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# Examining Indian Country Cases in the Federal Justice System

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*February 20, 2015*

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# Executive Summary

The Bureau of Justice Statistics (BJS) funded the Urban Institute (Urban) to document the federal response to crime in Indian country (IC), using nationwide administrative data collected by federal justice agencies between fiscal years<sup>1</sup> 2009–2011 and standardized by the BJS Federal Justice Statistics Program (FJSP). *Examining Indian Country Cases in the Federal Justice System, 2009–2011* presents data about IC cases at various stages of the federal criminal justice system, reviews the strengths and limitations of using the FJSP data to identify IC records, and tests an alternative method for identifying IC cases, even when the originating agency does not designate the cases as such.

The report builds on an earlier study conducted by Urban, *Tribal Youth in the Federal Justice System* (Adams et al. 2011), which explored issues surrounding the measurement of American Indian juveniles whose criminal cases are processed in the federal justice system. Using FY 1999–2008 data from the FJSP, and interviews with tribal and federal officials, the authors explored the prevalence, characteristics, and outcomes of cases involving these youth at each stage of the federal justice system. This earlier study identified a number of limitations in identifying juveniles and IC cases using existing data. BJS commissioned the current study to (1) determine whether federal data systems have increased their capacity to identify IC cases; (2) report on the recent trends in the volume, characteristics, and outcomes of IC cases in the federal justice system; and (3) assess an alternative methodology that leverages data across federal justice agencies to better identify and track IC cases.

The current report finds:<sup>2</sup>

- **Few changes in IC data collection and reporting.** With the major exception of the Executive Office of US Attorneys (EOUSA), FJSP agencies have not changed the way they identify or report IC cases since the release of the *Tribal Youth* report. Agency data systems generally do not include dedicated data fields or

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<sup>1</sup> The federal fiscal year runs from October 1 through September 30.

<sup>2</sup> The study team adopted a broad definition of Indian country cases to include all federal investigations and prosecutions for offenses occurring in Indian country, not just those based on the special jurisdictional statutes (Major Crimes Act and General Crimes Act). Also, the data are drawn from the subset of US Attorneys' Offices that have at least one federally recognized tribe.

clear indicators for crimes occurring in Indian country, making it difficult to identify IC cases across various agencies and stages.

- **EOUSA improvements in IC data collection and reporting.** EOUSA has taken steps to distinguish the data collected about IC cases, summarized in the recent Tribal Law and Order Act (TLOA) reports to Congress (U.S. Department of Justice 2013; U.S. Department of Justice 2014). Remaining limitations of the EOUSA data are noted in the TLOA report.
- **IC caseload increased from FY 2009–2011, for both juveniles and adults.** The number of IC cases in the federal system increased by 13–18% between 2009 and 2011.<sup>3</sup> This growth was seen across all stages of the justice system.
  - » On average, there were 2,045 IC suspects in criminal matters concluded by U.S. Attorneys each year from 2009–2011; this number increased by 14% over the three-year period, from 1,940 to 2,220 defendants in criminal matters concluded by U.S. Attorneys.
  - » There was an average of 1,300 IC defendants in criminal cases filed in the 48 federal districts with IC responsibility annually from 2009–2011; this number increased by 13% over the three-year period, from 1,235 to 1,395 defendants in cases filed in U.S. district court.
  - » From 2009 to 2011, the annual number of IC juvenile offenders processed in the federal system was relatively modest (totaling less than 100 each year), but increased by 20–25% over the three-year period. In comparison, the number of IC adult offenders in the federal system increased by 13–18% during the period.
- **Customized linking method for identifying IC cases yields a 14% improvement.** Urban used geographical indicators regarding place of arrest to identify offenses committed in Indian country and applied a matching process to augment with information collected from subsequent stages of processing. The resulting numbers represented an improvement over the traditional method of identifying IC cases through individual agency proxy variables. It would be

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<sup>3</sup> We limited our focus to the 48 federal judicial districts with IC responsibility (i.e., where there are federally recognized tribes), as identified by DOJ in its 2013 TLOA report.

possible to replicate this method, which requires data cleaning and customized linking, using FJSP data in future years.

- **Changing landscape in responding to crime in IC.** Even the best federal data about IC cases will be inadequate to reflect the full criminal justice response to crime on Indian lands, which includes the actions of tribal justice systems and the states that are, by definition, not captured in federal justice agencies' data systems. Moreover, TLOA and the recent reauthorization of the Violence Against Women Act (VAWA) have expanded tribal jurisdiction, complicating comparisons over time.





# Examining Indian Country Cases in the Federal Justice System

## Introduction

Addressing crime in Indian country (IC) and improving public safety in tribal communities is a top priority of the Department of Justice (DOJ).<sup>1</sup> The Bureau of Justice Statistics (BJS) has a key role in improving measures of crime and the response to crime in Indian country. With funding from BJS, the Urban Institute (Urban) analyzed IC cases handled in the federal justice system using data collected and maintained by the Federal Justice Statistics Program (FJSP). This report presents the volume, characteristics, and outcomes of IC cases processed in the federal system from FY 2009-2011 using a new methodology that combines data across federal agencies to develop more comprehensive statistics than previously available. The report also discusses limitations in currently available data.

The report builds on an earlier study conducted by Urban, *Tribal Youth in the Federal Justice System* (Adams et al. 2011), which explored issues in measuring the population of American Indian juveniles who are processed in the federal justice system. Using FY 1999–2008 data from the FJSP, and interviews with tribal and federal officials, the study explored the prevalence, characteristics, and outcomes of these youth at each stage of the justice system. The *Tribal Youth* report identified a number of limitations in identifying juveniles and IC cases.

In preparing this report, the project team: examined available federal justice data, consulted federal agency experts to understand the primary methods for identifying IC cases and learn about recent changes in data collection, assessed the strengths and limitations of these methods, and tested an alternative approach for identifying IC cases in FJSP data files. Using a customized linking methodology, Urban started with

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<sup>1</sup> See, for example, Letter to the US Sentencing Commission from Jonathan Wroblewski, US Department of Justice Public Comments on Proposed Amendments to the Federal Sentencing Guidelines, March 6, 2014; and Statement of Timothy Q. Purdon, United States Attorney, District of North Dakota, Department of Justice, Before the Senate Committee on Indian Affairs, February 12, 2014.

indicators available in the FJSP data regarding place of arrest to determine crimes committed within the geographic boundaries of Indian country. Analysts then applied a matching process across agency data sources to carry that information through to subsequent stages of processing. The resulting set of IC offenders identified through this linking process provides the means to define the fullest set of IC cases possible and associated case outcomes. This new approach, working within the limitations of the available administrative data, represents an important contribution toward improving statistics about IC cases that are handled in the federal justice system.

To provide context for the case processing statistics on the federal response to crime in Indian country that were generated, information about the implementation of the Tribal Law and Order Act of 2010 (TLOA) and other important developments in the federal response to crime in Indian country were examined.

Specific questions examined by the study include:

- How many IC cases were handled at various stages of the federal system from FY 2009 to 2011?
- Where (by federal judicial district) did the cases occur?
- What types of offenses were involved?
- What were the defendant characteristics?
- How many defendants were juveniles?
- What were the case dispositions?
- What is the quality/reliability of FJSP data for identifying IC cases?
- How well do FJSP data identify federal IC cases?
- Have changes been made by agencies? Has the quality of reporting IC cases improved since the 2011 *Tribal Youth* report?
- Can a different methodology help identify IC cases even when originating agency does not designate the cases as such?

It is important to emphasize that the statistics presented in this report only reflect IC cases handled in the federal system and do not account for those cases handled by

tribal governments and the states. To gain a full picture of the justice system's response to crime in Indian country, one would need to supplement the federal data with tribal and state data. Moreover, statutory changes enacted by the TLOA, the Violence Against Women Act 2013 (VAWA 2013), and policy changes implemented by DOJ may change the mix of cases among federal, tribal, and state authorities, which could complicate caseload comparisons across time periods. BJS is addressing the overall need for improved tribal crime data collection as part of its mandate under TLOA to establish and implement a tribal data collection system and support tribal participation in national records and information systems (BJS 2014).

*Examining Indian Country Cases in the Federal Justice System* first outlines the public safety and jurisdictional challenges facing IC and notes recent efforts to address these challenges (Section 1). The next section summarizes how FJSP data systems have identified and reported on IC cases in the past, discusses earlier findings about the limitations of those methods, describes the current approach, presents the data analysis results, and lays out the advantages and disadvantages of the revised methodology for identifying the IC cases (Section 2). Section 3 summarizes the findings and conclusions. The appendices provide additional details about the analytic approach and methodology.

## Section 1. Background on Federal Justice Response to Crime in Indian Country

The public safety challenges facing Indian country<sup>2</sup> have been well-documented,<sup>3</sup> including the high rates of crime, low per capita police presence, the large expanses of Indian land, and the complicated set of tribal, state, and federal responsibilities regarding criminal jurisdiction. There are 566 federally recognized Indian tribes in the United States (U.S. Department of the Interior 2014). While the particular challenges vary from tribe to tribe, tribal governments have often lacked the jurisdiction and the resources to respond adequately to crime in their communities.

This section presents highlights of recent Congressional and Administration efforts to address these public safety challenges and summarizes criminal jurisdiction in Indian country. This contextual knowledge is helpful in interpreting the federal data on crime in Indian country presented in this report.

### Tribal Law and Order Act

Recognizing these problems, Congress enacted the TLOA of 2010, which instituted a number of changes designed to improve public safety and address some of the jurisdictional challenges facing tribal communities.

TLOA also imposed new requirements on the Bureau of Justice Statistics. Specifically, BJS must (1) establish and implement a tribal data collection system and (2) support tribal participation in national records and information systems. The act also requires the BJS director to consult with tribes as they follow this mandate and to report to Congress annually (BJS 2014).

Key provisions of the TLOA and the status of their implementation are summarized below:

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<sup>2</sup> Indian country is defined as all federally recognized Indian reservations, dependent Indian communities, and Indian allotments. 18 U.S.C. § 1151.

<sup>3</sup> See, for example, Senate Report 111-093 (10/29/09).

- **DOJ Organizational Changes.** The Office of Tribal Justice became a permanent component at Main Justice and each US Attorney's office with Indian lands designated an AUSA as a tribal liaison.
- **Reports to Congress.** DOJ must annually report to Congress regarding declinations by the Federal Bureau of Investigation (FBI) and US Attorneys. Information must include federal district, type of crime, and status of the defendant and victim as Indian or not. DOJ submitted a report in 2013 for 2011 and 2012. In August 2014, they submitted a report for 2013. Among other required reports, DOJ/DOI must submit an IC long-term detention plan for juveniles and adults, which was submitted in 2011.
- **Improving Tribal Data.** BJS has a new mandate for tribal data and must report annually to Congress, Section 251(b). In July 2014, BJS published its technical report, *Tribal Crime Data Collection Activities, 2014*.
- **Extended Sentencing for Tribal courts that meet certain conditions.** TLOA authorized an increase in the maximum penalties a tribal court may impose from one to three years of imprisonment and from \$5,000 to \$15,000 in fines. Prerequisites for the new authority include providing counsel to defendants and having licensed and trained judges. At least eight tribes have implemented extended sentencing and a dozen more are close to implementation (Tribal Law and Order Resource Center 2014).
- **Assuming federal jurisdiction in PL 280 states.**<sup>4</sup> In certain circumstances the AG may re-assume concurrent federal jurisdiction to investigate and prosecute crimes in Indian country. DOJ published a final rule to implement this provision, under which a tribe subject to state law enforcement jurisdiction under PL 280 may ask the federal government to accept concurrent jurisdiction. As of March 2013, DOJ had granted one request to assume concurrent criminal jurisdiction (White Earth Nation, Minnesota) and was reviewing several other requests (DOJ Indian Country Accomplishments 2014).

