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United States Government Accountability Office  
Washington, DC 20548

December 13, 2010

The Honorable Byron L. Dorgan  
Chairman  
Committee on Indian Affairs  
United States Senate

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

The Honorable John Thune  
United States Senate

Subject: *U.S. Department of Justice Declinations of Indian Country Criminal Matters*

The Department of Justice (DOJ) has reported that the crime rates experienced by American Indians are two and a half times higher than those experienced by the general population in the United States. Specifically, from 1992 to 2001 American Indians experienced violent crimes at a rate of 101 violent crimes per 1,000 persons annually, compared to the national rate of 41 per 1,000 persons. The federal government plays a major role in prosecuting crimes committed in Indian country. For example, unless a federal statute has granted the state jurisdiction, the federal government has exclusive jurisdiction to prosecute non-Indians who commit crimes against Indians in Indian country, while the federal government and tribal governments both have jurisdiction to prosecute Indian offenders who commit crimes in Indian country. Federal prosecution, however, carries with it the possibility of greater terms of imprisonment, as tribal courts are statutorily limited to a maximum of 3 years imprisonment per offense, regardless of the severity of the offense, for example, a homicide.<sup>1</sup> Because of such jurisdictional and sentencing limitations, tribal communities rely on the federal government to investigate and prosecute a variety of crimes in Indian country.

Members of Congress have raised questions over recent press reports that federal prosecutors have declined to prosecute a significant percentage of Indian country

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<sup>1</sup>The Tribal Law and Order Act of 2010 (Pub. L. No. 111-211, tit. II, 124 Stat. 2258, 2261 (2010)) provides tribes with authority to sentence certain convicted Indian offenders for up to 3 years of imprisonment, provided that they afford additional pretrial and trial protections to safeguard the rights of the accused. See 25 U.S.C. § 1302. Before the passage of the act on July 29, 2010 the sentencing authority of tribes was limited to one year.

criminal investigations that have been referred to their offices, and you asked us to review this issue. This report addresses the following questions:

- 1) How many Indian country matters were referred to U.S. Attorneys' offices and what were the declination rates for those matters for fiscal years 2005 through 2009?
- 2) What are the reasons for the declinations as recorded in the Department of Justice's case management system?

To determine U.S. Attorney declination rates and the reasons for those declinations, we reviewed violent and nonviolent criminal matters from Indian country in DOJ's case management system, the Legal Information Office Network System (LIONS). Specifically, we consolidated records provided for fiscal years 2005 through 2009, the 5 most recent years of data available for violent and nonviolent crimes, into a single data set and analyzed the data to determine declination rates for Indian country matters. However, LIONS does not contain data on all criminal matters in Indian country. Specifically, Indian country matters may be categorized in LIONS as something other than "Indian country," and crimes committed in Indian country that are not referred to a U.S. Attorney's Office (USAO), for instance, crimes over which the state has jurisdiction, are not recorded in LIONS.<sup>2</sup> We interviewed cognizant DOJ officials about the data entry process for new matters, performed electronic testing for obvious errors in accuracy and completeness of the data, and reviewed LIONS documentation to determine that the data in LIONS was sufficiently reliable for the purpose of our review. We also interviewed staff from 4 of the 94 USAOs that had among the largest volumes of Indian country referrals from fiscal years 2005 through 2009. Since we selected a nonprobability sample of USAOs to interview, the information we obtained is not generalizable to all USAOs.<sup>3</sup> However, the interviews provided insights into the factors that may contribute to the difference in declination rates for various types of criminal offenses.

We conducted our work from October 2009 through December 2010 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives.<sup>4</sup> The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained and the analysis conducted provide a reasonable basis for any findings and

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<sup>2</sup>For example, states have jurisdiction over crimes occurring in Indian country where both parties are non-Indians. In addition, the federal government has enacted statutes giving certain states authority to prosecute crimes committed by or against Indians in Indian country. See, e.g., 18 U.S.C. § 1162, which confers such jurisdiction for all, or parts, of Indian country in Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin.

<sup>3</sup>Results from nonprobability samples cannot be used to make inferences about a population, because in a nonprobability sample some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

<sup>4</sup>This is the first of two efforts related to tribal justice issues that we reviewed in response to your request during this time. The second effort is focused on the challenges that select tribes face in adjudicating Indian country crimes, and collaboration between the Department of the Interior and DOJ to support tribal justice systems. We expect to issue the final results from that effort in 2011.

conclusions in this product. See enclosure I for a more detailed discussion of our scope and methodology.

## Results in Brief

In fiscal years 2005 through 2009, USAOs resolved about 9,000 of the approximately 10,000 Indian country matters referred to their offices by filing for prosecution,<sup>5</sup> declining to prosecute, or administratively closing the matter.<sup>6</sup> USAOs declined to prosecute 50 percent of the 9,000 matters. In addition:

- About 77 percent of the matters received were categorized as violent crimes, and 24 percent as nonviolent crimes.
- Declination rates tended to be higher for violent crimes, which were declined 52 percent of the time, than for nonviolent crimes, which were declined 40 percent of the time. According to staff from the USAOs, the difference in declination rates may be related to the evidence that is generally available for each type of crime, because, generally, less evidence is available for violent crimes.
- South Dakota and Arizona were the top two districts receiving Indian country matters, with 2,414 and 2,358 matters, respectively.
- The Federal Bureau of Investigation (FBI) and Bureau of Indian Affairs (BIA) were the most prominent referring agencies, with 5,500 and 2,355 matters referred, respectively. Matters referred by the FBI were declined 46 percent of the time by the USAO, and matters from BIA 63 percent of the time. According to USAO, FBI, and BIA officials, this may be attributed to differences in the types of crimes investigated by the two agencies and the agencies' policies on which matters to refer to USAOs.
- Two charge categories accounted for 55 percent of matters referred. There were 2,922 assault matters received (29 percent of the total), while the other leading charge was sexual abuse and related offenses, with 2,594 matters received (26 percent of the total). USAOs declined to prosecute 46 percent of assault matters and 67 percent of sexual abuse and related matters.

The Department of Justice's case management system, LIONS, cited 32 possible reasons associated with declinations of Indian country matters. Three of those reasons were associated with 65 percent of the declinations. They were "weak or insufficient admissible evidence" (42 percent), "no federal offense evident" (18 percent), and "witness problems" (12 percent).<sup>7</sup>

## Background

Crimes committed in Indian country may be under the jurisdiction of federal, state, or tribal governments depending on (1) the identity of the offender and victim—that is,

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<sup>5</sup>As of September 30, 2009, about 1,000 of the 10,000 matters were pending action by the USAOs.

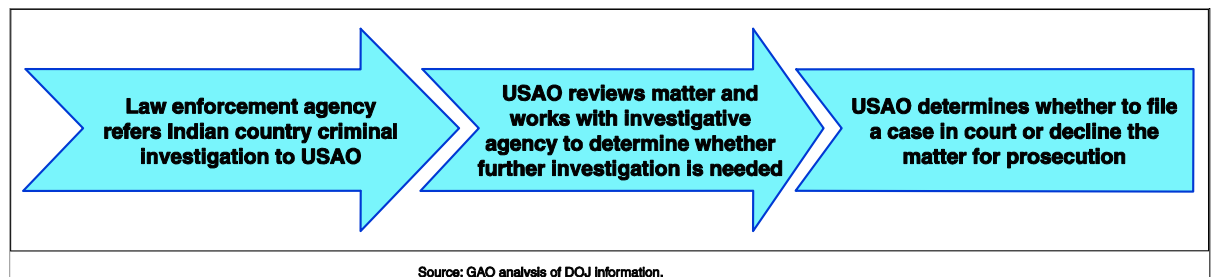
<sup>6</sup>Administratively closed matters were not declined, but were closed in LIONS for administrative reasons. These include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined.

<sup>7</sup>Up to three reasons may be associated with a declination; therefore, the sum of the individual percentages for the three reasons presented here exceeds 65.

Indian or non-Indian, (2) the nature of the alleged crime, (3) the state in which the alleged crime occurred, and (4) whether the crime was committed in Indian country as defined by federal statute.<sup>8</sup> Depending on the specific combination of factors in a given crime, the U.S. Attorneys may have jurisdiction to prosecute crimes committed in Indian country.<sup>9</sup>

The USAO intake process for Indian country criminal matters begins when a law enforcement agency presents an investigation for possible prosecution. Most Indian country crimes are investigated and presented to the USAO by a tribal law enforcement agency, the FBI, or by criminal investigators from BIA. USAOs refer to all criminal investigations referred to them as “matters,” and categorize them as “violent” or “nonviolent” depending on the nature of the alleged crime.<sup>10</sup> DOJ officials noted that receipt of a referral does not mean that a prosecutable case exists at the time the referral is made. Upon further investigation, USAOs may file the matter for prosecution as a case in court or decline to prosecute the matter.<sup>11</sup> When declining to prosecute a criminal matter, USAOs categorize the declination as an immediate declination or a later declination. An immediate declination occurs when the USAO does not open a file on a referral and does not pursue prosecution of the referral. A later declination occurs when the USAO opens a file on the referral, conducts more work on the matter than would be associated with an immediate declination, but ultimately does not pursue prosecution of the referral. Unless otherwise noted, we have combined immediate and later declinations into a single declination category in our analysis. The intake process for Indian country matters referred to USAOs is illustrated in figure 1 below.

