

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
AND THE  
UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

I. PURPOSE

This Memorandum of Understanding (MOU) is made by and between the United States Department of the Interior (DOI) and the Federal Bureau of Investigations (FBI) pursuant to the Indian Law Enforcement Reform Act of 1990 (ILERA). 25 U.S.C. §§ 2801-2815. The purpose of this MOU is to establish guidelines regarding the respective jurisdictions of the Bureau of Indian Affairs (BIA) and the FBI in certain investigative matters, and to provide for the effective and efficient administration of criminal investigations in Indian country.

II. BUREAU OF INDIAN AFFAIRS JURISDICTION

The BIA Office of Justice Services (BIA-OJS) derives its investigative jurisdiction in Indian country from the ILERA, 25 U.S.C. §§ 2801-2815, pursuant to which the BIA-OJS is granted investigative responsibility by the Secretary of the Interior. The administration of criminal justice in Indian country is overseen by the BIA-OJS. The BIA-OJS jurisdiction within Indian country includes, but is not limited to, crimes under 18 U.S.C. §§ 1152 and 1153 and Tribal law with consent of the Tribe. The BIA-OJS also enforces other federal offenses, including federal laws of general applicability and federal hunting and fishing regulations. Under 25 U.S.C. § 2804, the BIA-OJS may issue special law enforcement commissions (SLECs) to other federal, state, local and Tribal full-time certified law enforcement officers to obtain active assistance in enforcing applicable federal criminal statutes. In addition, the ILERA authorizes the Secretary of the Interior to develop interagency agreements with the Director of the FBI and provides for the promulgation of prosecutorial jurisdictional guidelines by United States Attorney's Office (USAO). 25 U.S.C. § 2804-2805.

III. FEDERAL BUREAU OF INVESTIGATION JURISDICTION

The FBI derives its investigative jurisdiction in Indian country from 28 U.S.C. § 533, pursuant to which the Attorney General grants the FBI the authority to investigate all federal crimes not assigned exclusively to another agency. The FBI is the principal federal law enforcement agency that investigates serious crimes in Indian country. Except as provided in 18 U.S.C. § 1162(a) and (c), "State Jurisdiction Over Offenses Committed By or Against Indians in the Indian Country" the jurisdiction of the FBI includes, but is not limited to, certain offenses committed by Indians against the persons or property of Indians, most offenses committed by Indians against the persons or property of non-Indians, and most offenses committed by non-Indians against the persons or property of Indians.

Like the BIA-OJS, the FBI investigates crimes under 18 U.S.C. §§ 1152 and 1153. As a general matter, for crimes committed by Indians against the persons or property of Indians, the FBI has jurisdiction to investigate any crime listed in 18 U.S.C. §1153. For crimes committed by an Indian against the person or property of a non-Indian, the FBI has jurisdiction to investigate any crime under 18 U.S.C. § 1152 and 18 U.S.C. § 1153. For crimes committed by a non-Indian against the person or property of an Indian, the FBI has jurisdiction to investigate any crime under 18 U.S.C. §1152.

#### IV. GENERAL PROVISIONS

1. Consistent with limitations regarding confidentiality, the requirements of the Privacy Act and any other applicable laws, and respective policies and procedures, the BIA-OJS and the FBI will cooperate on investigative matters of mutual interest, exchange intelligence, and investigative reports, as appropriate.
2. When either the FBI or the BIA-OJS receives information indicating a violation of law falling within the investigative jurisdiction of the other agency, the agency receiving the information will notify the other agency. If either the FBI or the BIA-OJS declines to investigate a matter within the jurisdiction of both agencies, the other agency will be notified.
3. The FBI and the BIA-OJS will attempt to resolve jurisdictional disputes at the field level. In the event the dispute cannot be resolved, it will be reviewed by each agency's respective headquarters for resolution.
4. In consultation with each United States Attorney's Office (USAO) whose criminal jurisdiction includes Indian country, the FBI and the BIA-OJS shall develop written guidelines outlining investigative roles and responsibilities of the BIA-OJS Criminal Investigators, the FBI, and Tribal Criminal Investigators, if applicable. These guidelines shall cover which federal agency has primary jurisdiction over 18 U.S.C. § 1152 and 18 U.S.C. § 1153 offenses, and other federal offenses that fall within the investigative jurisdiction of both agencies.
5. All BIA-OJS Criminal Investigators and FBI personnel assigned in Indian country shall annually review the local USAO's Indian Country Operational Plan, sexual violence guidelines, Savanna's Act regional guidelines, and any other applicable prosecution guidelines.
6. BIA-OJS Criminal Investigators, FBI, and Tribal Criminal Investigators should ensure that beyond a minimum facts interview, absent exceptional operational circumstances,<sup>1</sup> forensic interviews of minor victims and witnesses in cases involving alleged child abuse, exploitation, abduction, or exposure to violence, are conducted by a FBI Child Adolescent Forensic Interviewer (CAFI) or a trained Child Advocacy Center (CAC) forensic interviewer. The BIA-OJS Criminal Investigators, FBI, Tribal Criminal Investigators, and local USAO should consult regarding the need for forensic interviews of minor victims and witnesses in cases involving alleged child abuse, exploitation, abduction, or exposure to violence, and to determine if exceptional operational circumstances exist.
7. The BIA-OJS Criminal Investigators, FBI, and Tribal Criminal Investigators shall be trained on and employ during criminal investigations an approach that is victim-centered, trauma-informed, and culturally responsive. The Secretary of the Interior will ensure that