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<sup>4</sup> **Public Law 280 (1953)** mandated that six states ("mandatory PL 280 states") assume criminal jurisdiction over most or all Indian lands within their borders, removing federal jurisdiction. This law also provided other states the option to seek similar jurisdiction. These "optional states" have concurrent jurisdiction with the federal government.

- **Federal Bureau of Prisons (BOP) Pilot Project to house offenders sentenced by federally recognized tribes.** Under this four-year Pilot Project, BOP could house offenders sentenced by tribal courts. Any federally recognized tribe may request that a tribal member be incarcerated by BOP, if the offender meets certain conditions, including: conviction of a violent crime, sentenced to a term of two or more years of imprisonment with a minimum of two years left to serve at the time of the referral to BOP, and at least 18 years old at the time of the offense. BOP may house a maximum of 100 tribal offenders nationwide at any time (Federal Bureau of Prisons 2014).
- **Indian Law & Order Commission.** Created by TLOA to conduct a comprehensive study of the IC criminal justice system and extended by the Violence against Women Act (VAWA) 2013, this advisory commission offered a series of findings and recommendations in its final report, *A Roadmap for Making Native America Safer: Report to the President & Congress of the United States* (2013). The recommendations were designed to reduce violent crime in Native American and Alaska Native communities and improve justice and public safety. According to the chairman of the Commission, the Commission rejected the, “outmoded Federal command-and-control policies in favor of increased local control, accountability, and transparency.”

Since early in the Obama Administration (2009), DOJ has placed a priority on addressing crime in Indian country and has focused on improving public safety and the fair administration of justice. In May 2013, DOJ released its required report to Congress, *U.S. Department of Justice Indian Country Investigations and Prosecutions 2011-2012*.<sup>5</sup> The report (hereafter called the DOJ TLOA Report) describes the increasing number of prosecutions by U.S. Attorneys with IC responsibility and reports on the dispositions of IC matters received by U.S. Attorneys’ Offices and the IC investigative efforts by the FBI.<sup>6</sup> In addition to presenting statistics on suspects in matters declined for prosecution, the report describes some of the limitations of EOUSA’s Legal Information Office Network System (LIONS) database, which are

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<sup>5</sup> Section 212 of TLOA requires an annual report to Congress from the Attorney General describing the FBI’s investigative efforts and the dispositions of matters submitted to the US Attorneys’ office.

<sup>6</sup> While the FJSP includes data from the US Attorneys, it does not receive data from the FBI.

summarized in the next section.<sup>7</sup> In August 2014, DOJ released its report on 2013 investigations and prosecutions.

In its 2013 TLOA report, DOJ identifies 48 U.S. Attorneys' offices, listed in Table 1 below, that have at least one federally recognized tribe in their federal judicial districts. DOJ has required these offices to meet with tribal representatives in their districts and develop IC priorities.<sup>8</sup> Each office has at least one designated Tribal Liaison to serve as the point of contact with tribes in their district. Some offices have developed community prosecution efforts where federal prosecutors spend time on reservations to improve communications and investigations and prosecutions.<sup>9</sup> In addition, DOJ has expanded its practice of cross-designating tribal attorneys as Special Assistant U.S. Attorneys (SAUSAs), who can prosecute cases in federal court; according to recent Congressional testimony dozens of tribal prosecutors have been designated as SAUSAs (Purdon 2014).

In a November 2013 report (Indian Law & Order Commission 2013), the Indian Law and Order Commission described the serious problems confronting tribal communities, the inadequacies of the current law enforcement response, and offered a series of recommendations for improvement.

As part of VAWA 2013, Congress strengthened existing statutory language and penalties for certain domestic violence offenses and expanded tribal jurisdiction over perpetrators of domestic violence to include both Indians and non-Indians who assault Indian spouses or dating partners in Indian country. The law also specifies the tribes' authority to issue and enforce civil protection orders against Indians and non-Indians. The expanded jurisdiction provisions generally take effect in 2015, but a voluntary pilot project was authorized to allow certain tribes to begin exercising these new powers sooner. In February 2014, DOJ selected the Pascua Yaqui Tribe of Arizona, the Tulalip Tribes of Washington, and the Umatilla Tribes of Oregon for this pilot project, which will allow them to apply the special criminal jurisdiction over crimes of domestic

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<sup>8</sup> In the past (and consistent with Urban's 2011 *Tribal Youth* report), most federal IC cases occurred in five districts: Arizona, New Mexico, North Dakota, South Dakota, and Montana.

<sup>9</sup> The District of South Dakota was the first to implement a community prosecution project, placing an AUSA on the Pine Ridge Indian Reservation. According to the DOJ TLOA report, New Mexico and Eastern Wisconsin are also developing pilot projects.



or dating violence, regardless of the defendant's Indian or non-Indian status (DOJ VAWA 2013).

**Table 1: U.S. Attorneys' Offices with Indian Country Responsibility<sup>10</sup>**

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

**Source:** U.S. Department of Justice Indian Country Investigations and Prosecutions 2011-2012 (2013).

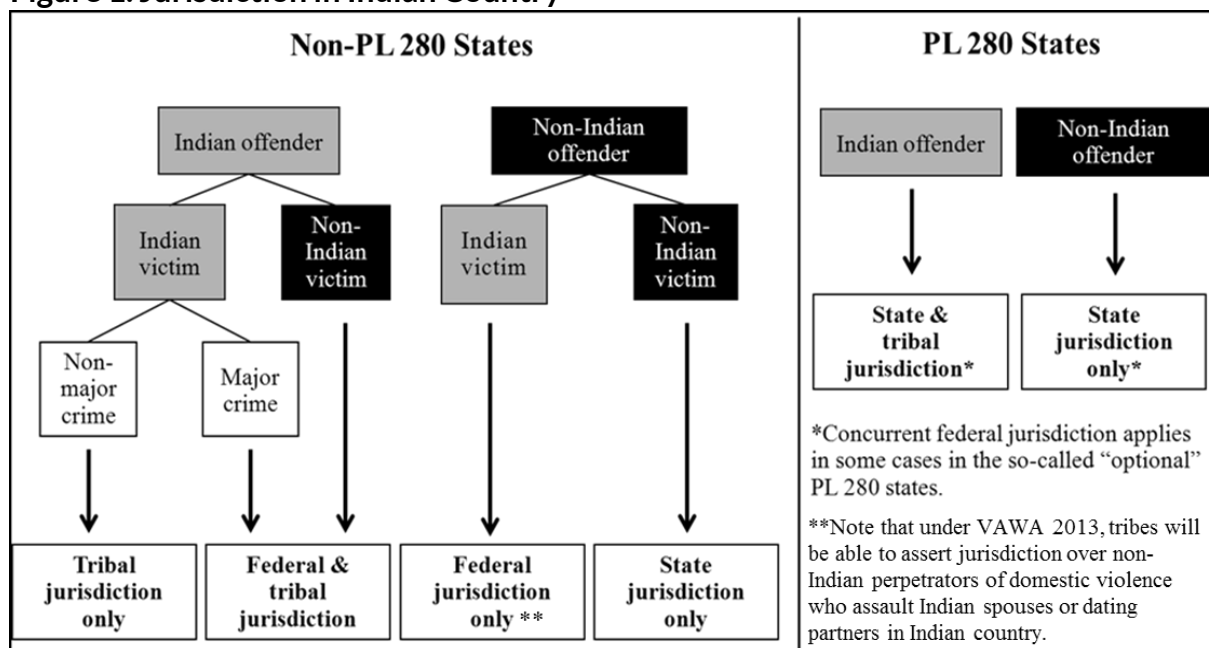
## Indian Country Jurisdiction

Although the rules for establishing criminal jurisdiction in IC cases are complicated (see Figure 1 below), the federal government generally has primary jurisdiction over

<sup>10</sup> The 2014 TLOA report identifies 49 districts, adding the Western District of Tennessee, although no cases are reported for that district.

most felonies occurring on Indian lands.<sup>11</sup> Tribal jurisdiction in IC extends to all crimes committed by Indians, but it does not generally apply to crimes committed by non-Indians on Indian lands.<sup>12</sup>

**Figure 1. Jurisdiction in Indian Country**



Source: Adams et al., *Tribal Youth in the Federal Justice System*, 2011.

In the *Tribal Youth* report, Urban summarized the key features of criminal jurisdiction in Indian country as follows:

“When a crime is committed in Indian country, jurisdiction is determined by three factors:

- Nature of the offense;
- Status of the victim and offender as Indian or non-Indian; and
- Existence of legislation conferring state jurisdiction.

<sup>11</sup> Federal criminal authority in Indian country derives from two primary jurisdictional statutes, 18 USC §1152 (General Crimes Act) and §1153 (Major Crimes Act). Under the Major Crimes Act, the federal government has jurisdiction to prosecute certain enumerated offenses when they are committed by Indians in Indian country, including murder, manslaughter, rape, aggravated assault, and child sexual abuse. Under the General Crimes Act the federal government has—along with tribes—jurisdiction to prosecute minor crimes by Indians against non-Indians.

<sup>12</sup> A recent change to VAWA extends jurisdiction over non-Indians if certain conditions are met by the tribe.

In most states, the federal government has Indian country jurisdiction over 1) all offenses committed by an Indian against a non-Indian; 2) all offenses committed by a non-Indian against an Indian; and 3) certain serious crimes committed by an Indian against another Indian. In contrast, the state generally has jurisdiction only over crimes committed by non-Indians against other non-Indians within IC. However, a 1953 law commonly known as Public Law 280 conferred broad jurisdiction over IC on certain states, collectively known as Public Law 280 states. In some of these states, jurisdiction is shared between the state and the federal government, while in others there is no federal jurisdiction over IC.<sup>13</sup> Thus, there are a small number of states in which the federal government has no role in prosecuting crimes in Indian country. Even in those Public Law 280 states with concurrent state and federal jurisdiction, the federal government's role is narrower than in states where Public Law 280 does not apply. In most cases, tribal jurisdiction over Indian offenders is concurrent with either state or federal jurisdiction, or both. However, federal law generally limits the length of the sentences that tribal courts may impose,<sup>14</sup> thereby rendering federal or state prosecution the more appropriate option in cases in which the nature of the crime calls for a longer period of incarceration."

This background information provides context for interpreting trends in federal IC cases. It will be important to monitor the shifting resources and jurisdictional responsibilities of federal, state, and tribal governments.

