

February 2011

INDIAN COUNTRY CRIMINAL JUSTICE

Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts



G A O

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Why GAO Did This Study

The Department of Justice (DOJ) reports from the latest available data that from 1992 to 2001 American Indians experienced violent crimes at more than twice the national rate. The Department of the Interior (DOI) and DOJ provide support to federally recognized tribes to address tribal justice issues. Upon request, GAO analyzed (1) the challenges facing tribes in adjudicating Indian country crimes and what federal efforts exist to help address these challenges and (2) the extent to which DOI and DOJ have collaborated with each other to support tribal justice systems. To do so, GAO interviewed tribal justice officials at 12 tribes in four states and reviewed laws, including the Tribal Law and Order Act of 2010, to identify federal efforts to assist tribes. GAO selected these tribes based on court structure, among other factors. Although the results cannot be generalized, they provided useful perspectives about the challenges various tribes face in adjudicating crime in Indian country. GAO also compared DOI and DOJ's efforts against practices that can help enhance and sustain collaboration among federal agencies and standards for internal control in the federal government.

What GAO Recommends

GAO recommends that the Secretary of the Interior and the Attorney General direct the relevant DOI and DOJ programs to develop mechanisms to identify and share information related to tribal courts. DOI and DOJ concurred with our recommendation.

View [GAO-11-252](#) or key components. For more information, contact David Maurer at (202) 512-9627 or maurerd@gao.gov.

INDIAN COUNTRY CRIMINAL JUSTICE

Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts

What GAO Found

The 12 tribes GAO visited reported several challenges in adjudicating crimes in Indian country, but multiple federal efforts exist to help address some of these challenges. For example, tribes only have jurisdiction to prosecute crimes committed by Indian offenders in Indian country. Also, until the Tribal Law and Order Act of 2010 (the Act) was passed in July 2010, tribes could only sentence those found guilty to up to 1 year in jail per offense. Lacking further jurisdiction and sentencing authority, tribes rely on the U.S. Attorneys' Offices (USAO) to prosecute crime in Indian country. Generally, the tribes GAO visited reported challenges in obtaining information on prosecutions from USAOs in a timely manner. For example, tribes reported they experienced delays in obtaining information when a USAO declines to prosecute a case; these delays may affect tribes' ability to pursue prosecution in tribal court before their statute of limitations expires. USAOs are working with tribes to improve timely notification about declinations. DOI and the tribes GAO visited also reported overcrowding at tribal detention facilities. In some instances, tribes may have to contract with other detention facilities, which can be costly. Multiple federal efforts exist to help address these challenges. For example, the Act authorizes tribes to sentence convicted offenders for up to 3 years imprisonment under certain circumstances, and encourages DOJ to appoint tribal prosecutors to assist in prosecuting Indian country criminal matters in federal court. Federal efforts also include developing a pilot program to house, in federal prison, up to 100 Indian offenders convicted in tribal courts, given the shortage of tribal detention space.

DOI, through its Bureau of Indian Affairs (BIA), and DOJ components have taken action to coordinate their efforts to support tribal court and tribal detention programs; however, the two agencies could enhance their coordination on tribal courts by strengthening their information sharing efforts. BIA and DOJ have begun to establish task forces designed to facilitate coordination on tribal court and tribal detention initiatives, but more focus has been given to coordination on tribal detention programs. For example, at the program level, BIA and DOJ have established procedures to share information when DOJ plans to construct tribal detention facilities. This helps ensure that BIA is prepared to assume responsibility to staff and operate tribal detention facilities that DOJ constructs and in turn minimizes potential waste. In contrast, BIA and DOJ have not implemented similar information sharing and coordination mechanisms for their shared activities to enhance the capacity of tribal courts to administer justice. For example, BIA has not shared information with DOJ about its assessments of tribal courts. Further, both agencies provide training and technical assistance to tribal courts; however, they are unaware as to whether there could be unnecessary duplication. Developing mechanisms to identify and share information related to tribal courts could yield potential benefits in terms of minimizing unnecessary duplication and leveraging the expertise and capacities that each agency brings.

Contents

Letter		1
	Background	4
	Tribes We Visited Reported Challenges in Adjudicating Crime in Indian Country; Various Federal Efforts Exist to Help Address Those Challenges	13
	BIA and DOJ Have Taken Action to Coordinate Their Efforts on Tribal Justice Issues, but Should Strengthen Coordination on Tribal Courts by Establishing Information Sharing Mechanisms	30
	Conclusions	36
	Recommendation for Executive Action	37
	Agency Comments and Our Evaluation	37
Appendix I	Objectives, Scope and Methodology	39
	Objectives	39
	Scope and Methodology	39
Appendix II	Federal, State, and Tribal Jurisdiction over, and the Prosecution of Crime in, Indian Country	43
	Criminal Jurisdiction in Indian Country	43
	Tribal Prosecutions under the Indian Civil Rights Act	45
Appendix III	Overview of Selected Tribal Courts	48
	Cheyenne River Sioux Tribe	48
	Gila River Indian Community	51
	Pueblo of Isleta	54
	Pueblo of Laguna	57
	Navajo Nation	60
	Oglala Sioux Tribe	63
	Pueblo of Pojoaque	66
	Rosebud Sioux Tribe	69
	Standing Rock Sioux Tribe	72
	Pueblo of Taos	75
	Three Affiliated Tribes	78
	Tohono O’odham Nation	81
Appendix IV	Comments from the Department of Justice	84

Tables

Table 1: Summary of Three Major Federal Laws Governing Criminal Jurisdiction in Indian Country	7
Table 2: Criminal Jurisdiction in Indian Country Where Jurisdiction Has Not Been Conferred on a State	8
Table 3: Judicial Personnel and Court Staff of Gila River Indian Community	53
Table 4: Gila River Civil and Criminal Caseload Data for 2008 through 2010	53
Table 5: Judicial Personnel and Court Staff of Pueblo of Isleta	56
Table 6: Judicial Personnel and Court Staff of Pueblo of Laguna	59
Table 7: Pueblo of Laguna Civil and Criminal Caseload Data for Calendar Years 2008 and 2009	59
Table 8: Judicial Personnel and Court Staff of Navajo Nation	61
Table 9: Navajo Nation Judicial Branch Civil and Criminal Caseload Data for Fiscal Years 2008 through 2010	62
Table 10: Judicial Personnel and Court Staff of Oglala Sioux Tribe	65
Table 11: Pueblo of Pojoaque Civil and Criminal Caseload Data for Calendar Years 2008 and 2009	68
Table 12: Judicial Personnel and Court Staff of Rosebud Sioux Tribe	71
Table 13: Rosebud Sioux Civil and Criminal Caseload Data for Calendar Years 2008 through 2010	71
Table 14: Judicial Personnel and Court Staff of Standing Rock Sioux Tribe	74
Table 15: Standing Rock Sioux Tribal Court Caseload Data for Calendar Years 2008 and 2009	74
Table 16: Pueblo of Taos Caseload Data for Calendar Years 2008 through 2010	77
Table 17: Judicial Personnel and Court Staff of Three Affiliated Tribes	80
Table 18: Three Affiliated Tribes Civil and Criminal Caseload Data for Calendar Years 2008 through 2010	80
Table 19: Judicial Personnel and Court Staff of Tohono O'odham Nation	83
Table 20: Tohono O'odham Court Civil and Criminal Caseload Data for Calendar Years 2008 through 2010	83

Figures

Figure 1: Overview of DOI Responsibilities to Support Tribal Justice Systems	10
Figure 2: Overview of DOJ Responsibilities to Support Tribal Justice Systems	11
Figure 3: Warning against Unwarranted Judicial Contact	20
Figure 4: Location of Cheyenne River Indian Reservation	49
Figure 5: Location of Gila River Indian Community	51
Figure 6: Location of Pueblo of Isleta	54
Figure 7: Location of Pueblo of Laguna	57
Figure 8: Location of Navajo Nation	60
Figure 9: Location of Pine Ridge Indian Reservation of the Oglala Sioux Tribe	63
Figure 10: Location of Pueblo of Pojoaque	66
Figure 11: Location of Rosebud Indian Reservation	69
Figure 12: Location of Standing Rock Reservation	72
Figure 13: Location of Pueblo of Taos	75
Figure 14: Location of the Fort Berthold Reservation of Three Affiliated Tribes	78
Figure 15: Location of Tohono O'odham Nation	81

Abbreviations

AUSA	Assistant U.S. Attorney
BIA	Bureau of Indian Affairs
BJA	Bureau of Justice Assistance
BOP	Bureau of Prisons
DOI	Department of the Interior
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
ICRA	Indian Civil Rights Act
JABG	Juvenile Accountability Block Grant
OJP	Office of Justice Programs
Recovery Act	American Recovery and Reinvestment Act of 2009
SAUSA	Special Assistant U.S. Attorney
SLEC	Special Law Enforcement Commission
TLOA	Tribal Law and Order Act of 2010
USAO	U.S. Attorney's Office

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Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

February 14, 2011

The Honorable Daniel Akaka
Chairman
The Honorable John Barrasso
Vice Chairman
Committee on Indian Affairs
United States Senate

The Honorable John Thune
United States Senate

The Department of Justice (DOJ) has reported from the latest available data that the crime rates experienced by American Indians nationwide are two and a half times higher than those experienced by the general population in the United States. Specifically, DOJ reported that from 1992 to 2001, American Indians, nationally, experienced violent crimes at an estimated rate of 101 violent crimes per 1,000 Indians annually, which is more than twice the estimated national rate of 41 per 1,000 persons. While violent crime rate statistics specific to Indian country are not available, the Tribal Law and Order Act of 2010 (TLOA) recognizes that Indian tribes have faced significant increases of burglary, assault, child abuse, and domestic violence as a direct result of increased methamphetamine use on Indian reservations.¹ Further, it is estimated that 39 percent of American Indian and Alaska Native women will be subjected to domestic violence during their lifetime. Such crime levels can have a devastating effect on the quality of life for tribal communities and signal a public safety crisis in Indian country.² Tribal, state, or federal governments may have jurisdiction to prosecute Indian offenders who commit crimes of a more serious nature in Indian country; however, tribal governments do not have jurisdiction to prosecute non-Indians, even if the victim is Indian. Rather, non-Indian offenders who commit crimes against Indians may be prosecuted by the federal government or, where jurisdiction has been

¹Tribal Law and Order Act of 2010 (TLOA), Pub. L. No. 111-211, tit. II, 124 Stat. 2258, 2261.

²The term "Indian country" refers to all land within the limits of any Indian reservation under the jurisdiction of the U.S. government, all dependent Indian communities within U.S. borders, and all existing Indian allotments, including any rights-of-way running through an allotment. See 18 U.S.C. § 1151.

conferred, a state government.³ Although TLOA acknowledges that tribal justice systems are often the most appropriate institutions for maintaining law and order in Indian country, they face challenges in effectively administering justice due to limited personnel and resources, increasing volume and complexity of criminal caseload, and limited sentencing authority. To that end and in light of the challenges that tribes face in adjudicating crimes, tribal communities rely on the federal government to investigate and prosecute a variety of crimes in Indian country.

The Department of the Interior (DOI) and DOJ are the two primary federal agencies that provide support to federally recognized tribes to ensure safe communities in Indian country and help tribes administer justice. First, DOI, through the Bureau of Indian Affairs (BIA), provides funding to entities of the tribal justice system including tribal courts, law enforcement agencies, and detention facilities. Additionally, BIA investigates crimes that occur in Indian country, and assists tribes in their efforts to establish and maintain judicial systems, among other things. Second, within DOJ, the Federal Bureau of Investigation (FBI) conducts criminal investigations, while the U.S. Attorney's Office (USAO) may exercise its jurisdiction to prosecute crime in Indian country. A number of DOJ components provide grant funding, training, and technical assistance to tribes for the purpose of enhancing tribal justice systems. In 2010, DOI and DOJ announced that public safety in tribal communities is to be a priority for their respective agencies and launched a number of initiatives intended to help address tribal justice issues. Further, TLOA was signed into law on July 29, 2010, to help address the wide-ranging challenges facing tribes and improve the response to and prosecution of crime in Indian country.

You requested that we review the challenges facing selected tribal justice systems in adjudicating crime in Indian country as well as federal agencies' efforts to coordinate their activities to support tribal justice systems. We prepared this report to answer the following questions:

1. What challenges do tribes face in adjudicating crime in Indian country and what federal efforts exist to help address those challenges?

³ Criminal jurisdiction in Indian country, including jurisdiction exercised by state governments, will be discussed in more detail later in this report.

2. To what extent have DOI and DOJ components collaborated with each other to support tribal justice systems?

To identify the challenges facing tribes in adjudicating criminal matters in Indian country and federal efforts that exist to help address those challenges, we met with tribal justice officials such as judges, prosecutors, law enforcement officers, and court administrators from a nonprobability sample of 12 federally recognized tribes in Arizona, New Mexico, North Dakota, and South Dakota.⁴ We selected the tribes based on several considerations such as reservation and land size, types of tribal court structures, and number of Indian country criminal matters referred to the USAO. Given the breadth of public safety and justice issues underlying the requests for this work as well as the recently enacted TLOA, we focused on criminal rather than civil law matters within the tribes selected for review. While the results of these interviews cannot be generalized to reflect the views of all federally recognized tribes across the United States, the information obtained provided us with useful information on the perspectives of various tribes about the challenges they face in adjudicating criminal matters. Additionally, we reviewed existing law, including the recently enacted TLOA, to identify federal efforts to help support tribes' efforts to adjudicate criminal matters in Indian country. We also interviewed officials and obtained documents from the BIA and various DOJ components such as the FBI, the Executive Office of U.S. Attorneys, select district USAOs, and the Bureau of Prisons (BOP) to obtain information about their efforts to implement TLOA provisions and other initiatives that address the challenges facing tribes in administering justice in Indian country.

To assess the extent to which DOI and DOJ collaborate with each other to support tribal justice systems, we identified practices that our previous work indicated can help enhance and sustain collaboration among federal agencies.⁵ In this report, we primarily focused on tribal courts and, to some extent, tribal detention programs. We compared the two agencies' efforts to share information on their tribal justice programs to select

⁴Nonprobability sampling is a method of sampling when nonstatistical judgment is used to select members of the sample, using specific characteristics of the population as criteria. Results from nonprobability samples cannot be used to make inferences about a population because in a nonprobability sample, some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

⁵GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

criteria in *Standards for Internal Control in the Federal Government* as well as select criteria on effective interagency collaboration.⁶ We also analyzed DOI and DOJ documents—such as tribal consultation and coordination plans—that describe the two agencies’ efforts to consult and coordinate with each other on public safety and justice issues. Further, we interviewed officials from DOI and DOJ components including DOI’s Office of Justice Services and DOJ’s Office of Tribal Justice and Office of Justice Programs (OJP) to determine the extent to which they had (1) implemented the practices we identified for effective interagency collaboration, and (2) identified and shared information that could be beneficial in addressing public safety and justice in Indian country.

We conducted this performance audit from September 2009 through February 2011 in accordance with generally accepted government auditing standards.⁷ Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence provides a reasonable basis for our findings and conclusions based on our audit objectives. Appendix I contains more details on our scope and methodology.

Background

Criminal Justice in Indian Country

In 2004, DOJ estimated that American Indians experience rates of violent crime that are far higher than most other racial and ethnic groups in the United States. For example, DOJ estimated that across the United States, the annual average violent crime rate among American Indians was twice as high as that of African Americans, and 2-½ times as high as that of whites, and 4-½ times as high as that of Asians. Also, domestic and sexual violence against American Indian women is among the most critical public safety challenges in Indian country, where, in some tribal communities, according to a study commissioned by DOJ, American Indian women face

⁶GAO-06-15 and GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

⁷This is the second of two efforts related to tribal justice issues that we reviewed in response to your request during this time. The results of the first effort were issued in December 2010 and are focused on DOJ declinations of Indian country matters. See GAO, *U.S. Department of Justice Declinations of Indian Country Criminal Matters*, GAO-11-167R (Washington, D.C.: Dec. 13, 2010).

murder rates that are more than 10 times the national average. Oftentimes, alcohol and drug use play a significant role in violent crimes in Indian country. According to DOJ, American Indian victims reported alcohol use by 62 percent of offenders compared to 42 percent for all races.

Tribal or BIA law enforcement officers are often among the first responders to crimes on Indian reservations; however, law enforcement resources are scarce. BIA estimates that there are less than 3,000 tribal and BIA law enforcement officers to patrol more than 56 million acres of Indian country. According to a DOJ study, the ratio of law enforcement officers to residents in Indian country is far less than in non-tribal areas. In the study, researchers estimated that there are fewer than 2 officers per 1,000 residents in Indian country compared to a range of 3.9 to 6.6 officers per 1,000 residents in non-tribal areas such as Detroit, Michigan and Washington, D.C. The challenge of limited law enforcement resources is exacerbated by the geographic isolation or vast size of many reservations. In some instances officers may need to travel hundreds of miles to reach a crime scene. For example, the Pine Ridge Indian Reservation in South Dakota has about 88 sworn tribal officers to serve 47,000 residents across 3,466 square miles, which equates to a ratio of 1 officer per 39 square miles of land, according to BIA.

In total there are 565 federally recognized tribes; each has unique public safety challenges based on different cultures, economic conditions, and geographic location, among other factors. These factors make it challenging to implement a uniform solution to address the public safety challenges confronting Indian country. Nonetheless, tribal justice systems are considered to be the most appropriate institutions for maintaining law and order in Indian country. Generally, tribal courts have adopted federal and state court models; however, tribal courts also strive to maintain traditional systems of adjudication such as peacemaking or sentencing circles.

Law enforcement, courts, and detention/correction programs are key components of the tribal justice system that is intended to protect tribal communities; however, each part of the system faces varied challenges in Indian country. Shortcomings and successes in one area may exacerbate problems in another area. For example, a law enforcement initiative designed to increase police presence on a reservation could result in increased arrests, thereby overwhelming a tribal court's caseload or an overcrowded detention facility.

Federal, State, and Tribal Jurisdiction over Crimes Committed in Indian Country

The exercise of criminal jurisdiction in Indian country depends on several factors, including the nature of the crime, the status of the alleged offender and victim—that is, whether they are Indian or not—and whether jurisdiction has been conferred on a particular entity by, for example, federal treaty or statute. As a general principle, the federal government recognizes Indian tribes as “distinct, independent political communities” that possess powers of self-government to regulate their “internal and social relations,” which includes enacting substantive law over internal matters and enforcing that law in their own forums.⁸ The federal government, however, has plenary and exclusive authority to regulate or modify the powers of self-government that tribes otherwise possess, and has exercised this authority to establish an intricate web of jurisdiction over crime in Indian country.⁹ The General Crimes Act, the Major Crimes Act, and Public Law 280, which are broadly summarized in table 1, are the three federal laws central to the exercise of criminal jurisdiction in Indian country.¹⁰ These laws as well as provisions of the Indian Civil Rights Act related to tribal prosecutions are discussed more fully in appendix II.¹¹

⁸ See, e.g., Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55-56 (1978) (citing United States v. Wheeler, 435 U.S. 313 (1978)). See also 25 U.S.C. § 1301(2) (defining an Indian tribe’s power of self-government).

⁹ See United States v. Lara, 541 U.S. 193, 200-01 (2004) (referencing the Indian Commerce Clause, U.S. CONST., art. I, § 8, cl. 3, and the Treaty Clause, U.S. CONST. art. II, § 2, cl. 2, as authority for the federal regulation of Indian affairs).

¹⁰ See 18 U.S.C. §§ 1152 (codifying the General Crimes Act, as amended), 1153 (codifying the Major Crimes Act, as amended), and 1162 (codifying Public Law 280, as amended).

¹¹ See Pub. L. No. 90-284, tit. II, 82 Stat. 73, 77 (1968) (codified as amended at 25 U.S.C. §§ 1301-41).

Table 1: Summary of Three Major Federal Laws Governing Criminal Jurisdiction in Indian Country

Federal law	Description
General Crimes Act	Enacted in 1817, the General Crimes Act (also referred to as the Federal Enclaves Act or Indian Country Crimes Act), as amended, extended the criminal laws of the federal government into Indian country and generally established federal criminal jurisdiction where either, but not both, the alleged offender or the victim is Indian.
Major Crimes Act	Enacted in 1885, the Major Crimes Act, as amended, provides the federal government with criminal jurisdiction over Indians charged with felony-level offenses enumerated in the statute, even when the victim is Indian. ¹² The tribes retained exclusive jurisdiction over other criminal offenses (generally, misdemeanor-level) where both parties are Indian.
Public Law 280	Enacted in 1953, Public Law 280, as amended, confers criminal jurisdiction over offenses committed in Indian country to the governments of six states—Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin, except as specified by statute, thereby waiving federal jurisdiction in Indian country under the General and Major Crimes Acts and subjecting Indians to prosecution in state court.