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<sup>1</sup> "Exceptional operational circumstances" exist when it is reasonable to believe that delaying an in-person forensic interview is likely to: cause or facilitate the continued, increased, or imminent likelihood of harm or abuse to the interviewee or a third party; enable critical evidence to be lost, removed, or destroyed or to become otherwise unobtainable; endanger the safety of law enforcement officers or the general public; impede or frustrate law enforcement's "hot pursuit" of a suspect; increase the likelihood that a suspect will flee before law enforcement can obtain a warrant. This is not an exhaustive list of all possible exceptional operational circumstances.

BIA-OJS Criminal Investigators receive adequate training, with particular attention to report writing, subject interviewing techniques, taking witnesses' statements, search and seizure techniques, and preservation of evidence at the crime scene. Successful completion of the BIA-OJS approved basic Criminal Investigator Training Program course provided at the Federal Law Enforcement Training Center or its equivalent shall constitute the minimum standard of acceptable training for Criminal Investigators. The BIA-OJS may consult with the DOJ and other training sources with respect to such additional specialized training as may be desirable. USAOs may also require, and participate in, training at the field level.

8. The BIA-OJS Criminal Investigators, FBI, and Tribal Criminal Investigators shall adhere to the Victims' Rights and Restitution Act, 34 U.S.C.A. § 20141, the Crime Victims' Rights Act, 18 U.S.C. § 3771, and the Survivors' Bill of Rights Act, 18 U.S.C. § 3772. BIA-OJS and FBI will notify the other agency at the local or field office level of law enforcement staffing changes when those changes are likely to impact operations or law enforcement response on a specific reservation or location.
9. To the extent possible and in consideration of limited resources, the BIA-OJS and the FBI will offer the Indian Country Criminal Investigator Training Program (ICCITP) to newly hired or Indian country stationed FBI special agents, and BIA-OJS Criminal Investigators and Tribal Criminal Investigators. The ICCITP curriculum may be co-developed and taught by BIA-OJS and FBI instructors and subject matter experts.
10. To the extent possible and in consideration of limited resources, the FBI will continue to assist the BIA-OJS in its investigative matters by providing investigative support services through the Criminal Justice Information Services Division, Training Division, Criminal Investigative Division, and Laboratory Division.
11. The sharing and dissemination of all FBI and BIA-OJS information will conform with requirements established by the authorities of each respective agency, and any other applicable laws, regulations, procedures, document disseminations controls/markings and agreements between the FBI and BIA-OJS.
12. This document constitutes the full and complete agreement between the BIA-OJS and the FBI. Modifications to this MOU will have no force and effect unless and until such modifications are reduced to writing and signed by an authorized representative of the parties. This MOU will, at three (3) year intervals after the date of signing, be subjected to a thorough review by the parties to determine if changes are appropriate. Any other agreements that the DOI, FBI, and Indian Tribes may enter into with or without reimbursement of personnel or facilities of another Federal, Tribal, State, or other government agency to aid in the enforcement of criminal laws of the United States shall be in accord with this MOU and with all applicable federal laws and regulations.
13. Nothing in this MOU is intended to change any existing cooperative relationships and responsibilities between the BIA-OJS and the FBI, and nothing in this MOU shall invalidate or diminish any law enforcement authority or responsibility of either agency.