**Figure 1: Prosecution or Declination Process for Indian Country Matters Referred to a USAO**



<sup>8</sup>The term "Indian country" refers to all land within the limits of any Indian reservation under the jurisdiction of the U.S. government, all dependent Indian communities within U.S. borders, and all existing Indian allotments, including any rights-of-way running through an allotment. See 18 U.S.C. § 1151.

<sup>9</sup>The tribal government also has jurisdiction to prosecute Indian offenders who commit crimes in Indian country, even in circumstances where federal jurisdiction exists.

<sup>10</sup>There are no fixed criteria for USAOs in categorizing violent versus nonviolent matters. DOJ officials told us that the categorization is made at the discretion of the prosecutor depending on the nature of the alleged crime and that categorization practices may differ among districts.

<sup>11</sup>In the event USAO declines to prosecute a matter, it must coordinate with appropriate tribal justice officials regarding the use of evidence relevant to the prosecution of the case in a tribal court with concurrent jurisdiction, that is, declined cases involving Indian offenders. See 25 U.S.C. § 2809(a)(3).

## USAOs Declined to Prosecute 50 Percent of the More Than 9,000 Matters Received in Fiscal Years 2005 through 2009 That Were Resolved

Approximately 10,000 Indian country matters were referred to USAOs in fiscal years 2005 through 2009, and USAOs declined to prosecute 50 percent of the more than 9,000 matters that were resolved. As of September 30, 2009, about 1,000 of the total matters received were considered pending because a USAO had not yet decided to file for prosecution, decline, or administratively close the matter.<sup>12</sup> Of the matters received, about 77 percent were categorized as violent crimes, and 24 percent as nonviolent crimes. Annual matters received for violent and nonviolent crime, as well as filing and declination information for those matters, are shown in table 1, below.

Fiscal year	Matters received			Matters filed for prosecution or declined			Not yet filed for prosecution or declined
	Violent <sup>a</sup>	Nonviolent <sup>a</sup>	Total received	Filed for prosecution <sup>b</sup>	Immediately declined	Later declined	
2005	1,876	479	2,342	977	663	682	20
2006	1,483	472	1,947	858	495	546	48
2007	1,488	489	1,963	1,018	331	544	70
2008	1,491	501	1,987	975	323	472	217
2009	1,342	429	1,767	756	201	249	561
<b>Total</b>	<b>7,680</b>	<b>2,370</b>	<b>10,006</b>	<b>4,584</b>	<b>2,013</b>	<b>2,493</b>	<b>916</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>Some matters are categorized as both violent and nonviolent. Therefore, the sum of the violent and nonviolent categories exceeds the total received.

<sup>b</sup>"Filed for prosecution" includes matters that were not declined, but were closed in LIONS for administrative reasons. These administratively closed matters include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined.

The overall declination rate for Indian country matters was 50 percent for fiscal years 2005 through 2009, as shown in table 2, below. Note that trends cannot be discerned by comparing individual years because more matters were pending for recent fiscal years than for earlier fiscal years.

Fiscal year	Matters received	Matters filed for prosecution or declined <sup>a</sup>	Matters declined	Declination rate <sup>b</sup>
2005	2,342	2,322	1,345	58%
2006	1,947	1,899	1,041	55%
2007	1,963	1,893	875	46%
2008	1,987	1,770	795	45%
2009	1,767	1,206	450	37%
<b>Overall</b>	<b>10,006</b>	<b>9,090</b>	<b>4,506</b>	<b>50%</b>

Source: GAO analysis of DOJ data.

<sup>12</sup>We calculated the declination rate as the number of matters declined divided by the number of matters that were resolved—that is, filed for prosecution, declined, or administratively closed. We did not include pending matters given that action had not yet been taken on them. See enclosure I for a more detailed discussion of our methodology.

<sup>a</sup>"Filed for prosecution" includes matters that were not declined, but were closed in LIONS for administrative reasons. These administratively closed matters include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined.

<sup>b</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate. Trends cannot be discerned by comparing individual years because more matters were pending for recent fiscal years than for earlier fiscal years. As these pending matters are closed, the declination rates may change, particularly for recent fiscal years.

Overall, declination rates tend to be higher for violent crimes, which were declined 52 percent of the time in fiscal years 2005 through 2009, than for nonviolent crimes, which were declined 40 percent of the time, as shown in tables 3 and 4 below.

**Table 3: Indian Country Matters Declined, Violent Crimes, Fiscal Years 2005 through 2009**

Fiscal year	Matters received	Matters filed for prosecution or declined <sup>a</sup>	Matters declined	Declination rate <sup>b</sup>
2005	1,876	1,864	1,095	59%
2006	1,483	1,454	805	55%
2007	1,488	1,434	732	51%
2008	1,491	1,343	669	50%
2009	1,342	898	370	41%
<b>Overall</b>	<b>7,680</b>	<b>6,993</b>	<b>3,671</b>	<b>52%</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>"Filed for prosecution" includes matters that were not declined, but were closed in LIONS for administrative reasons. These administratively closed matters include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined.

<sup>b</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate. Trends cannot be discerned by comparing individual years because more matters were pending for recent fiscal years than for earlier fiscal years. As these pending matters are closed, the declination rates may change, particularly for recent fiscal years.

**Table 4: Indian Country Matters Declined, Nonviolent Crimes, Fiscal Years 2005 through 2009**

Fiscal year	Matters received	Matters filed for prosecution or declined <sup>a</sup>	Matters declined	Declination rate <sup>b</sup>
2005	479	471	256	54%
2006	472	453	240	53%
2007	489	473	152	32%
2008	501	431	126	29%
2009	429	311	80	26%
<b>Overall</b>	<b>2,370</b>	<b>2,139</b>	<b>854</b>	<b>40%</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>"Filed for prosecution" includes matters that were not declined, but were closed in LIONS for administrative reasons. These administratively closed matters include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined.

<sup>b</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate. Trends cannot be discerned by comparing individual years because more matters were pending for recent fiscal years than for earlier fiscal years. As these pending matters are closed, the declination rates may change, particularly for recent fiscal years.

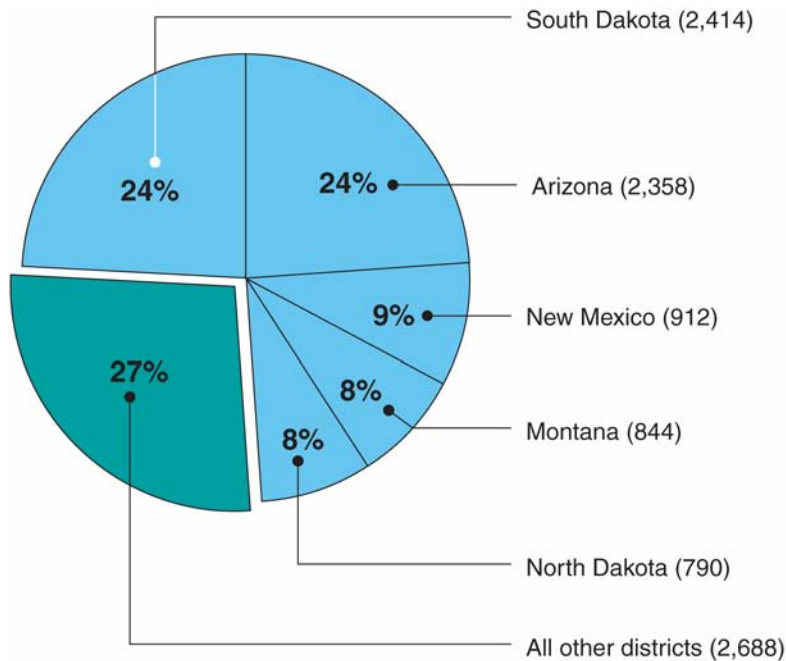
According to staff from the USAOs with whom we spoke, the difference in declination rates may reflect the amount and quality of evidence that is often available for each type of crime. Nonviolent crimes, such as the illegal sale of alcohol, tend to have more witnesses, while other nonviolent crimes such as fraud leave more of a "paper trail" than violent crimes. Violent crimes, however, frequently occur

outside the presence of witnesses, other than a typically fragile victim—for example, a child or a victim of domestic violence or sexual abuse—and lack documentary evidence. Furthermore, victims of violent crime may not have seen their attacker, may be too frightened to testify against him or her in court, or may have some form of domestic relationship with the suspect causing them to be unwilling to testify in court. The lack of evidence available for violent crimes tends to make them more difficult to prove and, therefore, may result in an increased rate of declination.

### Five USAO Districts Account for 73 Percent of All Indian Country Criminal Matters Received

Fifty-one of the 94 USAO districts received Indian country matters from fiscal years 2005 through 2009, although 5 districts account for 73 percent of all Indian country criminal matters received, as shown in figure 2 below.

**Figure 2: Indian Country Matters Received by USAO District, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009**



Source: GAO analysis of DOJ data.