Source: GAO analysis of General Crimes Act, Major Crimes Act, and Public Law 280.

The exercise of criminal jurisdiction by state governments in Indian country is generally limited to two instances, both predicated on the offense occurring within the borders of the state—where both the alleged offender and victim are non-Indian, or where a federal statute confers, or authorizes, a state to assume criminal jurisdiction over Indians in Indian country. Otherwise, only the federal and tribal governments have jurisdiction. Where both parties to the crime are Indian, the tribe generally has exclusive jurisdiction for misdemeanor-level offenses, but its jurisdiction runs concurrent with the federal government for felony-level offenses. Where the alleged offender is Indian but the victim is non-Indian, tribal and federal jurisdiction is generally concurrent. Finally, federal jurisdiction is exclusive where the alleged offender is non-Indian and the victim is Indian. Table 2 summarizes aspects of federal, state, and tribal jurisdiction over crimes committed in Indian country.

¹² The enumerated offenses are: murder; manslaughter; kidnapping; maiming; felony provisions of the Sexual Abuse Act of 1986, as amended; incest; assault with intent to commit murder; assault with a dangerous weapon; assault resulting in serious bodily injury; assault against an individual who has not attained the age of 16 years; felony child abuse or neglect; arson; burglary; robbery; and felony larceny, theft, and embezzlement. See 18 U.S.C. § 1153(a). The federal government also has jurisdiction to prosecute crimes of general applicability, such as violations of the Controlled Substances Act of 1970, 21 U.S.C. § 801 et seq., and crimes that relate specifically to Indian tribal organizations and resources without regard for the Indian status of the alleged offender or victim. See generally 18 U.S.C. §§ 1154-70.

Table 2: Criminal Jurisdiction in Indian Country Where Jurisdiction Has Not Been Conferred on a State

Identity of the offender	Identity of the victim	Jurisdiction
Indian	Indian	If the offense is listed in the Major Crimes Act, as amended, (18 U.S.C. § 1153), the tribal and federal governments have jurisdiction; the states do not. If the offense is not listed in the Major Crimes Act, tribal jurisdiction is exclusive.
Indian	Non-Indian	If the offense is listed in the Major Crimes Act, the tribal and federal governments have jurisdiction; the states do not. If the offense is not listed in the Major Crimes Act, under the General Crimes Act (18 U.S.C. § 1152) the tribal and federal governments have jurisdiction; the states do not.
Non-Indian	Indian	Federal jurisdiction is exclusive; tribal and state governments do not have jurisdiction.
Non-Indian	Non-Indian	States have exclusive jurisdiction; tribal and federal governments do not have jurisdiction.

Source: U.S. Attorney's Manual and GAO analysis of relevant statutory provisions.

DOI and DOJ Are the Two Primary Federal Entities That Support Tribal Justice Systems

DOI is one of two key federal agencies that have a responsibility to provide public safety in Indian country. Within DOI, BIA is assigned responsibility to support tribes in their efforts to ensure public safety and administer justice within their reservations as well as to provide related services directly or through contracts, grants, or compacts to 565 federally recognized tribes with a service population of about 1.6 million Indians across the United States. To that end, BIA's Office of Justice Services manages law enforcement, detention, and tribal court programs. Specifically, within BIA's Office of Justice Services, the Division of Law Enforcement supports 191 tribal law enforcement agencies and the Division of Corrections supports 91 tribal detention programs.¹³ About 90 BIA special agents are responsible for investigating crimes that involve violations of federal and tribal law that are committed in Indian country including crimes such as murder, manslaughter, child sexual abuse, burglary, and production, sale, or distribution of illegal drugs, among other criminal offenses. Following completion of an investigation, BIA special agents will refer the investigation to the USAO for prosecution.

BIA reported that it distributed approximately \$260 million of its fiscal year 2010 appropriation among tribal law enforcement and detention

¹³Of the 191 tribal law enforcement agencies that BIA supports, 151 are operated by the tribes through self-determination contracts or self-governance compacts, with the remaining facilities operated directly by BIA. Additionally, BIA directly operates 19 of the 91 tribal detention programs, and 62 are operated by the tribes through self-determination contracts or self-governance compacts. The remaining 10 detention facilities are suspended or closed for services, according to BIA, due to lack of adequate staffing.

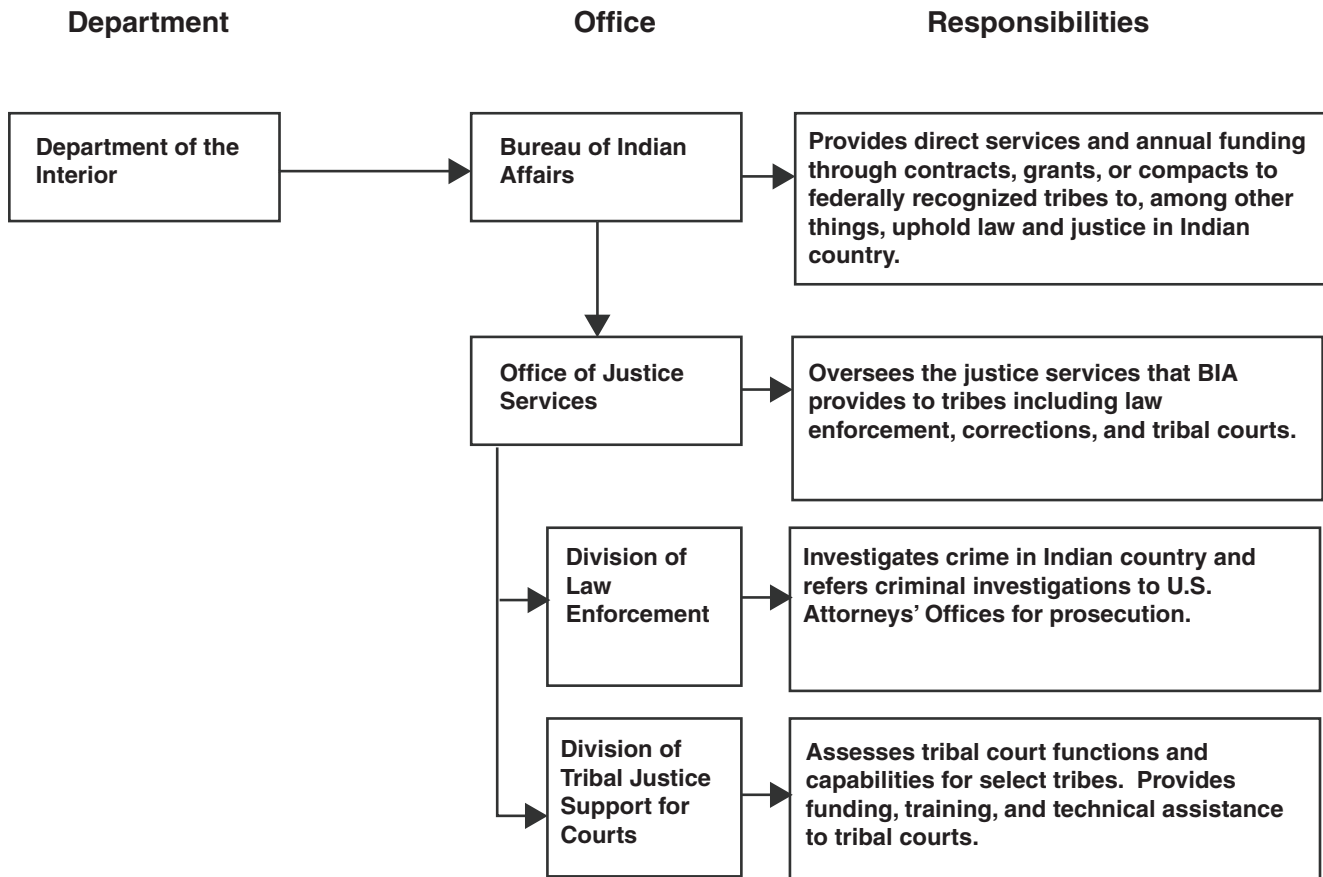
programs.¹⁴ Additionally, BIA reported that it funded maintenance and repair projects at four tribal detention centers totaling \$6.5 million from amounts appropriated under the American Recovery and Reinvestment Act of 2009 (Recovery Act).¹⁵ Within BIA's Office of Justice Services, the Division of Tribal Justice Support for Courts works with tribes to establish and maintain tribal judicial systems. This includes conducting assessments of tribal courts and providing training and technical assistance on a range of topics including establishing or updating law and order codes and implementing strategies to collect and track caseload data.¹⁶ BIA reported that it distributed \$24.5 million to support tribal court initiatives in fiscal year 2010. Figure 1 depicts the key DOI entities and their respective responsibilities related to supporting tribal justice systems.

¹⁴See generally Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-88, 123 Stat. 2904, 2916 (2009).

¹⁵See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 168. The following tribal detention centers received Recovery Act funding for improvement and repairs: Fort Belknap Detention Center in Montana, Hopi Detention Center in Arizona, Turtle Mountain Detention Center in North Dakota, and Walter Minor Detention Center in South Dakota.

¹⁶BIA also operates Courts of Indian Offenses to provide judicial services for tribes that do not have a tribal court.

Figure 1: Overview of DOI Responsibilities to Support Tribal Justice Systems



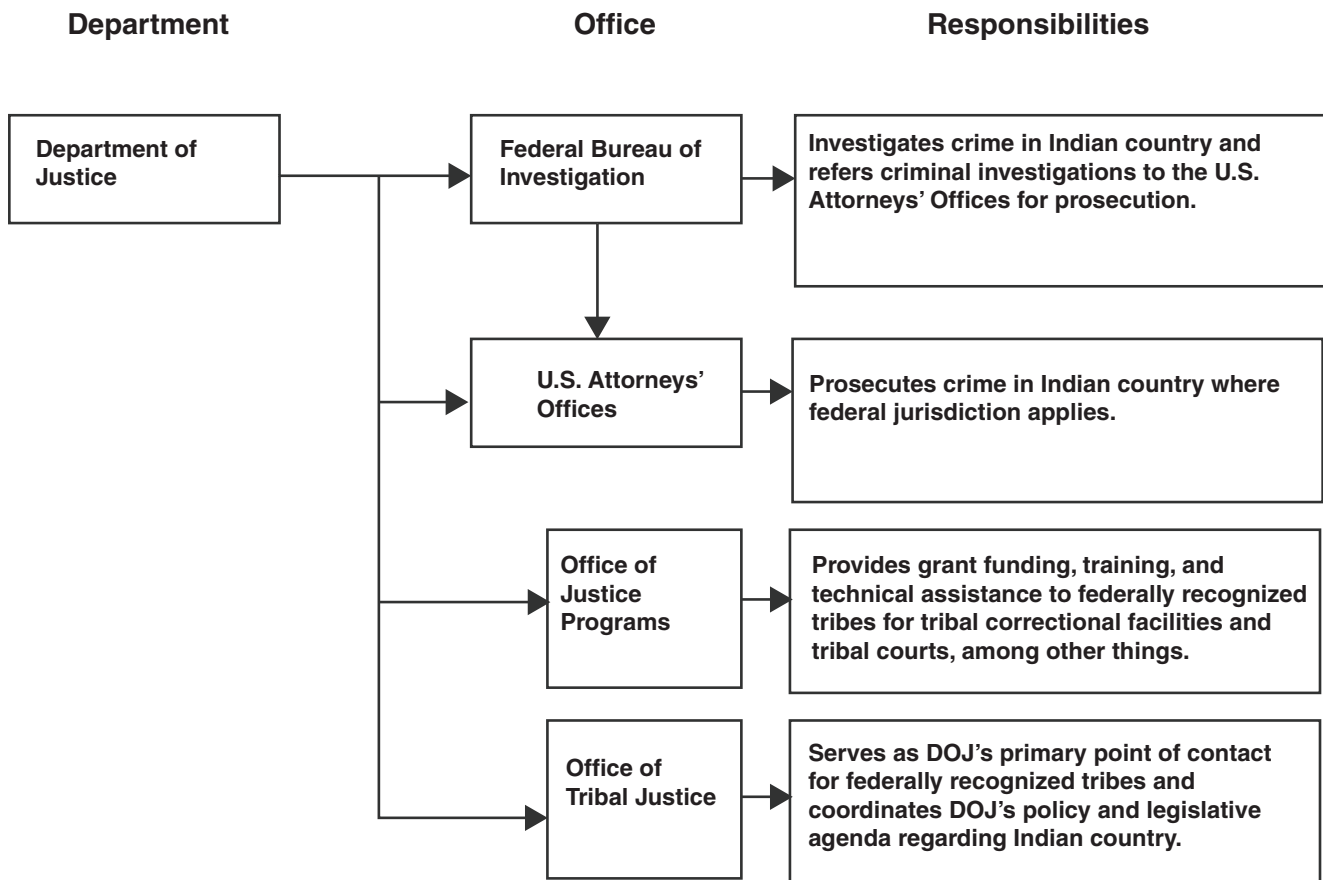
Source: GAO analysis of DOI and BIA documents.

DOJ also plays a significant role in helping tribes maintain law and order in Indian country and DOJ officials have stated that the department has a duty to help tribes confront the dire public safety challenges in tribal communities. Within DOJ, responsibility for supporting tribal justice systems falls to multiple components, including the FBI, which investigates crimes;¹⁷ the U.S. Attorneys' Offices, which prosecute crimes

¹⁷Two additional DOJ components also play a role in investigating Indian country crimes. First, the Bureau of Alcohol, Tobacco, Firearms and Explosives assists tribal governments in combating gang violence and offenses involving firearms. Second, the Drug Enforcement Administration works with tribes to combat smuggling, distribution, and abuse of controlled substances.

in Indian country; and the Office of Justice Programs, which provides grant funding, training, and technical assistance to federally recognized tribes to enhance the capacity of tribal courts, among other tribal justice programs. Figure 2 depicts the key DOJ entities and their respective responsibilities related to supporting tribal justice systems.

Figure 2: Overview of DOJ Responsibilities to Support Tribal Justice Systems



Source: GAO analysis of DOJ documents.

- The FBI works with tribal and BIA police and BIA criminal investigators to investigate crime in Indian country. Currently, the FBI dedicates more than 100 FBI special agents from approximately 16 field offices to investigate cases on over 200 reservations, nationwide. According to the FBI, its role varies from reservation to reservation, but generally the agency investigates crimes such as murder, child

sexual abuse, violent assaults, and drug trafficking, among other criminal offenses. FBI officials explained that approximately 75 percent of the crimes it investigates in Indian country include death investigations, physical and sexual abuse of a child, and violent felony assaults such as domestic violence and rape. Similar to BIA criminal investigators, FBI special agents refer criminal investigations to the USAO for prosecution; however, FBI officials explained that FBI agents may elect not to refer investigations that, pursuant to supervisory review, lack sufficient evidence of a federal crime or sufficient evidence for prosecution.

- Under the direction of the Attorney General, the USAO may prosecute crimes in Indian country where federal jurisdiction exists. Of the 94 judicial districts located throughout the United States and its territories, 44 districts contain Indian country. According to DOJ, approximately 25 percent of all violent crime cases opened each year by district USAOs nationwide occur in Indian country. In 2010, DOJ named public safety in Indian country as a top priority for the department. To that end, in January 2010, each USAO with Indian country jurisdiction was directed to develop operational plans that outline the efforts the office will take to address public safety challenges facing tribes within its district—particularly violence against women.
- The Bureau of Justice Assistance (BJA) within OJP is one of several DOJ components that provide grant funding, training, and technical assistance designed to enhance and support tribal government's efforts to reduce crime and improve the function of criminal justice in Indian country.¹⁸ For example, BJA awards grant funding to tribes for the planning, construction, and renovation of correctional facilities. In fiscal year 2010, BJA awarded 25 grants to tribes totaling about \$9 million to support tribal correctional facilities. Further, in fiscal year 2010, BJA awarded \$220 million in grant funding provided through the Recovery Act for 20 construction and renovation projects at correctional facilities on tribal lands.¹⁹ Additionally, BJA administers the Tribal Courts Assistance Program—a grant program—which is intended to help federally recognized tribes develop and enhance the

¹⁸The Office on Community Oriented Policing Services, Office of Juvenile Justice and Delinquency Prevention, and the Office on Violence Against Women also provide grant funding, training, and technical assistance to tribes to help them address a range of public safety issues.

¹⁹See Pub. L. No. 111-5, 123 Stat. at 130.

operation of tribal justice systems which may include activities such as training tribal justice staff, planning new or enhancing existing programs such as peacemaking circles and wellness courts and supporting alternative dispute resolution methods. In fiscal year 2010, BJA awarded 48 grants totaling \$17 million to tribes to establish new or enhance existing tribal court functions.

- In its role as a policy and legal advisor regarding Indian country matters within DOJ, the Office of Tribal Justice facilitates coordination among DOJ components working on Indian issues. Additionally, the office functions as the primary point of contact for tribal governments.

Tribes We Visited Reported Challenges in Adjudicating Crime in Indian Country; Various Federal Efforts Exist to Help Address Those Challenges

Selected Tribes Face Difficulties in Adjudicating Crime in Indian Country

All 12 tribes we visited reported challenges that have made it difficult for them to adjudicate crime in Indian country including: (1) limitations on criminal jurisdiction and sentencing authority, (2) delays in receiving timely notification about the status of investigations and prosecutions from federal entities, (3) lack of adequate detention space for offenders convicted in tribal court, (4) perceived encroachment upon judicial independence by other branches of the tribal government, and (5) limited resources for day-to-day court operations. Various ongoing and planned federal efforts exist to help tribes effectively adjudicate crimes within their jurisdiction. For example, TLOA, which was enacted in July 2010, attempts to clarify roles and responsibilities, increase coordination and communication, and empower tribes with the authorities necessary to reduce the prevalence of crime in Indian country.²⁰

²⁰See Pub. L. No. 111-211, tit. II, § 202(b), 124 Stat. at 2263.

Tribes Often Rely on the Federal Government to Prosecute Crime in Indian Country because of Limited Sentencing Authority, Tribal Jurisdiction, and Resources

Tribal courts only have jurisdiction to prosecute crimes committed by Indian offenders in Indian country, and their ability to effectively promote public safety and justice is curtailed by their limited sentencing authority and jurisdiction. As a result, even where tribal jurisdiction exists, tribes will often rely on the federal government to investigate and prosecute more serious offenses, such as homicide and felony-level assault, because a successful federal prosecution could result in a lengthier sentence and better ensure justice for victims of crime in Indian country. First, federal law limits the general sentencing authority of tribal courts to a maximum term of imprisonment not to exceed 1 year per offense.²¹ Officials from 6 of the 12 tribes we visited told us that the 1-year limit on prison sentences did not serve as an effective deterrent against criminal activity and may have contributed to the high levels of crime and repeat offenders in Indian country. Second, tribes do not have any jurisdiction to prosecute non-Indian criminal offenders in Indian country including those who commit crimes of domestic violence, assault, and murder. Therefore, tribes must rely on the USAO to prosecute non-Indian offenders.²² For example, in instances where a non-Indian abuses an Indian spouse, the tribe does not have the jurisdiction to prosecute the offender, and unless the USAO prosecutes the case, the non-Indian offender will not be prosecuted for the domestic violence offense.²³

The rate at which non-Indians commit crime on the reservations we visited is unclear as the tribes were not able to provide related crime data. Officials from 6 of the tribes we visited noted that non-Indians may be more likely to commit crimes in Indian country because they are aware that tribes lack criminal jurisdiction over non-Indians and that their criminal activity may not draw the attention of federal prosecutors. For

²¹TLOA authorizes tribal courts to sentence convicted offenders to prison for up to 3 years per offense and sets forth conditions under which a tribal court may exercise this authority. See 18 U.S.C. § 1302(b). Tribal courts have authority to impose fines instead of, or in addition to, a term of imprisonment; however, officials noted that this is not a viable form of punishment as Indian offenders typically lack the resources to pay a fine given the dire economic conditions in Indian country.

²²Federal jurisdiction over non-Indian offenders in Indian country is generally limited to circumstances where there is an Indian victim; if both parties are non-Indian, the state in which the offense occurred, and not the federal government, has jurisdiction to prosecute the offender.

²³BIA and FBI officials told us that they currently have efforts underway to collect and track a range of Indian country crime data to include the status of victims and offenders as Indian or non-Indian for reported crimes.

example, an official from a South Dakota tribe that we visited told us that the tribe has experienced problems with MS-13 and Mexican Mafia gangs who commit illegal activities such as distribution or sale of illegal drugs on the reservation because, as the official explained, they presume that federal prosecutors may be more inclined to focus their resources on higher-volume drug cases. Further, in 2006, the U.S. Attorney for the Wyoming district testified about a specific instance where a Mexican drug trafficker devised a business plan to sell methamphetamine at several Indian reservations in Nebraska, Wyoming, and South Dakota that first began with developing relationships with American Indian women on these reservations who would then help to recruit customers. According to a special agent involved in the case, the drug trafficker established drug trafficking operations to exploit jurisdictional loopholes believing that he could operate with impunity. According to a tribal justice official from a New Mexico pueblo, small-scale drug trafficking operations in Indian country can have an equally devastating effect on tribes as the effects of large-scale operations in large cities; therefore, if the federal government does not respond to small-scale operations in Indian country, the success of such operations may contribute to the sense of lawlessness in Indian country.

