interstate communications/extortion  
18 U.S.C. 875c – Interstate communications – threat to kidnap or injure  
18 U.S.C. 876 – Mailing threatening communications  
18 U.S.C. 922a3 – Firearms/Unlawful acts  
18 U.S.C. 922g1 – Felon in possession of a firearm  
18 U.S.C. 922k – Firearm with obliterated serial number  
18 U.S.C. 922n – Person under indictment for a felony ships or receives a firearm or ammunition  
18 U.S.C. 922x2A – Firearms/transfer of a handgun to a juvenile  
18 U.S.C. 1154 – Intoxicants dispensed in Indian country  
18 U.S.C. 1155 – Intoxicants dispensed on school site  
18 U.S.C. 1156 – Intoxicants possessed unlawfully  
18 U.S.C. 1201 – Kidnapping  
18 U.S.C. 1363 – Malicious destruction of building or property within Special Maritime and Territorial Jurisdiction  
18 U.S.C. 1512 – Tampering with a witness, victim, or an informant  
18 U.S.C. 1512b1 – Use of intimidation, threats, or corruptly persuades another person with the intent to influence, delay, or prevent the testimony of any person in an official proceeding  
18 U.S.C. 1793 – Trespass on Bureau of Prisons reservations and land  
18 U.S.C. 1853 – Trees cut or injured  
18 U.S.C. 1951 – Interference with commerce by threats or violence (racketeering chapter)  
18 U.S.C. 1951b1 – Interference with commerce by threats or violence/definition of robbery  
18 U.S.C. 1958 – Use of interstate commerce facilities in the commission of murder-for-hire (racketeering chapter)  
18 U.S.C. 2111 – Robbery within Special Maritime and Territorial Jurisdiction  
18 U.S.C. 2113a – Bank robbery and incidental crimes  
18 U.S.C. 2118 – Robberies and burglaries involving controlled substances  
18 U.S.C. 2312 – Transportation of stolen vehicles  
21 U.S.C. 458 – Prohibited Acts/Poultry and Poultry Products Inspection  
21 U.S.C. 841- Prohibited Acts A (drug abuse prevention and control)  
21 U.S.C. 841a1- Manufacture, distribute, dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance

21 U.S.C. 846- Attempt and conspiracy  
21 U.S.C. 859- Drug abuse prevention and control/distribution to persons under age twenty-one  
26 U.S.C. 5861 – Prohibited Acts/Internal Revenue Code firearm provisions  
26 U.S.C. 5861d – Receipt or possession of an unregistered firearm  
26 U.S.C. 5861d – Receive or possess a firearm not registered to him in the National Firearms  
Registration and Transfer Record  
47 U.S.C. 223 – Obscene or harassing telephone calls in the District of Columbia or in  
interstate or foreign commerce

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18 U.S.C. 287 – False, fictitious, or fraudulent crimes (civil, military, or naval service)  
18 U.S.C. 371 – Conspiracy to commit offense or to defraud United States  
18 U.S.C. 472 – Uttering counterfeit obligations or securities  
18 U.S.C. 641 – Public money, property, or records  
18 U.S.C. 661 – Theft of personal property within Special Maritime and Territorial  
Jurisdiction  
18 U.S.C. 662 – Receiving stolen property within Special Maritime and Territorial Jurisdiction  
18 U.S.C. 665 – Theft or embezzlement from employment and training funds; improper  
inducement; obstruction of investigations  
18 U.S.C. 666 – Theft or bribery concerning programs receiving Federal funds  
18 U.S.C. 666a1 – Theft or bribery concerning programs receiving Federal funds by an agent  
of an organization, or of a State, local, or Indian tribal government  
18 U.S.C. 1001 – False statements  
18 U.S.C. 1028 – Fraud and related activity in connection with identification documents,  
authentication features, and information  
18 U.S.C. 1030a2 – Fraud and related activity in connection with computers  
18 U.S.C. 1159 – Misrepresentation of Indian produced goods and products  
18 U.S.C. 1163 – Embezzlement and theft from Indian tribal organizations  
18 U.S.C. 1167 – Theft from gaming establishments on Indian lands  
18 U.S.C. 1167a – Theft from gaming establishments on Indian lands – value less than \$1000  
18 U.S.C. 1168 – Theft by officers or employees of gaming establishments on Indian lands  
18 U.S.C. 1168b – Theft by officers or employees of gaming establishments on Indian lands –  
value over \$1000  
18 U.S.C. 1341 – Frauds and swindles  
18 U.S.C. 1343 – Fraud by wire, radio, or television  
18 U.S.C. 1344 – Bank fraud  
18 U.S.C. 1347 – Health care fraud  
18 U.S.C. 1361 – Government property or contracts  
18 U.S.C. 1621 – Perjury generally  
18 U.S.C. 1622 – Subornation of perjury  
18 U.S.C. 1956 – Laundering of monetary instruments  
26 U.S.C. 7203 – Internal Revenue Code/willful failure to file return, supply information, or  
pay tax