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<sup>13</sup> However, the federal government has jurisdiction over federal crimes (e.g., bank robbery and drug trafficking) that occur in IC, as throughout the rest of the country.

<sup>14</sup> Prior to 2010, the maximum period of incarceration that a tribal court could impose on any offender was one year (although this could be increased in certain cases by sentencing a defendant to concurrent one-year sentences for multiple offenses). With the 2010 passage of TLOA, the sentencing limit was increased to three years for tribes meeting certain criteria.

## Section 2. Identifying IC Cases in the FJSP Data: Historical and Current Approaches

This section reviews how statistics on federal IC cases have been identified and reported by FJSP, describes the alternative approach used for this report, presents the findings from the data analysis, and assesses the revised methodology for identifying the IC cases. Historically, BJS has published annual counts for Indian country cases through the *Compendium of Federal Justice Statistics* (from 1984 through 2004), *Federal Justice Statistics* (from 2005 through 2010), and *American Indians and Crime: A BJS Statistical Profile, 1992-2002* by using the race of the offender (American Indian/Alaskan Native as recorded by each justice agency that submitted to the FJSP). However, BJS recognized that using race of the offender could only provide a very rough proxy measure of Indian country crime and thus sought ways to improve the methods used to capture federal Indian country crime statistics.

In 2009, Urban received funding to determine how well FJSP data could identify and describe tribal youth processed in the federal justice system. Staff analyzed FJSP data from 1999 to 2008 and conducted interviews with tribal and federal officials to report on the prevalence, characteristics, and outcomes of tribal and non-tribal youth handled in the federal criminal justice system. The resulting report, *Tribal Youth in the Federal Justice System* (Adams et al. 2011), was published in 2011 and offered a unique perspective on the shortcomings of the FJSP data to identify and report on IC and juvenile cases handled by the federal criminal justice system.

The *Tribal Youth* study found that there were no consistent indicator variables for identifying IC crimes across federal agency data systems. As a result, the authors relied on a combination of variables to identify these crimes, recognizing that the methods were imperfect (using race or ethnicity could, for example, overestimate cases occurring in IC). Variables included: IC jurisdictional statutes (18 U.S.C. § 1152 and 1153), Program Category codes (EOUSA), arresting or investigative agency (e.g., Bureau of Indian Affairs), tribal affiliation (EOUSA), and race or ethnicity. See the textbox below for a summary of the indicators available for each agency. Moreover, the authors identified federal IC cases as most concentrated in a few districts: Arizona, Montana, New Mexico, North Dakota, and South Dakota.

Variables Used to Identify Indian Country Defendants, by FJSP Agency	
FJSP agency/data source	Indicator variables
U.S. Marshals Service Justice Detainee Information System (JDIS)	<b>Race</b> = 'I' (American Indian/Alaskan) (proxy)
Executive Office for U.S. Attorneys Legal Information Office Network System (LIONS)	<b>Program Category</b> = '065' or '092' <b>Investigative Agency</b> = 'INIA' or 'HHPI' <b>Court</b> = 'TR' (Tribal Court) <b>Lead Charge</b> = 18 USC § 1153 - 1170 <b>Tribe</b> (when populated with any valid value) <b>Reservation</b> (when populated with any valid value)
U.S. Sentencing Commission Monitoring database	<b>Statute variables (STA1-STA3)</b> = 18 USC § 1153 - 1170
Federal Bureau of Prisons SENTRY database	<b>Offense</b> = 701-795, 292  (Offenses committed on state or government reservations)
Administrative Office of the U.S. Courts, U.S. Office of Probation and Pretrial Services PACTS (Federal Probation Supervision Information System) database	<b>Race</b> = 'I' (American Indian/Alaskan) (proxy)

**Source:** Adams et al., *Tribal Youth in the Federal Justice System*, 2011.

In light of the continued DOJ priority on handling IC cases and reporting them accurately, BJS asked Urban to provide updated statistics on IC cases handled in the federal system for FY 2009–2011 and summarize the current capacity and limitations of the FJSP to track the federal response to crime in Indian country. This study builds on the earlier *Tribal Youth* report conducted for BJS. For the current report, Urban was able to create and test a customized linking methodology. Analysts started with geographical indicators available in the FJSP data to determine crimes committed in Indian country. Next, analysts applied a customized matching process across stages and agencies. For purposes of this report, a broad definition of IC cases was adopted to include all federal prosecutions related to crimes occurring in Indian country, not just those based on these two jurisdictional statutes (18 U.S.C. § 1152 and 1153). This

means that drug, firearms, and immigration cases are generally included, although in one district (Arizona), the large volume of immigration cases warranted exclusion primarily due to the location of a large Indian reservation along the Mexican border that inflated the number of immigration offenses attributed to IC crime which severely skewed the offense distribution of the IC caseload.

## Changes in FJSP Agencies' Administrative Data since 2011

To provide context for interpreting the data, the study team conducted semi-structured telephone interviews with data experts in six FJSP contributing agencies (EOUSA, BOP, USSC, AOUSC, OPPS, and USMS) and a few DOJ stakeholders (National Institute of Justice (NIJ) and EOUSA). Urban's *Tribal Youth* report identified a number of weaknesses in agency data systems that limited Urban's ability to isolate IC cases, and agency calls were an opportunity to determine whether any changes had occurred in the subsequent years. The authors also explored whether the agencies maintained data on IC cases beyond the standard annual extracts for FJSP. In preparation for the calls, the data experts were sent the criteria Urban previously used to identify the IC cases and juvenile cases in their datasets and any issues encountered in trying to isolate these categories of offenders.

The calls revealed that agencies had made few changes to their data systems since the release of the *Tribal Youth* report in 2011. The agencies generally agreed with Urban's methods for identifying IC cases. Except for EOUSA, which is discussed below, the agencies did not report changes in their data collection or reporting methods for IC cases. Highlights of interviews with the other FJSP agencies are provided in Appendix A.

EOUSA has made a concerted effort to upgrade the quality of the IC data included in the LIONS system. The Native American Issues Subcommittee (NAIS) of the Attorney General's Advisory Committee has focused on improved data reporting. EOUSA has trained US Attorneys' Offices (USAO) and emphasized the need for more complete information about IC cases. According to EOUSA, program categories 062 ("Indian Offenses") and 092 ("Violent Crime in Indian Country") are the key to identifying the federal cases in Indian country. Although the LIONS system only requires one program category, EOUSA has instructed USAs that all cases occurring in

IC must include one of the IC program category codes, even if another category of crime is indicated as primary (e.g., drugs or bank robbery).

At the same time, the DOJ TLOA Report describes a number of limitations in the EOUSA data, including:

- Data entry standards and procedures vary across USAOs, e.g., criteria for opening a matter and assigning program categories;
- Multiple program categories may be associated with a case (and required by policy), but only one is required by the data system;
- The LIONS system is not designed to check entries for accuracy and internal consistency. For example, the system does not require entry in certain fields (e.g., identifying a case as either being in Indian country or not), and does not cross-check entry fields or control data-entry options based on previous responses. Incorrect entries remain in LIONS unless they are detected and manually corrected. Specific problems noted were:
  - » Cases classified with incorrect information that LIONS did not reject or flag for correction, such as the primary offense charge listed in the LIONS case-management system refers to a statute that is not a criminal offense, such as a sentencing provision or the jurisdictional statutes 1152 and 1153. Similarly, a USAO without any federally recognized tribes entered cases using one of the IC program categories.
- The LIONS system does not provide information on the status (Indian/non-Indian) of victims and defendants, which was one of the TLOA requirements. Although DOJ had directed USAOs to begin recording the status of status in the “individual participant” section of LIONS, it turned out that this only worked when using the so-called “long form,” which is not used for immediate declinations. The intent was to draw the status information from the Victim Notification System (VNS) and enter it into LIONS. EOUSA reported that it is working on a new case management system that would be able to include the Indian/non-Indian status of defendants and victims in the future.

In concert with these improvements in recording data, the first TLOA report showed a substantial increase in the number of prosecutions handled by U.S.

Attorneys in Indian country from FY 2009–2012, while the most recent report for FY13 showed a drop in cases, though not below the FY 11 levels. The report also provided data on declinations by U.S. Attorneys and information about the FBI’s referral patterns. It is worth noting that the DOJ TLOA Report offered a new way to group the 33 overlapping declination codes, organizing them into six categories. These groupings streamline and clarify the categories.

## Data Analysis

The section presents statistics about Indian country offenders for each stage of federal case processing. The objectives are to identify and describe Indian country cases over a three-year period (2009–2011) through the application of a new, alternative methodological approach that leverages available information across federal agency data systems by linking records across stages. This was not possible in the earlier *Tribal Youth* report as explained above.

We were unable to apply the FJSP sequential dyad linking methodology to our earlier study focused on tribal youth because of limitations inherent in the USSC and Administrative Office of the U.S. Courts (AOUSC) datasets. Adjudicated delinquents are not covered by the sentencing guidelines (USSG, §1B1.12), and thus not included in the USSC dataset, and we found that the AOUSC was increasingly sealing records for juveniles, making linking impossible since the identifier fields for these records were redacted.

The data sources used to conduct the quantitative analysis for this report were drawn from FJSP data obtained from the contributing federal agencies for FY 2009–2011 (see the textbox below for a summary of the contributing agencies and the associated datasets used for this study. Analysts reviewed arrest data from the U.S. Marshals Service JDIS/PTS database, investigation/prosecution data from the Executive Office of U.S. EOUSA LIONS database, USSC data on offenders sentenced pursuant to the Sentencing Reform Act, and BOP’s data on prisoners admitted to federal prisons.

To respond to the limitations identified in the *Tribal Youth* report, Urban developed an analytic approach that linked records across stages/data sources to take



advantage of the best indicators present in earlier stages that could be supplemented with indicators from subsequent stages. The resulting information identified the fullest set of Indian country offenders possible for each stage of processing.

This “mixed methods” approach relied primarily on geographic indicators regarding place of arrest, augmented with information from a customized process of linking records across

subsequent stages/agencies. This approach allowed additional indicators of IC offenses from each stage/data source to identify IC offenders that could not be identified through the geographical approach. Focus was limited to the 48 federal judicial districts with IC responsibility (i.e., where there are federally recognized tribes), as identified by DOJ in its 2013 TLOA report. The detailed steps of the methodological approach are described in Appendix B.

The mixed methods strategy employed was necessary given the data limitations (e.g., some USMS records were missing entirely on place

### **Federal Justice Statistics Program (FJSP): Contributing Agencies included in the Study**

**U.S. Marshals Service (USMS)**—Arrests and books suspects and transports and houses pretrial and pre-sentenced offenders

- *Prisoner Tracking System (PTS)/Justice Detainee Information System (JDIS)* contains information on all suspects arrested and booked for violations of federal law.

**Executive Office for U.S. Attorneys (EOUSA)**—Administrative office for all U.S. Attorneys’ Offices

- *National LIONS System Files* contains information on the investigation and prosecution of suspects in criminal matters received and concluded, as well as criminal cases filed and terminated, that are handled by U.S. Attorneys.