Declination Rates for Select USAO District Offices

For fiscal years 2005 through 2009, the rate at which district USAOs declined to prosecute criminal matters, which they categorize as violent and nonviolent, varied for the tribes we visited in Arizona, New Mexico, and North and South Dakota. As shown in the table below, we found that the Arizona USAO declined to prosecute 38 percent of the violent and nonviolent criminal matters that it resolved, whereas the North Dakota USAO declined to prosecute 64 percent of the criminal matters that it resolved. Of the four states, North and South Dakota were among the five USAO districts with the highest declination rates for the reporting period. It is important to note that USAOs have the discretion to determine which matters they will prosecute and are not required to prosecute all criminal investigations that are referred to them—regardless of whether the crime is committed in Indian country or elsewhere in the United States and its territories. According to DOJ officials, there is great variation in how USAOs decide whether to decline or prosecute a matter.

USAO decisions to decline a prosecution may be driven by the quality of available evidence and applicable law; therefore, according to DOJ, declinations should not be construed as a lack of commitment to or unwillingness to enforce federal criminal law in Indian country. Further, according to DOJ, in some instances, a declination may reflect a determination that: (1) no federal crime was committed as the offense was not sufficient to satisfy the Major Crimes Act, for example; (2) there was no federal jurisdiction because the crime did not occur in Indian country; (3) the evidence or witnesses is unlikely to support a conviction; and (4) a state or tribe was proceeding with prosecution.

USAO District	Declination percentage rate for violent and nonviolent crimes in Indian country
Arizona	38
New Mexico	40
North Dakota	64
South Dakota	61

Source: GAO-11-167R.

When we asked tribes that we visited about how they decide to prosecute serious crimes over which they do have jurisdiction, 9 of the 12 tribes we visited noted that they may exercise concurrent jurisdiction and prosecute those crimes in tribal court. Some officials reported they would rather preserve their tribe’s limited resources, recognizing that sentences considered more commensurate with the crime may only result from federal prosecution. Nonetheless, 5 of the 12 tribes we visited in Arizona, New Mexico, North Dakota, and South Dakota perceive that the district USAOs decline to prosecute the majority of Indian country matters that are referred to them. Officials from the tribes we visited expressed concerns about the rate at which USAOs decline to prosecute Indian country crimes and noted that a high number of declinations sends a signal to crime victims and criminals that there is no justice or accountability. In December 2010, we reported that approximately 10,000 Indian country criminal matters were referred to USAOs from fiscal year 2005 through 2009.²⁴ During that period, USAOs declined to prosecute 50 percent of the approximately 9,000 matters that they resolved, while they had not yet decided whether to prosecute or decline the remaining 1,000 matters. For criminal matters referred to USAOs, “weak or insufficient admissible evidence” followed by “no federal offense evident” were among the most frequently cited reasons associated with declinations based on available data in DOJ’s case management system, Legal Information Office Network System.

²⁴GAO-11-167R.

Delays in Receiving Timely Investigation and Declination Information Could Affect Tribes' Ability to Prosecute an Offender in Tribal Court

Eight of the twelve tribes we visited stated that they rely on the federal government to investigate and prosecute serious crimes; however, officials from the tribes we visited reported that their tribe had experienced difficulties in obtaining information from federal entities about the status of criminal investigations. For example:

- Officials from 5 of the 12 tribes we visited told us that oftentimes they did not know whether criminal investigators—most commonly, BIA or FBI—had referred the criminal investigation to the USAO for prosecution.
- Officials from the tribes we visited expressed concern about the lack of timely notification from local USAOs about decisions to prosecute a criminal investigation.
- Tribal justice officials from 4 of the 12 tribes we visited noted that they have to initiate contact with their district USAOs to get information about criminal matters being considered for prosecution and that only upon request will the USAO provide verbal or written notification of the matters they decline to prosecute; however, little detail is provided about the reasons for the declination. We examined a declination letter that was sent to one of the tribes we visited and found that the letter stated that the matter was being referred back to the tribe for prosecution in tribal court, but no additional information was provided about the reason for the declination decision. The Chief Prosecutor from one of the pueblos we visited noted that it can be difficult for the USAO to share details about a criminal matter for fear that doing so may violate confidentiality agreements or impair prosecutors' ability to successfully prosecute should the investigation be reopened at a later date. However, according to tribal officials, it is helpful to understand the reason for declining to prosecute a criminal matter so that tribal prosecutors can better determine whether to expend its resources to prosecute the matter in tribal court.
- Officials from 6 of the 12 tribes we visited told us that when criminal matters are declined, federal entities generally do not share evidence and other pertinent information that will allow the tribe to build its case for prosecution in tribal court. This can be especially challenging for prosecuting offenses such as sexual assault where DNA evidence collected cannot be replicated should the tribe conduct its own investigation following notification of a declination, according to officials.

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- When the federal government decides not to pursue a prosecution, a tribe may decide to prosecute such a case provided that any tribal statute of limitations has not expired. Officials from 6 of the 12 tribes that we visited noted that it is not uncommon for the tribe to receive notification of USAO declination letters after the tribe's statute of limitations has expired, which, ranges from 1 to 3 years. In addition to affecting the tribe's ability to administer justice in a timely manner—that is, before the statute of limitations expires—officials also noted that the absence of investigation or declination information makes it difficult for tribal justice officials to successfully prosecute a criminal matter in tribal court and assure crime victims that every effort is being made to prosecute the offender.

Tribes Often Lack Adequate Detention Space and Are Sometimes Faced with Making Difficult Tradeoffs

Officials from 6 of the 12 tribes we visited reported that they do not have adequate detention space to house offenders convicted in tribal courts and may face overcrowding at tribal detention facilities. Similarly, BIA and DOJ have acknowledged that detention space in Indian country is inadequate. One of the New Mexico pueblos we visited noted that the detention facility has a maximum capacity of 43 inmates; however, as of October 2010, there are more than 90 inmates imprisoned at the facility. In some instances, tribal courts are forced to make difficult decisions such as (1) foregoing sentencing a convicted offender to prison, (2) releasing inmates to make room for another offender who is considered to be a greater danger to the community, and (3) contracting with state or tribal detention facilities to house convicted offenders, which can be costly. According to an official from one of the New Mexico pueblos we visited, at times, when the pueblo has reached its detention capacity—up to three inmates—the pueblo has had to forego sentencing convicted juvenile or adult offenders to prison because using a nearby tribal facility to house its inmates would pose an economic hardship for the pueblo. Also, of the 12 tribes we visited, 5 noted that using detention facilities at another location is not always a viable option for housing offenders. Housing offenders in another entities' detention facility can be costly for the tribe who has to pay to transport inmates between the tribal court of jurisdiction and detention facility for arraignments, trial, and other appearances.

Various Factors Could Affect Judicial Independence

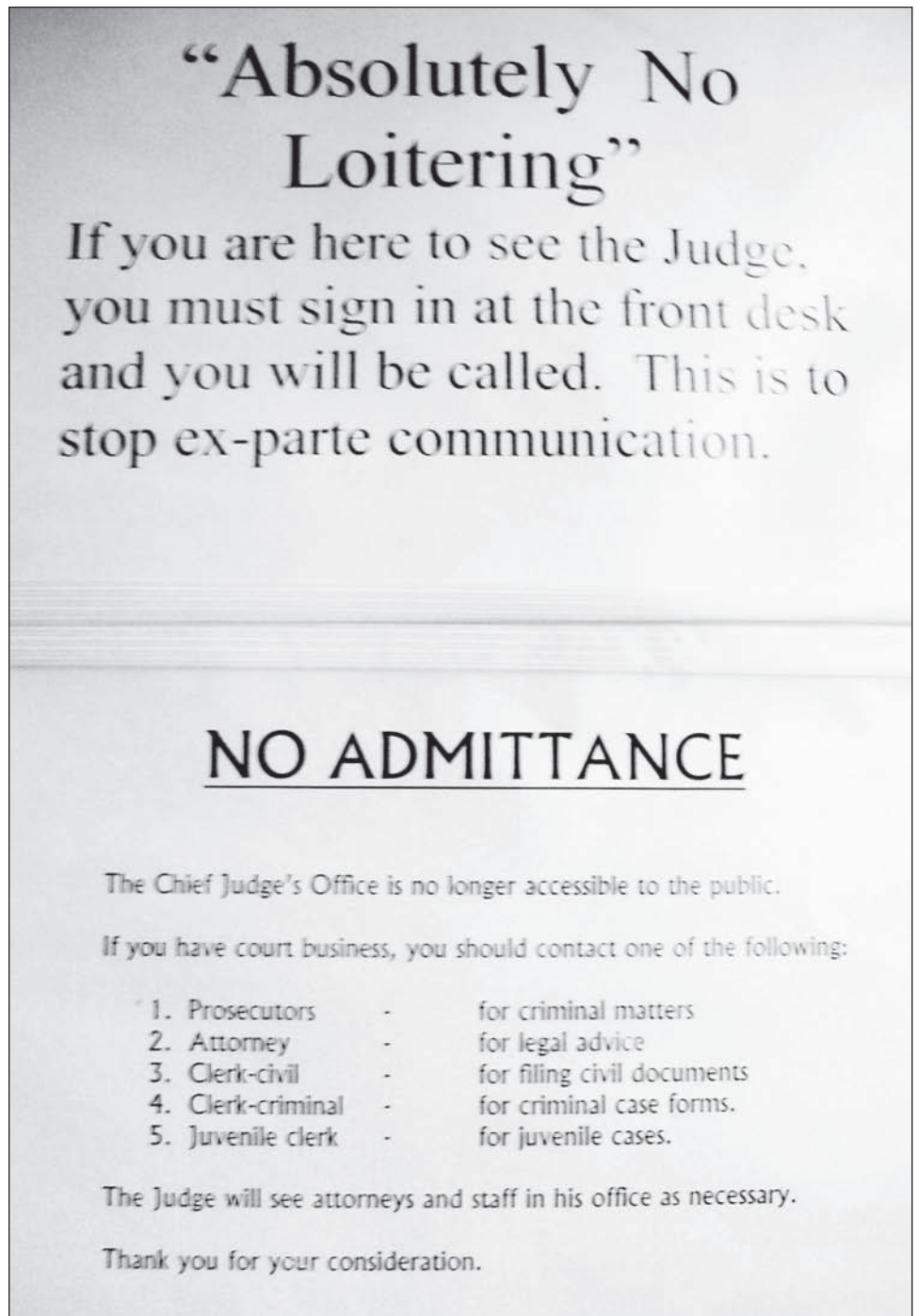
Generally, the tribes we visited have incorporated practices that help to foster and maintain judicial independence—that is, the ability of the tribal courts to function without any undue political or ideological influence from the tribal government. Various factors such as a tribe's approach to removing judges and intervening on behalf of tribal members during an ongoing criminal matter could affect internal and external perceptions of a tribal court's independence. The manner in which some tribes remove

judges serves as an example of the tribe's efforts to foster and maintain judicial independence. For example, at 11 of the 12 tribes we visited, a tribal judge can only be removed from office for cause following a majority vote by the Tribal Council. In another instance, the Chief Judge at one of the tribes we visited explained that tribal members will often approach the Tribal Council to intervene when members are not satisfied with the tribal court's decision. The Tribal Council subsequently issued several reminders to tribal members that unsatisfied parties to a criminal matter can appeal the trial court's decisions in the tribe's appellate court. Decisions of this tribe's appellate court; however, are final and not subject to review by the Tribal Council, thereby upholding and preserving the decisions and independence of the tribal court. The constitution for 4 of the 12 tribes we visited, stated that, upon appointment, judges' salaries cannot be reduced while serving in office, thereby helping to protect the independence of the judiciary.

Additionally, officials from the tribes we visited reported that certain activities may undermine a tribal court's independence. For example, officials from 5 of the 12 tribes we visited noted that the tribal court is viewed as a tribal program by tribal members rather than as a separate and autonomous branch of government. For example, according to officials at one of the tribes we visited, the constitution was amended in 2008 to articulate the independence of the tribal court from the legislative and executive branches of the tribal government. However, according to the officials from this tribe, Tribal Council members continue to approach criminal court judges to inquire about the status of ongoing cases and Tribal Council members have intervened on behalf of tribal members to discuss reversing the court's decisions on certain criminal matters. Such actions potentially add to the perception that the court is not autonomous and is subject to the rule of the executive or legislative branch, which, in turn can threaten the integrity of the tribal judiciary and create the perception of unfairness. Figure 3 shows a sign at a tribal court designed to serve as a measure to prevent people from engaging in ex parte communications.²⁵

²⁵An "ex parte communication" is generally a communication between counsel and the court when opposing counsel is not present. Black's Law Dictionary, p. 316 (9th ed. 2009).

Figure 3: Warning against Unwarranted Judicial Contact



Source: GAO.

Selected Tribes Reported
Various Resource Challenges

Additionally, the manner in which tribal governments distribute federal funding to tribal courts may limit courts' control of their budgets. According to a BIA official and judges from one of the tribes we visited, the placement of the tribal court within the tribe's overall budget structure—that is, not separate from other tribal programs that BIA funds—could contribute to the perception that the tribal court has little to no autonomy and separation from other tribal programs.

Officials at the 12 tribes we visited told us they face various resource limitations resulting in reliance on federal funding, staffing shortages, and limited capacity to conduct jury trials.

- **Tribes We Visited Reported They Rely on Federal Funding to Operate Tribal Courts Regardless of Their Size or Economic Condition.** We found that all of the 12 tribes we visited rely fully or partially on federal funding to operate their court systems regardless of the size of the population the tribal court serves, its geographic location, or economic conditions. For example, one of the tribes we visited relies on federal funding for aspects of its court system even though federal funding generally accounts for less than 10 percent of the court system's total budget, according to a senior tribal court official. This official explained that federal funding is barely sufficient to pay salaries for positions such as court clerks. Generally, of the 12 tribes we visited, the tribal government provided partial funding to 10 of the tribal courts; the remaining 2 were solely funded by federal funding.²⁶ For further information about the funding levels for each of the 12 tribes we visited, see appendix III.

Further, officials at 11 of the 12 tribes we visited noted that their tribal courts' budgets are inadequate to properly carry out the duties of the court; therefore, the tribes often have to make tradeoffs, which may include not hiring key staff such as probation officers or providing key services such as alcohol treatment programs. According to BIA, historically, federal funding for tribal courts has been less than what tribes deemed necessary to meet the needs of their judicial systems. While tribal courts we visited collect a range of fees and fines, which can be an additional source of operating revenue, 6 of the 12 tribes noted that the fees and fines the court collects are to be returned to the tribal government's general fund rather than retained for use by the

²⁶When this report refers to the tribal government as a source of funding it refers to funding generated by tribal activities, not federal funding passed through the tribal government.

tribal court. Where possible, to help fill the courts' budget shortfalls, officials at 3 of the 12 tribes we visited told us that they have sought funding from other sources such as state grants or partnered with other tribal programs to provide treatment services for parties appearing before their courts.

- **According to Tribes We Visited, Lack of Funding Affects Tribal Courts' Ability to Maintain Adequate Staffing Levels and Provide Training to Court Personnel.** Officials at 7 of the 12 tribes we visited told us that their tribal courts are understaffed and that funding is often insufficient to employ personnel in key positions such as public defenders, prosecutors, and probation officers, among other positions. Additionally, officials at three of the New Mexico pueblos we visited told us that law enforcement officers also served as prosecutors despite not being trained in the practice of law and not having sufficient training to serve as prosecutors. The Chief Judges at two of the New Mexico pueblos told us that the pueblos do not have any other alternatives due to the lack of funding. For further information about the staffing levels at each of the 12 tribes we visited, see appendix III.

Tribal justice officials also stated that their tribal courts face various challenges in recruiting and retaining qualified judicial personnel including: (1) inability to pay competitive salaries, (2) housing shortages on the reservation, and (3) rural and remote geographic location of the reservation, among other things. For example, a tribal justice official from one of the South Dakota tribes we visited noted that the tribe is often forced to go outside its member population to hire judges and attorneys because tribal members often lack education beyond the eighth grade; however, the tribe often faces difficulties in paying competitive salaries to hire legally trained non-Indians who often command salaries that are higher than the tribe can afford. Additionally, tribal justice officials noted that while some tribal members do pursue higher education, they do not often always return to work in tribal communities, thereby creating a shortage in available talent to draw from within the tribe's community. Further, officials from two of the tribes we visited noted that they may not be able to attract qualified applicants because of the rural location. Even if tribes overcome recruitment challenges, tribal justice officials noted that they may also face difficulties in retaining personnel—particularly, non-Indians—because these candidates' marketability often increases after gaining experience in Indian country and they are able to pursue opportunities that meet their compensation and quality-of-life needs such as higher salaries and improved housing.

Four of the twelve tribes we visited noted that the courts often use DOJ grant funds to pay salaries for various positions without the benefit of a sustainable funding source once the grant funds expire. For example, one of the South Dakota tribes we visited used grant funds to hire a compliance officer, probation officer, and process server to focus exclusively on domestic violence cases, which were occurring at a high rate on the reservation. Officials explained that they saw a decrease in reported cases of domestic violence during this time; however, once the grant funds expired, they were no longer able to maintain these positions and perceived an increase in domestic violence cases.

Additionally, lack of funding hinders tribes' abilities to provide personnel with training opportunities to obtain new or enhance existing skills. For example, at one of the North Dakota tribes we visited, court personnel explained that court clerks needed training to enhance their knowledge of scheduling court proceedings, developing case and records management systems, and familiarizing themselves with criminal procedures, among other things. Additionally, because of the increases in the number of cases involving illegal drugs, one of the judges we met with also expressed a need for training to effectively manage criminal proceedings that involve the use of methamphetamines. In particular, 8 of the 12 tribes we visited noted that they face difficulties in acquiring funds to register personnel for training as well as to pay for related expenses such as mileage reimbursement or other transportation costs, lodging, and per diem. The Chief Judge from one of the tribes we visited noted that the tribe has been able to acquire scholarships from various training providers to help absorb full or partial costs for certain training. Further, training providers such as the National Judicial College have begun to provide web-based training which, according to officials, is more cost-effective.

- **Tribes We Visited Reported Having Limited Capacity to Conduct Jury Trials.** Upon request, any defendant in tribal court accused of an offense punishable by imprisonment is entitled to a trial by jury of not less than six persons.²⁷ However, officials from 7 of the 12 tribes we visited reported that their tribal courts have limited capacity to conduct jury trials due to limited courtroom space, funding, and transportation. For example, the courtroom for one of the New Mexico pueblos that we visited does not have adequate space to

²⁷See 25 U.S.C. § 1302(a)(10).

seat a six-person jury and, according to officials, there is not another facility that can be used to set up a jury box. Additionally, tribal officials at 2 of the 12 tribes we visited stated that their courts lack funding to pay tribal members a per diem for jury duty. Additionally, potential jurors' lack of access to personal or public transportation can hinder the courts' ability to seat a jury. For example, officials from two of the Arizona tribes we visited explained that there is no public transportation on the reservations, and consequently it is difficult for tribal members without access to personal transportation to travel to court.

Multiple Federal Efforts Exist to Help Address Some of the Challenges That Tribes Face in Adjudicating Criminal Matters

Various federal efforts exist that could help to address some of the challenges that tribes face in effectively adjudicating crime in Indian country. For example, TLOA: (1) authorizes tribal courts to impose a term of imprisonment on certain convicted defendant in excess of 1 year;²⁸ (2) authorizes and encourages USAOs to appoint Special Assistant U.S. Attorneys (SAUSA), including the appointment of tribal prosecutors to assist in prosecuting federal offenses committed in Indian country;²⁹ (3) requires that federal entities coordinate with appropriate tribal law enforcement and justice officials on the status of criminal investigations terminated without referral or declined prosecution;³⁰ and (4) requires BOP to establish a pilot program to house, in federal prison, Indian offenders convicted of a violent crime in tribal court and sentenced to 2 or more years imprisonment.³¹ Additionally, to help address issues regarding judicial independence, BIA has ongoing and planned training to help increase tribes' awareness about the significance of judicial independence. Many of these initiatives directly resulted from the enactment of TLOA in July 2010; and at this time, these initiatives are in the early stages of implementation. As a result, it is too early to tell the extent to which these initiatives are helping to address the challenges that tribes face in effectively adjudicating crime in Indian country.

²⁸See 25 U.S.C. § 1302(b).

²⁹See 28 U.S.C. § 543; 25 U.S.C. § 2810(d).