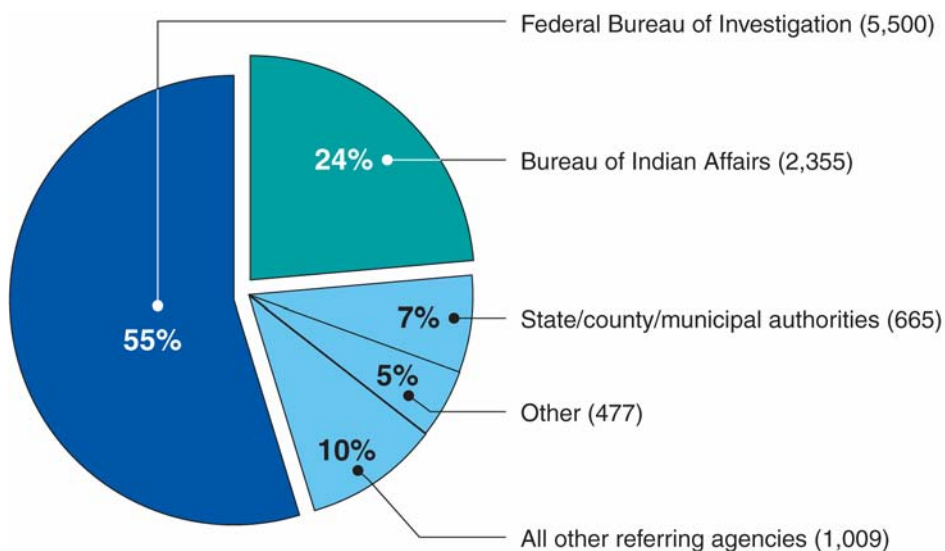
After North Dakota, which received 790 Indian country matters from fiscal years 2005 through 2009 and ranked fifth in the number of Indian country criminal matters received, the district with the next largest number of receipts was the Western District of Oklahoma with 301 matters. Twenty-six districts received between 1 and 10 Indian country matters over the period.

For more detail on the number of matters received and declination rates by USAO district, please see enclosure II, tables 7, 8 and 9.

## Seventy-Nine Percent of Indian Country Matters Were Referred to USAOs by the FBI or BIA

The FBI and the BIA referred 79 percent of the Indian country matters to the USAOs. The FBI accounted for 55 percent of the total referrals, while the BIA accounted for 24 percent. Tribal law enforcement, the BIA, and the FBI share responsibility for investigating federal offenses in Indian country; however, the LIONS database does not contain a category specifically for referrals from tribal law enforcement authorities. DOJ officials told us that USAOs generally categorize referrals from tribal authorities under the "state/county/municipal authorities" category or the "other" category, and that categorization practices differ between districts. Figure 3, below, shows the number of Indian country matters received by USAOs by referring agency from fiscal years 2005 through 2009.

**Figure 3: Indian Country Matters Received by Referring Agency, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009**



Source: GAO analysis of DOJ data.

Note: "State/county/municipal authorities" and "Other" categories may include tribal authorities. "Other" is a category in LIONS to track all other agencies that do not have a separate category in the database. "All other referring agencies" combines several smaller LIONS categories in our analysis. Percentages do not add to 100 due to rounding.

USAOs declined 63 percent of Indian country criminal matters referred by the BIA and 46 percent of Indian country criminal matters referred by the FBI. Representatives from USAOs, BIA, and FBI told us that this difference in declination rates may be the result of differences in agency protocols for referring matters to a USAO. For example, while FBI officials said that they may elect not to refer matters that they believe lack sufficient evidence for prosecution, BIA officials said that they refer all matters that they investigate to the USAO. Also, one agency may not have a presence in a certain area, leaving the other to make all of the referrals to the USAO. For example, the FBI does not have a presence on some tribal land in Arizona, and so criminal matters from that area are referred by the BIA. Furthermore, FBI officials noted that in many districts USAO guidelines assign primary responsibility for investigation of certain types of crimes to either the FBI or the BIA. For example, the FBI may be primarily responsible for crimes with child victims while the BIA may be



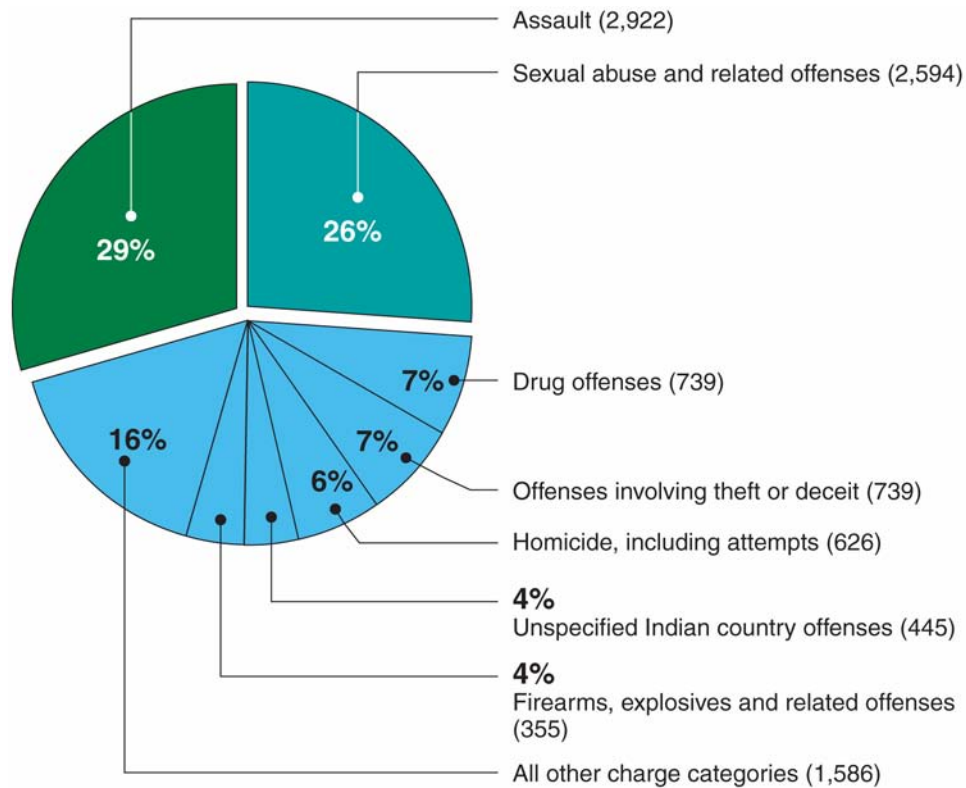
responsible for adult rape investigations. These differences in agency protocols for referring matters to a USAO, presence in certain areas of Indian country, and investigative responsibilities may affect the declination rates for the matters referred by the BIA and the FBI.

For more detail on the number of matters received and declination rates by referring agency for violent and nonviolent crimes, see enclosure II, tables 10, 11 and 12.

Assault and Sexual Abuse Charges Accounted for 55 Percent of Indian Country Matters Received

Assault and sexual abuse charges were the leading types of charges in Indian country and accounted for 55 percent of Indian country matters in LIONS, as shown in figure 4 below.

**Figure 4: Indian Country Matters Received by Charge, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009**



Source: GAO analysis of DOJ data.

Note: We used the category "Unspecified Indian country offenses" where the LIONS data did not include a specific charged offense but indicated that the alleged criminal conduct took place in Indian country. "All other charge categories" includes specific charges not included in this figure and pending matters where DOJ had not yet decided whether to charge or decline to prosecute. Percentages do not add to 100 due to rounding.

Of the two leading Indian country crime charge categories, USAOs declined to prosecute 67 percent of sexual abuse and related matters and declined to prosecute 46 percent of assault matters. USAO officials told us that the difference in declination rates between sexual abuse and assault matters may be the result of the difficulty in obtaining evidence and witnesses in sexual abuse investigations. For example, victims in sexual abuse crimes may not notify law enforcement officials of the crime

until long after it occurred, making the collection of nontestimonial, physical evidence difficult or impossible. In addition, sexual assault victims may be unwilling to testify against a perpetrator in court, particularly if they know the perpetrator and are facing pressure not to testify. USAO officials also noted that child victims, in particular, may have difficulty testifying in court against their abuser or experience difficulty in articulating what crimes were committed. In these instances, the matter would likely have to be declined.

For more detail on the number of matters received and declination rates by charge for violent and nonviolent crimes, see enclosure II, tables 13, 14, and 15.

**Reasons for Declinations Varied, but "Weak or Insufficient Evidence" Was the Most Frequently Cited**

There were 32 possible declination reasons that could be selected in LIONS and were associated with Indian country criminal matters,<sup>13</sup> and 5 of the reasons were associated with 83 percent of the declinations.<sup>14</sup> “Weak or insufficient admissible evidence” was the reason most frequently associated with declinations, as shown in table 5 below.

**Table 5: Frequency of Declination Reasons, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009**

Declination reason	Percentage of declinations citing reason <sup>a</sup>
Weak or insufficient admissible evidence	42%
No federal offense evident <sup>b</sup>	18%
Witness problems	12%
Lack of evidence of criminal intent	10%
Suspect to be prosecuted by other authorities	10%
All other declination reasons	26%

Source: GAO analysis of DOJ data.

<sup>a</sup>Up to three reasons may be associated with a declination, therefore the sum of percentages exceeds 100.

<sup>b</sup>"No Federal Offense Evident" may include matters declined because of jurisdictional issues.

