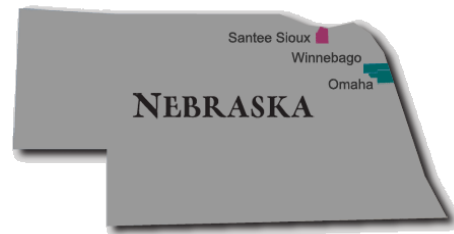


**INDIAN COUNTRY OPERATIONAL PLAN  
FOR THE DISTRICT OF NEBRASKA  
Revised Effective November 10, 2022**



**INTRODUCTION**

The United States Attorney's Office (USAO) for the District of Nebraska has authority to prosecute certain qualifying offenses on three Indian Reservations located in the District of Nebraska, which are the Omaha Nation Indian Reservation, the Santee Sioux Nation Indian Reservation, and the Winnebago Reservation.



Although Nebraska was originally designated as a Public Law 280 State, each of the three reservations above has retroceded jurisdiction to the federal government for certain qualifying offenses. There are three additional federally recognized tribes in Nebraska, namely the Iowa Tribe of Kansas and Nebraska, the Ponca Tribe of Nebraska (which has no land), and the Sac & Fox of Missouri (in Kansas and Nebraska), but the United States does not have jurisdiction to prosecute any offenses for those three tribes as they have not retroceded jurisdiction to the federal government.

Statutory authority for federal jurisdiction for offenses within the exterior boundaries of a reservation (statutorily referred to as "Indian Country") is contained within Chapter 53 of the Federal Criminal Code, 18 U.S.C. § 1151 *et seq.* The two major sources of federal jurisdictional authority are found in the General Crimes Act and in the Major Crimes Act, Title 18, United States Code, Sections 1152 and 1153 respectively. There is also jurisdiction for federal crimes of general applicability, which are federal offenses regardless of where the offense occurred or the Native status of the offender/victim.

The Omaha Nation Indian Reservation and the Santee Sioux Nation Indian Reservation have tribal police as their primary law enforcement. The Winnebago Reservation has both tribal police officers and Bureau of Indian Affairs (BIA) federal law enforcement officers and special agents. All tribal police officers are encouraged to obtain Special Law Enforcement Commissions (SLEC) certificates, which authorize those officers to investigate federal

offenses and affords the officers the protections given to federal law enforcement officers. Local law enforcement agencies, to include the Thurston County Sheriff's Office, the Knox County Sheriff's Office, and the Nebraska State Patrol also provide law enforcement services on the Reservations. All those officers are similarly eligible for or have their SLEC certificates.

### **PROSECUTION GUIDELINES**

The United States Attorney's Office (USAO) will prosecute all viable federal crimes occurring in Indian Country that meet the prosecution guidelines. Threshold requirements are significantly relaxed for cases arising in Indian Country. The USAO devotes multiple Assistant United States Attorneys (AUSAs), a Gaye L. Tenoso Indian Country Fellow, and the Tribal Liaison to the prosecution of Indian Country cases. The Indian Country Fellow is AUSA Kathryn A. Pflug, and the Tribal Liaison is AUSA Lecia E. Wright.

### **INVESTIGATIONS/ CHARGING/ DECLINATIONS**

#### *Investigations<sup>1</sup>*

Tribal police, the BIA, and local county deputy sheriffs are typically the initial law enforcement responders on a call for assistance or a reported crime. Initial law enforcement responders are responsible for gathering evidence, taking initial statements from witnesses, getting victims needed forensic and medical attention, detaining suspects where appropriate, and coordinating with tribal prosecutors regarding possible tribal charges or search warrants. For any case likely to be prosecuted in federal court, the tribal police shall immediately notify the Federal Bureau of Investigation (FBI), or any BIA criminal investigator assigned to the area. The FBI has primary law enforcement responsibilities for federal offenses in Indian Country. When the FBI opens a case, they are the lead on the investigation. FBI agents working in Indian Country have a productive working relationship with tribal police and often work investigations collaboratively.

Tribal police will prepare written reports regarding their investigations and will make them available to the FBI and the USAO. Tribal officers should anticipate being called as witnesses in preliminary hearings or at trial in federal cases. Similarly, in any case where federal charges are declined, but tribal charges are still viable, federal investigators should be prepared to

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<sup>1</sup> Investigations related to missing persons are addressed in the Appendix containing Savanna's Act guidelines. It is a Law Enforcement sensitive document and therefore not provided with the IC Operational Plan.

make their reports available to the tribal prosecutors and to testify in tribal court when required.