**U.S. Sentencing Commission (USSC)**—Independent body that develops and oversees sentencing policy for the federal system

- *Monitoring Data Base* contains information on criminal defendants sentenced pursuant to the provisions of the Sentencing Reform Act (SRA) of 1984.

**Federal Bureau of Prisons (BOP)**—Responsible for custody of all federal offenders sentenced to incarceration

- BOP database contains information on all sentenced offenders admitted to or released from federal prison during a fiscal year and offenders in federal prison at the end of each fiscal year.

of arrest, while others contained place of arrest data that was too general and therefore not useful (e.g., “15 Main Street”). For the residual set of records that did not contain good information on place of arrest, analysts employed other means of identifying IC offenders for each stage, such as examining USMS arresting agency or EO program category, as described above. In this manner, analysts were able to leverage as much reliable data as possible across stages/data sources to identify IC offenders for each stage, rather than relying on the rough proxy measures only available within the cross-sectional data sources for particular stages to report on those stages—an approach followed in prior research efforts. The geographic approach used for this project identified the core set of IC offenders that defined the analytic cohort, carried through across stages via customized linking, but this core was augmented with additional records identified using indicators available in later stages.

Based on the resulting set of cohorts/datasets described above, this section next presents a series of descriptive tables, organized by key stage of processing. The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

## INDIAN COUNTRY SUSPECTS IN MATTERS CONCLUDED

There were 6,137 IC suspects in matters concluded by U.S. Attorneys over the three-year period examined. The annual number of IC suspects in matters concluded increased by 15% from 1,233 in 2009 to 1,402 in 2011 (see Table 2). In terms of the lead charge investigated, violent offenses comprised nearly two-thirds (62%) of all IC matters concluded. These violent offenses were composed chiefly of murder, assault, and sexual abuse offenses, each of which accounted for about one-third of all violent offenses across the three years. Property offenses (including embezzlement, fraud and larceny) accounted for 12% of all Indian country matters resolved by U.S. Attorneys, while drug offenses accounted for 10%, public order offenses (including conspiracy, and arson and explosives) made up 8%, immigration encompassed 4%, and various other crimes (including weapon offenses) comprised the final 4% of matters concluded in Indian country. This offense distribution was fairly consistent annually across the three years (FY 2009–2011).

**Table 2. Indian Country Suspects in Matters Concluded, by Lead Charge, 2009–2011**

Lead charge	Total	2009	2010	2011
<b>Violent offenses</b>	3,833	1,223	1,208	1,402
Murder	1,261	372	418	471
Assault	1,040	315	312	413
Robbery	116	37	47	32
Sexual abuse	1,390	488	426	476
<b>Property offense</b>	724	231	238	255
<b>Drug</b>	586	156	186	244
<b>Public-order offenses</b>	498	174	179	145
Racketeering	34	15	6	13
Conspiracy, aiding & abetting	245	102	106	37
Arson and explosives	99	26	41	32
<b>Weapon offenses</b>	121	37	39	45
<b>Immigration offenses</b>	226	98	76	52
<b>Other offenses</b>	149	23	51	75
<b>Total (All Offenses)</b>	<b>6,137</b>	<b>1,942</b>	<b>1,977</b>	<b>2,218</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” suspects identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

Five federal judicial districts (Arizona, South Dakota, North Dakota, New Mexico, and Montana) accounted for nearly three-quarters (73%) of all Indian country matters referred to and resolved by U.S. Attorneys. The Arizona, South Dakota and New Mexico districts comprised the largest shares (27%, 17%, and 16%, respectively) of IC suspects in matters concluded by U.S. Attorneys for any single district, a pattern which held each year from 2009 to 2011 (see Table 3).

**Table 3. Indian Country Suspects in Matters Concluded, by Judicial District, 2009–2011**

Federal judicial district	Total	2009	2010	2011
Arizona	1,665	502	578	585
Colorado	73	26	22	25
Michigan – Eastern	87	6	19	62
Michigan – Western	98	30	37	31
Minnesota	87	26	25	36
Mississippi – Southern	75	18	12	45
Montana	487	159	158	170
Nebraska	145	44	54	47
Nevada	111	42	29	40
North Carolina – Western	46	14	7	25
North Dakota	299	96	102	101
New Mexico	963	319	329	315
Oklahoma – Eastern	90	44	21	25
Oklahoma – Northern	66	6	32	28
Oklahoma- Western	86	29	28	29
Oregon	80	30	16	34
South Dakota	1,030	344	303	383
Utah	64	12	28	24
Washington – Eastern	63	18	18	27
Washington – Eastern	77	27	25	25
Wyoming	115	38	38	39
Other districts	330	112	96	122
<b>Total</b>	<b>6,137</b>	<b>1,942</b>	<b>1,977</b>	<b>2,218</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” suspects identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

The Federal Bureau of Investigation investigated just over half (51%) of the 6,137 Indian country suspects in criminal matters referred to U.S. Attorneys from 2009 to 2011, followed by the BIA (22%), State and local authorities (9%), US Customs and Border Protection (CBP) (5%) and the Drug Enforcement Administration (DEA) (4%). This distribution across investigative agencies remained fairly stable across the three

years, although the share of IC suspects investigated by state or local authorities grew modestly, increasing from 7% at the start of the period to over 11% of all investigations referred by 2011 (see Table 4) .

**Table 4. Indian Country Suspects in Matters Concluded, by Investigative Agency, 2009–2011**

Investigative agency	Total	2009	2010	2011
Bureau of Indian Affairs (BIA)	1,321	406	398	517
Bureau of Customs & Border Protection (CBP)	314	106	81	127
Bureau of Alcohol, Tobacco & Firearms (ATF)	78	26	30	22
Drug Enforcement Administration (DEA)	236	91	87	58
Federal Bureau of Investigation (FBI)	3,126	992	1,081	1,053
State/County/Municipal Authorities	560	165	144	251
U.S. Marshals Service (USMS)	67	19	26	22
All Other	435	137	130	168
<b>Total</b>	<b>6,137</b>	<b>1,942</b>	<b>1,977</b>	<b>2,218</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” suspects identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

The data analysis identified a total of 227 IC juvenile suspects (comprising 4% of all IC suspects) over the three-year period. There were 67 IC suspects who were juveniles in 2009, which represented a 48% decrease from the 129 juvenile IC suspects in 2008 (*Tribal Youth in the Federal Justice System*, 2011). However, since the number of IC juvenile suspects had already been decreasing (27% drop since 2005 and 49% decrease since 2003, the decrease in the number of juveniles in 2009 appears to be a continuation of that downward trend. By 2010, however, the number of juvenile IC suspects had increased to 80 (a 19% increase from 2009), a level at which it remained in 2011 (see Table 5).

**Table 5. Indian Country Suspects in Matters Concluded, by Adults vs. Juveniles, 2009–2011**

	Total	2009	2010	2011
Adults	5,910	1,875	1,897	2,138
Juveniles	227	67	80	80
<b>Total</b>	<b>6,137</b>	<b>1,942</b>	<b>1,977</b>	<b>2,218</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” suspects identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

Most of the 6,137 IC suspects in matters concluded (58%) during 2009–2011 were prosecuted as criminal cases in U.S. district court, while 35% of those IC suspects were declined for federal prosecution, and just over 6% were disposed by U.S. Magistrates (See Table 6). Declination rates dropped modestly over the period, from 38% in 2009 to 34% in 2011.

**Table 6. Indian Country Suspects in Matters Concluded, by Disposition, 2009–2011**

Mode of disposition	Total	2009	2010	2011
Prosecuted in U.S. District Court	3,558	1,113	1,166	1,279
Disposed by U.S. Magistrate	384	92	120	172
Matter Declined for Federal Prosecution	2,157	730	677	750
<b>Total</b>	<b>6,137</b>	<b>1,942</b>	<b>1,977</b>	<b>2,218</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” suspects identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

Over the three-year period, the most commonly cited reasons for declining to proceed with federal prosecution concerned insufficient evidence. The recorded reasons of “weak or insufficient admissible evidence” and “lack of evidence of criminal intent” together comprised 63% of all declinations. In addition, “witness problems” were cited in another 6% of matters declined (see Table 7). These three case-related

reasons (comprising 7 out of 10 declinations) reflect situations where the U.S. Government could not proceed because it was unable to prove its case in court beyond a reasonable doubt. About 9% of Indian country suspects had matters declined because they were either being referred to other authorities for prosecution or were being prosecuted on other charges. Finally, another frequent reason for declining to move forward with a case was “no federal offense evident” (7%).

**Table 7. Indian Country Suspects in Matters Declined, by Declination Reason, 2009–2011**

Declination reason	Total	2009	2010	2011
Weak or insufficient admissible evidence	993	359	288	346
Lack of evidence of criminal intent	375	93	159	123
No federal offense evident	152	60	47	45
Minimal federal interest or no deterrent value	26	3	14	9
Jurisdiction or venue problems	25	6	6	13
Witness problems	134	56	42	36
Suspect to be prosecuted by other authorities	169	53	49	67
Suspect being prosecuted on other charges	25	8	7	10
Agency request	71	23	17	31
Opened in error	28	14	4	10
Lack of investigative resources	22	14	4	4
Staleness	20	11	5	4
All Other	117	30	35	52
<b>Total</b>	<b>2,157</b>	<b>730</b>	<b>677</b>	<b>750</b>

**Source** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” suspects identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

## INDIAN COUNTRY DEFENDANTS IN CASES FILED IN FEDERAL COURT

There were 3,921 IC defendants in case filed in U.S. district court. The annual number of IC defendants in cases filed increased by 13% from 1,237 in 2009 to 1,395 in 2011 (see Table 8).

Violent offenses were the most serious charge for the majority (58%) IC defendants, with charges of murder and sexual abuse each accounting for about one-third of those violent offenses, and assault accounting for just over one-quarter of all violent offenses. Drug (24%) and property offenses (19%) were the next most common offense types prosecuted, with the latter comprised mainly of larceny, fraud, and arson and explosives offenses. Public order offenses (which included conspiracy, aiding and abetting, escape and racketeering and extortion) accounted for another 12% of all IC defendants in cases filed.

**Table 8. Indian Country Defendants in Cases Filed, by Most Serious Offense, 2009–2011**

Lead charge	Total	2009	2010	2011
<b>Violent offenses</b>	2,272	721	727	824
Murder	815	266	257	292
Assault	608	184	187	237
Robbery	86	21	42	23
Sexual abuse	748	246	238	264
<b>Property offense</b>	434	149	135	150
Embezzlement	34	11	12	11
Fraud	82	28	23	31
Larceny	227	77	74	76
Arson and explosives	62	20	23	19
<b>Drug</b>	534	138	182	214
<b>Public-order offenses</b>	289	99	108	82
Racketeering and extortion	22	11	6	5
Conspiracy, aiding & abetting	124	50	58	16
Escape	35	13	8	14
<b>Weapon offenses</b>	106	33	34	39
<b>Immigration offenses</b>	176	77	63	36
<b>Unknown offenses</b>	110	20	40	50
<b>Total (All Offenses)</b>	<b>3,921</b>	<b>1,237</b>	<b>1,289</b>	<b>1,395</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” defendants identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).