14. The provisions set forth in this MOU are solely for the purpose of internal guidance of components of the DOI and the FBI. This MOU does not, is not intended to, shall not be construed to, and may not be relied upon to, create any substantive or procedural rights or benefits enforceable at law by any party in any matter, civil or criminal, against the parties, the United States, or the officers, employees, agents, or other associated personnel thereof. No assignment or rights, duties, or obligations of this Memorandum shall be made by any party without the express written approval of a duly authorized representative of all other parties. This MOU does not, is not intended to, and shall not be construed to exclude, supplant, or limit otherwise lawful activities of the DOI or the FBI.
15. The parties acknowledge that this Memorandum does not alter applicable law governing any claim for civil liability arising out of any activity conducted pursuant to this Memorandum or otherwise relating to this Memorandum. Each party agrees to notify the other in the event of receipt of a civil claim arising from activity related to this MOU. Both parties agree to cooperate fully with one another in the event of any investigation arising from alleged negligence or misconduct arising from acts or omissions related to this MOU. Nothing in this paragraph prevents any party from conducting an independent administrative review of any incident giving rise to a claim.

V. CONTRACTS AWARDED UNDER THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

1. Any contracts awarded under the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. § 5301 et seq. (ISDEAA), to perform the function of the BIA-OJS Criminal Investigations, must comply with all standards applicable to BIA-OJS Criminal Investigators, including the following:
  - a. Local USAO guidelines must be followed;
  - b. Tribal Criminal Investigators must be certified Law Enforcement Officers and must have satisfactorily completed the Basic Criminal Investigator Training Program provided at the Federal Law Enforcement Training Center, or an equivalent course approved by the Director, BIA-OJS. Tribal Criminal Investigators will receive a minimum of 40 hours in-service training annually to keep current on developments in the field of criminal investigations;
  - c. Compensation for Tribal Criminal Investigators must be comparable to that of BIA-OJS Criminal Investigators;
  - d. Tribal Criminal Investigators must be United States citizens;
  - e. Tribal Criminal Investigators must possess a high school diploma or its equivalent;
  - f. No Tribal Criminal Investigator shall have been convicted of a felony offense, misdemeanor crime of domestic violence, or crime involving moral turpitude;
  - g. Tribal Criminal Investigators must have documentation of semi-annual weapons qualifications;

- h. Tribal Criminal Investigators must be free from physical, emotional, or mental conditions which might adversely affect their performance as law enforcement officers; and
- i. Tribal Criminal Investigators must meet background investigation standards in accordance with 25 CFR 12.32, and undergo unannounced drug testing. Such examinations must be documented and available for inspection by the BIA-OJS.
- j. Appropriate procedures shall be devised to provide adequate supervision of Tribal Criminal Investigators by qualified supervisory personnel to ensure that investigative tasks are properly completed.
- k. When a Tribe is awarded a contract under ISDEAA, there must be a phase-in period of not less than 180 days to ensure an orderly transition from one law enforcement agency to another. The phase-in period gives the outgoing BIA-OJS Criminal Investigators sufficient time to communicate and collaborate with the contracting Tribe's Tribal Criminal Investigators, ensuring that ongoing investigations are efficiently transitioned from one office to the other, and to ensure that all evidence is preserved. The phase-in period does not replace, waive, or otherwise affect any of the regulatory, statutory, or contractual requirements for the contracting Tribe's Tribal Criminal Investigators, to include backgrounding and training requirements, as those requirements must be independently met upon award of the ISDEAA contract and throughout the Tribe's contractual performance.
- l. When a Tribe retrocedes its ISDEAA contract for the Criminal Investigations function, per 25 C.F.R. § 900.242, retrocession is effective on the earliest of the following three dates: one year from the date of the Tribe's request; the date the contract term expires; or a date mutually agreed upon by the BIA-OJS and the Tribe. In the instance of retrocession, all case files, evidence, and related material and documents associated with active and closed investigations must be turned over to the BIA-OJS.
- m. Appropriate procedures shall be established with respect to the storage, transportation, and destruction of, and access to, case files, evidence, and related documents and other material, with particular attention directed to the confidentiality requirements of 18 U.S.C. § 3509(d) and Rule 6(e) of the Federal Rules of Criminal Procedure. Tribal Criminal Investigators shall follow these procedures at all times. Access to such material will be for official use only.
- n. Before any Tribe contracts for the Criminal Investigations function, the BIA and the Tribe will ensure that there is sufficient funding to cover the costs of a Tribal Criminal Investigator program, including salary, equipment, travel, training, and other related expenses arising during both the investigation stage and the litigation stage of any case or matter covered by the contract.

