

CHAPTER 1

Building a Strong Foundation

“For us . . . the question is not who has been exposed to violence, it’s who hasn’t been exposed to violence?”

Mato Standing High, Former Attorney General, Rosebud Sioux Tribe.

Defending Childhood Meeting with Attorney General Eric Holder,
January 2011

“I think there has to be a recognition that all of our children have been abused or neglected at some point in their history. . . .”

Theresa M. Pouley, Chief Judge, Tulalip Tribal Court.
Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014

The health and well-being of American Indian and Alaska Native (AI/AN) children is critical to the strength and future stability of tribes¹ and Indian families.² Yet, AI/AN children are exposed to multiple forms of violence at rates higher than any other race in the United States, resulting in increased rates of altered neurological development, poor physical and mental health, poor school performance, substance abuse, and overrepresentation in the juvenile justice system.³ Violence, including intentional injuries, homicide, and suicide, accounts for 75 percent of deaths of AI/AN youth ages twelve to twenty.⁴ These serious adversities often lead to toxic stress reactions and chronic and severe trauma. With the convergence of exceptionally high crime rates, jurisdictional limitations, vastly under-resourced programs, and poverty, service providers and policy makers should assume that *all* AI/AN children have been exposed to violence. However, while AI/AN children face rates of violence at epidemic levels, some tribes and urban Indian organizations have found innovative ways to incorporate tradition, exercise sovereignty, and develop resources to protect their children from harm. This chapter includes foundational recommendations for tribes, urban Indian service providers, and policy makers at the federal, tribal, and state levels to transform the unconscionable reality in which AI/AN children live. The Advisory Committee believes that these recommendations, once acted on, will be the key to creating lasting and positive change.

Overview of AI/AN Children Exposed to Violence

There is a dearth of data and statistics specific to AI/AN children’s exposure to violence due to poor identification practices, a view that the population is too small to study, and a lack of solid methodological practices. However, a review of non-Native studies along with the somewhat limited data on AI/AN children sheds light on the impact of violence on AI/AN children.

Children Exposed to Violence Nationally

The best overview of children exposed to violence on a nationwide scale is provided in the 2012 Final Report of the Attorney General’s National Task Force on Children Exposed to Violence:⁵

Exposure to violence is a national crisis that affects almost two in every three of our children nationwide. For AI/AN children, while we do not have statistics, all indications are that these numbers are even higher. According to the National Survey of Children’s Exposure to Violence (NatSCEV), an

estimated 46 million of the 76 million children currently residing in the United States are exposed to violence, crime, and abuse each year.

It is important to realize that, although exposure to violence in any form harms children, exposure to different forms of violence can have different effects. **Sexual abuse** places children at high risk for serious and often chronic problems with health, PTSD and other mental health disorders, suicidality, eating disorders, sleep disorders, substance abuse, and sexuality and sexual behavior.

Children exposed to **physical abuse** also are at high risk for severe and often lifelong problems with physical health, PTSD and other mental health disorders, suicidality, eating disorders, substance abuse, and sexuality and sexual behavior.

Children who have been exposed to **intimate partner violence** in their families also are at high risk for severe and potentially lifelong problems with physical health, mental health, school and peer relationships, and disruptive behavior.

Children who are exposed to **community violence** in their neighborhoods or schools often see family members, peers, trusted adults, or strangers (both innocent bystanders and active participants in violent activities) being injured or even murdered. They may come to believe that violence is “normal.”

The picture becomes even more complex when children are exposed to **multiple types of violence**; these children are called “polyvictims.” The toxic combination of exposure to family violence, child physical and sexual abuse, and exposure to community violence increases the risk and severity of posttraumatic injuries and health and mental health disorders for exposed children by at least twofold and up to tenfold. Polyvictimized children are at high risk for losing the fundamental capacities they need to develop normally and to become successful learners and productive adults.

Poverty Increases Both Risk and Adverse Impact of Exposure to Violence
Children living in poverty are far more likely to be exposed to violence and psychological trauma, both at home and in the surrounding community. In many poor communities, particularly those that are isolated and the victims of historical trauma and racism as well as poverty, violence has become the norm for children growing up.