In any case involving potential federal charges, it is expected that search warrants will be sought in federal court rather than tribal court with input and review by an AUSA. It is anticipated there may be cases which were initially investigated solely for tribal law violations, and which may involve tribal search warrants, but which are later adopted by the FBI and this USAO. However, whenever the FBI or the BIA criminal investigator becomes involved in an investigation, search warrant requests should go through the USAO except in the most extenuating circumstances.

### Charging

Tribal prosecutors make their own independent determinations of what tribal charges are warranted. However, whenever an incident gives rise to both tribal and federal charges, tribal prosecutors, after consultation with the USAO, will generally dismiss their tribal charges in favor of related federal charges so that the more severe federal penalties can be imposed. When a defendant is in tribal custody, and continued detention of the defendant is warranted, it is anticipated that tribal prosecutors will delay dismissing their charges until after federal charges are filed. Further, before taking a plea or proceeding to sentencing on tribal charges where the defendant is a Native American and the victim is non-Native American, tribal prosecutors will be asked to consult with the Tribal Liaison as to whether federal charges are contemplated as 18 U.S.C. §1152 prohibits federal prosecution of a Native American who has already been punished by the local law of the tribe.

Review of Indian Country referrals will be completed as expeditiously as possible including any follow-up investigation requested by the USAO. Due consideration will be given to expediting charging decisions when appropriate to ensure that dangerous offenders are arrested and detained.

Each AUSA prosecuting cases in Indian Country will be encouraged to notify the FBI, tribal police and tribal prosecutor of any federal case filing within a reasonable time after the filing. In addition, the Tribal Liaison will maintain a list of filed cases and will review that list with tribal prosecutors and tribal police chiefs at the regular meetings (further described below). Tribal Councils and the Native American community will be advised of filed cases and any dispositions during the USAO's scheduled visits to a tribal council meeting on each reservation. Finally, the USAO shall continue to issue press releases relating to the filing and making public of federal charges and the sentencing of any federal defendant.

### Declinations

The Executive Office for United States Attorneys (EOUSA) must annually report to Congress certain declination data. In addition to the general declination information which EOUSA reports, beginning in 2011, EOUSA was required to begin reporting declinations in Indian country cases, as mandated in the Tribal Law and Order Act. All immediate and later declinations must be entered in CaseView, the USAO's case management system. An **immediate declination** occurs when an investigative agency presents a referral in writing 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 CaseView, and the USAO later decides to close the matter without filing charges. This typically follows some investigation or further consultation with the AUSA.

Known by many names, a field declination, exception, or "over-the-phone declination" occurs when an investigative agency seeks a USAO declination based on the agency's own internal guidelines or presents a matter orally to the USAO that does not warrant federal prosecution based on the facts and circumstances presented. Field declinations presented to the USAO require follow up by email so a record may be kept.

Federal declinations will be timely made and communicated to tribal prosecutors so that any viable tribal prosecutions can be initiated within the applicable statute of limitations for the tribe. Either the AUSA assigned to the case or the Tribal Liaison will directly communicate the declination to the tribal prosecutor. Federal declinations shall be in writing and indicate the reasons for declination. Written declinations must be approved by the USAO's Criminal Chief.

### **SIGNIFICANT CRIME CATEGORIES**

Felony assault, rape, child sexual assault and child physical abuse are the main offenses routinely prosecuted federally from the three reservations. Each of the reservations have a serious problem with methamphetamine, which has become readily available in significant quantities. There has been an increase in the federal prosecution of drug offenders in the last four years. One of the primary strategies developed to respond to this serious problem, is the FBI's implementation of the Siouland Safe Trails Task Force to identify, investigate, and prosecute criminal enterprises and violent offenders responsible for drug trafficking and related offenses on the Nebraska Reservations and surrounding areas. A secondary mission is to investigate homicide, child physical/sexual abuse, adult rape, aggravated assault, public

corruption, financial crimes, and other appropriate federal violations. Task Force is comprised of members from the Dakota County Sheriff's Office, Knox County Sheriff's Office, Thurston County Sheriff's Office, Omaha Nation Law Enforcement Services, Winnebago Police Department, Santee Sioux Nation Tribal Police, Nebraska National Guard, and the Nebraska State Patrol.