³⁰See 25 U.S.C. § 2809.

³¹See Pub. L. No. 111-121, tit. II, § 234(c), 124 Stat. at 2281-82 (defining "violent crime" as one comparable to those listed in the Major Crimes Act (18 U.S.C. § 1153(a)) for which the sentence includes a term of imprisonment of 2 or more years).

Federal Efforts Are Underway to Assist Tribes in Prosecuting Crime in Indian Country and Afford Tribal Courts Enhanced Sentencing Authority

Various federal efforts are underway that provide additional resources to assist tribes in the investigation and prosecution of crime in Indian country including (1) additional federal prosecutors, (2) authorizing tribal courts to impose longer prison sentences on certain convicted defendants, (3) mandating changes to the program that authorizes BIA to enter into agreements to aid in law enforcement in Indian country, and (4) affording tribal prosecutors opportunities to become Special Assistant U.S. Attorneys to assist in prosecuting federal offenses committed in Indian country. First, to help address the high levels of violent crime in Indian country, in May 2010, DOJ announced the addition of 30 Assistant U.S. Attorneys (AUSA) to serve as tribal liaisons in 21 USAO district offices that contain Indian country including the four states that we visited as part of our work—Arizona, New Mexico, North Dakota, and South Dakota.³² According to DOJ, these additional resources will help the department work with its tribal law enforcement partners to improve public safety in Indian country. DOJ also allocated 3 additional AUSAs to help support its Community Prosecution Pilot Project which it launched at two of the tribes we visited—the portion of Navajo Nation within New Mexico and the Oglala Sioux Tribe in South Dakota.³³ Under this pilot project, the AUSAs will be assigned to work at their designated reservation on a regular basis and will work in collaboration with the tribe to develop strategies that are tailored to meet the public safety challenges facing the tribe.

Second, TLOA authorizes tribal courts to imprison convicted offenders for up to a maximum of 3 years if the defendant has been previously convicted of the same or a comparable crime in any jurisdiction (including tribal) within the United States or is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year if prosecuted in state or federal court. To impose an enhanced sentence, the defendant must be afforded the right to effective assistance of counsel and, if indigent, the assistance of a licensed attorney at the tribe's expense; a licensed judge with sufficient legal training must preside over the proceeding; prior to charging the defendant, the tribal government

³²DOJ allocated additional prosecutors in the four district offices as follows: Arizona (5), New Mexico (2), North Dakota (1), and South Dakota (2). The remaining 20 prosecutors were allocated among 17 district USAOs across the United States. See 25 U.S.C. § 2810 (requiring the USAO in each district that includes Indian country to appoint not less than one AUSA to serve as a tribal liaison for the district).

³³The Menominee Indian Tribe in Wisconsin will also participate in the Community Prosecution Pilot Project.

criminal laws and rules of evidence and criminal procedure must be made publicly available; and the tribal court must maintain a record of the criminal proceedings.³⁴ Generally, tribal justice officials from 9 of the 12 the tribes we visited stated that they welcome the new sentencing authority, but officials from 2 of the tribes noted that they would likely use the new authority on a case-by-case basis because they lacked the infrastructure to fully meet the requisite conditions. For example, the Chief Judge from one of the New Mexico pueblos we visited noted that rather than hiring a full-time public defender, the pueblo is considering hiring an attorney on contract to be used on a case-by-case basis when the enhanced sentencing authority may be exercised.³⁵

Third, TLOA mandates changes to the Special Law Enforcement Commission (SLEC) program which authorizes BIA to enter into agreements for the use of personnel or facilities of federal, tribal, state, or other government agencies to aid in the enforcement of federal or, with the tribe's consent, tribal law in Indian country.³⁶ Specifically, within 180 days of enactment, the Secretary of the Interior shall develop a plan to enhance the certification and provision of special law enforcement commissions to tribal law enforcement officials, among others, that includes regional training sessions held at least biannually in Indian country to educate and certify candidates for the SLEC. The Secretary of the Interior, in consultation with tribes and tribal law enforcement agencies, must also develop minimum requirements to be included in SLEC agreements. Under the SLEC program, administered by the BIA, tribal police may be deputized as federal law enforcement officers, which affords them the authorities and protections available to federal law enforcement officers. According to BIA, given the potential difficulties arresting officers face in determining whether a victim or offender is an Indian or not or whether the alleged crime has occurred in Indian country (for purposes of determining jurisdiction at the time of arrest) a tribal officer deputized to enforce federal law is not charged with determining

³⁴See 25 U.S.C. § 1302(c).

³⁵ The law, however, does not require that a tribe hire a full-time public defender to exercise the sentencing authority extended under TLOA; rather defendants must be afforded the right to effective assistance of counsel (enabling a defendant to appeal a conviction due to the ineffective assistance of counsel) and an indigent defendant must be provided the assistance of licensed defense attorney at the tribe's expense. See 25 U.S.C. § 1302(c)(1)-(2).

³⁶ See 25 U.S.C. § 2804.

the appropriate jurisdiction for filing charges; rather this is to be determined by the prosecutor or court to which the arresting officer delivers the offender.

Lastly, among other provisions, TLOA explicitly authorizes and encourages the appointment of qualified attorneys, including tribal prosecutors, as Special Assistant U.S. Attorneys (SAUSA) to assist in the prosecution of federal offenses and administration of justice in Indian country.³⁷ If appointed as a SAUSA, a tribal prosecutor may pursue in federal court an Indian country criminal matter with federal jurisdiction that, if successful, could result in the convicted defendant receiving a sentence greater than if the matter had been prosecuted in tribal court. According to the Associate Attorney General, many tribal prosecutors have valuable experience and expertise that DOJ can draw on to prosecute crime and enforce federal criminal law in Indian country. Further, tribal prosecutors at 4 of the 12 tribes we visited are in varying stages of obtaining SAUSA credentials. The Chief Prosecutor at a New Mexico pueblo who is in the process of obtaining a SAUSA credential cited various benefits arising from a SAUSA appointment including increased: (1) prosecution of criminal cases that involve domestic violence and child sexual abuse;³⁸ (2) prosecution of misdemeanor-level offenses committed by non-Indians against Indians that occur in Indian country; (3) ability to directly present criminal investigations to the district USAO rather than solely relying on BIA criminal investigators to do so;³⁹ and (4) cooperation from tribal crime victims and witnesses who may be more forthcoming with someone closely affiliated with the pueblo rather than federal investigators or prosecutors, thereby helping to facilitate a more successful investigation and prosecution of a federal crime.

³⁷See 28 U.S.C. § 543; 25 U.S.C. § 2810.

³⁸The SAUSA designation, however, only enables a tribal prosecutor to pursue an offense in federal court if the federal government would otherwise have jurisdiction to prosecute the offense.

³⁹While a tribe with a SAUSA-appointed prosecutor may be better situated to present criminal investigations to the USAO, pre-TLOA law did not preclude tribal law enforcement or prosecutors from presenting criminal investigations to the USAO.

Investigative and Prosecutorial
Coordination Requirements
May Improve Timeliness and
Adequacy of Information
Shared by the Federal
Government with Tribes

TLOA provides that federal investigators and prosecutors must coordinate with tribes to communicate the status of investigations and prosecutions relating to alleged criminal offenses in Indian country crimes.⁴⁰ More specifically, if a federal entity terminates an investigation, or if a USAO declines to prosecute or terminates a prosecution of an alleged violation of federal criminal law in Indian country, they must coordinate with the appropriate tribal 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. Individually and collectively, these requirements could better enable tribes to prosecute criminal matters in tribal court within their statute of limitations. Although TLOA does not prescribe how coordination is to occur between federal entities—such as FBI and BIA criminal investigators—and tribes, DOJ directed relevant USAOs to work with tribes to establish protocols for coordinating with tribes. For example, the USAO for the District of Arizona, in consultation with Arizona tribes, has established protocols to guide its coordination with tribes. Specifically, within 30 days of a referral of a criminal investigation for prosecution, the Arizona district USAO plans to notify the relevant tribe in writing if the office is declining to prosecute the matter. Officials from one of the New Mexico pueblos we visited explained that they would like to have an entrance conference with the USAO for the District of New Mexico on each criminal investigation that is referred to the USAO for which the tribe has concurrent jurisdiction and an exit conference to discuss the USAO reasons for declining to prosecute the crime. Tribal officials explained that the exit conference could serve to educate the tribe about what it can do to better prepare an investigation for referral to the USAO. According to DOJ, each USAO and FBI field office will make efforts to reach agreements with tribes in their jurisdiction about communicating the status of investigation and prosecutions based on the unique needs of the tribe.

Federal Efforts Exist to Help
Tribes Address Detention
Space in Tribal Prisons and
Related Challenges

Pursuant to TLOA, on November 26, 2010, the Bureau of Prisons (BOP) launched a 4-year pilot program to house at the federal government's expense up to 100 Indian offenders convicted of violent crimes in tribal courts and sentenced to terms of imprisonment of 2 or more years.⁴¹ DOJ

⁴⁰See 25 U.S.C. § 2809.

⁴¹See Pub. L. No. 111-211, tit. II, § 234(c), 124 Stat. at 2281-82 (defining “violent crime” as one comparable to those listed in the Major Crimes Act (18 U.S.C. § 1153(a)) for which the sentence includes a term of imprisonment of 2 or more years). The statute further requires BOP to notify Congress if the demand for participation in the pilot exceeds 100 tribal offenders.

considers the pilot program to be an important step in addressing violent offenders and underresourced correctional facilities in Indian country. BOP's goal is to reduce future criminal activity of Indian offenders by providing them with access to a range of programs such as vocational training and substance abuse treatment programs that are designed to help offenders successfully reenter their communities following release from prison. It is unlikely that 5 of the 12 tribes we visited will immediately begin participating in the pilot because they are not yet positioned to fully meet the conditions that are required to imprison Indian offenders convicted in tribal court for two or more years. Additionally tribal officials expressed concern about placing convicted Indian offenders in federal prison because tribal members would likely oppose having tribal members sent to locations that are not in close proximity to the reservation, making it difficult for family members to visit and ensure the convicted Indian offender is able to maintain a connection with the tribal community—a key aspect of tribes' culture and values. While tribes expressed concern about the placement of tribal members in federal prison, officials from 2 of the tribes we visited stated that access to federal programs such as substance abuse and mental health treatment programs and job training would be a major benefit that offenders would likely not have access to while imprisoned in tribal detention facilities. More broadly, TLOA requires that BIA, in coordination with DOJ and in consultation with tribal leaders, law enforcement and correctional officers, submit a long-term plan to address incarceration in Indian country to Congress by July 29, 2011.⁴² The long-term plan should also describe proposed activities for constructing, operating, and maintaining juvenile and adult detention facilities in Indian country and construction of federal detention facilities in Indian country, contracting with state and local detention centers upon the tribe's approval, and alternatives to incarceration developed in cooperation with tribal court systems. BIA and DOJ officials noted that they have begun to conduct consultations with tribal entities to address incarceration in Indian country.

BIA Has Efforts Underway to Increase Awareness about Judicial Independence in Indian Country

BIA has taken steps to help increase awareness about the importance and significance of judicial independence in tribal communities. For example, officials from one of the tribes we visited told us that, at the request of the tribal court, the BIA Superintendent is to conduct a workshop for tribal leaders and community members to, among other things, provide instruction on how interference with the tribal court's decisions can

⁴²See 25 U.S.C. § 2802(f).

threaten the judiciary's ability to provide equitable adjudication of crimes. Further, BIA's Division of Tribal Justice Support for Courts has conducted similar workshops in the past and expects to do so again in fiscal year 2011.

BIA and DOJ Have Taken Action to Coordinate Their Efforts on Tribal Justice Issues, but Should Strengthen Coordination on Tribal Courts by Establishing Information Sharing Mechanisms

BIA and DOJ Components Have Taken Action to Coordinate Their Efforts to Support Tribal Court and Detention Initiatives

According to BIA and DOJ officials, the two agencies have begun to establish interagency coordinating bodies intended to facilitate the agencies' efforts to coordinate on tribal court and detention initiatives. Officials noted that because Indian country issues are a top priority across the federal government, federal departments and agencies are focused on ensuring that, where appropriate, they work together to address the needs of Indian tribes. For example, when DOI and DOJ developed tribal consultation plans for their respective agencies in 2010, the two agencies cited interagency coordination as a key element to meeting the tribes' needs.⁴³ According to DOJ, interagency coordination is essential to holding stakeholders accountable and achieving success. Similarly, DOI

⁴³A Presidential Memorandum dated November 2009 directed federal departments and agencies to develop plans, after consultation with Indian tribes and tribal officials, for implementing the policies and directives of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. See 74 Fed. Reg. 57,881 (Nov. 9, 2009) (referencing Exec. Ord. No. 13,175, 65 Fed. Reg. 67,249 (Nov. 9, 2000)).

acknowledged the importance of collaborating and coordinating with its federal partners regarding issues that affect tribes.

BIA and DOJ officials told us that communication between the two agencies has increased and their staff now know whom to call about various tribal justice issues, which they commented is a significant improvement over prior years when there was little to no communication. For example, DOJ has begun to consult BIA about its future plans to fund the construction of tribal correctional facilities, which has helped to resolve past inefficiencies. BIA officials told us that they need to know which tribes DOJ plans to award grants to construct correctional facilities at least 2 years in advance so that they can plan their budget and operational plans accordingly in order to fulfill their obligation to staff, operate, and maintain detention facilities. According to BIA, there have been instances where they were unaware of DOJ's plans to award grant funds to tribes to construct tribal detention facilities, which could result in new facilities remaining vacant until BIA is able to secure funding to operate the facility.

DOJ has implemented a process whereby when tribes apply for DOJ grants to construct correctional facilities, DOJ consults BIA about each applicant's needs as BIA typically has firsthand knowledge about tribes' needs for a correctional facility and whether the tribe has the infrastructure to support a correctional facility, among other things. BIA then prioritizes the list of applicants based on its knowledge of the detention needs of the tribes. DOJ officials noted that the decision about which tribes to award grants to rests solely with them; however, they do weigh BIA's input about the tribes' needs for and capacity to utilize a correctional facility when making grant award decisions. To help BIA anticipate future operations and maintenance costs for new tribal correctional facilities, each year DOJ's Bureau of Justice Assistance (BJA) provides BIA with a list of planned correctional facilities that includes the site location, size, and completion date. BIA officials noted that this level of coordination with DOJ is an improvement over past years as it helps to facilitate planning and ensure they are prepared to assume responsibility to staff, operate, and maintain tribal detention facilities.

BIA and BJA also serve on a governmentwide coordinating body, the Planning Alternatives and Correctional Institutions for Indian Country Advisory Committee, which brings together federal stakeholders who play

a role in planning detention and correctional programs and facilities in Indian country.⁴⁴ The advisory committee is responsible for developing strategic approaches to plan the training and technical assistance that BJA provides to tribes that receive grant funding to construct or renovate juvenile and adult correctional facilities.⁴⁵ Specifically, among other things, the agencies work together to plan the training and technical assistance to be delivered to tribes on issues such as alternatives to help control and prevent jail overcrowding, controlling costs to develop and operate detention facilities, developing alternatives to incarceration, and implementing substance abuse and mental health treatment programs at correctional facilities. According to DOJ officials, the advisory committee helps to provide a coordinated federal response that leverages the full scope of agency resources needed to deliver services that meet the tribes' needs.

BIA and DOJ officials have committed to working together to help meet the two agencies' shared goal to improve the criminal justice crisis in Indian country. To that end, in 2009, DOI, through BIA, and DOJ established both department level and program level coordinating bodies to increase communication and information exchange between the two agencies. At the department level, the Deputy Attorney General and the Deputy Secretary of the Interior jointly chair a working group that meets quarterly to facilitate governmentwide policymaking on tribal justice issues and coordinate agency activities on a range of tribal justice issues that are designed to help BIA and DOJ achieve their individual and shared goal of improving public safety in Indian country. For example, the working group is to oversee BIA and DOJ's efforts to assess tribal correctional and tribal court systems' needs and to develop strategies such as prisoner reentry programs in Indian country. In addition, the working group will oversee the implementation of various provisions included in

⁴⁴The Planning Alternatives and Correctional Institutions for Indian Country Advisory Committee comprises of federal stakeholders from the Indian Health Services and the Substance Abuse and Mental Health Services Administration within the Department of Health and Human Services; the Department of Housing and Urban Development; BIA entities including the Division of Corrections, Office of Facilities Management and Construction, Office of Justice Services, and Bureau of Indian Education within DOI; and OJP entities such as BJA and Office of Juvenile Justice and Delinquency Prevention, Executive Office of the U.S. Attorneys, the National Institute on Corrections, and Office of Tribal Justice, among others, within DOJ.

⁴⁵In developing these approaches, the Advisory Committee is to draw on each agency's expertise and lessons learned.

TLOA such as assessing the effectiveness of the enhanced sentencing authority that tribal courts may exercise.⁴⁶

At the program level, in 2009, BIA and DOJ established task forces to address key issues including tribal judicial systems and tribal detention, among other issues.⁴⁷ The task forces that report to the department level working group are chaired by senior officials from BIA and DOJ and serve as a forum for BIA and DOJ to, where appropriate, jointly address a range of public safety and justice issues in Indian country. For example, as part of the detention task force, BIA and DOJ officials are now working together, in consultation with tribes, to identify alternatives to incarceration in Indian country. According to BIA and DOJ officials, the task force's activities are to, among other things, support the activities of the department-level working group. For example, the work conducted by the task forces is intended to help facilitate the two agencies' efforts to develop a long-term plan for submission to Congress in July 2011 that includes proposals on how to address juvenile and adult detention facilities.

Although BIA and DOJ have taken action to coordinate their activities, according to officials the agencies' coordination efforts are in the early stages of development and it is too early to gauge how effective these efforts will be based on six of the eight practices that we have identified for ensuring that collaborating agencies conduct their work in a

⁴⁶TLOA requires that DOJ, in coordination with DOI, submit a report to the appropriate committees of Congress not later than 4 years after the date of enactment (July 29, 2010) describing the effectiveness of the enhanced tribal sentencing authority in curtailing violence and improving the administration of justice on Indian lands, along with a recommendation on whether the authority should be discontinued, enhanced, or maintained. See Pub. L. No. 111-211, tit. II, § 234(b), 124 Stat. at 2281.

⁴⁷In addition to the tribal courts and tribal detention task forces, BIA and DOJ have established three additional task forces that are to focus on Indian country law enforcement training, violence against women in tribal communities, and Indian country crime data collection.

coordinated manner.⁴⁸ We found that the two agencies have defined a common outcome—improving public safety and justice in Indian country—which is one of the eight practices that we have identified for enhancing and maintaining effective collaboration among federal agencies.⁴⁹ In our previous work we have reported that it is a good practice for agencies to have a clearly defined outcome, as doing so can help align specific goals across agencies and help overcome differences in agency missions, cultures, and established ways of doing business. Officials told us that as they work toward defining approaches to achieve their common goal there could be a need to take a more strategic approach that incorporates the key collaboration practices that we have identified to help achieve sustainable interagency coordination. To that end, BIA officials told us that in January 2011, they expect to deploy a liaison to DOJ's Office of Tribal Justice to help foster ongoing sustainable collaboration between the two agencies. The BIA liaison is to work with staff from various DOJ components as the two agencies develop and execute coordinated plans to implement various provisions in TLOA regarding tribal detention and tribal courts, among other tribal justice initiatives.

By Strengthening Information Sharing, BIA and DOJ Could Help Ensure Efficient Use of Limited Resources and Enhance the Capacity of Tribal Courts

To meet their respective responsibilities to support tribal courts, BIA and DOJ provide funding, training, and technical assistance to tribal courts; however, the two agencies do not leverage each other's resources—one of the eight collaboration practices that we have identified—by sharing certain relevant information that could benefit each agency's efforts to enhance the capacity of tribal courts to effectively administer justice in Indian country. In October 2009, DOJ told the leadership of the Senate Indian Affairs Committee that it was taking action to provide better coordination with DOI to ensure that the two agencies' tribal courts initiatives are coordinated to develop and support tribal courts to help

⁴⁸GAO-06-15. The collaboration practices that we have identified generally consist of two or more agencies (1) defining and articulating a common outcome; (2) establishing mutually reinforcing or joint strategies to achieve the outcome; (3) identifying and addressing needs by leveraging resources; (4) agreeing upon agency roles and responsibilities; (5) establishing compatible policies, procedures, and other means to operate across agency boundaries; (6) developing mechanisms to monitor, evaluate, and report the results of collaborative efforts; (7) reinforcing agency accountability for collaborative efforts through agency plans and reports; and (8) reinforcing individual accountability for collaborative efforts through agency performance management systems.