DOJ officials have stated that lack of jurisdiction precludes USAO prosecution of certain Indian country crimes. For example, if a non-Indian commits a crime in Indian country and the victim of the crime is also non-Indian, the state rather than the federal government would have jurisdiction to prosecute. However, “Jurisdiction or Venue Problems” was cited in only 2 percent of declinations. At the same time, the selection of reasons for a declination is subject to the prosecutor’s discretion and, according to DOJ officials, a prosecutor could choose to use an alternate reason, such as “No Federal Offense Evident,” when jurisdiction or venue problems occur. "No Federal Offense Evident" accounted for 18 percent of the declination reasons, as shown in the table above. It is unknown what percentage of these cases may have

<sup>13</sup>LIONS tracks only the declination reasons chosen by the USAOs and not case-specific facts behind individual declinations.

<sup>14</sup>Up to three reasons may be associated with a declination; therefore, the sum of percentages for the top five reasons exceeds 83.

been declined because the federal government lacked jurisdiction or because the conduct did not meet other elements of the crime.

For a list of all of the reasons associated with declinations of Indian country matters, see enclosure II, tables 16, 17, and 18.

We provided a draft of this report to DOJ for review and comment. Their comments are reproduced in enclosure III. DOJ provided additional perspectives on the reasons why USAOs may decline to prosecute a criminal matter, and on their efforts to address public safety challenges in Indian country. DOJ also provided technical comments that we have incorporated where appropriate.

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We are sending copies of this report to the appropriate congressional committees. We are also sending copies to the Attorney General of the United States and the Secretary of the Interior. This report will also be available at no charge on our Web site at <http://www.gao.gov>.

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



David C. Maurer  
Director, Homeland Security and Justice

Enclosures (4)

# Enclosure I

## Scope and Methodology

To determine U.S. Attorney declination rates and the reasons for those declinations, we reviewed violent and nonviolent criminal matters from Indian country in the Department of Justice's (DOJ) case management system, the Legal Information Office Network System (LIONS). Specifically, we consolidated records provided from fiscal years 2005 through 2009, the 5 most recent years of data available for violent and nonviolent crimes, into a single data set and analyzed the data to determine declination rates for Indian country matters. We considered a matter to be not declined if any one defendant was prosecuted, even if the USAO had declined to prosecute other defendants or had previously declined the matter.

We also interviewed cognizant DOJ officials about the intake and data entry process for Indian country matters, performed electronic testing for obvious errors in accuracy and completeness of the data, and reviewed LIONS documentation to determine that the data we used were sufficiently reliable for the purposes of our review. Nevertheless, certain limitations apply to the Indian country data in LIONS because the system is designed for case management and not primarily for statistical analysis. Specifically, Indian country matters may be categorized in LIONS as something other than "Indian country." For example, a firearms offense involving Indians in Indian country may be categorized only as a firearms matter. Further, crimes committed in Indian country that are not referred to a U.S. Attorney's Office (USAO), for instance, crimes over which the state has jurisdiction, are not recorded in LIONS. Therefore, LIONS does not contain data on all criminal investigations in Indian country. Moreover, the manner in which LIONS is used in individual offices may vary over time in a way that could affect the declination rate, even without changes in Indian country crime frequency or prosecution practices. For example, DOJ officials told us that prior to 2007, the South Dakota USAO opened matters in LIONS to keep information about offenders for possible use if the offenders were later arrested for a prosecutable federal offense. Starting in 2007, the South Dakota USAO changed its LIONS practices and no longer entered those matters in LIONS, which would have the effect of decreasing that office's declination rate.

In addition, we interviewed staff from 4 of the 94 USAOs that had among the largest volumes of Indian country matters from fiscal years 2005 through 2009, the period for which we calculated declination rates. Since we selected a nonprobability sample of USAOs to interview, the information we obtained is not generalizable to all USAOs.<sup>15</sup> However, the interviews provided insights into the factors that may contribute to the difference in declination rates for various types of criminal matters.

We calculated the declination rate for a given fiscal year as the proportion of resolved matters received in that year that were declined at any time during the five year period. A resolved matter is one that the USAO has decided to file for prosecution, decline, or administratively close. For example, we looked at the Indian country

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<sup>15</sup>Results from nonprobability samples cannot be used to make inferences about a population, because in a nonprobability sample some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

matters that USAOs received in fiscal year 2006, and then determined what percentage of the resolved matters were filed for prosecution or administratively closed and what percentage were declined. If a matter was received in fiscal year 2006 and was immediately declined, it was included in the declination rate. Similarly, if a matter was received in fiscal year 2006 and was declined in fiscal year 2008, it was also included in the declination rate for fiscal year 2006 matters. Matters that USAOs had not yet resolved—that is, decided to file for prosecution, decline, or administratively close—were not included in the declination rate.

This approach for calculating declination rates contrasts with an alternate method that has been used by DOJ, in which the number of matters that were received in a given fiscal year is compared with the number of matters declined in that same year. Under this approach, a matter received in 2006 and declined in 2008 would be included in the 2008 declination rate. Furthermore, a matter received in 2008, but which was not filed for prosecution or declined, would also be included in the calculation of the 2008 declination rate. This approach is useful for describing the level of activity related to matters in a given fiscal year, one of the purposes for which DOJ uses the LIONS system, but does not reflect what happened to a matter over time.

In determining the declination rates by charge, we grouped Indian country matters into 19 broad charge categories, listed below in table 6. These categories reflect the lead charge assigned by a prosecutor at intake to indicate the most significant crime alleged.

<b>Charge category</b>	<b>Description of charge category</b>
Conservation and environmental offenses	Violations of resource conservation laws contained in Title 16 of the U.S. Code, such as laws protecting National Parks, forests, archeological resources, historic properties, fish, wildlife, and marine mammals; laws protecting public lands (Title 18, Chapter 91); water pollution control laws (Title 33, Chapter 26), and unlawful hunting, trapping, or fishing on Indian land (18 U.S.C. § 1165).
Offenses involving theft or deceit	Violations of 17 U.S.C. Chapter 5 (copyright infringement), and 18 U.S.C. Chapter 9 (bankruptcy fraud), Chapter 11 (bribery, graft, and conflicts of interest), Chapter 11a (failure to pay child support), Chapter 25 (counterfeiting and forgery), Chapter 31 (embezzlement and theft), Chapter 42 (extortionate credit transactions), Chapter 47 (fraud and false statements), Chapter 63 (mail and other fraud), Chapter 75 (passport and visa fraud), Chapter 103 (robbery and burglary), Chapter 107 (stowaways), Chapter 113 (stolen property), Chapter 114 (trafficking in tobacco contraband), and 26 U.S.C. Chapter 75 (tax offenses), and certain Indian-related theft offenses, i.e., 18 U.S.C. § 1163 (embezzlement and theft from tribal organizations), 18 U.S.C. § 1167 (theft from gaming establishments in Indian country), and 18 U.S.C. § 1168 (theft by officers or employees of gaming establishments on Indian lands).
Obstruction of justice offenses	Violations of 18 U.S.C. § 4 (concealment of a felony), 18 U.S.C. §§ 371-372 (conspiring to commit an offense against the United States or its officers), 18 U.S.C. § 1169 (failure to report child abuse in Indian country), as well as any offenses within the following Chapters of Title 18: Chapter 21 (contempt), Chapter 35 (escape from custody), Chapter 49 (fugitives from justice), Chapter 73 (obstruction of justice), Chapter 75 (perjury), Chapter 207 (release and detention pending judicial proceedings), Chapter 224 (protection of witnesses), Chapter 227

	(sentences), and chapter 229 (post-sentence administration).
Controlled substance offenses	Violations of the Controlled Substances Act of 1970, which is found in Title 21 of the United States Code, as well as violations of the alcohol prohibitions applicable to Indian country under Title 18, Chapter 53 (18 U.S.C. § 1154-1156).
Firearms, explosives, and related offenses	Violations of 18 U.S.C. Chapter 5 (arson), Chapter 40 (explosives), chapter 44 (firearms), and 26 U.S.C. Chapter 53 (certain firearms and destructive devices).
Sexual abuse and related offenses	Violations of 18 U.S.C. Chapter 109A (sexual abuse), Chapter 109B (sex offender registration requirements), Chapter 110 (child pornography), and Chapter 117 (involving transportation of the victim for illegal sexual activity).
Immigration offenses	Encompasses the general immigration penalty provisions (8 U.S.C. §§ 1324-1330).
Property damage or trespass offenses	Violations of 18 U.S.C. Chapter 65 (malicious mischief) and trespass offenses such as 18 U.S.C. § 1793, trespass on Bureau of Prisons land.
Gambling offenses	Violations of the following U.S. Code provisions: 15 U.S.C. § 1175, gambling devices prohibited and 18 U.S.C. § 1084, transmission of wagering information.
Racketeering offenses	Violations of 18 U.S.C. chapter 95, including 18 U.S.C. § 1951, interference with commerce by threats or violence; 18 U.S.C. § 1952, interstate and foreign travel or transportation in aid of racketeering enterprises; 18 U.S.C. § 1955, prohibition of illegal gambling businesses; 18 U.S.C. § 1956, laundering of monetary instruments; 18 U.S.C. § 1958, use of interstate commerce facilities in murder-for-hire; and 18 U.S.C. § 1959, violent crimes in aid of racketeering activity.
Homicide, including attempts	Violations of 18 U.S.C. chapter 51 (homicide). The offenses within this chapter include murder, manslaughter, and attempted murder or manslaughter, among other things
Assault	Violations of 18 U.S.C. Chapter 7. Within this category, assaults may range from simple assault, which is a misdemeanor with a maximum prison exposure of 6 months, to assault with intent to commit murder, which is a felony punishable by up to 20 years imprisonment.
Offenses involving threats, force or violence	Violations of 18 U.S.C. Chapter 41 (extortion and threats), Chapter 55 (kidnapping), Chapter 90A (protection of unborn children), and Chapter 110A (domestic violence and stalking).
Civil rights offenses	Violations of 18 U.S.C. Chapter 13, which addresses criminal violations of civil rights, such as conspiracy to injure citizens in the exercise of federal rights (18 U.S.C. § 241); willful deprivations of federal rights under color of law (18 U.S.C. § 242); and interference with federally protected activities (18 U.S.C. § 245).
Unspecified Indian country offenses	Encompasses LIONS charge values that correspond with the following Indian country provisions: 18 U.S.C. § 1151, which defines the term "Indian country," 18 U.S.C. § 1152, which establishes federal jurisdiction to prosecute a wide variety of crimes in Indian country such as arson, theft, receiving stolen goods, destruction of property, and robbery, provided that either the offender or the victim is an Indian, and 18 U.S.C. § 1153, which establishes federal jurisdiction to prosecute a wide variety of crimes committed by Indians in Indian country, such murder, manslaughter, kidnapping, maiming, incest, felony assault, felony child and a host of sex crimes. Because of the wide array of criminal conduct represented by these charge codes, it is not possible to identify the specific underlying offense, only that the offense charged was committed in Indian country.
Juvenile delinquency matters	Encompassed by 18 U.S.C., Chapter 403, which involves violations of federal law committed by persons younger than 18 years old.