- o. Tribal Criminal Investigators are prohibited from striking, walking off the job, feigning illness, or otherwise taking any job action that would adversely affect their responsibility and obligation to provide law enforcement services in their capacity as Tribal Criminal Investigators.

VI. LAW ENFORCEMENT OFFICER-INVOLVED SHOOTINGS AND IN-CUSTODY DEATH INVESTIGATIONS

1. The FBI will take an initial primary role in the investigation of BIA-OJS or Tribal law enforcement officer-involved shootings and in-custody death incidents. The responsibility of the FBI is to investigate the incident to determine if the incident is criminal in nature. The BIA-OJS will concurrently conduct separate internal administrative investigations of all BIA-OJS or Tribal law enforcement officer-involved shootings and in-custody death incidents. The FBI will provide the BIA-OJS with copies of applicable criminal investigation case files related to officer-involved shootings and in-custody death investigations after the case has been adjudicated by the USAO or administratively closed by the FBI.
  - a. The FBI will not investigate officer-involved shootings that are completely administrative in nature, such as accidental or negligent discharges, or the shootings of animals.
  - b. If the BIA-OJS or Tribal law enforcement officer-involved shooting occurs while the officer is performing duties under the authority of another law enforcement agency task force, the sponsoring agency will be responsible for the investigation of the incident pursuant to any agreements with that agency.
  - c. Each FBI field office, in collaboration with the USAO, may develop specific protocols to respond to and assess in-custody deaths or officer-involved shootings, absent those protocols, the following guidelines should be followed:
    - i. When the FBI is notified of an officer-involved shooting or in custody death in Indian country, whether it be from BIA-OJS, a local LEO agency on the reservation, or a Tribal detention facility, an agent will respond to assess the incident to determine if that matter may be criminal in nature;
    - ii. Upon arrival and pursuant to a non-intrusive cursory investigation, the agent will confer with their immediate supervisor and determine if the incident warrants further criminal investigation based on the facts and circumstances involved;
    - iii. Some preliminary investigations may require physical evidence to be examined or requests for additional documentation. During this time, the FBI will maintain the lead investigative role and assess the nature of the investigation. If at a later date the FBI determines the matter is not criminal in nature, the FBI will refer the process to the BIA-OJS.
    - iv. During the preliminary investigative phase, the FBI will not become involved in any civil or policy compliance investigation by the BIA-OJS; and

- v. If during the investigation the FBI determines that the incident may be criminal in nature, the FBI will maintain the primary role in the investigation until the criminal investigation has been completed and submitted to the USAO for review and resolved via prosecution or declination. When applicable, the FBI will obtain written declination from the USAO.
2. The FBI Victim Assistance Program (VAP) and the BIA-OJS VAP will coordinate to provide victim services to victims of crime to ensure that a continuum of services is provided. The BIA-OJS VAP may provide services independently, or jointly with the FBI VAP on a case-by-case basis. The FBI VAP and BIA VAP personnel shall coordinate their efforts with the USAO Victim Witness Coordinator and, where applicable, a Tribe's victim advocate.
3. FBI, BIA-OJS Criminal Investigators, and Tribal Criminal Investigators shall ensure that missing person cases are entered into NCIC by the lead investigative agency in a timely manner. The lead investigative agency shall also ensure that DNA is submitted to the National Missing Person DNA Database when appropriate and available. Similarly, the FBI, BIA-OJS Criminal Investigators, and Tribal Criminal Investigators shall ensure that murder cases are entered into the National Incident-Based Reporting System (NIBRS) and other appropriate federal criminal databases. If available, information about the party's Tribal affiliation should be submitted.

By subscription of their signatures below, the parties acknowledge that they have read, understand, and will abide by the foregoing statements.

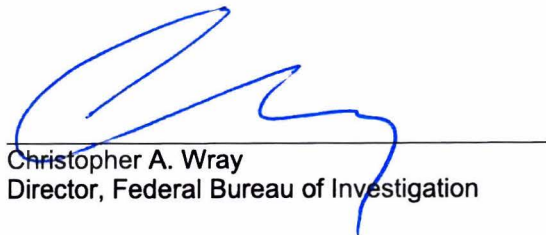
U.S. Department of the Interior



Bryan Newland  
Assistant Secretary – Indian Affairs

NOV 22 2022

Date



Christopher A. Wray  
Director, Federal Bureau of Investigation

11/28/22

Date