⁴⁹GAO-06-15. We will discuss our evaluation of another of the eight practices—leveraging resources—in the next section of the report.

tribal courts build the capacity needed to exercise the enhanced sentencing authority proposed for tribes under TLOA. However, when we met with OJP and BIA program officials in October 2010 and November 2010, respectively, they noted that the information sharing and coordination mechanisms that are in place to support tribal detention initiatives have not extended to tribal courts initiatives. For example:

- Since 2005, BIA has commissioned reviews of about 90 tribal court systems that include the collection of data such as court funding and operating budget, training needs for court clerks and judges, and technical assistance needs such as developing and maintaining a complete collection of a tribal criminal code. DOJ officials told us that they were vaguely aware of these court reviews but stated they had never seen the reviews or the accompanying corrective action plans. BIA officials told us that DOJ had never requested the court reviews or corrective action plans and that they had never shared this information with DOJ.
- BIA officials stated that they were aware that DOJ awards competitive grants to tribal courts; however, DOJ does not share information with BIA about which tribal courts have applied for DOJ grants to establish new or enhance existing tribal court systems. BIA officials noted that DOJ could benefit from BIA's insights and firsthand knowledge about the needs of tribal courts including those tribal courts that BIA has identified as having the greatest need for additional funding.
- Further, BIA officials noted that they were unaware of the training and technical assistance that DOJ provides to tribal courts and noted that there could be potential unnecessary duplication with the training and technical assistance that both agencies provide as well as inefficient use of scarce resources. For example, according to BIA, there was an instance where DOJ and BIA provided funding to a tribe to purchase the hardware and software for a case management system, but neither DOJ nor BIA consulted each other about the purchase. Ultimately, the tribe did not have any funds to purchase software training and, as a result never used the system. Sharing information about training and technical assistance could help ensure that BIA and DOJ avoid such situations.
- DOJ officials stated that they frequently hear concerns from tribes that tribal courts lack the funds needed to operate effectively; however, DOJ does not have direct access to information about the funding that BIA provides to tribal courts. According to DOJ officials, gaining access to BIA's annual funding data could be useful in DOJ's efforts to

implement a more strategic approach to meet the needs of tribal courts. Specifically, officials told us that data on the annual funding to tribal courts could help DOJ to first establish a baseline, then conduct a needs assessment to identify overall needs and then use that information to identify what additional funding, if any, is needed to close the gap between the baseline and overall resource need.

We have previously reported that collaborating agencies are most effective when they look for opportunities to leverage each other's resources, thereby obtaining benefits that may not otherwise be available if the agencies work separately.⁵⁰ Further, *Standards for Internal Control in the Federal Government* call for agencies to enhance their effectiveness by obtaining information from external stakeholders that may have a significant impact on the agency achieving its goals.⁵¹ Developing mechanisms for identifying and sharing information and resources related to tribal courts could yield potential benefits in terms of leveraging efforts already underway and minimizing the potential for unnecessary duplication in federal agencies' efforts to support tribal courts. Moreover, by sharing information resources, BIA and DOJ could achieve additional benefits that result from the different levels of expertise and capacities that each agency brings. BIA and DOJ officials acknowledged that the two agencies could benefit from working together to share information and leverage resources to address the needs of tribal courts and stated that they would begin taking steps to do so.

Conclusions

Because responsibilities for enhancing the capacity of tribal courts is shared among two key federal agencies—DOI and DOJ—effective collaboration is important to operating efficiently and effectively and to producing a greater public benefit than if the agencies acted alone. Although the two agencies have information regarding tribal courts that could be of benefit to the other, they have not fully shared their information with each other. As a result, they have missed opportunities to share information that could be used to better inform decisions about funding and development of training and technical assistance that meets

⁵⁰GAO-06-15.

⁵¹GAO/AIMD-00-21.3.1.

the tribes' needs. Developing mechanisms for better sharing information about tribal courts could help the agencies ensure they are targeting limited federal funds to effectively and efficiently meet the needs of federally recognized tribes.

Recommendation for Executive Action

To maximize the efficiency and effectiveness of each agency's efforts to support tribal courts by increasing interagency coordination and improving information sharing, we recommend that the Attorney General and the Secretary of the Interior direct DOJ's Office of Justice Programs and BIA's Office of Justice Services, respectively, to work together to develop mechanisms, using GAO collaboration practices as a guide, to identify and share information and resources related to tribal courts.

Agency Comments and Our Evaluation

We provided a draft of this report to DOI and DOJ for review and comment. The DOI audit liaison stated in an e-mail response received on January 25, 2011, that DOI agreed with the report's findings and concurred with our recommendation; however, DOI did not provide written comments to include in our report. DOJ provide written comments that are reproduced in appendix IV. DOJ concurred with our recommendation and noted that OJP's Bureau of Justice Assistance has begun discussions with BIA's Office of Justice Services about plans to, among other things, coordinate training activities and share funding information regarding tribal courts.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Attorney General of the United States, the Secretary of the Interior, and appropriate congressional committees. This report will also be available at no charge on our website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-9627 or maurerd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.

A handwritten signature in black ink, appearing to read 'D. C. Maurer', with a long horizontal flourish extending to the right.

David C. Maurer
Director, Homeland Security and Justice Issues

Appendix I: Objectives, Scope and Methodology

Objectives

We were asked to review the challenges facing selected tribal justice systems as well as federal agencies' efforts to coordinate their activities to support tribal justice systems. Specifically, we prepared this report to answer the following questions:

1. What challenges do tribes face in adjudicating Indian country crimes and what federal efforts exist to help address those challenges?
2. To what extent have the Department of the Interior (DOI) and Department of Justice (DOJ) components collaborated with each other to support tribal justice systems?

Scope and Methodology

To identify the challenges facing tribes in adjudicating criminal matters in Indian country and what federal efforts exist to help address those challenges, we met with tribal justice officials such as judges, prosecutors, law enforcement officers, and court administrators from a nonprobability sample¹ of 12 federally recognized tribes in Arizona, New Mexico, North Dakota, and South Dakota.² We selected the tribes based on several considerations. First, we identified the U.S. Attorney district offices that received the largest volume of Indian country criminal matters from fiscal years 2004 through 2008, the five most recent years of available data at the time we conducted our selection. We interviewed DOJ officials about the data-entry process, performed electronic testing for obvious errors in accuracy and completeness of the data, and reviewed database documentation to determine that the data were sufficiently reliable for the purpose of our review. Next, we considered a variety of factors including (1) reservation land size, (2) population, (3) types of tribal court structures, (4) number and type of courts, and (5) number of full-time judicial personnel such as judges and prosecutors. The selected tribes have a range of land and population size, court size, and tribal court

¹Nonprobability sampling is a method of sampling when nonstatistical judgment is used to select members of the sample, using specific characteristics of the population as criteria. Results from nonprobability samples cannot be used to make inferences about a population because in a nonprobability sample, some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

²We interviewed tribal justice officials from the following tribes in Arizona: Gila River Indian Community, Navajo Nation, and Tohono O'odham Nation. New Mexico tribes we covered included the Pueblos of Isleta, Laguna, Pojoaque, and Taos. In North Dakota, we met with tribal justice officials from Standing Rock Sioux and Three Affiliated Tribes. Lastly, the South Dakota tribes we covered included Cheyenne River Sioux, Oglala Sioux, and Rosebud Sioux tribes.

structures such as traditional and modern court systems. We also obtained documentation on the tribal courts' operations, caseload, and funding. Because we are providing the caseload and funding data for informational purposes only, we did not assess the reliability of the data we obtained from the tribes.

Additionally, we obtained the tribe's perspectives on the federal process to communicate declination decisions. In light of the public safety and justice issues underlying the requests for this work and the focus in the Tribal Law and Order Act of 2010 (TLOA) on criminal matters, we focused on criminal rather than civil law matters during the course of this review.³ While the results of these interviews cannot be generalized to reflect the views of all federally recognized tribes across the United States, the information obtained provided us with useful information on the perspectives of various tribes about the challenges they face in adjudicating criminal matters. Additionally, we identified federal efforts to help support tribal efforts to adjudicate criminal matters in Indian country based on new or amended statutory provisions enacted through TLOA. We also interviewed cognizant officials from the Bureau of Indian Affairs and various DOJ components such as the Federal Bureau of Investigation, the Executive Office of U.S. Attorneys, and select U.S. Attorneys Offices to obtain information about their efforts to implement TLOA provisions to help address the challenges facing tribes in administering justice in Indian country.

To determine the extent that DOI and DOJ collaborate with each other to support public safety and justice in tribal communities, we first compared the agencies' efforts against criteria in *Standards for Internal Control in the Federal Government* which holds that agencies are to share information with external stakeholders that can affect the organization's ability to achieve its goals.⁴ Next, we identified practices that our previous work indicated can enhance and sustain collaboration among federal agencies⁵ and assessed whether DOI and DOJ's interagency coordination efforts reflected consideration of those practices. For purposes of this report, we define collaboration as any joint activity by two or more organizations that is intended to produce more public value than could be

³ Tribal Law and Order Act of 2010, Pub. L. No. 111-211, tit. II, 124 Stat. 2258, 2261.

⁴ [GAO/AIMD-00-21.3.1.](#)

⁵ [GAO-06-15.](#)

produced when the organizations act alone. We use the term “collaboration” broadly to include interagency activities that others have defined as cooperation, coordination, integration, or networking. Eight practices we identified to enhance and sustain collaboration are as follows:

- (1) define and articulate a common goal;
- (2) establish mutually reinforcing or joint strategies to achieve that goal;
- (3) identify and address needs by leveraging resources;
- (4) agree on roles and responsibilities;
- (5) establish compatible policies, procedures, and other means to operate across agency boundaries;
- (6) develop mechanisms to monitor, evaluate, and report on results;
- (7) reinforce agency accountability for collaborative efforts through agency plans and reports; and
- (8) reinforce individual accountability for collaborative efforts through performance management systems.

In this report, we focused on two of the eight practices—defining and articulating a common goal and identifying and addressing needs by leveraging resources—that we previously identified for enhancing and maintaining effective collaboration among federal agencies. We were not able to address the remaining six practices because we found that DOI and DOJ were in the early stages of implementing these two practices that serve as the foundation for the remaining practices. For example, because collaboration activities are in the early stages of development and the agencies have not yet established joint strategies to achieve the goal of enhancing the capacity of tribal courts, we did not expect the agencies to have developed mechanisms to monitor and report on the results of their collaboration, reinforce accountability by preparing reports, or establish performance management systems. We selected examples that, in our best judgment, clearly illustrated and strongly supported the need for improvement in specific areas where the key practices could be implemented. We met with officials from DOI and various DOJ components such as the Office of Tribal Justice and Office of Justice

Programs to discuss the mechanisms they have put in place to enhance and sustain collaboration between the two agencies.

We conducted this performance audit from September 2009 through February 2011 in accordance with generally accepted auditing standards.⁶ Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁶ This is the second of two efforts related to tribal justice issues that we reviewed in response to your request during this time. The results of the first effort were issued in December 2010 and are focused on DOJ declinations of Indian country criminal matters. See GAO, *U.S. Department of Justice declinations of Indian Country Criminal Matters*, [GAO-11-167R](#) (Washington, D.C.: Dec. 13, 2010).

Appendix II: Federal, State, and Tribal Jurisdiction over, and the Prosecution of Crime in, Indian Country

Criminal Jurisdiction in Indian Country

The exercise of criminal jurisdiction in Indian country depends on several factors, including the nature of the crime, the status of the alleged offender and victim (that is, whether they are Indian or not) and whether jurisdiction has been conferred on a particular entity by, for example, federal treaty or statute. As a general principle, the federal government recognizes Indian tribes as “distinct, independent political communities” with inherent powers of self-government to regulate their “internal and social relations,” which includes enacting substantive law over internal matters and enforcing that law in their own forums.¹ The federal government, however has plenary and exclusive authority to regulate or modify the powers of self-government the tribes otherwise possess, and has exercised this authority to establish an intricate web of jurisdiction over crime in Indian country.²

Enacted in 1817, the General Crimes Act (also referred to as the Federal Enclaves Act or Indian Country Crimes Act), as amended, established federal criminal jurisdiction in Indian country over cases where either the alleged offender or the victim is Indian.³ It did not, for example, establish federal jurisdiction over cases where both parties are Indian and, in effect, left jurisdiction over cases where both parties are non-Indian to the state.⁴ Enacted in 1885, the Major Crimes Act extended federal criminal

¹See, e.g., Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55-56 (1978) (citing, among others, United States v. Wheeler, 435 U.S. 313, 323-324 (1978)). See also 25 U.S.C. § 1301(2) (defining an Indian tribe’s power of self-government).

²See United States v. Lara, 541 U.S. 193, 200 (2004) (referencing the Indian Commerce Clause, U.S. CONST., art. I, § 8, cl. 3, and the Treaty Clause, U.S. CONST., art. II, § 2, cl. 2, as authority for the federal regulation of Indian affairs).

³See 18 U.S.C. § 1152 (codifying the General Crimes Act, as amended). The Assimilative Crimes Act, enacted in 1825 and subsequently amended, further extends federal criminal jurisdiction into Indian country by authorizing the federal government to prosecute offenses punishable as a violation of the law of the state in which it was committed if not otherwise addressed by federal law. See 18 U.S.C. § 13 (codifying the Assimilative Crimes Act, as amended). In effect, the federal government enforces a gap in federal law by incorporating or applying state law to the offense.

⁴Specifically, the General Crimes Act, as amended, precludes the exercise of federal criminal jurisdiction in Indian country where both parties are Indian, the Indian offender has already been punished by the local law of the tribe, and where, by treaty stipulation, the offense is within a tribe’s exclusive jurisdiction. See 18 U.S.C. § 1152. Where both parties are non-Indian, the state in which the offense occurs has criminal jurisdiction. See U.S. v. McBratney, 104 U.S. 621 (1881) (holding that non-Indian against non-Indian crimes are subject to state jurisdiction, based upon the state’s authority to exercise criminal jurisdiction over its own citizens throughout its territorial limits, including any Indian country within those limits).

jurisdiction in Indian country to Indians who committed so-called “major crimes,” regardless of the victim’s status.⁵ As amended, the Major Crimes Act provides the federal government with criminal jurisdiction over Indians charged with felony-level offenses enumerated in the statute.⁶ The tribes retained exclusive jurisdiction over other criminal offenses (generally, misdemeanor-level) where both parties are Indian.

State governments, however, may not exercise criminal jurisdiction over Indians or their property in Indian country absent a “clear and unequivocal grant of that authority” by the federal treaty or statute.⁷ Enacted in 1953, Public Law 280 represents one example of a “clear and unequivocal” grant of state criminal jurisdiction.⁸ As amended, Public Law 280 confers exclusive criminal jurisdiction over offenses committed in Indian country to the governments of six states—Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin, except as specified by statute, thereby waiving federal jurisdiction under the General and Major Crimes acts in these states and subjecting Indians to prosecution in state court.⁹ Subsequent

⁵See 18 U.S.C. § 1153 (codifying the Major Crimes Act, as amended).

⁶The enumerated offenses are: murder; manslaughter; kidnapping; maiming; felony provisions of the Sexual Abuse Act of 1986, as amended; incest; assault with intent to commit murder; assault with a dangerous weapon; assault resulting in serious bodily injury; assault against an individual who has not attained the age of 16 years; felony child abuse or neglect; arson; burglary; robbery; and felony larceny, theft, and embezzlement. See 18 U.S.C. § 1153(a). The federal government also has jurisdiction to prosecute crimes of general applicability, such as violations of the Controlled Substances Act of 1970, 21 U.S.C. § 801 et seq., and certain other crimes that relate specifically to Indian tribal organizations and resources, without regard for the Indian status of the alleged offender or victim. See generally 18 U.S.C. §§ 1154-70.

⁷See Langley v. Ryder, 778 F.2d 1092, 1095-96 (5th Cir. 1985) (citing, among others, Oliphant v. Saquamish Indian Tribe, 435 U.S. 191 (1978) and Fisher v. District Court, 424 U.S. 382 (1976)). See also Felix Cohen, Handbook of Federal Indian Law, § 6.03(1)(a), (2005 ed.) (1941).

⁸See 18 U.S.C. § 1162 (codifying Public Law 280, as amended).

⁹Although § 1162 establishes certain exceptions to state criminal jurisdiction within each state, this report focuses on the relationship between the federal and tribal governments and therefore does not include a detailed discussion of the extent or exercise of state criminal jurisdiction in Indian country. Section 221(b) of the recently enacted TLOA, however, further amends § 1162 by enabling the federal government to assume jurisdiction under the General Crimes Act and Major Crimes Act in the Indian Country areas of a requesting tribe otherwise subject to exclusive state jurisdiction. Upon the request of such a tribe and with the Attorney General’s consent, the federal government shall have concurrent jurisdiction with that of the state and, where applicable, the tribe.

amendments to Public Law 280 and other laws further define state criminal jurisdiction in Indian country.¹⁰

To summarize the foregoing discussion, the exercise of criminal jurisdiction by state governments in Indian country is generally limited to two instances, both predicated on the offense occurring within the borders of the state—where both the alleged offender and victim are non-Indian, or where a federal treaty or statute confers, or authorizes a state to assume, criminal jurisdiction over Indians in Indian country. Otherwise, jurisdiction is distributed between federal and tribal governments. Where both parties to the crime are Indian, the tribe generally has exclusive jurisdiction for misdemeanor-level offenses, but its jurisdiction runs concurrent with the federal government for felony-level offenses. Where the alleged offender is Indian but the victim is non-Indian, tribal and federal jurisdiction is generally concurrent. Finally, federal jurisdiction is exclusive where the alleged offender is non-Indian and the victim is Indian.

Tribal Prosecutions under the Indian Civil Rights Act

When a tribal government exercises its jurisdiction to prosecute an Indian offender, it must do so in accordance with the Indian Civil Rights Act (ICRA). Enacted in 1968, ICRA limited the extent to which tribes may exercise their powers of self-government by imposing conditions on tribal governments similar to those found in the Bill of Rights to the U.S. Constitution.¹¹ For example, the act extended the protections of free speech, free exercise of religion, and due process and equal protection under tribal laws.¹² With respect to alleged criminal conduct, tribes are

¹⁰See, e.g., 25 U.S.C. §§ 1321 (authorizing a state to assume criminal jurisdiction over areas of Indian country with the consent of the Indian tribes occupying those areas, though such jurisdiction is to be concurrent with the federal government at the request of an Indian tribe and with the Attorney General's consent) and 1323 (authorizing the United States to accept a state decision to retrocede part or all of its jurisdiction over Indian country to the federal government). See also, e.g., Act of May 31, 1946, ch. 279, 60 Stat. 229 (conferring criminal jurisdiction over Devil's Lake, now Spirit Lake, Indian Reservation to North Dakota).

¹¹Pub. L. No. 90-284, tit. II, 82 Stat. 73, 77 (1968) (codified as amended at 25 U.S.C. §§ 1301-41). See *Santa Clara Pueblo*, 436 U.S. at 56-58 (explaining that tribes, as separate sovereigns preexisting the Constitution, "have historically been regarded as unconstrained by those constitutional provisions specifically as limitations on federal or state authority" and that through 25 U.S.C. § 1302 (enacted as amended through Indian Civil Rights Act), "Congress acted to impose certain restrictions upon tribal governments similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment").

¹²See 25 U.S.C. § 1302(a)(1), (8).

prohibited from trying a person twice for the same offense (double jeopardy), compelling an accused to testify against himself or herself in a criminal case, and imposing excessive fines or inflicting cruel and unusual punishment.¹³ Tribes must also afford a defendant the rights to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted by witnesses of the prosecution, to have compulsory process for witnesses in his favor, and to be represented by counsel at his own expense, among other things.¹⁴

ICRA also governs the sentencing authority tribes exercise over convicted Indian offenders. First, any person accused of an offense punishable by imprisonment has the right, upon request, to a trial by jury of not less than six persons.¹⁵ Second, the act limits the maximum sentence a tribe may impose. Prior to amendments made by the Tribal Law and Order Act (TLOA) in July 2010, ICRA limited the maximum sentence for any one offense to a term of 1 year imprisonment, a \$5,000 fine, or both, regardless of the severity of the alleged offense.¹⁶ The July 2010 amendments, however, authorize tribal courts to impose sentences in excess of 1 year imprisonment or \$5,000 fine if the tribe affords the defendant certain additional protections specified in the statute.¹⁷ Specifically, a tribal court may subject a defendant to a maximum term of imprisonment of 3 years (or a fine not to exceed \$15,000, or both) for any one offense if the defendant had been previously convicted of the same or a comparable offense by any jurisdiction in the United States, or the defendant was prosecuted for an offense comparable to one punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the states.¹⁸ To exercise this enhanced sentencing authority, the tribe must afford a criminal defendant the following additional protections: effective assistance of counsel; if indigent, the assistance of a licensed defense attorney appointed at the tribe's expense; a presiding judge with sufficient

¹³25 U.S.C. § 1302(a)(3)-(4), (7)(A).