Postal Service offenses	Violations of law applicable to the Postal Service, which are contained in 18 U.S.C. Chapter 83.
Pending matters	Matters where DOJ had not yet decided whether to charge or decline to prosecute.
Unknown offenses	Encompasses: (1) LIONS charge values for which we were unable to find an associated criminal provision in the U.S. Code; and (2) LIONS charge values that corresponded with a general provision in the U.S. Code such as 18 U.S.C. § 3, accessory after the fact, but did not identify the underlying offense, such as accessory after the fact to murder.

Source: GAO.

We conducted our work from October 2009 through December 2010 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives.<sup>16</sup> The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained and the analysis conducted provide a reasonable basis for any findings and conclusions in this product.

<sup>16</sup>This is the first of two efforts related to tribal justice issues that we reviewed in response to your request during this time. The second effort is focused on the challenges that select tribes face in adjudicating Indian country crimes, and collaboration between the Department of the Interior and DOJ to support tribal justice systems. We expect to issue the final results from that effort in 2011.

# Enclosure II

## Indian Country Matters Received and Declination Rates

Tables 7, 8, and 9, below, show the number of Indian country matters received and declination rates by U.S. Attorney's Office (USAO) district from fiscal years 2005 through 2009. Table 7 includes both violent and nonviolent criminal matters, table 8 shows only violent criminal matters, and table 9 shows only nonviolent criminal matters.

Declination rates are calculated based on the number of matters actually filed for prosecution, declined, or administratively closed by the district office. Declination rates do not include matters that were still "pending," that is, that had not yet been filed for prosecution, declined or administratively closed. We did not calculate declination rates for districts with fewer than 50 matters filed for prosecution, declined or administratively closed from fiscal years 2005 through 2009 because a declination rate would have little meaning when based on such a small number of matters.

**Table 7: Indian Country Matters Received and Declination Rates by USAO District, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009**

USAO district	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate <sup>a</sup>
South Dakota	2,414	2,241	1,376	61%
Arizona	2,358	2,178	817	38%
New Mexico	912	746	301	40%
Montana	844	795	376	47%
North Dakota	790	750	478	64%
Oklahoma-Western	301	287	134	47%
Wyoming	225	194	98	51%
Idaho	217	200	119	60%
Washington-Eastern	199	183	132	72%
Nebraska	193	171	76	44%
Oregon	192	181	122	67%
Michigan-Western	164	139	52	37%
Nevada	163	151	84	56%
North Carolina-Western	131	125	53	42%
Colorado	119	106	38	36%
Mississippi-Southern	118	88	30	34%
Oklahoma-Eastern	93	66	33	50%
Minnesota	92	77	28	36%
Washington-Western	85	65	20	31%
Utah	83	78	22	28%
Wisconsin-Eastern	82	74	16	22%
Oklahoma-Northern	78	65	35	54%
Alaska	47	42	20	.
Michigan-Eastern	30	26	19	.
Iowa-Northern	12	12	6	.
Alabama-Middle	5	5	1	.
Connecticut	5	4	3	.
California-Southern	5	4	0	.



<b>USAO district</b>	<b>Matters received</b>	<b>Matters filed for prosecution, declined or administratively closed</b>	<b>Matters declined</b>	<b>Declination rate<sup>a</sup></b>
California-Northern	4	3	2	.
New York-Northern	4	3	0	.
California-Eastern	4	2	2	.
New York-Western	4	2	2	.
Florida Southern	4	2	1	.
Louisiana-Western	3	3	2	.
Alabama-Southern	3	3	1	.
Texas-Southern	3	3	0	.
Virginia-Eastern	3	2	0	.
Wisconsin-Western	2	2	1	.
Maine	2	1	1	.
Iowa-Southern	2	1	0	.
District of Columbia	1	1	1	.
Missouri-Eastern	1	1	1	.
Ohio-Southern	1	1	1	.
Pennsylvania-Western	1	1	1	.
Rhode Island	1	1	1	.
Alabama-Northern	1	1	0	.
California-Central	1	1	0	.
Maryland	1	1	0	.
Puerto Rico	1	1	0	.
Tennessee-Western	1	1	0	.
Pennsylvania-Eastern	1	0	0	.
<b>Overall</b>	<b>10,006</b>	<b>9,090</b>	<b>4,506</b>	<b>50%</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

**Table 8: Indian Country Matters Received and Declination Rates by USAO District, Violent Crimes, Fiscal Years 2005 through 2009**

<b>USAO district</b>	<b>Matters received</b>	<b>Matters filed for prosecution, declined or administratively closed</b>	<b>Matters declined</b>	<b>Declination rate<sup>a</sup></b>
South Dakota	1,808	1,689	1,094	65%
Arizona	1,766	1,602	746	47%
New Mexico	907	744	300	40%
North Dakota	692	660	410	62%
Montana	646	622	292	47%
Idaho	189	174	100	57%
Wyoming	188	164	79	48%
Nebraska	174	155	69	45%
Oregon	166	157	103	66%
Washington-Eastern	161	149	103	69%
Oklahoma-Western	125	122	77	63%
North Carolina-Western	115	114	46	40%
Nevada	115	106	63	59%
Michigan-Western	101	82	33	40%
Colorado	96	86	30	35%
Minnesota	86	72	26	36%
Mississippi-Southern	76	59	18	31%

<b>USAO district</b>	<b>Matters received</b>	<b>Matters filed for prosecution, declined or administratively closed</b>	<b>Matters declined</b>	<b>Declination rate<sup>a</sup></b>
Utah	73	69	20	29%
Wisconsin-Eastern	63	56	14	25%
Washington-Western	50	37	7	.
Oklahoma-Northern	23	20	12	.
Oklahoma-Eastern	18	16	9	.
Michigan-Eastern	15	13	10	.
Iowa-Northern	7	7	3	.
New York-Northern	3	3	0	.
Virginia-Eastern	3	2	0	.
Alaska	2	2	0	.
California-Eastern	1	1	1	.
District of Columbia	1	1	1	.
Louisiana-Western	1	1	1	.
Missouri-Eastern	1	1	1	.
New York-Western	1	1	1	.
Pennsylvania-Western	1	1	1	.
Rhode Island	1	1	1	.
Alabama-Southern	1	1	0	.
California-Southern	1	1	0	.
Puerto Rico	1	1	0	.
Tennessee-Western	1	1	0	.
Florida Southern	1	0	0	.
<b>Overall</b>	<b>7,680</b>	<b>6,993</b>	<b>3,671</b>	<b>52%</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

**Table 9: Indian Country Matters Received and Declination Rates by USAO District, Nonviolent Crimes, Fiscal Years 2005 through 2009**

<b>USAO district</b>	<b>Matters received</b>	<b>Matters filed for prosecution, declined or administratively closed</b>	<b>Matters declined</b>	<b>Declination rate<sup>a</sup></b>
South Dakota	619	565	291	52%
Arizona	594	578	71	12%
Montana	199	174	84	48%
Oklahoma-Western	177	166	57	34%
North Dakota	98	90	68	76%
Oklahoma-Eastern	75	50	24	48%
Michigan-Western	65	59	19	32%
Oklahoma-Northern	55	45	23	.
Nevada	49	46	21	.
Alaska	45	40	20	.
Wyoming	45	37	22	.
Mississippi-Southern	42	29	12	.
Washington-Eastern	38	34	29	.
Washington-Western	35	28	13	.
Idaho	28	26	19	.
Oregon	26	24	19	.
Colorado	26	23	10	.
Wisconsin-Eastern	19	18	2	.