AI/AN Children Exposed to Violence

AI/AN children experience violence in many forms, including sexual abuse, physical abuse, domestic violence, child maltreatment, and community violence. As noted in the preceding text, polyvictimized children face significant barriers. Different forms of violence may have different negative impacts; but all forms can be

“I’m not confident I would be able to identify even one [Alaska] Native person who has not experienced or witnessed physical violence, or worse, as a child.”

Andy Teuber, Chair of Alaska Native Tribal Health Consortium; President / CEO of KANA and President of Tangirnaq Native Village (aka Woody Island Tribal Council) Testimony before the Task Force on American Indian/ Alaska Native Children Exposed to Violence, Anchorage, AK, June 11, 2014

“When children grow up surrounded by violence they learn to see the world in two ways: as a victim of violence and a perpetrator of violence.”

William A. Thorne Jr., Appellate Court Judge, Utah Court of Appeals (Retired). Testimony before the Task Force on American Indian/ Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014

toxic and lead to serious mental, physical, and social disabilities. For instance one report noted that AI/AN juveniles experience post-traumatic stress disorder (PTSD) at a rate of **22 percent**. Sadly, this is the same rate as veterans returning from Iraq and Afghanistan, and triple the rate of the general population.⁶

Statistics indicate that overall violence in tribal communities is very high:

- Violent crime rates in Indian country are more than 2.5 times the national rate; some reservations face more than twenty times the national rate of violence.⁷
- Thirty-four percent of AI/AN women will be raped in their lifetimes; and AI/AN women are 2.5 times more likely to be raped or sexually assaulted than women in the United States in general.⁸
- Thirty-nine percent of AI/AN women will be subject to domestic violence.⁹

The rates of child abuse, suicide, victimization, and involvement in the criminal justice system are extremely high among AI/AN youth:

- A 2008 report by the Indian Country Child Trauma Center calculated that Native youth are 2.5 times more likely to experience trauma when compared with their non-Native peers.¹⁰
- In a sample of AI/AN youth, an average of 4.1 lifetime traumas have been reported, with threat of injury and witnessing injury being the most common form of trauma exposure.¹¹
- AI/AN youth also experience high rates of child abuse: 15.9 per one thousand compared to 10.7 for white youth.¹²
- Native American youth are twice as likely as white youth and three times as likely as other minority youth to commit suicide.¹³ In 2005, suicide was the second leading cause of death for Native Americans ages ten to twenty-five.¹⁴
- Violence, including intentional injuries, homicide, and suicide, account for 75 percent of deaths for AI/AN youth ages twelve to twenty.¹⁵
- AI/AN youth have higher rates of mental health and substance use problems than other ethnic groups.¹⁶
- Native youth are overrepresented in both federal and state juvenile justice systems and disproportionately receive the most severe dispositions. For example, in state juvenile justice systems, AI/AN juveniles are disproportionately represented compared to white juveniles.¹⁷ In 2010, AI/AN youth made up 367 of every one hundred thousand juveniles in residential

placement, compared with 127 of every one hundred thousand for white juveniles.¹⁸ These rates, which are calculated based on the total percentage of AI/AN youth in the state system, are in fact even more egregious because they do not include the AI/AN youth involved in tribal juvenile justice systems.

Poverty is a significant risk factor that is intensified in Indian country. On the Pine Ridge Indian Reservation in South Dakota, for example, 70 percent of adults are unemployed, and substance abuse, homelessness, rape, violence, and child abuse are everyday occurrences—nearly all of the children on this reservation will experience or witness violence. Yet until a few years ago, the reservation had just eight police officers to respond to the needs of its 16,986 residents despite having a homicide rate more than five times the national average.¹⁹