Five federal judicial districts (Arizona, South Dakota, North Dakota, New Mexico, and Montana) were responsible for three-quarters (76%) of all IC cases filed in U.S. district court in the United States. Arizona had the largest share of IC case-defendants in the nation, with fully one-quarter of all IC defendants in cases filed occurring in Arizona. The districts of South Dakota and New Mexico were responsible for 18% and 14% respectively, of all IC defendants in cases filed. Montana (11%) and North Dakota (6%) also accounted for significant shares of IC defendants in cases filed in the United States (see Table 9).

**Table 9. Indian Country Defendants in Cases Filed, by Judicial District, 2009–2011**

Federal judicial district	Total	2009	2010	2011
Arizona	1,001	275	357	369
Colorado	35	7	12	16
Michigan – Eastern	33	4	10	19
Michigan – Western	58	21	22	15
Minnesota	58	14	25	19
Mississippi – Southern	32	7	12	13
Montana	433	148	139	146
Nebraska	85	25	31	29
Nevada	48	15	14	19
North Carolina – Western	44	14	9	21
North Dakota	240	74	75	91
New Mexico	564	201	198	165
Oklahoma – Eastern	37	11	13	13
Oklahoma – Northern	54	8	23	23
Oklahoma- Western	41	18	18	5
Oregon	44	16	6	22
South Dakota	724	242	208	274
Utah	47	13	15	19
Washington – Eastern	55	16	16	23
Washington – Western	52	21	15	16
Wyoming	89	33	24	32
Other districts	147	54	47	46
<b>Total</b>	<b>3,921</b>	<b>1,237</b>	<b>1,289</b>	<b>1,395</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” defendants identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

We identified a total of 172 IC juvenile defendants in case filed from FY 2009–2011 (about 4% of all IC defendants). The number of IC juvenile defendants in cases filed increased from 51 in 2009 to 64 in 2010 (a 25% increase) before decreasing to 57 in 2011. The average annual number of IC juvenile defendants in cases filed over the three-year period was 57 (see Table 10).

**Table 10. Indian Country Defendants in Cases Filed, by Adults vs. Juveniles, 2009–2011**

	Total	2009	2010	2011
Adults	3,749	1,186	1,225	1,338
Juveniles	172	51	64	57
<b>Total</b>	<b>3,921</b>	<b>1,237</b>	<b>1,289</b>	<b>1,395</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” defendants identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

#### INDIAN COUNTRY DEFENDANTS IN CASES TERMINATED IN FEDERAL COURT

There were 3,645 IC defendants in case filed in U.S. district court. The annual number of IC defendants in cases terminated increased by 14% from 1,152 in 2009 to 1,309 in 2011 (see Table 11). Violent offenses (N=2,160) were the most common offense type (nearly 6 in 10) for IC defendants in cases terminated, with murder accounting for 35% of those violent offenses, and the remainder composed of sexual abuse (33%), assault (29%), and robbery (3%). The next most common offense categories were drug (12%) and property offenses (11%), with the latter comprised mostly of larceny, fraud, and arson and explosives offenses. Public order offenses accounted for another 8% of all IC defendants in cases filed, followed by immigration offenses (5%) and weapon offenses (3%). These offense distributions were fairly consistent across the three years.

**Table 11. IC Defendants in Cases Terminated in Federal Court, by Most Serious Offense, 2009–2011**

Lead charge	Total	2009	2010	2011
<b>Violent offenses</b>	2,160	718	721	721
Murder	758	252	244	262
Assault	624	229	201	194
Robbery	65	21	22	22
Sexual abuse	703	215	250	238
<b>Property offense</b>	417	138	138	141
Embezzlement	28	8	7	13
Fraud	79	34	25	20
Larceny	224	71	77	76
Arson and explosives	63	17	21	25
<b>Drug</b>	430	94	107	229
<b>Public-order offenses</b>	284	97	96	91
Racketeering and extortion	29	10	15	4
Conspiracy, aiding & abetting	148	54	49	45
Escape	32	12	11	9
<b>Weapon offenses</b>	94	22	36	36
<b>Immigration offenses</b>	174	70	64	40
<b>Unknown offenses</b>	86	13	22	51
<b>Total (All Offenses)</b>	<b>3,645</b>	<b>1,152</b>	<b>1,184</b>	<b>1,309</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” defendants identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

There were 163 IC juvenile defendants in case terminated from FY 2009-2011 (about 4% of all IC defendants). The number of IC juvenile defendants in cases filed increased from 42 in 2009 to 69 in 2009 (a 64% increase) before leveling off to 52 in 2011, for an annual average of 54 IC juvenile defendants in cases terminated over the three-year period was 54 (see Table 12).

**Table 12. IC Defendants in Cases Terminated, by Adults vs. Juveniles, 2009–2011**

	Total	2009	2010	2011
Adults	3,482	1,110	1,115	1,257
Juveniles	163	42	69	52
<b>Total</b>	<b>3,645</b>	<b>1,152</b>	<b>1,184</b>	<b>1,309</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” defendants identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

In terms of case disposition, about 92% of all IC defendants were convicted in U.S. district court from 2009 to 2011. The annual rate of conviction remained consistent at about that level across the three-year period (see Table 13).

**Table 13. IC Defendants in Cases Terminated, by Case Disposition, 2009–2011**

Case disposition	Total	2009	2010	2011
Convicted	91.8%	91.1%	91.5%	92.6%
Not convicted	8.2%	8.9%	8.5%	7.4%
<b>Total N</b>	<b>3,645</b>	<b>1,152</b>	<b>1,184</b>	<b>1,309</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” defendants identified by linking: the Executive Office for U.S. Attorneys’ National LIONS database with U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

## INDIAN COUNTRY OFFENDERS SENTENCED IN FEDERAL COURT

There were 2,447 IC offenders sentenced in U.S. district court. The annual number of IC offenders sentenced increased by 17%, from 775 in 2009 to 906 in 2011 (see Table 14). Consistent with previous stages, violent offenses (55%) were the most common offense type for IC offenders sentenced, with assault comprising 54% of those violent offenses, followed by sexual abuse (26%), murder (16%), and robbery (2%). Murder was the most common violent offense charged (see Table 8). The sentencing data showed that assault was the most common violent offense of conviction. The next most common offense types for IC offenders sentenced were drug and property

offenses (each accounted for 14% of IC offenders sentenced during the period). Immigration offenses accounted for another 7% of all offenders sentenced, followed by public order offenses (5%) and weapon offenses (3%). These offense distributions remained stable across the three years examined.

**Table 14. Indian Country Offenders Sentenced in Federal Court, by Most Serious Offense, 2009–2011**

Offense	Total	2009	2010	2011
<b>Violent offenses</b>	1,341	436	434	471
Murder	209	65	79	65
Assault	726	247	221	258
Robbery	28	12	5	11
Sexual abuse	354	104	121	129
<b>Property offense</b>	342	112	95	135
Embezzlement	116	39	41	36
Fraud	56	20	9	27
Larceny	50	14	10	26
Arson and explosives	27	5	13	9
<b>Drug</b>	342	81	93	168
<b>Public-order offenses</b>	119	34	32	53
Racketeering and extortion	5	2	3	0
Conspiracy, aiding & abetting, traffic and jurisdictional	67	19	11	37
Escape	33	12	10	11
<b>Weapon offenses</b>	106	30	40	36
<b>Immigration offenses</b>	160	70	61	29
<b>Unknown offenses</b>	37	12	11	14
<b>Total (All Offenses)</b>	<b>2,447</b>	<b>775</b>	<b>766</b>	<b>906</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” offenders identified by linking: U.S. Sentencing Commission Monitoring data with: the Executive Office for U.S. Attorneys’ National LIONS database and U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

Most, but not all, of the offenders sentenced for IC crimes between 2009 and 2011 were American Indian. Demographic information available from the U.S. Sentencing

Commission data revealed that most IC offenders were male (82%) and 3 in 4 were American Indian, 22% were White, 5% were Black, and less than 1% were Asian. About half of all IC offenders sentenced in federal court had not graduated high school, while 35% were high school graduates, 14% had some college, and 1% were college graduates (see Table 15).

**Table 15. Demographics of Indian Country Offenders Sentenced, 2009–2011**

Offender characteristics	Total	2009	2010	2011
<b>Gender</b>				
Male	2,075	649	669	757
Female	361	121	96	144
Unknown	12	6	1	5
<b>Race</b>				
American Indian	1,791	549	576	666
White	526	175	161	190
Black	45	17	13	15
Asian	15	8	2	5
Unknown	66	22	14	30
<b>Education</b>				
Less than H.S. graduate	1,168	372	376	420
High School graduate	826	258	254	314
Some college	328	103	102	123
College graduate	39	12	18	9
Unknown	86	30	16	40
<b>Total</b>	<b>2,447</b>	<b>775</b>	<b>766</b>	<b>906</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” offenders identified by linking: U.S. Sentencing Commission Monitoring data with: the Executive Office for U.S. Attorneys’ National LIONS database and U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

In terms of the type of sentence imposed on IC offenders, an overwhelming majority (about 9 in 10) received a prison sentence, while 9% received a probation sentence and a negligible amount (<1%) received a sentence of a fine only (see Table 16). Of those receiving prison, the average term imposed was 56 months and the average probation term was 35 months (see Table 17.)

**Table 16. Indian Country Offenders Sentenced, by Type of Sentence Imposed, 2009–2011**

Type of Sentence	Total (All Years)		2009		2010		2011	
	N	Percent	N	Percent	N	Percent	N	Percent
Prison	2,216	90.7%	698	90.3%	705	92.3%	813	89.7%
Probation	227	9.3%	75	9.7%	59	7.7%	93	10.3%
Fine Only	4	0.2%	2	0.3%	2	0.3%	0	0.0%
<b>Total</b>	<b>2,443</b>		<b>773</b>		<b>764</b>		<b>906</b>	

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” offenders identified by linking: U.S. Sentencing Commission Monitoring data with: the Executive Office for U.S. Attorneys’ National LIONS database and U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

**Table 17. IC Offenders Sentenced, by Average Sentence Imposed, 2009–2011**

*Mean sentence (in months)*

Type of sentence	Total (all years)	2009	2010	2011
Prison (N=2,205)*	56.1 mos.	57.2 mos.	58.8 mos.	52.8 mos.
Probation (N=227)	35.1 mos.	34.5 mos.	36.8 mos.	34.4 mos.

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” offenders identified by linking: U.S. Sentencing Commission Monitoring data with: the Executive Office for U.S. Attorneys’ National LIONS database and U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

\*There were 11 offenders sentenced to prison with missing information on length of the prison sentence.

The USSC data contained information for sentenced IC offenders regarding the USSC criminal history category.<sup>15</sup> The most common criminal history category for IC offenders was Criminal History Category I, at about 59%, while 13% were classified under Criminal History Category II, 14% under Criminal History Category III, 7% with Criminal History Category IV, and 4% each with Criminal History Category V and VI.

<sup>15</sup> According to the U.S. Sentencing Guidelines, federal sentences imposed are partly determined by the offender’s criminal history category score, which ranges from Category I (least criminal history) to Category VI (most criminal history).