<b>USAO district</b>	<b>Matters received</b>	<b>Matters filed for prosecution, declined or administratively closed</b>	<b>Matters declined</b>	<b>Declination rate<sup>a</sup></b>
Nebraska	19	16	7	.
North Carolina-Western	16	11	7	.
Minnesota	15	14	7	.
Michigan-Eastern	15	13	9	.
Utah	14	12	2	.
Iowa-Northern	5	5	3	.
Alabama-Middle	5	5	1	.
Connecticut	5	4	3	.
New Mexico	5	2	1	.
California-Northern	4	3	2	.
California-Southern	4	3	0	.
Texas-Southern	3	3	0	.
Florida Southern	3	2	1	.
California-Eastern	3	1	1	.
New York-Western	3	1	1	.
Alabama-Southern	2	2	1	.
Louisiana-Western	2	2	1	.
Wisconsin-Western	2	2	1	.
Maine	2	1	1	.
Iowa-Southern	2	1	0	.
Ohio-Southern	1	1	1	.
Alabama-Northern	1	1	0	.
California-Central	1	1	0	.
Maryland	1	1	0	.
New York-Northern	1	0	0	.
Pennsylvania-Eastern	1	0	0	.
<b>Overall</b>	<b>2,370</b>	<b>2,139</b>	<b>854</b>	<b>40%</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

Tables 10, 11, and 12, below, show the number of Indian country matters received and declination rates by referring agency from fiscal years 2005 through 2009. Table 10 includes both violent and nonviolent criminal matters, table 11 shows only violent criminal matters, and table 12 shows only nonviolent criminal matters.

Declination rates are calculated based on the number of matters actually filed for prosecution, declined, or administratively closed by the USAOs. Declination rates do not include matters that were still "pending," that is, that had not yet been filed for prosecution, declined or administratively closed. We did not calculate declination rates for referring agencies with fewer than 50 matters filed for prosecution, declined or administratively closed from fiscal years 2005 through 2009 because a declination rate would have little meaning when based on such a small number of matters.

**Table 10: Indian Country Matters Received and Declination Rates by Referring Agency, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009**

Referring agency	Matters filed for			Declination rate <sup>a</sup>
	Matters received	prosecution, declined or administratively closed	Matters declined	
Federal Bureau of Investigation	5,500	5,008	2,323	46%
Bureau of Indian Affairs	2,355	2,087	1,305	63%
State/County/Municipal Authorities	665	598	303	51%
Other	477	467	387	83%
Drug Enforcement Administration	276	267	10	4%
Joint State/Local Led Task Force	119	108	26	24%
Bureau of Alcohol, Tobacco, Firearms and Explosives	103	89	31	35%
Immigration and Customs Enforcement	93	92	4	4%
Joint Federal Bureau of Investigation/State or Local Task Force	89	80	25	31%
Customs and Border Protection	60	59	2	3%
Other Department of the Interior	54	47	27	.
United States Marshals Service	27	25	2	.
Other Department of Justice	19	17	4	.
Postal Service	15	14	4	.
Fish and Wildlife Service	15	13	2	.
Office of the Inspector General—Health and Human Services	14	12	2	.
Joint Alcohol, Tobacco, Firearms and Explosives/State or Local Task Force	12	12	2	.
Joint United States Marshals Service/State or Local Task Force	11	8	5	.
National Park Service	9	9	3	.
Citizenship and Immigration Services	7	7	6	.
Transferred from other USAO	7	7	4	.
Indian Health Service/Public Health Service	7	6	1	.
United States Secret Service	7	5	2	.
Forest Service	7	2	2	.
Other Department of Housing and Urban Development	6	5	3	.
Office of the Inspector General—Department of Justice	5	3	0	.
United States Courts	4	4	1	.
Joint Drug Enforcement Administration/State or Local Task Force	4	4	0	.
Public Health Service	3	3	3	.
Bureau of Land Management	3	3	2	.
Social Security Administration	3	3	0	.
Office of the Inspector General—Department of Education	3	1	1	.
Air Force	2	2	2	.
Navajo and Hopi Indian Relocation	2	2	2	.
Other Department of Agriculture	2	2	2	.

Referring agency	Matters filed for			Declination rate <sup>a</sup>
	Matters received	prosecution, declined or administratively closed	Matters declined	
Department of State	2	2	1	.
Office of the Inspector General—Postal Service	2	2	0	.
Other Department of Health and Human Services	2	1	1	.
Department of Education	1	1	1	.
Environmental Protection Agency	1	1	1	.
Food and Drug Administration	1	1	1	.
Joint Defense/State or Local Task Force	1	1	1	.
Metropolitan Police Department—District of Columbia	1	1	1	.
Veterans Administration—Utah	1	1	1	.
Bureau of Prisons	1	1	0	.
Farm Service Agency/Commodity Credit Corp	1	1	0	.
Federal Housing Administration	1	1	0	.
Internal Revenue Service	1	1	0	.
Other Department of Labor	1	1	0	.
Parole Commission	1	1	0	.
Tennessee Valley Authority Commission	1	1	0	.
Veterans Administration—New Mexico/Albuquerque	1	1	0	.
National Oceanic and Atmospheric Administration	1	0	0	.
<b>Overall</b>	<b>10,006</b>	<b>9,090</b>	<b>4,506</b>	<b>50%</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

**Table 11: Indian Country Matters Received and Declination Rates by Referring Agency, Violent Crimes, Fiscal Years 2005 through 2009**

Referring agency	Matters filed for			Declination rate <sup>a</sup>
	Matters received	prosecution, declined, or administratively closed	Matters declined	
Federal Bureau of Investigation	4,779	4,377	2,029	46%
Bureau of Indian Affairs	1,851	1,652	1,053	64%
State/County/Municipal Authorities	558	506	263	52%
Other	311	301	260	86%
Bureau of Alcohol, Tobacco, Firearms and Explosives	56	49	21	.
Joint Federal Bureau of Investigation/State or Local Task Force	34	27	13	.
Other Department of the Interior	17	16	11	.
Joint State/Local Led Task Force	16	11	4	.
United States Marshals Service	8	7	0	.
Other Department of Justice	6	6	2	.
Joint Alcohol, Tobacco, Firearms and Explosives/State or Local Task Force	6	6	1	.
Transferred from other USAO	4	4	3	.

Referring agency	Matters received	Matters filed for		Declination rate <sup>a</sup>
		prosecution, declined, or administratively closed	Matters declined	
Immigration and Customs Enforcement	4	4	0	.
Indian Health Service/Public Health Service	4	3	0	.
National Park Service	3	3	1	.
Joint United States Marshals Service/State or Local Task Force	3	2	1	.
Public Health Service	2	2	2	.
Customs and Border Protection	2	2	0	.
Joint Drug Enforcement Administration/State or Local Task Force	2	2	0	.
United States Secret Service	2	1	1	.
Air Force	1	1	1	.
Joint Defense/State or Local Task Force	1	1	1	.
Metropolitan Police Department—District of Columbia	1	1	1	.
Navajo and Hopi Indian Relocation	1	1	1	.
Postal Service	1	1	1	.
Veterans Administration—Utah	1	1	1	.
Bureau of Prisons	1	1	0	.
Drug Enforcement Administration	1	1	0	.
Farm Service Agency/Commodity Credit Corp	1	1	0	.
Parole Commission	1	1	0	.
United States Courts	1	1	0	.
Veterans Administration—New Mexico/Albuquerque	1	1	0	.
<b>Overall</b>	<b>7,680</b>	<b>6,993</b>	<b>3,671</b>	<b>52%</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

**Table 12: Indian Country Matters Received and Declination Rates by Referring Agency, Nonviolent Crimes, Fiscal Years 2005 through 2009**

Referring agency	Matters received	Matters filed for		Declination rate <sup>a</sup>
		prosecution, declined or administratively closed	Matters declined	
Federal Bureau of Investigation	749	657	304	46%
Bureau of Indian Affairs	516	447	261	58%
Drug Enforcement Administration	275	266	10	4%
Other	167	167	127	76%
State/County/Municipal Authorities	110	95	40	42%
Joint State/Local Led Task Force	103	97	22	23%
Immigration and Customs Enforcement	89	88	4	5%
Customs and Border Protection	58	57	2	4%
Joint Federal Bureau of Investigation/State or Local Task Force	55	53	12	23%

Referring agency	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate <sup>a</sup>
Bureau of Alcohol, Tobacco, Firearms and Explosives	47	40	10	.
Other Department of the Interior	37	31	16	.
United States Marshals Service	19	18	2	.
Fish and Wildlife Service	15	13	2	.
Postal Service	14	13	3	.
Office of the Inspector General—Health and Human Services	14	12	2	.
Other Department of Justice	13	11	2	.
Joint United States Marshals Service/State or Local Task Force	8	6	4	.
Citizenship and Immigration Services	7	7	6	.
Forest Service	7	2	2	.
National Park Service	6	6	2	.
Joint Alcohol, Tobacco, Firearms and Explosives/State or Local Task Force	6	6	1	.
Other Department of Housing and Urban Development	6	5	3	.
United States Secret Service	5	4	1	.
Office of the Inspector General—Department of Justice	5	3	0	.
Bureau of Land Management	3	3	2	.
Indian Health Service/Public Health Service	3	3	1	.
Transferred from other USAO	3	3	1	.
United States Courts	3	3	1	.
Social Security Administration	3	3	0	.
Office of the Inspector General—Department of Education	3	1	1	.
Other Department of Agriculture	2	2	2	.
Department of State	2	2	1	.
Joint Drug Enforcement Administration/State or Local Task Force	2	2	0	.
Office of the Inspector General—Postal Service	2	2	0	.
Other Department of Health and Human Services	2	1	1	.
Air Force	1	1	1	.
Department of Education	1	1	1	.
Environmental Protection Agency	1	1	1	.
Food and Drug Administration	1	1	1	.
Navajo and Hopi Indian Relocation	1	1	1	.
Public Health Service	1	1	1	.
Federal Housing Administration	1	1	0	.
Internal Revenue Service	1	1	0	.
Other Department of Labor	1	1	0	.
Tennessee Valley Authority Commission	1	1	0	.
National Oceanic and Atmospheric Administration	1	0	0	.
<b>Overall</b>	<b>2,370</b>	<b>2,139</b>	<b>854</b>	<b>40%</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

Tables 13, 14, and 15, below, show the number of Indian country matters received and declination rates by charge category from fiscal years 2005 through 2009. Table 13 includes both violent and nonviolent criminal matters, table 14 shows only violent criminal matters, and table 15 shows only nonviolent criminal matters.