Impact of Historical Trauma

Compounding these high rates of violence is historical trauma: a cumulative emotional and psychological wounding over the life span and across generations, emanating from massive group trauma.²⁰ AI/AN people have, for more than five hundred years, endured physical, emotional, social, and spiritual genocide from European and American colonialist policy.²¹ This is a direct attack on the cultural fabric of a people and an assault on the essence of a community that has a lasting impact on an individual's psyche, spiritual/emotional core, and well-being.²² Many Native practitioners, clinicians, researchers, and traditional healers have long recognized the impact of historical trauma on Native peoples. The term *historical trauma* can be used as framework to understand what happened in Native America and why the statistics relating to AI/AN well-being are so dismal.²³

To understand AI/AN children's exposure to violence within the context of historical trauma, it is essential to understand the disparate treatment of AI/AN families and communities by federal and state governments, and the lingering effects that government policies and practices have on the AI/AN population, including:

- the removal and confinement of tribes to reservations from historic lands,
- the boarding school experience,
- the relocation of AI/AN peoples to major cities,
- specific attempts to assimilate AI/AN children, and
- the erosion of sovereignty that led to the diminishment of criminal jurisdiction.

"Poverty creates trauma and that leads to trauma behavior in children . . . this is not new information."

Abby Abinanti, Chief Judge,
Yurok Tribal Court.
Testimony before the Task
Force on American Indian/
Alaska Native Children
Exposed to Violence, Phoenix,
AZ, February 11, 2014

"Cultural trauma has been defined as a direct attack on the cultural fabric of a people and its lasting impact that it has had on an individual's psyche, spiritual/emotional core and well-being as well as the assault on the essence of a community."

Deborah Painte, Director,
Native American
Training Institute.
Testimony before the Task
Force on American Indian/
Alaska Native Children
Exposed to Violence, Bismarck,
ND, December 9, 2013

“The outcome of these assimilation efforts is heightened risk factors for child maltreatment in AI/AN communities. These policies left generations of parents and grandparents who were subjected to prolonged institutionalization and who do not have positive models of family life and family discipline.”

Sarah Hicks Kastelic, Deputy Director, National Indian Welfare Association.
Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Bismarck, ND, December 9, 2013

The mass trauma experienced by Native people has been referred to as a “soul wound” that began with the colonization of the Americas; continued throughout the aftermath of the doctrines of discovery and manifest destiny; and culminated in the shattered social fabric and homelands of Indigenous populations in the Americas.

These practices continue today and have a significant and lingering impact on AI/AN children and families. Accordingly, although an exhaustive history of federal Indian policy and its impact is beyond the scope of this report, the report does contain references to these policies throughout. Please see the “Suggested Further Reading” in the appendix for additional information.

Connecting Sovereignty, Trust Obligations, and AI/AN Children Exposed to Violence

Currently, there are 566 federally recognized Indian tribes in the United States consisting of reservation and nonreservation tribes.²⁴ The diversity and uniqueness of AI/AN tribes cannot be overemphasized. Tribes have different resources, social and economic conditions, languages, and cultural and traditional practices. American Indians are dual citizens of both the United States and a federally recognized tribe. American Indians reside in all states; however, the majority of American Indians live in the western United States with Oklahoma having the highest American Indian population and California having the second highest. Approximately 71 percent of AI/AN people live in urban areas,²⁵ largely as a result of relocation policies in the 1950s. Urban Indian organizations exist around the nation, and they provide crucial services to urban AI/AN populations, to include health care, social services, and, in some areas, quality services for children exposed to violence.

Tribal governments are independent sovereign Nations with inherent authority recognized by the U.S. Constitution. At the time of European contact with North America, the tribes were sovereign by nature and conducted their own internal affairs.²⁶ Tribal sovereignty is a core principle in the federal-tribal government-to-government relationship. Tribes have inherent sovereignty to determine their form of tribal government, the power to determine membership, the power to legislate and tax, the power to administer justice, the power to exclude persons from tribal territory,²⁷ and all the powers of sovereignty not expressly divested by agreement or clear statement of Congress. However, both state and federal constraints impede tribes from exercising full authority and marshaling their full potential to address violence against children.