This distribution on Criminal History Category for IC offenders held each year consistently across the three years (see Table 18).

**Table 18. Indian Country Offenders Sentenced, by Criminal History, 2009–2011**

	Total (all years)		2009		2010		2011	
Criminal history category (USSC)	N	Percent	N	Percent	N	Percent	N	Percent
CH I	1,422	59.3%	457	60.1%	440	57.8%	525	60.1%
CH II	308	12.9%	87	11.4%	105	13.8%	116	13.3%
CH III	328	13.7%	104	13.7%	104	13.7%	120	13.7%
CH IV	158	6.6%	53	7.0%	55	7.2%	50	5.7%
CH V	92	3.8%	24	3.2%	36	4.7%	32	3.7%
CH VI	88	3.7%	36	4.7%	21	2.8%	31	3.5%
Missing	51	-	14	-	5	-	32	-
<b>Total</b>	<b>2,447</b>		<b>775</b>		<b>766</b>		<b>906</b>	

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” offenders identified by linking: U.S. Sentencing Commission Monitoring data with: the Executive Office for U.S. Attorneys’ National LIONS database and U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

## INDIAN COUNTRY OFFENDERS ADMITTED TO FEDERAL PRISON, 2009–2011

There were 2,758 IC offenders were admitted to federal prison from 2009 to 2011. The annual number of IC offenders admitted to BOP increased by 44%, from 775 in 2009 to 1,087 in 2011 (see Table 19). Violent offenses (56%) were the most common offense type among IC offenders admitted to prison, with assault comprising 53% of those violent offenses, followed by sexual abuse (29%), murder (15%), and robbery (3%). The next most common offense types for IC prisoners were public order (12%), drug and property offenses (each accounted for 11% of IC prisoners admitted during the period), while weapon offenses accounted for 3% of IC prisoners admitted. These offense distributions remained fairly stable across the three years analyzed.

**Table 19. Indian Country Offenders Admitted to Federal Prison, by Most Serious Offense, 2009–2011**

Offense	Total	2009	2010	2011
<b>Violent offenses</b>	1,545	473	517	555
Murder	236	70	88	78
Assault	825	247	273	305
Robbery	41	8	14	19
Sexual abuse	441	148	140	153
<b>Property offense</b>	281	82	94	105
Fraud	42	10	14	18
Burglary	59	18	16	25
Larceny	39	10	17	12
Arson and explosives	47	15	13	19
<b>Drug</b>	296	43	99	154
<b>Public-order offenses</b>	335	97	137	101
Racketeering and extortion	8	2	5	1
Conspiracy, aiding & abetting, traffic and jurisdictional	150	41	59	50
Escape	15	6	5	4
<b>Weapon offenses</b>	93	23	34	36
<b>Immigration offenses</b>	18	4	7	7
<b>Unknown offenses</b>	190	33	28	129
<b>Total (All Offenses)</b>	<b>2,758</b>	<b>755</b>	<b>916</b>	<b>1,087</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” offenders identified by linking: BOP SENTRY data with U.S. Sentencing Commission Monitoring data, Executive Office for U.S. Attorneys’ National LIONS data and U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

Information on offender characteristics was available from the BOP data regarding IC offenders admitted to prison during the 2009–2011 period. Most IC prisoners were male (89%), non-Hispanic (89%), and American Indian. In addition, the vast majority (93%) of admitted prisoners who committed crimes in IC were U.S. Citizens (see Table 20).

**Table 20. Demographics of IC Offenders Admitted to Prison, 2009–2011**

Offender demographics	Total	2009	2010	2011
<b>Gender</b>				
Male	2,459	671	830	958
Female	299	84	86	129
Unknown	-	-	-	-
<b>Race</b>				
American Indian	1,856	534	620	702
White	759	197	241	321
Black	119	19	46	54
Asian	24	5	9	10
Unknown	-	-	-	-
<b>Ethnicity</b>				
Hispanic	311	56	117	138
Non-Hispanic	2,447	699	799	949
Unknown	-	-	-	-
<b>Citizenship</b>				
U.S. citizen	2,575	718	857	1,000
Not U.S. citizen	183	37	59	87
Unknown	-	-	-	-
<b>Total</b>	<b>2,758</b>	<b>755</b>	<b>916</b>	<b>1,087</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” offenders identified by linking: BOP SENTRY data with U.S. Sentencing Commission Monitoring data, Executive Office for U.S. Attorneys’ National LIONS data and U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

There were a total of 114 IC offenders admitted to BOP across the three-year period (FY 2009–2011) who were juveniles, comprising 4% of all IC admissions. The annual number of IC juveniles increased from 29 in 2009 to 44 in 2011, and the average annual number of IC juveniles admitted to BOP over the three-year period was 38 (see Table 21).

**Table 21. IC Offenders Admitted to Federal Prison, by Status (Adults vs. Juveniles), 2009–2011**

	Total	2009	2010	2011
Adults	2,644	726	875	1,043
Juveniles	114	29	41	44
<b>Total</b>	<b>2,758</b>	<b>755</b>	<b>916</b>	<b>1,087</b>

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” offenders identified by linking: BOP SENTRY data with U.S. Sentencing Commission Monitoring data, Executive Office for U.S. Attorneys’ National LIONS data and U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

The average prison term imposed for all IC offenders admitted to BOP during the 2009–2011 period was 56 months, although the annual average prison term decreased from 61 to 54 months, a 12% decline (see Table 22.) For violent IC offenders, the average prison term imposed was 74 months, while for property, drug, and public order offenders, the average prison term ranged from 31 to 33 months. The overall average prison term of 56 months reflected in the data on BOP admissions matched the information contained in the USSC data regarding IC offenders sentenced to prison (see Table 17).

**Table 22. Average Prison Term for IC Offenders Admitted to Prison, by Offense, 2009–2011 (months)**

Offense	All years	2009	2010	2011
All offenses	56.0 mos.	60.9 mos.	55.1 mos.	53.5 mos.
Violent	73.7	77.3	71.1	73.0
Property	31.4	31.7	28.8	33.4
Drug	33.5	20.1	41.2	32.4
Public order	30.6	28.2	29.7	34.1
Weapon	71.8	95.2	60.9	67.0
Immigration	23.9	10.7	28.1	27.1

**Source:** Urban Institute analysis of FJSP data. Customized subset of “Indian Country” offenders identified by linking: BOP SENTRY data with U.S. Sentencing Commission Monitoring data, Executive Office for U.S. Attorneys’ National LIONS data, and U.S. Marshals Service, Justice Detainee Information System data, FY 2009–2011.

**Note:** The data are reported only for the 48 federal judicial districts for which Assistant U.S. Attorneys (AUSAs) had IC responsibility (as reported by the 2013 TLOA Report).

## Assessment of the Geographical/Mixed Methods Approach

Recognizing the limited capacity of the individual FJSP agency datasets to identify IC cases for each stage of processing, the authors developed an approach that linked records across stages to improve the overall pool of information from which to identify IC cases. This alternative approach used geographic indicators regarding arrest location to determine the base set of crimes committed in Indian country. By applying the FJSP dyad linking methodology, this base set of identified IC offenders was tracked through to subsequent stages and, augmented along the way by using proxy indicators of IC available from each stage/agency to include additional IC offenders that were not captured by the geographic approach. Thus, the set of identified IC offenders was identified for each stage. In this manner, analysts leveraged the best information available across the FJSP agency data sources to build the fullest set of identified IC cases handled in the federal system.

The resulting numbers of IC offenders determined through this method represent an improvement over the cross-sectional approach of using the limited proxy variables and indicators available in any individual agency dataset to identify IC offenders for that particular criminal justice processing stage. Table 23 presents comparisons of the cross-sectional (“single-agency”) method and the new linking method for two stage cohorts: suspects in matters concluded and defendants in cases filed. As shown in Table 23, the new methodology yielded an extra 14% of identified IC suspects in matters concluded: 6,137 IC offenders were identified with the new linking approach as compared to the 5,363 IC offenders identified using the single-agency method. This 14 percent difference (added benefit) was fairly consistent across the three years. In addition, applying the new linking methodology resulted in an extra 28% of identified IC defendants in cases filed: 3,921 IC offenders were identified with the linking approach compared to the 3,069 IC offenders identified with the single-agency method.

**Table 23. Comparison of Methods to Identify Indian Country Offenders, by Cohort**

Stage/Cohort	Number of IC Records Identified		
	Single-agency method	Linking method	Net benefit of linking method
<b>Suspects in matters concluded</b>			
2009	1,676	1,942	266 (+15.8%)
2010	1,736	1,977	241 (+13.9%)
2011	1,951	2,218	267 (+13.7%)
<i>Total</i>	5,363	6,137	774 (+14.4%)
<b>Defendants in cases filed</b>			
2009	949	1,237	318 (+33.5%)
2010	1,003	1,289	286 (+28.5%)
2011	1,117	1,395	278 (+24.8%)
<i>Total</i>	3,069	3,921	852 (+27.8%)

As a measure of the soundness of the linking/mixed methods approach, analysts also examined the link rates across the stages, presented in Table 24. The link rates across the various cohorts were consistently high, ranging from 88% to 93%. However, there was one dyad explored that resulted in a low link rate: the link from EO criminal cases to AOUSC criminal cases (61% link rate). One reason for the lower link rate pertains to the practices followed by the AOUSC regarding juveniles: many districts do not enter juveniles into the system while others enter them, but redact identifying information (such as by inserting ‘SEALED’ into name fields). Also, the AOUSC data does not have an IC indicator variable in their database. Other than searching the criminal statute fields for the jurisdictional statutes (18 U.S.C. §1152 and 1153) pertaining to federal authority in IC, there is no systematic way to identify IC within the AOUSC data. Data from (EOUSA) for the adjudication stage containing better IC indicators (program category and investigative agency) were used to augment the set of identified IC ‘defendants in cases filed’ and ‘defendants in case terminated’ cohorts obtained through the linking approach.

**Table 24. Link Rates, by Dyad, for Indian Country Linked Datasets**

Dyad	Starting cohort	Expected linking universe (base)	Actual links	Link rate
Suspects in matters concluded-to-defendants in cases filed	EO Matters Out	EO Matters filed as cases in U.S. district court	Links to Defendants in Cases Filed	
	6,137	3,980	3,496	87.8%
Defendants in cases filed-to-defendants in cases terminated	EO Cases In	EO Cases In	EO Cases Out	
	3,921	3,921	3,645	93.0%

The geographical/linking methodology approach had several benefits, including:

- The geographical approach represents the best way to identify crimes occurring on Indian lands for the early stages of case processing, as it captures location information closest to where the crime actually occurred.
- Linking across data sources/stages allows for the cross-validation of information across data sources.
- Linking across data sources/stages permits the Indian country cohort to be expanded through secondary criteria (e.g., EO Investigative Agency='INIA', EO Program Category= IC ('065' or '092'), or BOP offense codes related to IC) determined to be fairly reliable. These multiple methods of identifying IC offenders are important since not all records have useful or complete information recorded in the USMS 'place of arrest' variable.
- Linking a base cohort of IC cases across multiple stages allows for cumulative advantage for the later stages, as all information from proceeding stages is leveraged through linking to identify the fullest set of IC offenders.