¹⁴25 U.S.C. § 1302(a)(6).

¹⁵25 U.S.C. § 1302(a)(10).

¹⁶See 25 U.S.C. § 1302(a)(7)(B).

¹⁷See Pub. L. No. 111-211, tit. II, § 234(a)(3), 123 Stat. 2258, 2280-81 (2010) (codified at 25 U.S.C. § 1302(b)).

¹⁸See 25 U.S.C. § 1302(a)(7)(C), (b). The maximum penalty or punishment that may arise from any single criminal proceeding (e.g., if a defendant is convicted of multiple offenses) may not exceed 9 years imprisonment. See 25 U.S.C. § 1302(a)(7)(D).

**Appendix II: Federal, State, and Tribal
Jurisdiction over, and the Prosecution of
Crime in, Indian Country**

legal training and a license to practice law; prior to charging the defendant, make publicly available the criminal laws and rules of evidence and criminal procedure of the tribal government; and maintain a record (audio or otherwise) of the criminal proceeding.¹⁹ Finally, although ICRA protects alleged offenders from double jeopardy in tribal courts, neither the federal government nor the tribal government is precluded from pursuing a prosecution if the other sovereign elects to prosecute the case.²⁰ Therefore, by example, a criminal defendant prosecuted in tribal court may still face prosecution, and a potentially more severe sentence if convicted, in federal court.

¹⁹See § 1302(c). This enhanced sentencing authority neither affects the preexisting tribal authority to sentence defendants to prison for a period of up to 1 year for an offense nor does it afford indigent defendants a right to counsel at the tribe's expense when sentenced for a period of up to 1 year for an offense.

²⁰See United States v. Lara, 541 U.S. 193, 210 (2004) (holding that the double jeopardy clause did not prohibit the federal government from prosecuting a defendant where the tribe had already prosecuted and convicted the defendant for an offense involving the same instance and conduct for which the federal government sought to prosecute).

Appendix III: Overview of Selected Tribal Courts

This appendix summarizes information regarding the court systems of the 12 tribes we visited in Arizona, New Mexico, North Dakota, and South Dakota. Specifically, in Arizona, we visited Gila River Indian Community, Navajo Nation,¹ and Tohono O’odham Nation. New Mexico tribes we covered include the Pueblos of Isleta, Laguna, Pojoaque, and Taos. In North Dakota, we included Standing Rock Sioux² and Three Affiliated Tribes. Lastly, the South Dakota tribes we visited include Cheyenne River Sioux, Oglala Sioux, and Rosebud Sioux tribes. The 12 tribes that we visited ranged in enrollment from 417 members to nearly 300,000 tribal members. Tribal enrollment data showed that for 9 of the 12 tribes we visited, more than 50 percent of the enrolled members live on the reservation.³

Enclosed in this appendix are individual summaries for each tribe that include a description of: (1) land area and population data, (2) establishment of the court system, (3) availability of tribal code and court rules and procedures, (4) structure of the court system, (5) selection and removal of judges as well as requisite qualifications, (6) judicial personnel and court staff, (7) caseload levels, and (8) funding information.

Cheyenne River Sioux Tribe

Land Area and Population

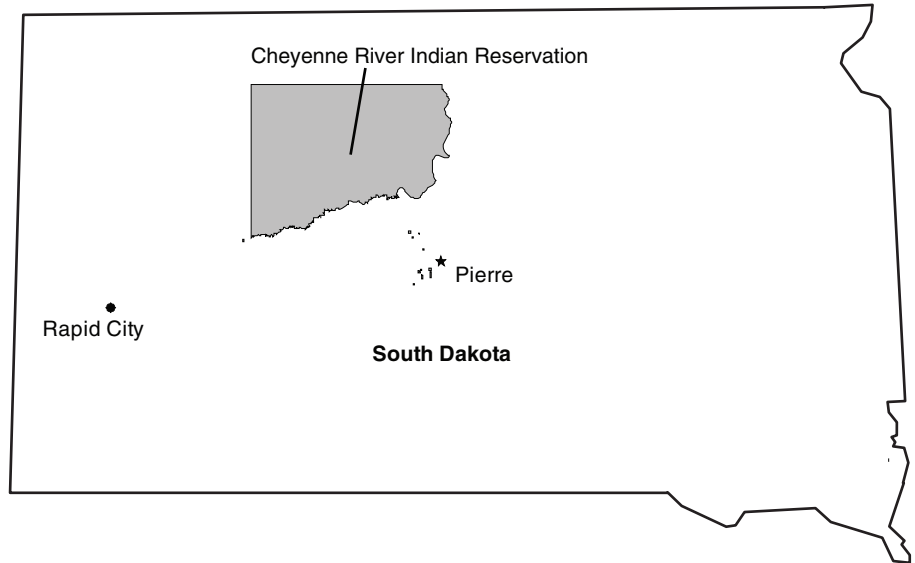
The Cheyenne River Indian Reservation of the Cheyenne River Sioux Tribe covers 4,410 square miles in north-central South Dakota, as shown in figure 4, and is between Delaware and Connecticut in size. Of the estimated 16,622 enrolled members of the tribe, an estimated 8,000 live on the reservation.

¹The Navajo Nation extends into three states: Arizona, New Mexico, and Utah. For purposes of this report, we counted Navajo Nation among the Arizona tribes we visited because the tribal government offices and the main district court of the tribe are headquartered in Window Rock, Arizona.

²The Standing Rock Sioux Reservation is situated in North Dakota and South Dakota. For purposes of this report, we counted the Standing Rock Sioux Tribe among the North Dakota tribes we visited because the tribal government offices and the tribal court are headquartered in Fort Yates, ND.

³An enrolled member is a person whose name appears on the formally approved membership roll of a tribe. Enrolled members may reside anywhere in the world.

Figure 4: Location of Cheyenne River Indian Reservation



Source: Census Bureau.

Establishment of Court System and Relationship to Tribal Council

The Cheyenne River Sioux Tribe's constitution, which was adopted in 1935, assigned the duty of establishing a court to the Tribal Council. The court system was established in the late 1930s. Tribal officials stated that the tribe's judiciary is a separate branch of government. Further, a 1992 amendment to the constitution stated that decisions of tribal courts shall not be subject to review by the Tribal Council. Officials noted that the Judiciary and Codification Committee of the Tribal Council and the Chief Judge, among others, oversee the operations of the tribal court.

Tribal Code and Court Rules and Procedures

The Cheyenne River Sioux Tribe's *Law and Order Code*, established in 1978, has been amended a number of times and is available in electronic format, according to officials. The Chief Judge reported that the *Law and Order Code* is modeled after South Dakota laws. The Tribal Council's Judiciary and Codification Committee is responsible for updating the criminal code. Additionally, members of the tribal court and the tribe's legal department also assist the Committee in updating the code. According to officials, the tribe follows federal rules of evidence and has

adopted rules of criminal and civil procedure as well as a Code of Judicial Conduct that are modeled after federal and state courts.

Structure of the Court System

The Cheyenne River Sioux Tribe's court system is composed of a tribal court, a juvenile court, a mediation court, and an appellate court. Tribal officials consider the court system to be modern, though the mediation court incorporates some traditional practices that promote tribal traditions and values to resolve disputes. In 1992, according to tribal officials, the tribe's constitution was amended to include a provision that states that decisions of the tribal court may be appealed to the tribe's appellate court, but shall not be subject to review by the Tribal Council.

Judicial Qualifications, Selection, Term Limits, and Removal

Tribal judges are elected by voting members of the tribe and must (1) be a member of the Cheyenne River Sioux Tribe, (2) have resided on the reservation for 1 year preceding the election, and (3) be over 25 years of age. We were not able to obtain complete information about the required qualifications for judges and the tribe's process to select and remove judges.

Judicial Personnel and Court Staff

Information about judicial personnel and court staff are not reported as we were not able to obtain complete information from the tribe.

Caseload Information

Data about the court's caseload for fiscal years 2008 through 2010 are not included as we were not able to obtain complete information from the tribe.

Funding Information

BIA reported that for fiscal years 2008 and 2009, it did not distribute any funding to Cheyenne River Sioux Tribe specifically for tribal court programs. In fiscal year 2010, BIA distributed \$190,503 to the tribe, but we were not able to obtain information from the tribe on how much funding was allocated to tribal court programs. Further, DOJ did not award any grant funding to Cheyenne River Sioux Tribe as part of its Tribal Court Assistance Program (TCAP) for fiscal years 2008 through 2010.

Gila River Indian Community

Land Area and Population

The Gila River Indian Reservation covers 584 square miles in Arizona, and is between the District of Columbia and Rhode Island in size. Of the estimated 20,590 enrolled members of the tribe, approximately 82 percent, or 16,783, live on the reservation.

Figure 5: Location of Gila River Indian Community



Source: Census Bureau.

Establishment of Court System and Relationship to Tribal Council

The Gila River Indian Community's constitution, adopted in 1960, authorized but did not establish a court system or articulate its jurisdiction or powers, leaving this to the Tribal Council. Although the council exercised its authority to establish a court system, there is no formal document marking when this occurred. The tribe has efforts underway to adopt a revised constitution, which seeks to establish a separate judicial branch that is autonomous and independent of other branches of the tribal government. The draft constitution calls for a court system that is

comprised of a tribal court known as the Community Court, Supreme Court, and other lower courts, including forums for traditional dispute resolution, as deemed necessary by the legislature.

Tribal Code and Court Rules and Procedures

Gila River Indian Community has civil, criminal, traffic, and children’s codes. Officials noted that the current criminal code may not be applicable to address new uses of technology to commit crime. The children’s code was most recently revised in 2010 and now addresses gang-related offenses, according to officials. Some procedural guidance is provided by legislation, but the tribal court does not have formal rules of criminal procedures since the court has not been granted authority to promulgate such rules. However, officials explained that the tribal court has developed an administrative order and understanding between parties for some rules. The court has not established rules of evidence; although it will occasionally incorporate state or federal rules of evidence as permitted by the criminal code.

Structure of the Court System

Officials describe the court as modern because it is modeled after the state of Arizona’s judicial system. The court system is composed of a tribal court, children’s court, and appellate court. The children’s court was officially established by statute in 1983. Gila River has two courthouses: a main court located in Sacaton, Arizona, and another located in Laveen, Arizona.

Judicial Qualifications, Selection, Term Limits, and Removal

The Chief Judge and five Associate Judges are elected by tribal members to the general jurisdiction court for 3-year terms. Additionally, two judges are appointed to the children’s court by the Tribal Council for 4-year terms. The general jurisdiction court consists of six elected judicial positions with all judges up for election at the same time. Judges must be a member of the tribe and be at least 25 years old, among other requirements. Certain residency requirements must also be met. The Tribal Council can remove a judge from office for any reason it deems cause for removal.

Judicial Personnel and Court Staff of Gila River Indian Community

One of the eight judges in the tribal court is law-trained; however, there are no requirements that judges are to be law-trained or licensed by a state or tribal bar association. Public defenders and prosecutors are required to be law-trained and licensed by a state bar association. The tribe has six public defenders and nine prosecutors.

Table 3: Judicial Personnel and Court Staff of Gila River Indian Community

Position title	Number of staff
Tribal court judge	8
Prosecutor	9
Public defender	6
Probation officer	18
Bailiff	10
Process server	0
Court administrator	3
Court clerk	22
Other court staff	3

Source: Gila River Indian Community.

Caseload Information

Criminal cases accounts for the majority of the tribal court’s caseload.

Table 4: Gila River Civil and Criminal Caseload Data for 2008 through 2010

Type of case	New cases filed		
	2008	2009	2010
Civil	579	614	667
Criminal	8,620	8,204	8,244

Source: Gila River Indian Community.

Funding Information

For fiscal years 2008 through 2010, the tribal government funded at least 90 percent of the Gila River Indian Community Court, and the court did not receive any funding from BIA.⁴ According to tribal court officials, the court was awarded \$13,000 in fiscal years 2008 and 2009 through the Juvenile Accountability Block Grant (JABG)—a grant program that is administered by Office of Juvenile Justice and Delinquency Prevention

⁴When this report refers to the tribal government as a source of funding it refers to funding generated by tribal activities, not federal funding passed through the tribal government.

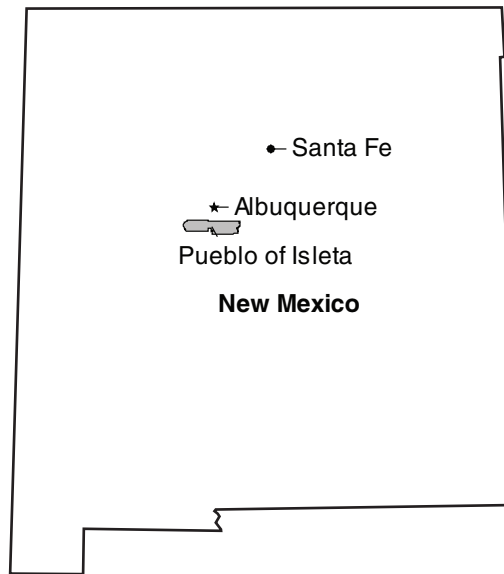
within DOJ.⁵ In fiscal year 2009, the tribal court was awarded \$49,977 in grant funding under DOJ's Justice and Mental Health Collaboration Program. Further, in fiscal year 2010, the Gila River court system was awarded \$499,586 in grant funding as part of DOJ's Coordinated Tribal Assistance Solicitation.

Pueblo of Isleta

Land Area and Population

The Pueblo of Isleta covers 331 square miles in New Mexico and is between the District of Columbia and Rhode Island in size. Of the estimated 3,496 enrolled members of the pueblo, 58 percent, or 2,013 live on the pueblo's lands.

Figure 6: Location of Pueblo of Isleta



Source: Census Bureau.

⁵Under the JABG, DOJ, through OJJDP, provides funds as block grants to qualifying states and U.S. territories to implement accountability-based programs and services that are designed to reduce juvenile crime and strengthen the juvenile justice system. The JABG is a competitive block grant program wherein local and tribal governments can apply to state governments for funds to support local juvenile justice programs.

Establishment of Court System and Relationship to Pueblo Council

The most recent revision to the constitution of the Pueblo of Isleta was adopted in 1991; however, according to tribal officials, Isleta has efforts underway to amend its constitution. In an effort to help address concerns about the court's perceived lack of autonomy, according to Isleta officials, the Tribal Council established the Judicial Law and Order Committee to conduct a review of the constitution that includes examining the authorities of each branch of tribal government.

Tribal Code and Court Rules and Procedures

The Pueblo of Isleta's *Law and Order Code* was first adopted in 1965 and revised in 2008. The Tribal Council established a committee to recommend amendments regarding the code to the Council.

Structure of the Court System

The Pueblo of Isleta's court system is composed of a tribal and appellate court. The tribal court is presided over by one or more judges and has jurisdiction over all criminal and civil matters articulated in the Law and Order Code. The majority of the court's cases are adjudicated by applying federal or state law; however, the court seeks first to apply traditional law in cases where it may be applicable. The Tribal Council serves as the appellate court, and appeals are granted as a matter of right. However, the council may delegate its appellate authority to an appeal committee, appellate judge, or other appellate body established by the council. The constitution holds that all appeals decisions are final.

Judicial Qualifications, Selection, Term Limits, and Removal

Judges are appointed by the tribal governor with the concurrence of a two-thirds majority of the council. According to the constitution, the Tribal Council is to prescribe the qualifications and terms of office for judges. The constitution states that judges' salaries may not be modified during the judges' term in office. The council is currently drafting an ordinance establishing qualifications and salaries for judges. Those convicted of felonies are not eligible to serve as a judge. Judges can be removed from office after a hearing and a two-thirds vote of the full council.

Judicial Personnel and Court Staff

Because of funding limitations, according to officials, criminal investigators also serve as tribal prosecutors.

Table 5: Judicial Personnel and Court Staff of Pueblo of Isleta

Position title	Number of staff
Tribal court judge	1
Appellate judge	1
Prosecutor	0
Public defender	0
Probation officer	1
Bailiff	0
Process server	0
Court administrator	0
Court clerk	2
Other court staff	2

Source: Pueblo of Isleta.

Caseload Information

Data about the court's caseload for 2008 through 2010 are not reported here as we were not able to obtain this information from the tribe.

Funding Information

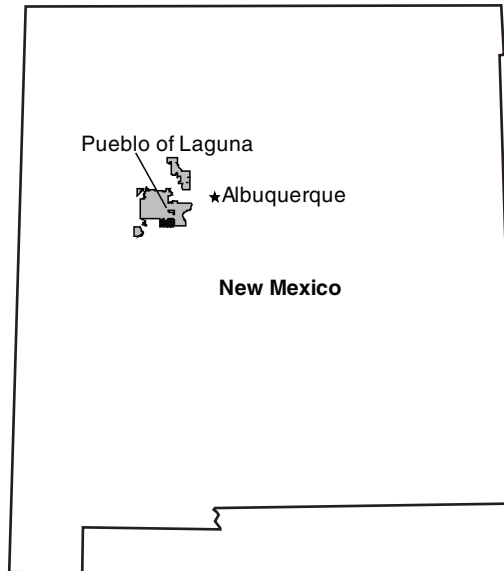
BIA told us that it distributed \$76,923, \$128,279, and \$99,071 in fiscal years 2008, 2009, and 2010, respectively. We were not able to obtain information from the tribe on how much of the funding was provided to the tribal court. Our review of DOJ grants awarded under the Tribal Court Assistance Program showed that the Pueblo of Isleta did not receive any grant funding for tribal courts initiatives for fiscal years 2008 through 2010.

Pueblo of Laguna

Land Area and Population

The Pueblo of Laguna reservation covers 779 square miles in New Mexico and is between the District of Columbia and Rhode Island in size. Of the estimated 8,413 enrolled members in the pueblo, 4,315 live on or near the pueblo's lands; Laguna's total population, including nonpueblo members, is estimated at 5,352.

Figure 7: Location of Pueblo of Laguna



Source: Census Bureau.

Establishment of Court System and Relationship to Pueblo Council

The Pueblo of Laguna's constitution, adopted in 1908, empowered the pueblo's Governor and certain members of the Tribal Council to function as the pueblo's court. A subsequent version of the constitution, adopted in 1949, maintained this judicial structure. In 1958, the pueblo amended its constitution and thereby vested the Pueblo's judicial power in the Pueblo's tribal court, and in 1984, another constitutional amendment vested the pueblo's judicial power in the pueblo's tribal court and in an appellate court. Currently, the pueblo's Governor and certain members of the Tribal Council serve as the pueblo's appellate court, according to tribal officials.

Tribal Code and Court Rules and Procedures

The pueblo has a written criminal code that was enacted in 1999, according to officials. The Tribal Secretary is responsible for keeping ordinances enacted by the Tribal Council. Revisions to the criminal code were pending adoption by the Tribal Council as of October 2010. The pueblo is in the process of adopting rules of judicial conduct and criminal procedure.

Structure of the Court System

The Pueblo of Laguna's court system combines aspects of modern and traditional courts. The court relies on the written codes and laws of the pueblo, but they may also defer to the pueblo's traditions, when possible. The pueblo's court system includes a tribal court that adjudicates both civil and criminal matters, a juvenile court, and an appellate court that reviews cases from the lower courts. The appellate court is composed of the Governor and certain members of the Pueblo Council, though this composition of the appellate court is not provided for by constitution or code; rather it is to be established by ordinances passed by the Pueblo Council.

Judicial Qualifications, Selection, Term Limits, and Removal

Judges must be law-trained, have a state bar license, and must have at least 1 year of judicial experience or related law practice, among other things. Judges are appointed by the Tribal Council for a term that does not exceed 3 years, and may be removed from office if convicted of a felony or if found to have grossly neglected the duties of the office.

Judicial Personnel and Court Staff

The Pueblo of Laguna's court system employs one full-time contract judge and three part-time contract judges. In addition, the tribe employs two prosecutors, and a public defender, among other staff.

Table 6: Judicial Personnel and Court Staff of Pueblo of Laguna

Position title	Number of staff
Tribal court judge	4
Appellate judge	1
Prosecutor	2
Public defender	1
Probation officer	2
Bailiff	1
Court administrator	1
Court clerk	3
Other court staff	3

Source: Pueblo of Laguna.

Caseload Information

Traffic offenses, which are not reported in table 7 below, account for a large portion of the court’s activity and are considered criminal offenses. For example, there were 2,685 traffic cases opened in 2009.

Table 7: Pueblo of Laguna Civil and Criminal Caseload Data for Calendar Years 2008 and 2009

Type of case	2008		2009	
	Carried over from prior year	New cases filed	Carried over from prior year	New cases files
Civil	Data not provided	308	284	238
Criminal	Data not provided	711	375	845

Source: Pueblo of Laguna.