The concept of tribal sovereignty is woven through each and every issue affecting AI/AN children including the primacy of tribal governments in responding to violence experienced or witnessed by Indian children. The unique legal posture of tribes in relation to the federal government is deeply rooted in American law and history, and knowledge of this historical context is essential to understanding the issues regarding AI/AN children exposed to violence.

Additionally, the federal government has a special relationship known as the trust responsibility with Indian tribes. The trust responsibility encompasses an obligation to guarantee law and order in Indian country.²⁸ For example, in the Indian Child Welfare Act (ICWA), Congress formally declared that it is the policy of this nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes that will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.²⁹

The federal trust responsibility encompasses a range of issues impacting AI/AN children exposed to violence, including:

- identifying, assessing, and treating AI/AN children exposed to violence, including recognizing tribally recognized, culturally based healing practices;
- expanding tribal self-governance policies;
- training professionals who come into contact with AI/AN children exposed to violence;
- impacting juvenile justice issues related to AI/AN children;
- funding tribal programs;
- mandating the cooperation of federal agencies regarding trauma-based practices for AI/AN children exposed to violence; and
- collecting data and sharing information in Indian country.

Native children and youth, like their ancestors, continue to be resilient in the face of extreme adversity. Maintaining cultural traditions is still a very important part of the everyday lives of American Indians. Children grow up learning the traditions of the tribe, practice them each day, and will someday teach them to their children.³⁰ This focus on tribal self-determination and the use of tradition to respond to the needs of AI/AN children exposed to violence is echoed throughout this report and the Advisory Committee recommendations.

“The exercise of tribal sovereignty means being able to actively and consciously participate in the creation of our own future. If our future is decided by others, we are really not sovereign. There is a direct relationship between sovereignty and our willingness to determine what our future will be.”

Dr. Eddie Brown, Executive Director, American Indian Policy Institute

ADVISORY COMMITTEE VISION FOR AMERICAN INDIAN AND ALASKA NATIVE CHILDREN

The Advisory Committee envisions a future where Native children are raised in a supportive community that is rich in American Indian and Alaska Native cultures, where the primacy of tribal governments in responding to AI/AN children exposed to violence is respected, where AI/AN tribes are empowered with authority and resources to prevent AI/AN children from being exposed to violence and where AI/AN tribes have sufficient tools to respond to and heal their children.

Reaching this vision by changing broken systems that traumatize AI/AN children—rather than respecting their sacredness—is the focus of this report. How can the tribes lead us to this vision? How can the federal government and state governments support tribes in achieving this vision? This report examines the complex systems involved and provides foundational recommendations on changes that need to be made to restore Native children and Native communities to wholeness and balance.

Foundational Findings and Recommendations

- **1.1 Leaders at the highest levels of the executive and legislative branches of the federal government should coordinate and implement the recommendations in this report consistent with three core principles—Empowering Tribes, Removing Barriers, and Providing Resources—identified by the Advisory Committee.**

Core Principle #1 (Empowering Tribes):

Tribal sovereignty includes the inherent authority to govern and protect the health, safety, and welfare of tribal citizens, especially children, within tribal lands. Tribes must be empowered with authority and resources to prevent AI/AN children from being exposed to violence and with sufficient tools for tribes to respond and heal their children. Tribes cannot thrive without the authority and resources to implement their own decisions for their children. There is a vital connection between inherent

tribal sovereignty and protecting AI/AN children. Federal and state governments must recognize and respect the primacy of tribal governments in responding to AI/AN children. In each Advisory Committee hearing and Listening Session, witnesses spoke bravely and boldly about the critical importance of inherent tribal sovereignty in addressing AI/AN children's exposure to violence and the need for effective and appropriate services for AI/AN children that reflect the cultural integrity of each individual tribe.

Core Principle #2 (Removing Barriers):

Federal and state governments must remove the restrictions and barriers—such as jurisdictional and resource limitations—that currently prevent AI/AN Nations from effectively exercising their inherent sovereign authority to stop AI/AN children from being exposed to violence, and provide sufficient tools for tribes to heal their children who have been exposed to violence.