Declination rates are calculated based on the number of matters actually filed for prosecution, declined, or administratively closed by the USAOs. Declination rates do not include matters that were still "pending," that is, that had not yet been filed for prosecution, declined or administratively closed. We did not calculate declination rates for charge categories with fewer than 50 matters filed for prosecution, declined or administratively closed from fiscal years 2005 through 2009 because a declination rate would have little meaning when based on such a small number of matters. For a detailed explanation of the specific charges included in each charge category see table 6 in enclosure I.

**Table 13: Indian Country Matters Received and Declination Rates by Charge Category, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009**

Charge category	Matters received	Matters filed for		Declination rate <sup>a</sup>
		prosecution, declined or administratively closed	Matters declined	
Assault	2,922	2,922	1,341	46%
Sexual abuse and related offenses	2,594	2,594	1,745	67%
Pending matters <sup>b</sup>	990	75	0	0%
Drug offenses	739	739	136	18%
Offenses involving theft or deceit	739	738	359	49%
Homicide, including attempts	626	626	292	47%
Unspecified Indian country offenses	445	445	297	67%
Firearms, explosives and related offenses	355	355	120	34%
Unknown	200	200	71	36%
Obstruction of justice offenses	115	115	29	25%
Other offenses involving threats, force or violence	78	78	43	55%
Immigration offenses	67	67	3	4%
Juvenile delinquency matters	37	37	15	.
Conservation and environmental offenses	30	30	10	.
Civil rights offenses	25	25	22	.
Property damage or trespass offenses	21	21	12	.
Racketeering offenses	12	12	8	.
Postal Service offenses	9	9	2	.
Gambling offenses	2	2	1	.
<b>Overall</b>	<b>10,006</b>	<b>9,090</b>	<b>4,506</b>	<b>50%</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.



<sup>b</sup>"Pending matters" includes matters where DOJ had not yet decided whether to charge or decline to prosecute, and 75 matters (reflected in the second data column) that were subsequently filed for prosecution or administratively closed but for which charge information was not available in the data provided by DOJ.

**Table 14: Indian Country Matters Received and Declination Rates by Charge Category, Violent Crimes, Fiscal Years 2005 through 2009**

Charge category	Matters received	Matters filed for		Declination rate <sup>a</sup>
		prosecution, declined or administratively closed	Matters declined	
Assault	2,869	2,869	1,316	46%
Sexual abuse and related offenses	2,450	2,450	1,655	68%
Pending matters <sup>b</sup>	752	66	0	0%
Homicide, including attempts	606	606	280	46%
Firearms, explosives and related offenses	266	266	90	34%
Unspecified Indian country offenses	253	253	130	51%
Unknown	131	131	42	32%
Offenses involving theft or deceit	128	127	51	40%
Other offenses involving threats, force or violence	71	71	38	54%
Obstruction of justice offenses	51	51	15	29%
Drug offenses	39	39	17	.
Juvenile delinquency matters	28	28	9	.
Civil rights offenses	21	21	19	.
Property damage or trespass offenses	8	8	5	.
Racketeering offenses	5	5	4	.
Immigration offenses	1	1	0	.
Postal Service offenses	1	1	0	.
<b>Overall</b>	<b>7,680</b>	<b>6,993</b>	<b>3,671</b>	<b>52%</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

<sup>b</sup>"Pending matters" includes matters where DOJ had not yet decided whether to charge or decline to prosecute, and 66 matters (reflected in the second data column) that were subsequently filed for prosecution or administratively closed but for which charge information was not available in the data provided by DOJ.

**Table 15: Indian Country Matters Received and Declination Rates by Charge Category, Nonviolent Crimes, Fiscal Years 2005 through 2009**

Charge category	Matters received	Matters filed for		Declination rate <sup>a</sup>
		prosecution, declined or administratively closed	Matters declined	
Drug offenses	700	700	119	17%
Offenses involving theft or deceit	612	612	309	50%
Pending matters <sup>b</sup>	240	9	0	.
Unspecified Indian country offenses	193	193	167	87%
Sexual abuse and related offenses	157	157	96	61%
Firearms, explosives and related offenses	90	90	30	33%
Assault	75	75	35	47%
Unknown	71	71	29	41%
Immigration offenses	66	66	3	5%

Charge category	Matters filed for		Matters declined	Declination rate <sup>a</sup>
	Matters received	prosecution, declined or administratively closed		
Obstruction of justice offenses	64	64	14	22%
Conservation and environmental offenses	30	30	10	.
Homicide, including attempts	22	22	14	.
Property damage or trespass offenses	13	13	7	.
Juvenile delinquency matters	9	9	6	.
Postal Service offenses	8	8	2	.
Other offenses involving threats, force or violence	7	7	5	.
Racketeering offenses	7	7	4	.
Civil rights offenses	4	4	3	.
Gambling offenses	2	2	1	.
<b>Overall</b>	<b>2,370</b>	<b>2,139</b>	<b>854</b>	<b>40%</b>

Source: GAO analysis of DOJ data.

<sup>a</sup>Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

<sup>b</sup>"Pending matters" includes matters where DOJ had not yet decided whether to charge or decline to prosecute, and 9 matters (reflected in the second data column) that were subsequently filed for prosecution or administratively closed but for which charge information was not available in the data provided by DOJ.

Tables 16, 17, and 18, below show the reasons provided in LIONS for declinations of Indian country matters. Immediate and later declinations both require one reason to be provided. However, later declinations may also include up to two additional reasons. Therefore, the total number of reasons exceeds the total number of declinations. Table 16 includes reasons provided for both violent and nonviolent criminal matters, table 17 shows only reasons associated with violent criminal matters, and table 18 shows only reasons associated with nonviolent criminal matters.

**Table 16: Frequency of Declination Reasons, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009**

Declination reason	Number of declinations citing reason <sup>a</sup>	Percentage of declinations citing reason <sup>a</sup>
Weak or insufficient admissible evidence	1,878	42%
No federal offense evident	797	18%
Witness problems	537	12%
Lack of evidence of criminal intent	467	10%
Suspect to be prosecuted by other authorities	457	10%
Agency request	161	4%
Minimal federal interest or no deterrent value	150	3%
No known suspect	117	3%
Office policy (fails to meet prosecutive guidelines)	109	2%
Offender's age, health, prior record, or personal matter	94	2%

<b>Declination reason</b>	<b>Number of declinations citing reason<sup>a</sup></b>	<b>Percentage of declinations citing reason<sup>a</sup></b>
Jurisdiction or venue problems	91	2%
Staleness	84	2%
Civil, administrative, or other disciplinary alternative	80	2%
Lack of investigative resources	70	2%
Juvenile suspect	65	1%
Lack of prosecutive resources	58	1%
Suspect being prosecuted on other charges	55	1%
Suspect deceased	37	less than 1%
Suspect serving sentence	25	less than 1%
Statute of limitations	16	less than 1%
Opened in error/office error	12	less than 1%
Pretrial diversion completed	12	less than 1%
Petite policy	8	less than 1%
Suspect cooperation	8	less than 1%
Suspect a fugitive	6	less than 1%
Declined per instructions from DOJ	5	less than 1%
Local agency referral presented by federal agency	5	less than 1%
Restitution/arrearage payments made or being made	4	less than 1%
Department policy	3	less than 1%
By action of the grand jury (no true bill)	1	less than 1%
All work completed—to be used for miscellaneous matters	1	less than 1%
Suspect deported	1	less than 1%

Source: GAO analysis of DOJ data.

<sup>a</sup>Up to three reasons may be associated with a declination. Therefore, the number of reasons cited exceeds the number of declinations for violent and nonviolent crimes of 4,506 and the sum of percentages exceeds 100.