Funding Information

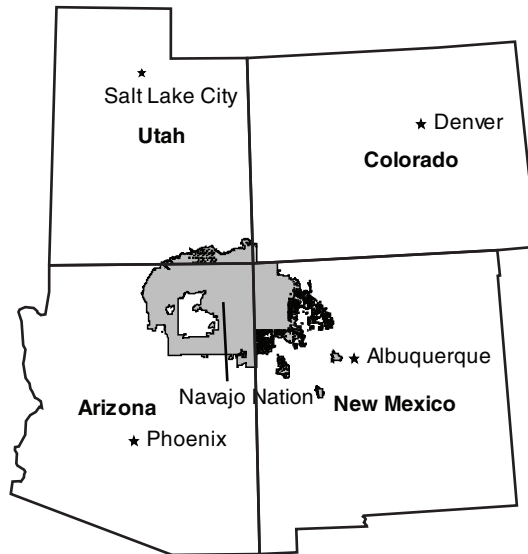
The Pueblo of Laguna court system’s main funding sources are the tribal government and funding from the BIA. Additionally, in fiscal year 2010 the Pueblo of Laguna was awarded \$350,000 for tribal courts initiatives under DOJ’s Coordinated Tribal Assistance Solicitation grant program.

Navajo Nation

Land Area and Population

The Navajo Nation's land area totals 24,097 square miles and is mostly situated in Arizona though its boundaries extends into parts of New Mexico and Utah. The reservation is between Maryland and West Virginia in size. Of the estimated 292,023 enrolled members of the Navajo Nation, approximately 234,124, or about 80 percent, live on the reservation.

Figure 8: Location of Navajo Nation



Source: Census Bureau.

Establishment of Court System and Relationship to Tribal Council

The Navajo Nation does not have a written constitution. However, the duties of the court system are documented in the Navajo Nation Codes. The tribal court was established in 1959.

Tribal Code and Court Rules and Procedures

The Navajo Nation criminal code was created in 1959 and has been amended as necessary. The Legislative Council, within the legislative branch, is responsible for updating the code. The court system has rules of judicial conduct, criminal procedure, as well as rules of evidence.

Structure of the Court System

Officials described the Navajo Nation court system as a modern system that continues to embody Navajo customs and traditions. The Chief Justice is the administrator of the judicial branch, which consists of 10 District Courts, the Supreme Court of the Navajo Nation, and other courts that may be created by the Navajo Nation Council. The Navajo Nation Supreme Court comprises one Chief Justice and two Associate Justices.

Judicial Qualifications, Selection, Term Limits, and Removal

The President of the Navajo Nation appoints Judges and Justices, who are appointed for a 2-year probation period. The appointees are selected from a panel recommended by the Judicial Committee of the Navajo Nation Council. After 2 years, the Judicial Committee can recommend a permanent appointment. If the Judge or Justice is recommended, the President submits the name to the Navajo Nation Council for confirmation. There are no term lengths; however, judges can be removed for cause. All judicial appointments must meet certain qualifications, including a higher education degree, preferably a law degree, and have work experience in law-related fields and a working knowledge of Navajo, state, and federal laws. Judges must be a member of the Navajo Nation Bar Association.

Judicial Personnel and Court Staff

Only members in good-standing with the Navajo Nation Bar Association, including public defenders and prosecutors can provide legal representation in the court system.

Table 8: Judicial Personnel and Court Staff of Navajo Nation

Position title	Number of staff
Tribal court judge	17
Appellate judge	3
Prosecutor	32
Public defender	12
Probation officer	30
Bailiff	16
Court administrator	12
Court staff attorney	12
Peacemaker staff	13
Other court staff	133

Source: Navajo Nation.

Caseload Information

The data provided in table 9 below comprises caseload information from the 10 District Courts, Family Courts, Probation, Peacemaking, and Supreme Court. As shown in the table below, criminal offenses account for much of the court’s activity.

Table 9: Navajo Nation Judicial Branch Civil and Criminal Caseload Data for Fiscal Years 2008 through 2010

Type of case	Fiscal Year 2008		Fiscal Year 2009		Fiscal Year 2010	
	Carried over from prior year	New cases filed	Carried over from prior year	New cases filed	Carried over from prior year	New cases filed
Civil	2,122	3,237	1,592	2,749	1,279	2,523
Criminal	8,874	8,843	6,366	7,826	6,670	7,457
Civil traffic	5,269	26,789	6,924	23,634	3,612	16,372
Criminal traffic	2,534	2,402	2,222	2,209	2,112	2,230
Family civil	947	1,936	1,170	2,179	1,284	2,074
Domestic violence	723	3,803	716	4,572	860	4,478
Dependency	266	230	261	180	241	228
Delinquency	268	481	179	384	215	354
Child in need of services	121	423	133	301	144	204
Probation	2,103	6,926	1,387	7,076	1,685	8,606
Peacemaking	206	741	221	691	265	951
Supreme Court	67	140	92	129	56	111

Source: Navajo Nation.

Funding Information

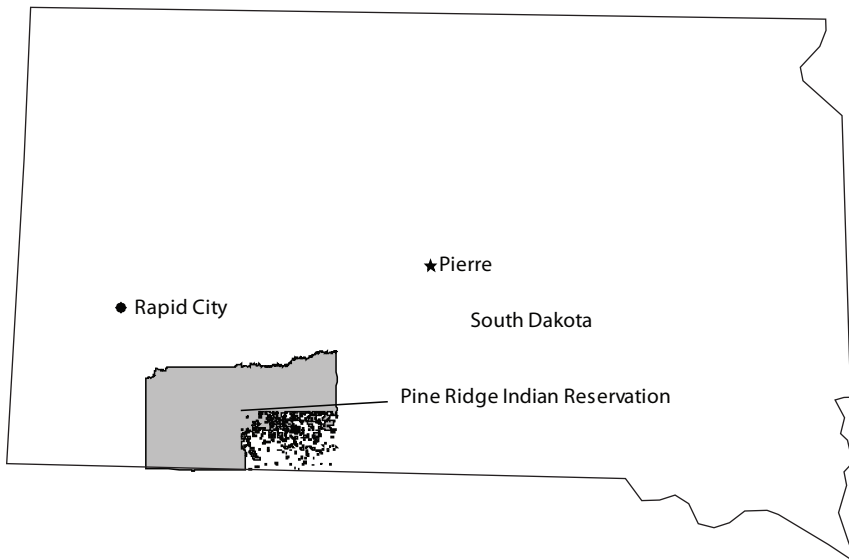
The Navajo Nation judicial branch is funded primarily by the tribal government. It is important to note that the funding supports the operations of the 10 districts courts, among other courts within the judiciary branch of the Navajo Nation.

Oglala Sioux Tribe

Land Area and Population

The Pine Ridge Indian Reservation of the Oglala Sioux Tribe covers 3,466 square miles in Southwest South Dakota, and is between Delaware and Connecticut in size. Of the estimated 47,000 enrolled members of the tribe, an estimated 29,000 Indian people live on the reservation.

Figure 9: Location of Pine Ridge Indian Reservation of the Oglala Sioux Tribe



Source: Census Bureau.

Establishment of Court System and Relationship to Tribal Council

The Oglala Sioux Tribe's court system was established by the tribe's constitution in 1936. A 2008 amendment to the tribe's constitution vests the tribe's judicial power in one Supreme Court and in other inferior tribal courts established by the Tribal Council. As amended, the constitution provides that the tribe's judiciary is independent from the legislative and executive branches of government. The Judiciary Committee of the Tribal Council oversees the administrative function of the court.

Tribal Code and Court Rules and Procedures

In September 2002, the Oglala Sioux Tribal Council passed an ordinance to adopt its *Criminal Offenses Code*. In addition, the Oglala Sioux Tribe has adopted criminal procedures and court rules, which includes a judicial code of ethics. According to court officials, the tribal court generally

applies federal rules of evidence. Further, the Tribal Council, through its Judiciary Committee, is responsible for maintaining and updating the *Criminal Offenses Code*.

Structure of the Court System

The Oglala Sioux Tribe’s court system combines aspects of modern and traditional approaches to administer justice, and is composed of the Supreme Court, a tribal court, and a juvenile court. The Supreme Court has appellate jurisdiction, and is composed of a Chief Justice, two Associate Justices, and one Alternate Justice.⁶ Given the vast size of the reservation, the tribe operates two courthouses, which are located in Pine Ridge, South Dakota and Kyle, South Dakota.

Judicial Qualifications, Selection, Term Limits, and Removal

The Oglala Sioux Tribe’s court system comprises a Chief Judge, associate judges,⁷ and Supreme Court justices. The Chief Judge of inferior courts, who oversees the inferior courts, must be law-trained and bar-licensed in any state or federal jurisdiction, and is elected by members of the tribe for a 4-year term. Justices of the Supreme Court must be law-trained and bar-licensed in any state or federal jurisdiction. They are appointed by the Tribal Council for 6-year terms. Any judge may be removed by a two-thirds vote of the Tribal Council for unethical judicial conduct, persistent failure to perform judicial duties, or gross misconduct that is clearly prejudicial to the administration of justice, among other things.

Judicial Personnel and Court Staff

The Oglala Sioux Tribe’s court system employed a Chief Judge, three associate judges, and two Supreme Court justices. The Oglala Sioux Attorney General’s Office employed four tribal prosecutors—one of which is law-trained and bar licensed.

⁶Alternate Justices will hear cases where there are instances of conflicts or other permanent judges are otherwise unavailable.

⁷The Oglala Sioux Tribe’s constitution provides for “inferior court judges.” As many of the other tribes use the term “associate judges” to describe analogous positions, we use the term “associate judges” here.

Table 10: Judicial Personnel and Court Staff of Oglala Sioux Tribe

Position title	Number of staff
Tribal court judge	5
Appellate judge	2
Prosecutor	1
Public defender	1
Bailiff	1
Court administrator	1
Court clerk	8
Other court staff	1

Source: Oglala Sioux Tribe.

Caseload Information

Officials estimated that in 2009, there were approximately 1,245 civil cases and 7,470 criminal cases. Additional data about the court's caseload for fiscal years 2008 through 2010 are not reported as we were not able to obtain this information from the tribe.

Funding Information

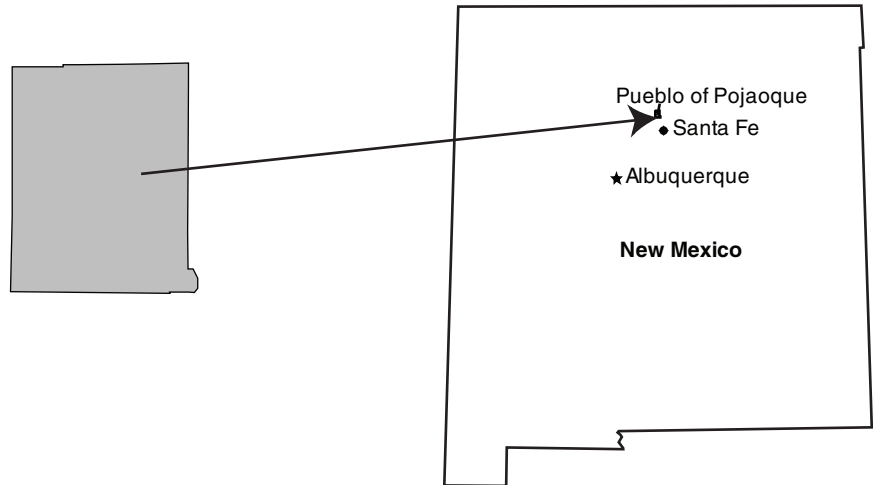
Based on data provided by the tribe, the Oglala Sioux court system did not receive any funding from the tribal government for fiscal years 2008 through 2010. Rather, the main source of funding was from BIA.

Pueblo of Pojoaque

Land Area and Population

The Pueblo of Pojoaque covers 21 square miles in New Mexico, and is smaller in size than the District of Columbia. Of the estimated 417 enrolled members of the pueblo, an estimated 325 enrolled members live on the pueblo's lands.

Figure 10: Location of Pueblo of Pojoaque



Source: Census Bureau.

Establishment of Court System and Relationship to Pueblo Council

The Pueblo of Pojoaque has not adopted a constitution, and, according to a court official, the tribal government operates in a traditional manner. From 1932 to 1978, the Pueblo of Pojoaque's Tribal Court operated according to tradition. For example, the pueblo's Governor or the Tribal Council served as the tribal court. In 1978, the tribal code formally established a court system. There are no distinct branches of government within the Pueblo of Pojoaque and a court official stated that the Tribal Council does not intervene in individual cases before the court. When the tribal court has concerns about the direction of the Tribal Council regarding court matters, such concerns are discussed openly at Tribal

Council meetings and resolutions are passed and incorporated in the Tribal Law and Order Code, as needed.

Tribal Code and Court Rules and Procedures

According to a court official, the Pueblo of Pojoaque's Tribal Law and Order Code was adopted in 1978. One of the court officials explained that the court's judges are responsible for suggesting code revisions to the Tribal Council, and that the Tribal Council amends the code by resolutions. Further, complete copies of the Tribal Law and Order Code are made available through the court. The Tribal Law and Order Code includes a criminal code as well as basic rules of procedure and evidence as many of the parties appearing before the court typically advocate on their own behalf rather than being represented by an attorney. The court system has adopted rules of judicial conduct, and, pursuant to the law and order code, judges are permitted to defer to either state or federal rules of procedure or evidence, and, according to the Chief Judge, this option is often exercised when both parties appearing before the court have legal representation.

Structure of the Court System

The Pueblo of Pojoaque's court system combines aspects of modern and traditional courts, and includes a tribal court, a juvenile court, and traditional methods of dispute resolution. The Tribal Council serves as the pueblo's appellate court.

Judicial Qualifications, Selection, Term Limits, and Removal

The Pueblo of Pojoaque's court system includes two types of judges—a Chief Judge and judges pro tempore—and the qualifications for these positions are identical. Judges are appointed by the Tribal Council and serve at the pleasure of the Pueblo Council and the Tribal Governor. Though there are no set educational requirements for judges, prospective judges who do not have a law degree must complete a specific training course in judicial proceedings within 6 months after being appointed as a judge. Age requirements and a background interview also apply. Given the small population of the pueblo, the Tribal Council prohibits judges, who are enrolled members of the pueblo, from hearing cases of other enrolled members, according to a court official.

Judicial Personnel and Court Staff

The Pueblo of Pojoaque court system employed one full-time Chief Judge, one part-time judge pro tempore; two contract judges pro tempore, as needed; one part-time court clerk; and one full-time court and traffic court clerk. Tribal police, who are not law-trained, serve as prosecutors.

Caseload Information

The caseload data reported below in table 11 does not reflect the number of civil and criminal matters that are resolved through traditional means and mediation. Traffic violations, which are not included in the table below, account for much of the court’s activity. For example, in 2009, there were 7,316 traffic citations docketed, of which 825 resulted in a court hearing.

Table 11: Pueblo of Pojoaque Civil and Criminal Caseload Data for Calendar Years 2008 and 2009

Type of case	2008	2009
	New cases filed	New cases filed
Civil	68	59
Criminal	70	76

Source: Pueblo of Pojoaque.

Funding Information

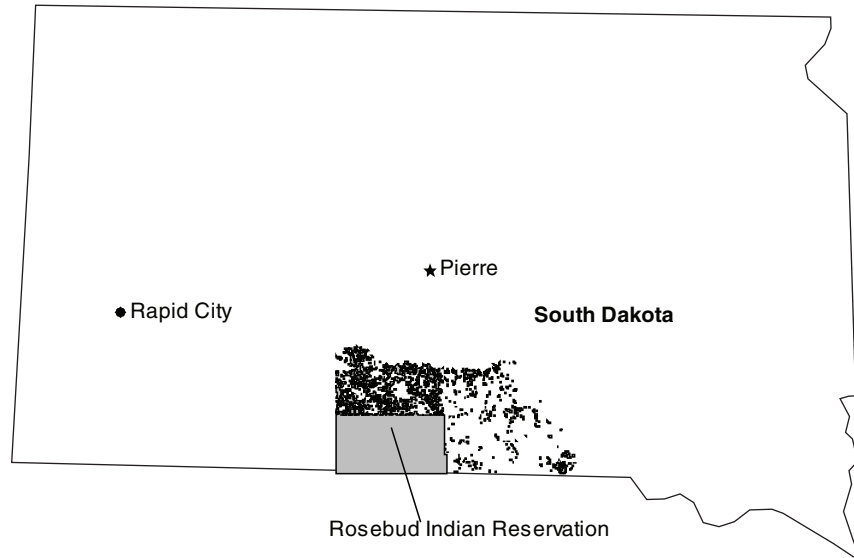
The Pueblo of Pojoaque court system’s main funding sources are the tribal government and BIA funding. Generally, for fiscal years 2009 and 2010, the BIA funding accounted for about 30 percent of the court’s total funding.

Rosebud Sioux Tribe

Land Area and Population

The Rosebud Indian Reservation of the Rosebud Sioux Tribe covers 1,971 square miles in south-central South Dakota, as shown in figure 11 below, and is between Rhode Island and Delaware in size. Of the estimated 29,710 enrolled members of the tribe, approximately 85 percent, or 25,254, live on the reservation.

Figure 11: Location of Rosebud Indian Reservation



Source: Census Bureau.

Establishment of Court System and Relationship to Tribal Council

The Rosebud Sioux Tribe's court was established in 1975, according to officials, replacing the Court of Indian Offenses administered by BIA. A 2007 amendment to the tribe's constitution, which was originally adopted in 1935, established the tribal court as separate and distinct from the legislative and executive branches of the tribal government and established the Rosebud Sioux Tribe Supreme Court as the tribe's appellate court. The Tribal Council's Judiciary Committee helps to oversee the administration of court.

Tribal Code and Court Rules and Procedures

The Rosebud Sioux Tribe's *Law and Order Code* was adopted in 1986 and is available by request from the Tribal Secretary's office, although tribal court officials indicated that the status of the code has been an ongoing concern. The *Law and Order Code* contains a criminal code and rules of criminal procedure. Additionally, officials noted that the code adopts by reference federal rules of evidence and requires tribal judges to conform their conduct to the *Code of Judicial Conduct* as adopted by the American Bar Association.

Structure of the Court System

The Rosebud Sioux Tribe's court system is composed of a tribal court, a juvenile court, a limited mediation court, and an appellate court. While the court applies traditional methods of dispute resolution, officials described the court system as mostly modern in that it is modeled on federal and state court systems and applies federal rules of evidence and judicial conduct. It is traditional in that the *Law and Order Code*, which the courts apply, contains references to tribal customs. Further, in some cases, tribal courts include interested community members in the court proceedings. For example, in some family disputes, members of the community such as family members or concerned citizens may participate in the court process even though they are not parties appearing before the court. Decisions of the tribal court and juvenile court are subject to appellate review by the Rosebud Sioux's Supreme Court. The Supreme Court is composed of six justices, three of whom sit as a panel to hear a case.

Judicial Qualifications, Selection, Term Limits, and Removal

The Rosebud Sioux Tribe's court system includes a Chief Judge, associate judges, and Supreme Court justices. The Chief Judge must be law-trained, bar-licensed, and admitted to practice before the U.S. District Court for South Dakota. The Chief Judge is appointed by the Tribal Council for a 4-year term. Associate judges are appointed by the Tribal Council for 2-year terms, and must have a high-school education or equivalent. Further, at least one associate judge must be bilingual in English and Lakota—the tribe's traditional language. Of the three justices in an appellate panel, two must be law-trained, bar-licensed, and admitted to practice in the U.S. District Courts of South Dakota. One may be a lay judge who must have a high-school education or equivalent. Supreme Court justices are appointed by the Tribal Council for 5-year terms. Removal of any judge or justice must be for cause after a public hearing by the Tribal Council and by a two-thirds vote of Tribal Council members present at the hearing.

Judicial Personnel and Court Staff

As of October 2010, the Rosebud Sioux Tribe’s court system employed a Chief Judge, two associate judges—one law-trained but not bar-licensed, and the other a lay judge—and four Supreme Court justices. There is one law-trained, bar-licensed tribal prosecutor, an assistant prosecutor who works mainly in juvenile court, a public defender, and an assistant public defender who works mainly in juvenile court. Additionally, in fiscal year 2010, the tribe received a DOJ grant to fund three additional attorney positions, though tribal officials stated that these positions may be difficult to fill because of recruitment and retention challenges. Tribal officials stated that the numbers of prosecutors and public defenders is inadequate for the tribes’ caseload and affects the tribe’s ability to effectively administer justice.

Table 12: Judicial Personnel and Court Staff of Rosebud Sioux Tribe

Position title	Number of staff
Tribal court judge	3
Prosecutor	2
Public defender	2
Probation officer	4
Bailiff	1
Court administrator	1
Court clerk	5

Source: Rosebud Sioux Tribe.

Caseload Information

Criminal offenses account for much of the court’s caseload. Traffic violations are considered criminal offenses; however, they are not included in the data in the table below.