Having pointed out the advantages of applying this new methodology, the approach has some limitations, such as the following:

- The geographic approach assumes location of arrest is where the offense actually occurred (in certain instances, the offender may have fled the scene and been apprehended at a different location outside the Indian Reservation, or

even in another State). In this respect, place of arrest is a proxy for the location of the offense.

- Missing, incomplete, or low quality data in the ‘place of arrest’ variable is problematic (this challenge is addressed through the secondary criteria/mixed methods approach). A few districts had a fairly high level of missing data on arrest location. For these districts, the geographic approach does not work well and must be supplemented by relying on the traditional method indicators to fill in the gaps.
- Misspelled and incomplete place names sometimes appear in the USMS data arrest location variable. Analysts took steps to identify these variants and recode/standardize them into their code but may not have captured all of them.
- There are some towns and city borders that overlap different land types (including a different tribe’s reservation, private land, and public land) in the Census-designation places (CDP) shape files. Places were counted as IC if they were completely enclosed within one tribe’s reservation boundaries. However, analysts manually scanned reservations in ArcGIS to find CDPs that overlapped land types and if they determined that a place was, in fact, located in IC, they coded it as IC in the dataset.
- The linking of records across data sources is imperfect due to “noise” in the data (i.e., some identifying information will be recorded differently in different agency data and may not result in a match) as well as scope of coverage differences in what various agency data systems capture. The link rates achieved through the matching technique applied for the dyad linking methodology were fairly high.

The geographical/linking approach yielded improvements to the single-agency method of identifying IC cases and it would be possible to replicate this method to FJSP data in future years. However, given the labor-intensive requirements of the approach, including manual coding of the place of arrest and customized linking, consideration should be given to whether it should be routinely replicated.



## Section 3: Findings and Conclusions

Urban examined the available FJSP information about federal IC cases and summarized the statistics from FJSP for FY 2009-2011. Except for EOUSA, agencies have made few changes in the way they identify and report on IC cases since Urban's earlier *Tribal Youth* report. Consistent with earlier findings, federal criminal justice agency data systems generally do not include dedicated data fields or clear indicators for crimes occurring in IC, making it difficult to identify IC cases across various agencies and stages. The linked cohort analysis, which offered the promise of improved information about the flow of cases throughout the system, was more productive for this study than it was for the earlier *Tribal Youth* study.

Key findings from the analysis of FY 2009-2011 IC cases follow:

- From 2009 to 2011, the number of IC cases in the federal system increased by between 13% and 18%. This growth held across all stages of the justice system.
- There was an average of 2,045 IC suspects in criminal matters concluded by U.S. Attorneys each year from 2009 to 2011; this number increased by 14% over the three-year period, from 1,940 to 2,220 defendants in criminal matters concluded by U.S. Attorneys.
- On average, 1,300 IC defendants in criminal cases were filed in federal court annually from 2009 to 2011; this number increased by 13% over the three-year period, from 1,235 to 1,395 defendants in cases filed in U.S. district court.
- From 2009 to 2011, the annual number of IC juvenile offenders processed in the federal system was relatively modest (totaling less than 100 each year), but increased by 20–25% over the three-year period.
- Most IC cases are concentrated in a small number of federal judicial districts, mainly Arizona, South Dakota, Montana, New Mexico, and North Dakota.
- U.S. Attorneys accepted the majority of IC matters referred for prosecution (nearly 6 in 10), but declined about 35 percent during this period. Annual declination rates decreased modestly over the period, from 38% in 2009 to 34% in 2011.

- The most commonly cited reasons for declining to proceed with the federal prosecution of IC cases concerned insufficient evidence (“weak or insufficient admissible evidence” and “lack of evidence of criminal intent” together comprised 63% of all declinations).
- Most IC cases in the federal justice system involve violent offenses, with the most common violent offenses charged being murder, sexual abuse, and assault. Because of the study’s broad definition of Indian country, there were also some drug, property and public order offenses that occurred on Indian land that were included. (Also, as noted in the earlier section, immigration cases were excluded in Arizona that were identified through the geographical approach, since a large Indian reservation abuts Arizona’s border with Mexico which inflated the numbers).
- The average prison term imposed for IC prisoners was 56 months.

# Appendix A. Agency Interviews on the Identification of Indian Country Cases

The project team conducted semi-structured interviews with the agencies that contribute to the FJSP as well as a few other DOJ components. Highlights of those interviews, conducted in late 2012 and 2013, follow:

**USMS.** The USMS does not have an operational need to track or report on IC cases; they do not maintain any data fields to identify arrests that occur in Indian country. If asked, USMS staff indicated they would either use the race variable (=Native American) as a proxy or else employ a data mining methodology that combined the examination of multiple fields (e.g., arresting agency=BIA, arrest city (scanning this descriptive field for references to Indian Reservations or Tribes), limited to only those districts which contain Indian Reservations.

**EOUSA.** EOUSA has made a concerted effort to upgrade the quality of the IC data included in the LIONS system. The Native American Issues Subcommittee (NAIS) of the Attorney General's Advisory Committee has focused on improved data reporting. EOUSA has been training USAOs and emphasizing the need for more complete information about IC cases. According to EOUSA, program categories 062 and 092 are the key to identifying the federal cases in Indian country. USAs are being encouraged to enter multiple program categories to reflect cases in IC, even if another category of crime is indicated as primary (e.g., drugs or bank robbery).

At the same time, the 2013 DOJ TLOA Report describes a number of limitations in the EOUSA data, including:

- Data entry standards/procedures vary across USAOs, e.g., criteria for opening a matter and assigning program categories;
- Multiple program categories may be associated with a case, but only one is required;

- The LIONS system is not designed to check entries for accuracy and internal consistency. For example, the system does not require entry in certain fields (e.g., identifying a case as either being in Indian country or not), and does not cross-check entry fields or control data-entry options based on previous responses. Incorrect entries remain in LIONS unless they are detected and manually corrected. Specific problems noted were:
  - » Cases classified with incorrect information that LIONS did not reject or flag for correction, such as the primary offense charge listed in the LIONS case-management system refers to a statute that is not a criminal offense, such as a sentencing provision or the jurisdictional statutes 1152 and 1153. Similarly, a USAO without any federally recognized tribes entered a case using one of the IC program categories.
- The LIONS system is unable to provide information on the status (Indian/non-Indian) of victims and defendants, which was one of the TLOA requirements. Although DOJ had directed USAOs to begin recording the status of status in the “individual participant” section of LIONS, it turned out that this only worked when using the so-called “long form”, which is not used for immediate declinations. The status information was be drawn from VNS and entered into LIONS. EOUSA reported that it was working on a new case management system that would be able to include the Indian/non-Indian status of defendants and victims in the future.

Substantively, the TLOA report showed a substantial increase in the number of prosecutions handled by US Attorneys in Indian country. The report also provided data on declinations by US Attorneys and information about the FBI’s referral patterns.

The DOJ TLOA Report also offered a new way to group the overlapping declination codes, organizing them into fewer categories. FJSP may wish to consider similar changes in the future (we heard during our discussions that the next generation of the EO data system will include these improvements, as well as others).

**AOUSC.** The AO would identify IC cases by searching the citation table for “Indian or Native American.” Using this method, they identified a number of statutes in Chapter 53 of Title 18, Indians, including: 18 USC §§ 1153, 1154, 1158, 1163, 1167,

and 1170. These statutes map into ‘other violent offenses’ or ‘other regulatory offenses’ in their offense categories. The AO confirmed that there are no additional data fields or supplementary sources of information that could help identify IC cases. It is worth mentioning that some of the specified statutes in Chapter 53, e.g., 1158, Counterfeiting Indian Arts and Crafts Board trade mark and 1159, Misrepresentation of Indian produced goods and products, do not require the crimes to occur on Indian lands.

Juvenile cases are best identified with the proceeding code=‘9’ (Juvenile proceeding/FJDA cases); the AO advised that proceeding code = ‘-’ (Rule 20A Juvenile Transfer) should not be used, as it not consistently entered properly and is therefore unreliable.

**USSC.** The data experts at the USSC agreed with our earlier methods for identifying IC cases in their dataset and had not made any other changes in the way they collect or analyze sentencing data for IC cases. They would use the race category (MONRACE=AI) to identify tribal defendants and they would expect the cases to cluster in several districts. To identify juveniles prosecuted as adults, they would use age at sentencing as a proxy.

**BOP.** BOP data experts would use the same factors Urban used to identify offenders prosecuted for IC offenses—statute/offense category, plus the race (American Indian).<sup>19</sup> Despite Urban’s impression that BOP’s SENTRY system included a juvenile flag that was not available in the FJSP dataset, the research staff was unaware of any such flag.

- **TLOA implementation.** The TLOA Pilot Project, which allowed BOP to house adult offenders sentenced by tribal courts, began in November 2010 and will continue until November 2014. Although the pilot permitted up to 100 participants at any one time, as of July 2013, only three inmates had been referred; all were accepted. BOP has tried to keep them as close to home as possible. A report on the BOP pilot program (four year report) is due to Congress after the completion of the pilot. BOP has added a new variable for

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<sup>19</sup> However, the program staff mentioned that the following BOP SENTRY variables and new codes would be used in the future: Sentence Procedure Code (SPCODE) =1200; Court of Jurisdiction (COJTYPE)=‘TRB’; Method of Commitment (HOWCOMT)=135; Release Method (RELSMTH)=‘TRIBAL\_RMV’. They also noted that BOP needs to notify the tribes before they release a federal inmate into their communities.

the TLOA Pilot Program (CMA=TLOA), but that change would not be relevant for the FJSP datasets.

**OPPS.** Operationally, the agency continues to have its IC Steering Committee, made up of New Mexico, Arizona, North Dakota, South Dakota, Minnesota, Nebraska, and Western District of New York. The agency collects race/ethnicity as a required field. We had a preliminary conversation about the possibility of using offender address (geocoded) to map to the Census tract level to determine IC offenders to identify IC cases. However, FJSP does not receive the geographic information. OPPS was fine with our method for identifying juveniles.

The OPPS tribal expert had the impression that there are more cases being handled in IC since TLOA. She noted continuing challenges in matching services to offenders, particularly for juveniles. Interestingly, from the perspective of the probation/pretrial officers, where the crime occurred (and whether it was “Indian country”) is irrelevant; they are only focused on the offender, not on the underlying jurisdiction or where the crime occurred. They want to provide services close to where the individual lives. (Note, however, that we do not use OPPS data in this study.)

**NIJ.** NIJ continues to conduct research on violence against American Indian and Alaska Native women in Indian Country. In NIJ’s experience, the FBI has the best IC data (Note, however, that the FBI does not contribute data to the FJSP database.)

# Appendix B. Mixed Methods Approach

This “mixed methods” approach relied primarily on geographic indicators regarding place of arrest, augmented with information from a customized process of linking records across subsequent stages/agencies. This approach allowed us to add indicators of IC offenses from each stage/data source to identify IC offenders that could not be identified through the geographical approach. We limited our focus to the 48 federal judicial districts identified in the 2013 TLOA report as having IC responsibility (i.e., where there are federally recognized tribes). The steps comprising our methodological approach are outlined below.

