

## Special Considerations for Tribal Law Enforcement

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*“If they ask us, we will be there.”*

*In the face of resource deficiencies, complicated jurisdictional issues, and what are often vast geographic coverage areas, this sentiment is shared by virtually all tribal law enforcement agencies. Tribal law enforcement prioritizes being there for the people they serve through standard policing functions, community events, and day to day interpersonal interactions. Community policing is not a program or activity in Indian country; rather, it is a guiding philosophy and way of life...*

*One of the things that makes tribal law enforcement unique is the opportunity to incorporate traditional Native customs and beliefs into the everyday work of the department. Incorporating the culture of the tribe is an important way to show respect for the community served and earn respect in turn.*

International Association of Chiefs of Police. 2016. *Promising Practices in Tribal Community Policing*. Washington, DC: Office of Community Oriented Policing Services

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- There are now more than 165 police departments operating in Indian country, ranging in size from one officer to more than 300. Steven W. Perry, “Census of Tribal Justice Agencies in Indian Country, 2002,” (Washington, DC: Bureau of Justice Statistics, 2005)
  - According to the National Institute of Justice, data suggest that on average, tribes have only 55 to 75 percent of the resource base available to non-Indian communities. Stewart Wakeling et al, “Policing on Indian Reservations,” *National Institute of Justice Journal* (January 2001)
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Broken Promises: Continuing Federal Funding Shortfall for Native Americans Briefing Before the United States Commission on Civil Rights Held in Washington, DC Briefing Report December 2018:

- Sovereignty: Tribal nations are distinctive sovereigns that have a special government-to-government relationship with the United States. Unequal treatment of tribal governments and lack of full recognition of the sovereign status of tribal governments by state and federal governments, laws, and policies diminish tribal self-determination and negatively impact criminal justice, health, education, housing, and economic outcomes for Native Americans.
- According to DOJ crime statistics, Native Americans are the victims of violent crime at a rate of two times the national average. Native American youth experience a violent crime rate of up to ten times the national average. Native American women are ten times more likely to be murdered and four times more likely to be sexually assaulted than the national average. There is also a disproportionate number of unresolved or unprosecuted cases involving Native American women who have been murdered or gone missing. Native Americans are also being killed in police encounters at a higher rate than any other racial or ethnic group.
- 96% of these [Native women] survivors [of IPV, stalking, sexual violence] report that they are victimized by at least one non-Native perpetrator. Source: NIJ, 2016
- Federal, state, and tribal governments all share jurisdictional authority for law enforcement and criminal justice in Indian Country. Although tribal jurisdictional authority is crucial for self-determination, the overlap among federal, state, and tribal authorities has been described as a “jurisdictional maze” that undermines the efficient administration of criminal justice and may lead to higher rates of crime in Native American communities.

- Harold Frazier, the Chairman of the Cheyenne River Sioux Tribe, testified to this point, noting that “If an Indian harms a non-Indian it’s federal. If . . . a non -Indian harms an Indian it’s local. So that’s the point. There should be fairness in the judicial system, but it’s not happening. . . [The federal government] promised to protect our people, and that’s why I think the feds should be involved.”
- The question of which jurisdiction—federal, state, or tribal—has authority over a criminal investigation may be difficult to determine when it is not immediately known if the victim or suspect are Native American, and evidence may be lost during the process of determining which governmental authority has jurisdiction over a matter.
- In the case of Native American community members who go missing, it is often unknown where they went missing which can impact a determination of which entity has jurisdiction to investigate.
- DOJ has funded the construction of detention facilities in Indian Country— but upon completion, the facilities could not be staffed due to lack of funding in the BIA budget for facilities operation. In another case, BIA, and DOJ both provided funding for a computerized case management system that was never utilized because neither agency provided funds for training on the system.
- Additionally, the U.S. Government Accountability Office (GAO) reports that BIA does not reliably share information with DOJ concerning its evaluations of tribal courts, and both agencies at times are unaware of unnecessary duplication in their tribal court training and technical assistance programs.

On March 24, 2023, the Department issued the [Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice programs in Indian Country, 2020](#):

- Total BIA *spending* for law enforcement was \$246.3 million, \$123.1 million for detention facilities, and \$62.8 million for Tribal courts. The total estimated *costs* for public safety and justice programs is \$1.4 billion for law enforcement programs, \$247.7 million for existing detention centers, and \$1.2 billion for Tribal courts. These numbers demonstrate the continued need for investment to improve the ability of Tribal public safety systems to fully serve their communities.

October 2021 GAO Report:

- “The total number of missing or murdered AI/AN women is unknown, because federal databases do not contain comprehensive national data, including comprehensive data from tribal, state and local law enforcement entities.” (GAO-22-104045, Missing and Murdered Indigenous Women, page 17.)
- “Federal officials, tribal leaders, and members of families directly impacted by the MMIW crisis all agreed that failures in cross-jurisdictional coordination, inadequate MMIW reporting protocols, and poor data collection limit the effectiveness of efforts to track, investigate, and solve MMIW cases.”