Table 13: Rosebud Sioux Civil and Criminal Caseload Data for Calendar Years 2008 through 2010

Type of case	2008	2009	2010
	New cases filed	New cases filed	New cases filed
Civil	808	771	805
Criminal	4,865	2,270	2,173

Source: Rosebud Sioux Tribe.

Funding Information

Based on data provided by officials for fiscal years 2008 through 2010, the Rosebud Sioux Tribe court system is primarily funded by BIA, although the court received funding from other sources.

Standing Rock Sioux Tribe

Land Area and Population

The Standing Rock Reservation covers 3,654 square miles in south-central North Dakota and north-central South Dakota, and is between Connecticut and Delaware in size. Of the estimated 14,914 enrolled members of the tribe, 8,656 live on the reservation.

Figure 12: Location of Standing Rock Reservation



Source: Census Bureau.

Establishment of Court System and Relationship to Tribal Council

The Standing Rock Sioux Tribe Constitution, adopted in 1959, empowers the Tribal Council to establish courts on the reservation and define those courts' duties and powers. Exercising this constitutional authority, the Standing Rock Sioux Tribal Council established the tribal court system.

Further, the constitution vests the tribe's judicial authority in a Supreme Court and in a Tribal Court and specifies the process by which judges for these courts would be selected and removed, as described below. Subsequent amendments to the tribe's constitution did not alter these provisions.

Tribal Code and Court Rules and Procedures

The Standing Rock Sioux Tribe's *Code of Justice* addresses criminal offenses, criminal procedure, and civil procedure, among other things. In addition, the Tribe's *Rules of Court* include provisions regarding civil procedure, criminal procedure, rules of evidence, among other things. However, court officials reported challenges in keeping the code current and stated that they do not have access to the entire code.

Structure of the Court System

The court system is composed of a tribal court, a children's court, and a Supreme Court that has appellate jurisdiction over the tribe's other courts. The Supreme Court is composed of a chief justice and two associate justices.

Judicial Qualifications, Selection, Term Limits, and Removal

The *Code of Justice* articulates the composition of the court as well as the qualifications, selection, and removal of judges. Specifically, the Supreme Court is to include a Chief Justice and Associate Justices. Additionally, the tribal court is to include a Chief Judge, Associate Chief Judge, and Associate Judges. The Chief Justice, Chief Judge, and Associate Chief Judge must be law-trained and bar-licensed. Associate justices and judges must have at least a high-school diploma or its equivalent. All justices and judges are appointed by the Tribal Council and face a retention election at the tribe's next election. Justices and judges retained then serve 4-year terms and may be removed from office for cause by a two-thirds vote of the Tribal Council.

Judicial Personnel and Court Staff

The Standing Rock Sioux Tribe's court system employed three appellate judges, four tribal court judges, six court clerks, two prosecutors, one public defender, among other staff. Of the four tribal court judges, three are bar-licensed and one is law-trained but not bar-licensed. Of the three appellate judges, two are bar-licensed and one is a lay judge.

Table 14: Judicial Personnel and Court Staff of Standing Rock Sioux Tribe

Position title	Number of staff
Tribal court judge	3
Appellate judge	3
Prosecutor	2
Public defender	1
Defense advocate	1
Probation officer	3
Bailiff	2
Process server	2
Court administrator	1
Court clerk	8
Other court staff	7

Source: Standing Rock Sioux Tribe.

Caseload Information

Criminal offenses account for much of the court’s caseload. Traffic violations are considered criminal offenses; however, they are not included in the data in the table below.

Table 15: Standing Rock Sioux Tribal Court Caseload Data for Calendar Years 2008 and 2009

Type of case	2008		2009	
	Carried over from prior year	New cases filed	Carried over from prior year	New cases filed
Civil	127	756	174	735
Criminal	Data not provided	3,171	Data not provided	2,979

Source: Standing Rock Sioux Tribe.

Funding Information

For fiscal years 2008 through 2010, the Standing Rock Sioux Tribal Court did not receive any funding from the tribal government and federal funding is the primary source of funding for the court, based on data provided by officials. The BIA funding has remained unchanged during this time. Additionally, officials told us that they received grant funding from the

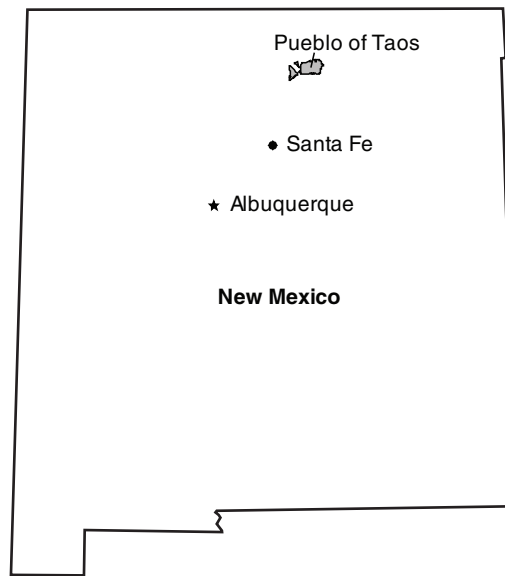
South Dakota Department of Corrections totaling \$15,000 and \$25,000 in fiscal years 2009 and 2010, respectively.

Pueblo of Taos

Land Area and Population

The Pueblo of Taos covers 156 square miles north of Santa Fe, New Mexico, and is between the District of Columbia and Rhode Island in size. Of the estimated 2,500 enrolled members of the pueblo, approximately 1,800 members live on the pueblo's lands.

Figure 13: Location of Pueblo of Taos



Source: Census Bureau.

Establishment of Court System and Relationship to Pueblo Council

The Pueblo of Taos does not have a written constitution and has not established a separate judicial branch within its tribal government. Rather, according to officials, the pueblo has an unwritten social order that dates back to the pueblo's origins and continues to be practiced and adhered to. Officials noted that they are exploring the possibility of establishing three distinct branches within the tribal government that would include a

judicial branch. The Pueblo is governed by a Tribal Governor and a War Chief, both of whom are appointed by the Tribal Council for a 1-year term and operate the pueblo's traditional courts.

Tribal Code and Court Rules and Procedures

In 1986, the Tribal Council adopted the pueblo's law and order code. Tribal officials explained that the tribal court is responsible for updating the criminal code and the Tribal Council approves amendments or revisions. The Pueblo has not fully revised the code since its adoption but has efforts underway to update and revise the criminal code. The tribal court does not have rules of judicial conduct or rules of evidence. However, the tribal court applies federal rules of evidence and New Mexico state rules regarding judicial conduct. Officials noted that rules of judicial conduct and rules of evidence are to be developed as part of the law and order code update. The code is available in hard copy only, and is generally made available to parties appearing before the court. Officials expect that the law and order code will be available in electronic format once revisions are completed.

Structure of the Court System

The Pueblo of Taos has two traditional courts and one tribal court. The Lieutenant Governor of the tribe serves as a Traditional Court Judge to hear both civil matters, such as contract violations, and family disputes. The War Chief also serves as a Traditional Court Judge and generally hears civil cases that involve disputes over land, natural resources, and fish and wildlife. The tribal court was established in the late-1980s to provide tribal members an alternative dispute resolution forum and to address the changes in the types of crimes being committed on the pueblo's lands. Further, according to officials, the tribal court is intended to supplement rather than replace the traditional courts. Officials explained that tribal members may choose to have their case heard before the traditional or tribal court; however, once the case is filed with either court, the parties cannot then request a transfer to the other court. The Pueblo of Taos does not have an appellate court. However, appeals can be made to the Traditional Court Judge, usually the Lieutenant Governor, to challenge tribal court decisions. In the future, the Pueblo of Taos may use the Southwest Intertribal Court of Appeals.⁸

⁸The Southwest Intertribal Court of Appeals hears appeals from tribal courts for federally recognized tribes located in Arizona, Colorado, New Mexico, and west Texas.

Judicial Qualifications, Selection, Term Limits, and Removal

The Chief Judge is retained under contract, and the contract can be issued for up to 12 months. The Pueblo of Taos has not yet established requirements regarding selection, removal, and qualifications of judges, but expects to do so in the future.

Judicial Personnel and Court Staff

The pueblo employs one tribal court judge for the modern court, who is not bar-licensed. Additionally, the pueblo does not have public defenders or prosecutors; rather, the police, who are not law-trained, serve as prosecutors in addition to their patrol duties.

Caseload Information

Criminal cases account for much of the court’s activity for fiscal years 2008 through 2010.

Table 16: Pueblo of Taos Caseload Data for Calendar Years 2008 through 2010

Type of case	2008		2009		2010 (as of October 2010)	
	Carried over from prior year	New cases filed	Carried over from prior year	New cases files	Carried over from prior year	New cases filed
Civil	Data not available	43	Data not available	69	20	25
Criminal		468		394	Data not available	235

Source: Pueblo of Taos.

Funding Information

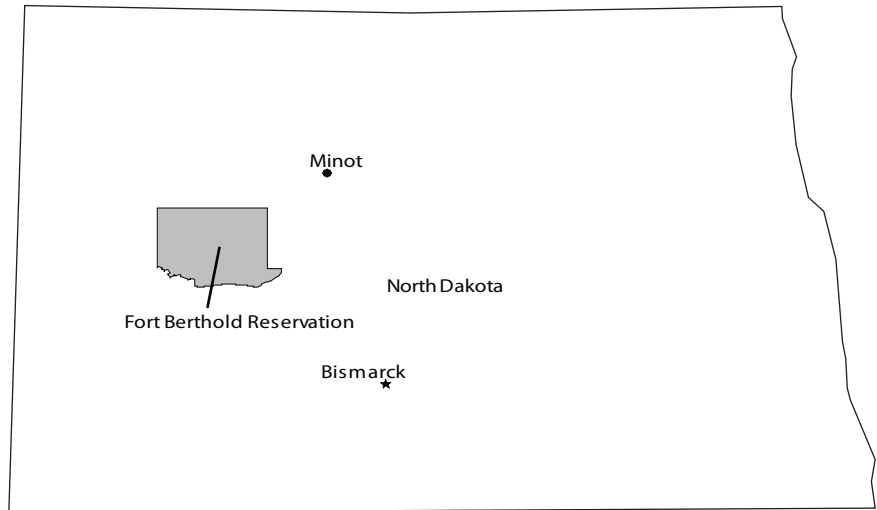
Based on data provided by officials for fiscal years 2008 through 2010, with the exception of fiscal year 2009, BIA funding accounted for much of the court system’s entire budget.

Three Affiliated Tribes

Land Area and Population

The Fort Berthold Reservation of the Three Affiliated Tribes covers 1,578 square miles in northwest North Dakota, and is between Rhode Island and Delaware in size. Of the 11,993 enrolled members of the tribe, about half live on the reservation.

Figure 14: Location of the Fort Berthold Reservation of Three Affiliated Tribes



Source: Census Bureau.

Establishment of Court System and Relationship to Tribal Council

According to officials, the Three Affiliated Tribe's court system was established by the Tribal Business Council⁹ in the 1930s. Further, officials estimated that in the 1990s, an amendment to the constitution established the court's authority. The Tribal Business Council has a Judicial Committee, composed of tribal council members, that regularly reviews court operations such as funding, staffing, and evaluation, among other things.

⁹ The Tribal Business Council is the Tribe's governing body.

Tribal Code and Court Rules and Procedures

The Three Affiliated Tribes have a tribal code that, according to a court official, was developed in 1935. The tribal code contains a criminal code, although officials stated that the court does not have rules of criminal procedure. The code also has a section that addresses federal rules of evidence. According to court officials, it is not always clear what the current law is because the tribal code is not kept up-to-date.

Structure of the Court System

The Three Affiliated Tribes' court system combines aspects of modern and traditional courts. The court is modern in that it applies the tribal code; the court is traditional in that tribal members and court staff are personally acquainted, tribal members who appear before the court readily accept tribal laws that regulate conduct on the reservation, and Indian language is sometimes used in court. The court system includes a tribal court and a juvenile court. Appeals from either of these courts are addressed by an intertribal appeals court, the Northern Plains Intertribal Court.¹⁰

Judicial Qualifications, Selection, Term Limits, and Removal

The Three Affiliated Tribes' court system includes a Chief Judge and associate judges, also called magistrate judges. Court officials reported that all judges must be law-trained, bar-licensed members of the tribes. However, at their discretion, the Tribal Council may overrule the requirement that judges must be members of the tribe. The Chief Judge is elected tribal members for a 4-year term. Associate Judges are appointed by the Tribal Council for 1-year terms. All judges may be removed by the Tribal Council for cause.

Judicial Personnel and Court Staff

As of November 2010, the Three Affiliated Tribes' court system employed a law-trained Chief Judge, two law-trained associate judges, a prosecutor, and a public defender, among other staff. Prosecutors are not required to be law-trained or bar-licensed, according to officials.

¹⁰The Northern Plains Intertribal Court of Appeals is a consortia court that hears appeals from seven Indian tribes in North Dakota, South Dakota, and Nebraska including: Crow Creek Sioux Tribe, Omaha Tribe of Nebraska, Ponca Tribe of Nebraska, Sisseton-Wahpeton Sioux Tribe, Spirit Lake Tribe, Three Affiliated Tribes, and Yankton Sioux Tribe.

Table 17: Judicial Personnel and Court Staff of Three Affiliated Tribes

Position title	Number of staff
Tribal court judge	2
Prosecutor	1
Public defender	1
Probation officer	2
Bailiff	1
Court administrator	1
Court clerk	4
Other court staff	4

Source: Three Affiliated Tribes.

Caseload Information

Criminal offenses account for the majority of the court’s caseload. Traffic violations are considered civil matters; however, they are not included in the data in the table below.

Table 18: Three Affiliated Tribes Civil and Criminal Caseload Data for Calendar Years 2008 through 2010

Type of case	2008		2009		2010	
	Carried over from prior year	New cases filed	Carried over from prior year	New cases files	Carried over from prior year	New cases filed
Civil	Data not provided	416	Data not provided	607	Data not provided	693
Criminal	Data not provided	Data not provided	Data not provided	2,362	97	3,000

Source: Three Affiliated Tribes.

Funding Information

Based on data provided by the tribe, the Three Affiliated Tribes court systems’ main funding sources are the tribal government and BIA.

Tohono O’odham Nation

Land Area and Population

The Tohono O’odham Nation covers 4,456 square miles within Arizona, although it encompasses land on both sides of the U.S.-Mexico border. Tohono O’odham Nation is between Delaware and Connecticut in size. Of the 29,974 members of Tohono O’odham Nation, approximately 13,035, or 43 percent, live on the reservation.

Figure 15: Location of Tohono O’odham Nation



Source: Census Bureau.

Establishment of Court System and Relationship to Tribal Council

The Tohono O’odham Nation adopted its most recent constitution in 1986, which replaced an earlier constitution from 1937. The constitution established a judicial branch and articulates the powers and duties of the court. The judicial branch is an independent branch within the tribal government, according to officials.

Tribal Code and Court Rules and Procedures

The Tohono O’odham Nation’s criminal code was adopted in 1985 and subsequently has been updated by the legislative branch with input from the Tohono O’odham Prosecutor’s Office and Attorney General’s Office. The most updated code is available on the tribe’s website. The judicial branch has adopted Arizona rules of criminal procedure, with modification, and has also adopted Arizona rules of evidence.

Structure of the Court System

The Tohono O’odham Nation’s court system is composed of a tribal court, an appeals court, children’s court, family court, traffic court, and criminal court. The chief judge is the constitutionally-mandated administrative head of the judicial branch and oversees the operations and decisions of the court. Appellate cases are heard by a three-judge panel, designated by the chief judge. In order to hear the appeal, the appellate judges must not have presided over the original case. Appeals panel decisions are final.

Judicial Qualifications, Selection, Term Limits, and Removal

The legislative branch of Tohono O’odham Nation is responsible for the selection of tribal court judges. The judges of Tohono O’odham Nation select a chief judge from among themselves, who serves as the chief administrative officer for the judiciary and serves in that capacity for 2 years. Potential judges pro tempore are referred by the chief judge to the Judiciary Committee of the Tribal Council. All judges are appointed by the legislative branch. The six full time judges mandated by the constitution are appointed for 6-year terms that are staggered. However, judges may be reappointed to the bench upon application. Judges pro tempore are typically appointed to a term of no more than 6 years. Judicial qualifications, which changed in 2008, include preferences for members of federally-recognized Indian tribes, with first preference given to qualified, enrolled members of the Tohono O’odham Nation. Further, persons with felony or recent misdemeanor convictions are not eligible. Finally, the candidate must be either a bar-admitted, Indian-law experienced attorney, or possess a bachelor’s degree and have work experience and training in judicial or law-related fields. Judges may be removed by vote of the Legislative Council upon the petition of a tribal member for felony convictions, malfeasance in office, among other things.

Judicial Personnel and Court Staff

Tohono O’odham Nation has 6 full-time judges, 6 prosecutors, 6 full-time public defenders, and approximately 100 support staff, among other staff.

Table 19: Judicial Personnel and Court Staff of Tohono O’odham Nation

Position title	Number of staff
Tribal court judge	10
Prosecutor	6
Legal advocates	10
Public defender	6
Probation officer	19
Bailiff/Court officer	4
Process server	1
Court administrator	1
Court clerk	1
Other court staff	61

Source: Tohono O’odham Nation.

Caseload Information

Criminal cases accounted for more than 85 percent of the court’s docket as shown in table 20 below.

Table 20: Tohono O’odham Court Civil and Criminal Caseload Data for Calendar Years 2008 through 2010

Type of case	New cases filed		
	2008	2009	2010
Civil	278	255	279
Criminal	3,747	4,641	3,940
Traffic	1,304	1,782	1,858
Children’s (Civil)	168	192	149
Child Offender	458	472	342
Appellate	2	0	2

Source: Tohono O’odham Nation.

Funding Information

Tohono O’odham Nation’s court was funded, for the most part, by the tribal government during fiscal years 2008 through 2010, though the tribe received BIA funding. Additionally, a court official explained that in fiscal year 2006, DOJ awarded an Indian Alcohol and Substance Abuse grant totaling \$500,000 that permitted the tribe to implement the grant over a 3-year period through fiscal year 2009.

Appendix IV: Comments from the Department of Justice



U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

FEB 2011

Mr. David C. Maurer
Director
Homeland Security and Justice Issues
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Maurer:

Thank you for the opportunity to comment on the draft Government Accountability Office (GAO) report entitled, "Indian Country Criminal Justice: Departments of Interior and Justice Should Strengthen Coordination to Support Tribal Courts" (GAO-11-252). The draft GAO report contains one Recommendation for Executive Action to the U.S. Department of Justice (DOJ), which is restated in bold text below and is followed by our response.

To maximize the efficiency and effectiveness of each agency's efforts to support tribal courts by increasing interagency coordination and improving information sharing, we recommend that the Attorney General and the Secretary of the Interior direct DOJ's Office of Justice Programs and BIA's Office of Justice Services, respectively, to work together to develop mechanisms, using GAO collaboration practices as a guide, to identify and share information and resources related to tribal courts.

The Office of Justice Programs (OJP) agrees with the Recommendation for Executive Action, and appreciates the feedback provided by GAO. Recognizing the need for better coordination on tribal court issues, OJP's Bureau of Justice Assistance (BJA) and the Bureau of Indian Affairs' (BIA's) Office of Justice Services, have discussed enhancing coordination in this area. The discussions between BJA and BIA have focused on:

- establishing a Memorandum of Understanding to support collaboration efforts between the agencies;
- coordinating training activities;
- sharing information about current grant activities to assist BIA in anticipating future requests from tribes for Section 638 contract funding, to support sustainability of BJA's investments in new tribal courts;

**Appendix IV: Comments from the Department
of Justice**

- exploring strategies to coordinate funding requests during the application phase to reduce potential duplication and to expand the information available to both agencies to inform funding priorities; and
- forming a committee to engage staff across DOJ and BIA to address the range of issues impacting tribal courts throughout the United States.

If you have any questions regarding this response, you or your staff may contact Maureen Henneberg, Director, Office of Audit, Assessment, and Management, at (202) 616-3282.

Sincerely,



Laurie O. Robinson
Assistant Attorney General

cc: Phillip Merkle
Acting Deputy Assistant Attorney General for Operations and Management

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Department of Justice

Appendix V: GAO Contact and Staff Acknowledgements

GAO Contact

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Staff Acknowledgements

In addition to the contact named above, William Crocker and Glenn Davis, Assistant Directors and Candice Wright, analyst-in-charge, managed this review. Ami Ballenger and Christoph Hoashi-Erhardt made significant contributions to the work. Christine Davis and Thomas Lombardi provided significant legal support and analysis. David Alexander provided significant assistance with design and methodology. Katherine Davis provided assistance in report preparation. Melissa Bogar and Rebecca Rygg made contributions to the work during the final phase of the review.

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