**Table 17: Frequency of Declination Reasons, Violent Crimes, Fiscal Years 2005 through 2009**

<b>Declination reason</b>	<b>Number of declinations citing reason<sup>a</sup></b>	<b>Percentage of declinations citing reason<sup>a</sup></b>
Weak or insufficient admissible evidence	1,619	44%
No federal offense evident	609	17%
Witness problems	505	14%
Lack of evidence of criminal intent	374	10%
Suspect to be prosecuted by other authorities	354	10%
Agency request	121	3%
No known suspect	94	3%
Minimal federal interest or no deterrent value	91	2%

<b>Declination reason</b>	<b>Number of declinations citing reason<sup>a</sup></b>	<b>Percentage of declinations citing reason<sup>a</sup></b>
Offender's age, health, prior record, or personal matter	87	2%
Office policy (fails to meet prosecutive guidelines)	74	2%
Jurisdiction or venue problems	71	2%
Lack of investigative resources	62	2%
Staleness	58	2%
Civil, administrative, or other disciplinary alternative	52	1%
Juvenile suspect	52	1%
Lack of prosecutive resources	48	1%
Suspect being prosecuted on other charges	46	1%
Suspect deceased	31	less than 1%
Suspect serving sentence	21	less than 1%
Statute of limitations	10	less than 1%
Opened in error/office error	7	less than 1%
Petite policy	7	less than 1%
Suspect a fugitive	6	less than 1%
Declined per instructions from DOJ	5	less than 1%
Suspect cooperation	5	less than 1%
Pretrial diversion completed	4	less than 1%
Local agency referral presented by federal agency	3	less than 1%
All work completed—to be used for miscellaneous matters	1	less than 1%
Department policy	1	less than 1%
Restitution/arrearage payments made or being made	1	less than 1%

Source: GAO analysis of DOJ data.

<sup>a</sup>Up to three reasons may be associated with a declination. Therefore, the number of reasons cited exceeds the number of declinations for violent crimes of 3,671 and the sum of percentages exceeds 100.

**Table 18: Frequency of Declination Reasons, Nonviolent Crimes, Fiscal Years 2005 through 2009**

<b>Declination reason</b>	<b>Number of declinations citing reason<sup>a</sup></b>	<b>Percentage of declinations citing reason<sup>a</sup></b>
Weak or insufficient admissible evidence	266	31%
No federal offense evident	190	22%
Suspect to be prosecuted by other authorities	104	12%
Lack of evidence of criminal intent	94	11%
Minimal federal interest or no deterrent value	59	7%
Agency request	43	5%

<b>Declination reason</b>	<b>Number of declinations citing reason<sup>a</sup></b>	<b>Percentage of declinations citing reason<sup>a</sup></b>
Office policy (fails to meet prosecutive guidelines)	35	4%
Witness problems	35	4%
Civil, administrative, or other disciplinary alternative	28	3%
Staleness	27	3%
No known suspect	23	3%
Jurisdiction or venue problems	20	2%
Juvenile suspect	13	2%
Lack of prosecutive resources	10	1%
Suspect being prosecuted on other charges	9	1%
Lack of investigative resources	8	less than 1%
Pretrial diversion completed	8	less than 1%
Offender's age, health, prior record, or personal matter	7	less than 1%
Suspect deceased	7	less than 1%
Statute of limitations	6	less than 1%
Opened in error/office error	5	less than 1%
Suspect serving sentence	4	less than 1%
Restitution/arrearage payments made or being made	3	less than 1%
Suspect cooperation	3	less than 1%
Department policy	2	less than 1%
Local agency referral presented by federal agency	2	less than 1%
By action of the grand jury (no true bill)	1	less than 1%
Petite policy	1	less than 1%
Suspect deported	1	less than 1%

Source: GAO analysis of DOJ data.

<sup>a</sup>Up to three reasons may be associated with a declination. Therefore, the number of reasons cited exceeds the number of declinations for nonviolent crimes of 854 and the sum of percentages exceeds 100.

# Enclosure III

## Comments from the Department of Justice



### U.S. Department of Justice

*Executive Office for United States Attorneys  
Office of the Director*

*Main Justice Building, Room 2260 (202) 252-1000  
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Washington, D.C. 20530*

Mr. Glenn Davis  
Assistant Director  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

**DEC 03 2010**

Re: U.S. Department of Justice Declinations of Indian Country Criminal Matters  
GAO Engagement Code 440923

Dear Mr. Davis:

Thank you for the opportunity to comment on the report titled "U.S. Department of Justice Declinations of Indian Country Criminal Matters." The Executive Office for United States Attorneys (EOUSA) appreciates GAO's cooperation and efforts on this project. We hope this presentation of declination data will be used constructively to work toward solutions to reducing crime in Indian Country.

We particularly appreciate your team's efforts to present this data in appropriate context. For many of the reasons you have included in your report, the declination data generated by our current Legal Information Office Network System (LIONS) is not an appropriate measure of the dedication and commitment of the United States Attorneys' Offices (USAOs) in Indian Country. As the report recognizes, the receipt of a referral from a law enforcement agency does not mean that a prosecutable case exists. In fact the second most frequent reason given for declinations by the USAOs is "No Federal Offense Evident," i.e., the conduct alleged is not a violation of the Federal statutes setting forth the crimes which can be prosecuted by the United States in Indian Country. Yet another reason cited for declinations is that there is no legal jurisdiction over certain individuals or no legal venue to prosecute the crime in Federal court. In addition, as the report points out, the determination to decline to bring a Federal criminal prosecution does not mean that a crime is left unaddressed. Many cases are declined by the USAOs when the defendant is being prosecuted by other authorities, on other charges, or has been subject to other civil or administrative proceedings or a pretrial diversion program (similar to a period of probation).

The public safety challenges in Indian Country are not uniform. They vary widely from district to district - and from tribe to tribe - based upon unique conditions, a complex set of legal jurisdictional issues, geographic challenges, differences in tribal cultures, and the number of tribes and reservations within a particular district. The officer-to-population ratio still remains lower on Indian reservations than in other jurisdictions across the country, and law enforcement

agencies in Indian Country have the unique challenge of patrolling large areas of sparsely populated land. The uniformity of LIONS data and its suitability for statistical analysis are affected by the variances among districts and by the discretion afforded the 93 individual United States Attorneys to use the system to manage their offices to meet local priorities and needs. For example, individual offices may have different criteria for entering matters in LIONS. A change in a LIONS-generated declination rate may be entirely attributable to a change in the office's LIONS policy rather than as a result of any changes in the crime rate or prosecution practices or capabilities in that district. In addition, as the report acknowledges, variations in the practice of law enforcement agencies in referring cases to USAOs can also affect the declination rates of USAOs. As noted, some agencies may refer every allegation, even if unsupported, to a USAO (resulting in a declination), while other agencies may refer only those cases which they believe are fully investigated and ready for prosecution.

More importantly, the data contained in the report must be considered in the context of appropriate prosecutorial decision-making. The decision to charge someone with a crime and to seek to deprive the defendant of his or her liberty represents the exercise of power which must be used judiciously. With respect to all crimes, the United States Attorney's Manual and the Principles of Federal Prosecution provide that Department of Justice attorneys "should initiate or recommend Federal prosecution if he/she believes that the person's conduct constitutes a Federal offense and that the admissible evidence probably will be sufficient to obtain and sustain a conviction. Evidence sufficient to sustain a conviction is required under Rule 29(a), Fed. R. Crim. P., to avoid a judgment of acquittal. Moreover, both as a matter of fundamental fairness and in the interest of the efficient administration of justice, no prosecution should be initiated against any person unless the government believes that the person probably will be found guilty by an unbiased trier of fact." United States Attorneys' Manual Section 9-27.220 (Comment). Each case must be evaluated on the evidence available to the prosecutor. Accordingly, it would not be appropriate to use the data contained in this report to promote any type of prosecutorial quota system or incentives to prosecute a higher number of individuals.

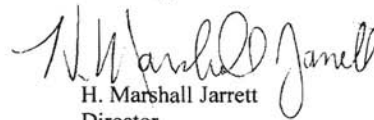
Similarly, the declination rates generated by LIONS data are not an appropriate measure of all the ongoing efforts by United States Attorneys to be actively engaged with their partners in tribal law enforcement. Last year, the Attorney General launched a Department-wide initiative on public safety in tribal communities. A component of that initiative is that every USAO with Indian Country in its district will engage annually in consultation with the tribes in that district, in coordination with the FBI, the Bureau of Indian Affairs, the U.S. Marshals Service, the Drug Enforcement Agency, and the Bureau of Alcohol, Tobacco, Firearms and Explosives, and, where appropriate, state and local law enforcement. In addition USAOs are currently implementing operational plans designed to foster ongoing government-to-government relationships with the tribes; to improve communications with tribal law enforcement regarding charging decisions; to initiate cross-deputization and Special Assistant United States Attorney agreements where appropriate; and to establish training for all relevant criminal justice personnel on issues related to Indian Country criminal jurisdiction and legal issues.

- 3 -

The public safety challenges confronting Indian Country are great, and the Department's enhanced efforts in Indian Country can be resource intensive. We are pleased that the FY 2011 President's Budget requests \$448.8 million in total resources for initiatives in Indian Country. New investments include significant grant resources for addressing a broad range of criminal justice issues and additional FBI agents to help tribal communities combat illegal drug use, trafficking, and violent crime.

The Department has a responsibility to build a successful and sustainable response to the scourge of violent crime on reservations. In partnership with tribes, our goal is to find and implement solutions to immediate and long-term public safety challenges confronting Indian Country. Thank you for your time and attention to this important matter.

Sincerely,



H. Marshall Jarrett  
Director



# Enclosure IV

## GAO Contact

If you or your staff have questions concerning this report, please contact me at (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov).

## Staff Acknowledgments

In addition to the contact named above, William Crocker III and Glenn Davis, Assistant Directors, and Christoph Hoashi-Erhardt, Senior Analyst, managed this review. Ami Ballenger, Rebecca Rygg, and Candice Wright made significant contributions to the work. Christine Davis provided legal support. David Alexander and Minette Richardson assisted with the design, methodology, and data analysis. Katherine Davis provided assistance in report preparation.

(440923)

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