**Step 1.** Beginning with the USMS data, we used information on place of arrest (ARCITY) to determine whether an arrest occurred on Indian land. This was accomplished by using ArcGIS software to perform a spatial join of federal land shape files indicating Indian Reservations with U.S. Census places shape files (indicating census designated places). USMS arrest records that contained place of arrest determined to be located within an Indian Reservation were coded as IC cases with a flag (IC) variable. USMS arrest records not coded as Indian country cases through this geographical method were then subsequently checked to see if arresting agency was equal to ‘BIA’, the Bureau of Indian Affairs. If so, the IC flag was set to “on” for these cases as well. For a more detailed description of the geographic approach that we employed, please see Appendix C.

**Step 2.** Next, we linked these USMS Arrest records to the EOUSA ‘Suspects in Matters Out’ data, after which we examined the EOUSA program category variable for records coded with the designated IC Program Categories (‘065’ & ‘092’). Records that contained the EOUSA IC Program Categories that were not already coded as IC cases with the IC flag described in step 1 were coded as IC cases. We also examined records having investigative agency equal to ‘INIA’ or ‘HHPI’ that were not yet coded as IC offenders – such records were then coded as IC offenders. The net result of Step 2 was a linked dataset that comprised the analytic cohort for suspects in matters concluded that we used to report statistics regarding this stage of processing.

**Step 3.** We then joined the linked dataset from Step 2 to EOUSA criminal data on ‘Defendants in Cases Filed’. To augment the set of IC offenders identified through linking the Step 2 dataset, we analyzed residual records among the cohort of defendants in cases filed to examine the following two EOUSA variables: Program Category (=‘065’ or ‘092’) and Investigative Agency (=‘INIA’ or ‘HHPI’). For any records identified using these two criteria that were not already coded as IC offenders, we set the IC flag on to include them. The net result of Step 3 was a linked dataset that comprised the analytic cohort of defendants in criminal cases filed in federal court that we used to report statistics for this stage of processing.

**Step 4.** We performed intra-agency links within the EOUSA data to find matches for the Step 3 dataset (EOUSA defendants in cases filed cohort) with the EOUSA ‘defendants in cases terminated’ data. We then applied a similar process as describe above in Step 3 to augment the set of IC offenders by analyzing the Program Category (=‘065’ or ‘092’) and Investigative Agency (=‘INIA’ or ‘HHPI’) variables to pick up residual records that were not already coded as IC offenders with the IC flag. For any additional records that were found in this manner, the IC flag was set on to include them. We used the resulting dataset to report statistics for this stage/cohort (defendants in criminal cases terminated).

**Step 5.** In this step we linked the Step 4 dataset with the USSC data, to build the ‘defendants sentenced’ cohort. To augment this linked file, we analyzed the U.S. Code Title and Section offense variables available in the USSC criminal data to look for any records containing the jurisdictional statutes (18 USC §1152 and 18 USC §1153) as well as the following other statutes pertaining to IC offenses (18 USC §1154, 18 USC §1163, 18 USC §1167, and 18 USC §1170). For any records found that contained the IC jurisdictional statutes not already coded as IC offenders, the IC flag was set on to include them. This dataset was used to report statistics for the sentencing stage.

**Step 6.** The final step in the process involved linking the step 5 USSC dataset with the BOP admissions data, to create an IC ‘offenders admitted to prison’ cohort. We examined the BOP detailed offense codes that specifically flag offenses committed on Indian Reservations (701 – 795), in an effort to augment the set of identified IC offender records for this stage. Any records that contained the BOP offense codes designated for crimes committed on Indian Reservations that were not already flagged as IC cases were coded as IC cases.



This mixed methods strategy was necessary, given the imperfections present with the geographic approach (e.g., some USMS records were missing entirely on ‘place of arrest’ (ARCITY), while others contained place of arrest data that was not useful (e.g., “15 Main Street”). For the residual set of records that did not contain good information on place of arrest, we employed other means of identifying IC offenders for each stage, such as examining USMS arresting agency or EO program category, as described above. In this manner, we were able to leverage as much reliable data as possible across stages/data sources to identify IC offenders for each stage, rather than relying on the rough proxy measures only available within the cross-sectional data sources for particular stages to report on those stages – an approach we found to have limitations in our earlier *Tribal Youth* research report. We should emphasize that the geographic approach that we employed identified the core set of IC offenders that defined our analytic cohort, carried through across stages via customized linking, but this core was augmented with additional indicators available in later stages, via the multiple methods approach.

# Appendix C. The Geographic Approach

**Goal:** Identify all Indian country (IC) cases in US Marshals 2009-2011 arrest data

**Geographic Approach with ArcGIS:** We completed a spatial join of a federal land area shapefile (National Atlas of the U.S. and the U.S. Geological Survey 2013) and a census designation places (CDP) area shapefile (U.S. Bureau of the Census 2013) in ArcGIS.

For the five districts/states with the bulk of IC cases (AZ, MT, ND, NM, and SD), we first cleaned the US Marshals arrest places data from 2009-2011 within their respective judicial districts. ARCTY, the arrest location variable, is a text field that included places with varying specificity. It generally just listed the city, but sometimes included a street address or an unidentifiable place, such as “at work,” “self-surrender,” or “probation.” The cleaned data just included the town or city name. We then joined the CDPs within the state to the US Marshals arrest location data by the (cleaned) place of arrest. We selected each of the five states from the GIS census places data and generated output of each state’s CDPs with the number of arrests and BIA land area, including the reservation name if applicable. We then ran a report through ArcGIS to identify all CDPs across the US in IC. By looking at both reports, we found that this method underreported places on reservations, primarily for these three reasons:

1. The CDP overlapped different land types

Many town and city borders overlap different land types, including different tribe’s reservations, private land, and public land. The ArcGIS report only counted places as in IC if they were completely enclosed within one tribe’s reservation boundaries. Those places close to a reservation’s border (e.g., Tuba City, Arizona), straddling two reservations (a concern primarily in Arizona), or spanning tracts of private land were therefore not initially counted as being within IC. To identify these places, we made the CDPs’ transparent outlines superimposed over the opaque BIA land area to show how much of the census place fell inside BIA land. Instead of running an ArcGIS report to show places that had encompassed two land types—which could inadvertently include CDPs that are primarily outside IC—we manually scanned reservations’ borders in ArcGIS across the United States to find CDPs that overlapped land types. Those places

that appeared to be in IC were flagged for future examination. We only considered places to be in IC if they were primarily (from what we could deduce) in IC, in which case they were added to our list of IC places.

## 2. Arrest location did not exist in the GIS CDP data

We analyzed the arrest locations that did not join to a CDP for the five states/districts that we conducted a spatial join by place of arrest. Generally, the join did not work because the place name was incomplete (e.g., “Kykotsmovi” instead of “Kykotsmovi Village”), misspelled (e.g., “Kowlic” instead of “Cowlic”), or not a CDP (e.g., “North Komelik”). For the five primary districts, we investigated each place that did not join and identified the reason and if the place was on IC. If the place was not a CDP, we used internet maps and searches to determine if the location was on IC. Those places we determined to be on IC were added to the list of IC places, including misspelled and incomplete place names.

For the remainder of the districts in which AUSAs have IC responsibility, we compared the ArcGIS list of IC CDPs to an alphabetical list of US Marshals output. This allowed us, to the best of our ability, to identify misspellings and incomplete place names in the Marshals data. For larger reservations, we also manually scanned the places inside reservations boundaries using MapQuest (which we found preferable to Google Maps). If through this scan we found a place appeared to be in IC, but was missing from the ArcGIS CDPs in IC report, then we checked online that it was actually in a reservation. If so, we added it to our list of IC places.

## 3. Arrest location was in a different state

Cases could also be arrested in IC outside the district/state. To try and capture as many of these instances as possible, we exported the SAS output of all Marshals’ 2009-2011 arrest data to Excel. We then compared the ArcGIS list of IC places to the Marshals arrest places, using Excel. Through this process, we found ~30 arrest places that were in IC, but outside of their district. These places were added to each of the respective districts.

**SAS:** We then created an IC offender variable in SAS, based on arrest location identified above. We first compared our list of IC places with US Marshals arrest location data from 2009-2011. To reduce the amount of coding, only IC places found in US Marshals data were coded to identify those cases as IC offenders.

The variable ARCITY sometimes included the street name and number, in addition to the city. We wanted to code these cases as IC, even if the city was not the first or only text in the field. To allow for this, the SAS code used the index function:

```

if dist=51 then do;

  if index(arcity, 'ALCALDE')>0

    then IC = 1;

    else IC = 0;

  if index(arcity, 'ALAMO') then IC = 1;

  if index(arcity, 'ALAMOGORDO') then IC = 0;

```

In this example, any observation within New Mexico (dist=51) would be coded as IC if the word Alcalde or Alamo was anywhere in the arcity field. This can accidentally flag places like Alamogordo as in IC. Therefore, it was important to check all IC output to ensure that no extra places were inadvertently included, and code accordingly (as shown above for Alamogordo).

Many places had numerous spelling variations, as place of arrest is a text field within the US Marshals data system. For example, Sil Nakya was found in US Marshals data as Sil Makya, Sil Naka, Sil Nakay, Sil Nakia, and Sili Nakia. These variations were identified, to the best of our ability, when comparing the US Marshals output with the CDPs in IC list. All coding variations were flagged as IC.

We coded each district separately, since not binding the code to a district would create opportunities to erroneously include places with similar names (e.g., while Hot Spring, North Dakota is in IC, Hot Springs in Arkansas is not).

Additional considerations:

- » Cases with arrest place listed as Indian reservations, tribal police, or BIA were also counted as IC offenders.
- » In addition to arrest place, any case with BIA as the arresting agency was considered to be an IC offender.
- » In the 5 primary states, we noticed that around 75% of offenders in IC country were arrested for immigration offenses. These occurred on the Tohono Oodham reservation on the US-Mexican border in Arizona. We created an immigration flag so that these cases would not be included in further analysis.

## Limitations

- Arrest location is not always where the crime took place, some individuals apprehended in IC may have committed their offenses outside a reservation. Similarly, some may have committed the crime in IC but were arrested outside of it.
- About 12% of US Marshals cases from 2009-2011 (in jurisdictions with IC) did not have an arrest location recorded. Nine jurisdictions had 25% or more of cases missing an arrest location, with the highest in Connecticut (59%), New York Northern (44%), South Carolina (39%), Rhode Island (34%), Northern Oklahoma (33%), Eastern Michigan (31%), Western Michigan (26%), Maine (26%), and Northern Mississippi (25%).
- Arrest location is often recorded without a town or city. In cases where arrest location is documented as self-surrender, courthouse, probation, prison, or another unidentifiable place (e.g., “grandma’s house” or “hwy 89”), we were unable to determine if this was in IC.
- Misspelled and incomplete place names are common within the US Marshals data. Though we took steps to identify these variants (described above), it is possible that we did not catch all of them.

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