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8 U.S.C. 1324a1Ai – Penalty provisions for crime of bringing in and harboring certain aliens  
16 U.S.C. 470 – Congressional finding and declaration of policy/National Historic  
Preservation Act

8 U.S.C. 1324a1Ai – Penalty provisions for crime of bringing in and harboring certain aliens  
16 U.S.C. 470 – Congressional finding and declaration of policy/National Historic Preservation Act  
18 U.S.C. 7 – Special Maritime and Territorial Jurisdiction Defined  
18 U.S.C. 13 – Assimilative Crimes Act  
18 U.S.C. 13b1 – Assimilative Crimes Act: OUIL or drugs and any limitation on limitation on right or privilege to drive  
18 U.S.C. 844 – Penalties Section in Chapter on Explosive Materials  
18 U.S.C. 844e – Penalty for using the mail, telephone, telegraph, or other instrument of interstate or foreign commerce to threaten to kill, injure, intimidate or to damage property by fire or explosive  
18 U.S.C. 924c1Ai – Enhanced penalty provision for possessing a firearm during a crime of violence or drug trafficking crime  
18 U.S.C. 1152 – General Crimes Act  
18 U.S.C. 1153 – Major Crimes Act  
18 U.S.C. 1956h – Penalty provision in the racketeering statute  
18 U.S.C. 5032 – Juvenile delinquency/delinquency proceedings in district court; transfer for criminal prosecution  
21 U.S.C. 844 – Penalties for simple possession  
42 U.S.C. 408 – Penalties section for law on Federal old-age survivors and disability insurance benefits

Arizona:

14T:00505 (ARS 13-3263) – Child abuse  
14T:00298 (ARS 13-1203) – Assault; classification  
14T:00506 (ARS 13-3623) – Child or vulnerable adult abuse; emotional abuse

Idaho:

IC 18-1401 – Burglary defined

Michigan:

MCL 750.136b(3) – Child abuse, second degree  
MCL 750.136b(5) – Child abuse, third degree  
MCL 750.110a(2) – Home invasion, first degree  
MCL 750.110a(3) – Home invasion, second degree  
MCL 750.110a(4) – Definitions; breaking and entering a dwelling; crime of home invasion; third degree  
MCL 750.540 - Interference with a telecommunications carrier  
01D:00301.69 - Tribal Code  
22D:01810 - Tribal Code

Minnesota:

609S:609.378(1)2b1 (M.S.A. § 609.378(a)(1)(2)(b)(1)) – Neglect or endangerment of child

Montana:

45S:6-204 (MCA § 45-6-204) – Burglary

45S:45-5-207 (MCA § 45-5-201) – Criminal endangerment—Penalty  
45S:5-212(1) (MCA § 45-5-212(1)) – Assault on minor

New Mexico:

NMSA 30-6-1D(1) – Abandonment or abuse of child  
NMSA 30-3-1B – Assault (misdemeanor)

North Dakota:

12.1S:12.1-22-02 (NDCC § 12.1-22-02) – Burglary.  
14S:14-09-22a (NDCC § 14-09-22) – Abuse or neglect of child—Penalty

Oklahoma:

14T:01266 (21 Okla. St. Ann. § 1787) – Loitering in, injuring, or molesting automobile or motor vehicle  
18S:2917.11B1 (21 Okla. St. Ann. § 22) – Outraging public decency  
18.2S:18.2-387 (21 Okla. St. Ann. § 1021) – Indecent exposure  
14T:02101 (21 Okla. St. Ann. § 1713) – Receiving stolen property

Oregon:

14T:00504 (ORS 163.545) Child Neglect in the Second Degree

South Dakota:

18S:2610.1 (SDCL § 26-10-1) – Abuse of or cruelty to minor as felony  
18S:2232.1 (SDCL § 22-32-1) – Burglary, first degree  
18S:2232.3 (SDCL § 22-32-3) – Burglary, second degree  
14T:00504 (SDCL §§ 26-10-1 & 26-8A-2) – Felony child abuse and neglect