### **VIOLENCE AGAINST WOMEN**

All reports of sexual assault and/or domestic violence in Indian Country receive top priority. All reports of either sexual assault or domestic violence will be immediately investigated unless there is clearly an absence of credible evidence that such crimes have been committed. The FBI will take the lead in all sexual assault investigations without regard to whether the case will be prosecuted in federal or tribal court. The FBI will assume the lead in all domestic violence cases whenever it has been determined that a dangerous weapon was used, that the victim sustained serious bodily injuries, that the perpetrator crossed state or tribal boundaries with the requisite intent to commit the offense, or when the subject has a prior domestic violence conviction as that term is defined in 18 U.S.C. §2265A. All reports of sexual assault and/or domestic violence will be reviewed by the USAO.

#### **Sexual Assault Cases**

In most instances, sexual assault victims on the Omaha Nation Indian Reservation and the Winnebago Reservation will be taken first to the Twelve Clans Unity Hospital in Winnebago, Nebraska and then to the University of Nebraska Medical Center in Omaha, Nebraska for a sexual assault nurse examination (SANE) or other forensic examinations. Currently the USAO is not recommending any sexual assault victim be taken to Unity Point/St Luke's due to the lack of SANE protocols at that facility. Victims on the Santee Sioux Nation Indian Reservation, regardless of age, are generally taken to the Norfolk Child Advocacy Center (CAC) for the purpose of forensic examinations. On occasion, victims will be taken to the Avera Sacred Heart Hospital in Yankton, South Dakota. Rape kits and other forensic evidence may be submitted to the FBI laboratories with a request that such evidence be assigned to the unit specifically designated to work Indian Country cases. However, in most circumstances, due to the lengthy delay processing evidence in the FBI laboratories, the AUSA will request the evidence be submitted to a local lab with the Nebraska State Patrol or the University of Nebraska Medical Center Human DNA Identification Laboratory. The AUSA will ensure prompt submission and proper funding is secured to pay for testing (FBI

is responsible for expenses pre-Indictment; the USAO is responsible post-Indictment).

#### Domestic Violence Cases

Domestic violence (DV) cases in Indian Country are a priority and will be treated accordingly. Further, it is recognized there are instances of misdemeanor level domestic violence on the three Nebraska reservations, which are committed by non-Indian offenders against Indian victims. In those cases, the FBI will assume the lead role in the investigation and the USAO will prosecute all such cases that satisfy the principles of federal prosecution.

Tribal domestic violence advocates on the three reservations are given the responsibility of meeting with the victims and completing the domestic violence threat assessment. This assessment addresses such issues as lethality risks and victim safety considerations. While the threat assessment is primarily used by the tribal advocates in determining the needs of the victim, where appropriate, the risk assessment will be made available to law enforcement and to tribal and federal prosecutors to be considered when making charging or plea determinations. These assessments will also be provided to the USAO Victim Assistance Specialist (VAS).

#### **VICTIM ASSISTANCE**

Victim assistance will be victim-centered, trauma-informed, and culturally sensitive. This approach requires establishing a communications plan with all relevant personnel early in a case and traveling to meet with victims in their own community, whenever possible. Individuals working with victims in Indian Country, should be aware of a particular tribe's preferred practices and take all reasonable steps to conduct investigations in ways respectful of cultural traditions to the extent that they do not create an unreasonable risk of interfering with the investigation.

#### FBI Victim Specialist Responsibilities

Once the FBI has been notified of a crime on a Reservation and a Special Agent has been assigned, the agent will identify the crime victim and notify the FBI's Victim Specialist. The specialist will then meet with the victim and/or the victim's family and explain the crime victim's rights under 18 USC §3771 (Crime Victims' Rights Act). The FBI Victim Specialist will notify the USAO VAS for Indian Country of the identity of the victim and/or the victim's family. The FBI Victim Specialist will further coordinate with the USAO VAS to ensure that there is a smooth transition between the FBI Victim Specialist and the USAO VAS. The FBI Victim Specialist will gather pertinent information and upload that information into the Victim Notification System (VNS). The FBI Victim Specialist will also provide an explanation to the victim regarding the VNS system and the criminal justice process with respect to the roles of

the FBI and the USAO.

The FBI Victim Specialist will be responsible for conducting a short term and long-term victim's need assessment. Based on that assessment, the Victim Specialist will make referrals to tribal resources (victim advocates, DV advocates, Child Protective Services), Tribal Family Services, tribal counseling services, housing, transportation, etc.) and coordinate with these local providers to meet the victim's needs.