Core Principle #3 (Providing Resources):

AI/AN Nations must be provided with the assistance, collaboration, and resources to build capacity to fully implement and sustain tribally controlled, trauma-informed prevention and treatment models and systems that will empower their individual communities to prevent their children from being exposed to violence along with sufficient tools to respond and heal their children who have been exposed to violence.

Working with the executive branch, Congress should take legislative action on the recommendations in this report, making these recommendations a bipartisan priority. The Advisory Committee recognizes that implementation of its recommendations will require the assistance of multiple Cabinet offices and federal, tribal, and state departments to shape and sustain a truly national response. Coordination and implementation of the recommendations in this report must not only be consistent with these three core principles, but it must also be consistent with the federal government's trust responsibility and the tribal consultation policies of the various affected federal agencies.

The Advisory Committee commends Congress and the administration for positive bipartisan steps taken in the last few years designed to reduce violence in Indian country including the

“These are serious matters, especially when it involves the safety of our children and youth. If you want to help, help us to look within our own people and communities for solutions, support our ideas and help us implement those ideas. But do not do it for us—it will not work.”

Darla Thiele, Director, Sunka Wakan Ah Ku Program.
Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Bismarck, ND, December 9, 2014

“As tribal leaders, we are trustees for the resources of our tribe’s futures: our children . . . Tribal leaders shoulder the heavy burden of knowing our resources for the future are hurting.”

Brian Cladoosby, President, National Congress of American Indians.
Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Fort Lauderdale, FL, April 16, 2014

Tribal Law and Order Act (TLOA) of 2010,³¹ the Indian Law and Order Commission³² which was created through TLOA, and the 2013 Violence Against Women Act (VAWA) Reauthorization³³ which included very important provisions designed to restore full tribal criminal jurisdiction over all persons who commit domestic violence crimes in Indian country.³⁴ The Advisory Committee would also like to commend Congress for two important bipartisan bills that have been moving forward this Congress—(1) S. 1474 (*Alaska Safe Families and Villages Act of 2014*),³⁵ and (2) S. 1622³⁶ (*Alyce Spotted Bear and Walter Soboleff Commission on Native Children*). There is a long history of bipartisanship on Indian law and policy going back to the time when Richard Nixon announced that “[t]he time has come to break decisively with the past and to create conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.”³⁷ The Advisory Committee trusts that the same bipartisan spirit will lead to prompt bipartisan implementation of the recommendations in this report.

- **1.2 The White House should establish—no later than May 2015—a permanent fully staffed Native American Affairs Office within the White House Domestic Policy Council. This new Native American Affairs Office should include a senior position specializing in AI/AN children exposed to violence. This office should be responsible for coordination across the executive branch of all services provided for the benefit and protection of AI/AN children and the office lead should report directly to the Director of the Domestic Policy Council as a Special Assistant to the President. The Native American Affairs Office should have overall executive branch responsibility for coordinating and implementing the recommendations in this report including conducting annual tribal consultations.**

The Advisory Committee believes that a permanent fully staffed Native American Affairs Office of the level recommended—including a senior position specializing in AI/AN children exposed to violence—is required in order to comply with the federal government’s trust responsibility and to effectively address the current inability of the federal government to serve the needs of AI/AN children exposed to violence. The Advisory Committee commends the Obama administration for its many positive steps to engage and

empower the AI/AN community in recent years including the establishment of annual White House Tribal Nations Conferences and the restoration of the ability of AI/AN tribes to assert full criminal jurisdiction over all alleged perpetrators of domestic violence through Title IX of the Violence Against Women Act (VAWA) Reauthorization.³⁸

The Advisory Committee also commends the administration for establishing two very important White House positions: (1) Special Assistant to the President on Native American Affairs, a position within the White House Domestic Policy Council; and (2) Associate Director of Intergovernmental Affairs and Tribal Liaison, a position within the Office of Intergovernmental Affairs. But both of these positions are currently only temporary one-person offices. The Advisory Committee strongly recommends building upon the success of these two vital White House positions in order to ensure effective implementation of the recommendations in this report. The current “Special Assistant to the President on Native American Affairs” (or their designee) should serve on an interim basis as the lead person to coordinate and implement the recommendations in this report. However, a permanent fully staffed White House Native American Affairs Office is required in order to effectively coordinate and implement the recommendations in this report. This Native American Affairs Office should have a minimum of three to five full-time senior staff members including a senior position specializing in AI/AN children exposed to violence.