During the investigation of the case, the Victim Specialist will keep the victim and USAO VAS informed of the progress of the investigation. When the case is indicted, the FBI Victim Specialist will work with the USAO VAS and the victim to transition the victim into the prosecution phase.

USAO Victim Assistance Specialist for Indian Country

The USAO VAS will meet with the FBI Victim Specialist as the case is nearing Grand Jury or as soon as possible after an Indictment is returned. The coordinator will meet with the victim and continue the efforts of the FBI to make referrals to tribal resources and local providers to meet the victim's current needs.

The USAO VAS will be responsible for communicating with the victim to keep the victim informed of the progression of the criminal case. This will include use of the VNS, email, phone, and/or personal visits. The coordinator will also serve as the liaison between the victim and the assigned AUSA regarding plea negotiations, court appearances, preparation of victim impact statements, and allocution at sentencing.

The USAO VAS will accompany and provide assistance to the victim at any public court hearings. This will include arranging transportation and/or lodging, making the victim familiar with the courtroom, and, to the extent possible, shielding the victim from unwanted contact with families of the defendant.

Tribal Victim Specialists or Advocates

These advocates shall work with the tribal prosecutors and the victims during the pendency of any tribal prosecution. The advocates will also be consulted with by the FBI Victim Specialist and the USAO VAS to ensure the victim's needs and rights are reasonably met.

**CHILD PROTECTIVE SERVICES**

Each tribe has an agency for child protective services, which provide culturally sensitive services. These organizations are responsible for protecting children (and in some cases vulnerable adults) from abuse and neglect. These agencies provide services to include

investigations, safety planning, case planning and management, support services, specialized services, supervision, and transportation. Each reservation's child protective services agency provides services in keeping with the Indian Child Welfare Act to preserve and strengthen Indian families and provide permanency for children while protecting the tribe's culture. Agency contact information is below.

### **TRAINING AND LAW ENFORCEMENT COORDINATION**

The mission of the United States Attorney's Office Law Enforcement and Community Coordination (LECC) Unit is to assist law enforcement and criminal justice agencies throughout the District of Nebraska, and to facilitate community-based efforts on issues related to criminal justice and community restoration. The LECC Unit manages or facilitates several programs designed to support and coordinate the objectives of the criminal justice system at various levels, provides services to witnesses and victims of federal crime, conducts training, and appries the community at large about issues related to the criminal justice system. The LECC Unit maintains strong collaborative partnerships among the federal, state, local and tribal law enforcement agencies to improve the effectiveness of law enforcement in the District of Nebraska. In this respect, the LECC Unit, in conjunction with the Tribal Liaison, will continue to serve as a liaison between the AUSAs doing Indian Country prosecutions, the BIA and FBI, and tribal law enforcement.

The LECC Unit hosts trainings and conferences at various venues throughout the District of Nebraska. The LECC will ensure that these trainings include topics relevant to current issues in Indian Country, domestic abuse, sexual abuse including sexual abuse of children, violence against women, and victim issues. The LECC Coordinator and the VAS will be responsible for providing notice of these trainings and conferences to the Tribal Chairs, Tribal law enforcement chiefs, and tribal service providers. Reasonable efforts will be made to ensure tribal law enforcement personnel have ample opportunity to attend these trainings and conferences. When possible, tuition costs for tribal law enforcement will be reduced or eliminated.

The LECC Unit and the Tribal Liaison will also provide notice of training opportunities at the National Advocacy Center or that are available for tribal communities. This includes the Criminal Jurisdiction in Indian Country Course (CJIC), which is required for any law enforcement officer seeking an SLEC. Currently, all CJIC offerings are via WebEx, but when in-person training resumes, the USAO will provide that training.



In addition to the standard trainings and conferences held by the LECC as noted above, when requested, the LECC, with the assistance of the Tribal Liaison, will design and hold informal training sessions at either the USAO's facilities or at the law enforcement headquarters of any tribal law enforcement entity. Initially, training will be developed to satisfy requests from tribal prosecutors from the tribes for training for officers concerning report writing, questioning of juveniles, understanding addictions and addictive behaviors, and testifying. Training will be developed on an as needed basis if not already covered by other training sponsored by the LECC Unit for all law enforcement officers.

### **OUTREACH & CONSULTATION**

The USAO will meet at least annually with the Tribal Council for the Omaha Nation Indian Reservation, the Santee Sioux Nation Indian Reservation and the Winnebago Reservation. The frequency of the meetings will vary depending on the tribe and the need. The purpose of these meetings will be to: (a) keep the tribes informed of the criminal cases being handled by the USAO (due regard will be given to the Privacy Act so that only cases that are a matter of public record will be specifically addressed); (b) provide information on grants and funding; and (c) ascertain any needs the tribes may have which the USAO can address. The meetings will be attended by the United States Attorney or the First Assistant US Attorney, Tribal Liaison, Drug Chief, Criminal Chief, LECC Coordinator and the VAS. Representatives from the FBI and BIA will be invited to attend as well. It is anticipated that tribal police chiefs and tribal service providers will be at these council meetings in addition to members of the tribal community.

The Indian Country Fellow and Tribal Liaison will consult and schedule meetings with tribal prosecutors, tribal police chiefs and FBI special agents assigned to Indian Country at least monthly. During these meetings, the Indian Country Fellow and Tribal Liaison will be able to inform tribal prosecutors and police chiefs of the status of federal investigations and prosecutions, to review the inventory of pending tribal investigations and prosecutions to determine whether any cases warrant federal intervention, and to address any law enforcement concerns the prosecutors or police chiefs may have. All of our tribal partners are encouraged to contact the Indian Country Fellow and the Tribal Liaison as needs demand and the Indian Country Fellow and Tribal Liaison will respond as soon as possible.

#### **Multidisciplinary Teams**

AUSAs will coordinate and consult with a Multidisciplinary team (MDT) as required by statute (18 U.S.C. § 3509(g)) and as necessary on cases involving child victims. AUSAs

communicate case updates to the VAS who may communicate directly with members of the MDT as necessary. Further, AUSAs will call an MDT on an as needed basis for specific cases.

*Indian County Conference*

The USAO hosts an annual Indian Country Conference, which typically includes a component addressing violence against Native women, to include DV, human trafficking and missing Native women. For the last several years, the USAO has partnered with the District of Kansas and the Northern District of Iowa for this annual conference.

Dated: November 9, 2022

*Steve Russell*

STEVEN A. RUSSELL  
ACTING UNITED STATES ATTORNEY  
District of Nebraska

**AGENCY CONTACT INFORMATION**

<b><i>United States Attorney's Office</i></b>		
<b>Tribal Liaison</b>	Lecia E. Wright, Assistant U.S. Attorney	(402) 661-3705
<b>Indian Country Fellow</b>	Kathryn A. Pflug, Assistant U.S. Attorney	(402) 661-3765
<b>Victim Assistance Specialist for Indian Country</b>	Jose Palacios	(402) 661-3742
<b>Law Enforcement Coordinator</b>	Jose Palacios	(402) 661-3742

<b><i>Federal Bureau of Investigation</i></b>		
<b>Sioux City Resident Agency Phone Line</b>		(712) 258-1920
<b>Supervisory Special Agent</b>	Kevin Hall	(310) 310-0083
<b>FBI Victim Specialist</b>	Sherrie Schweder	(402) 650-0215
<b>FBI Special Agent Covering Omaha Nation</b>	Samuel (aka Sam) Roberts	(402) 613-0387
<b>FBI Special Agent Covering Santee Sioux Nation</b>	Joel Feekes	(402) 613-1823
<b>FBI Special Agent Covering Winnebago</b>	Paul Voss	(402) 490-4505

<b><u>Omaha Nation</u></b>		
<b>Omaha Nation Law Enforcement Services</b>	Dispatch/Main Line	(402) 837-5907
<b>Chief of Police</b>	Ed Tyndall	(402) 922-3497
<b>Children &amp; Family Services</b>		(402) 837-5331
Director	Deanna Parker	(402) 860-4820
Deputy Director	Mary Webster	(402) 860-1170
Domestic Violence Advocate	Joseph Galvin Sr.	(402) 750-0785

<b><u>Santee Sioux Nation:</u></b>		
<b>Santee Sioux Police Department</b>		(402) 857-2527
<b>Chief of Police</b>	Rob Henry	(402) 640-1253
<b>Dakota Tiwahe Service Unit</b>	(DTSU/CPS)	(402) 857-2342
	Donna Pike	
	Clarissa LaPlante	

**Winnebago**

<b>Winnebago Police Department</b>	Dispatch/Main Line	(402) 878-2245
<b>Chief of Police</b>	Jason Lawrence	(402) 878-2245 (712) 259-0625
<b>Child Protective Services</b>	Miskoo Petite	(833) 568-7882
Program Leads	Amy Harper	(402) 922-2792
	Kayla Backer	(402) 922-3109