This new White House Native American Affairs Office should conduct annual consultations with tribal governments that should—at a minimum—include discussion of:

- Administering tribal funds and programs;
- Enhancing the safety of AI/AN children exposed to violence in the home and in the community;
- Enhancing child protection services through trauma-informed practice;
- Enhancing research and evaluation to address the mental health needs that include tribal cultural interventions to promote tribal best practice;
- Enhancing substance abuse services for caregivers and youth that address the exposure to violence; and
- Evaluating the implementation status of the recommendations in this report.

The new White House Native American Affairs Office will provide the essential executive branch coordination and collaboration required to effectively implement the recommendations in this report. The current “stovepipe organizational structure” of federal agencies restricts the flow of information and cross-organizational communication. Stovepipes within the executive branch make essential collaboration extremely difficult. Stovepipes exist for many reasons that include (1) the structure of the federal budget; (2) turf protection by the various executive branch agencies; and (3) a lack of commitment among executive branch leadership to promote real collaboration. This lack of coordination across federal agencies creates great hardship for tribes that receive funding from multiple federal sources. Conflicting policies, procedures, and requirements for grants that have similar purposes and data systems make it very difficult for agencies to work together, but more importantly make it extremely difficult for tribes to effectively engage the federal bureaucracy.

The Advisory Committee knows that this is an extremely difficult issue to address quickly, but the current arrangement is ineffective and does not serve Native people. The new Native American Affairs Office within the Domestic Policy Council should coordinate programs across the executive branch, and develop and implement a plan to increase collaboration among agencies and breaking down stovepipes. This should include braided funding streams³⁹ to tribes, joint grant solicitations, and adoption of compatible data systems. If this office is not established and these recommendations are not implemented, then the federal government will continue to force tribes to squander precious resources to meet bureaucratic needs rather than to address the needs of children in their communities.

The Advisory Committee recommends that the Attorney General take the lead in the interagency coordination needed to fully staff the White House Native American Affairs Office. Until that office is at full capacity, the Attorney General should support existing White House staff to assure successful implementation of all the recommendations in this report.

■ 1.3 Congress should restore the inherent authority of American Indian and Alaska Native (AI/AN) tribes to assert full criminal jurisdiction over all persons who commit crimes against AI/AN children in Indian country.

The framework for criminal jurisdiction in Indian country is institutionally complex⁴⁰ and divided among federal, tribal, and state governments. The question of jurisdiction depends upon whether the crime is committed in Indian country, whether the perpetrator is Indian or non-Indian, whether the victim is Indian or non-Indian, and what type of crime is committed.⁴¹ The jurisdictional maze in Indian country was further complicated by the U.S. Supreme Court's decision in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), which held that federally recognized tribes do not possess the sovereign power to assert criminal jurisdiction over non-Indians. With the federal government declining to prosecute 76 percent of the crimes referred by tribal authorities, tribal leaders have struggled to find ways to keep Native citizens safe, especially when the perpetrators are non-Indian.⁴²

The complex nature of the justice systems in Indian country has contributed to a crisis of violent crime on many Indian reservations that has persisted for decades. As the Indian Law and Order Commission (ILOC) observed, "When Congress and the Administration ask why the crime rate is so high in Indian country, they need look no further than the archaic system in place, in which federal and state authority displaces tribal authority and often makes tribal law enforcement meaningless."⁴³ Federal reports have consistently found that the divided system of justice in place on Indian reservations lacks coordination, accountability, and adequate and consistent funding. These shortfalls serve to foster violence and disrupt the peace and public safety of tribal communities. When tribal law enforcement and justice systems are supported rather than discouraged from taking primary responsibility over local justice the result is usually better, stronger, and faster justice than the non-Native counterparts.⁴⁴

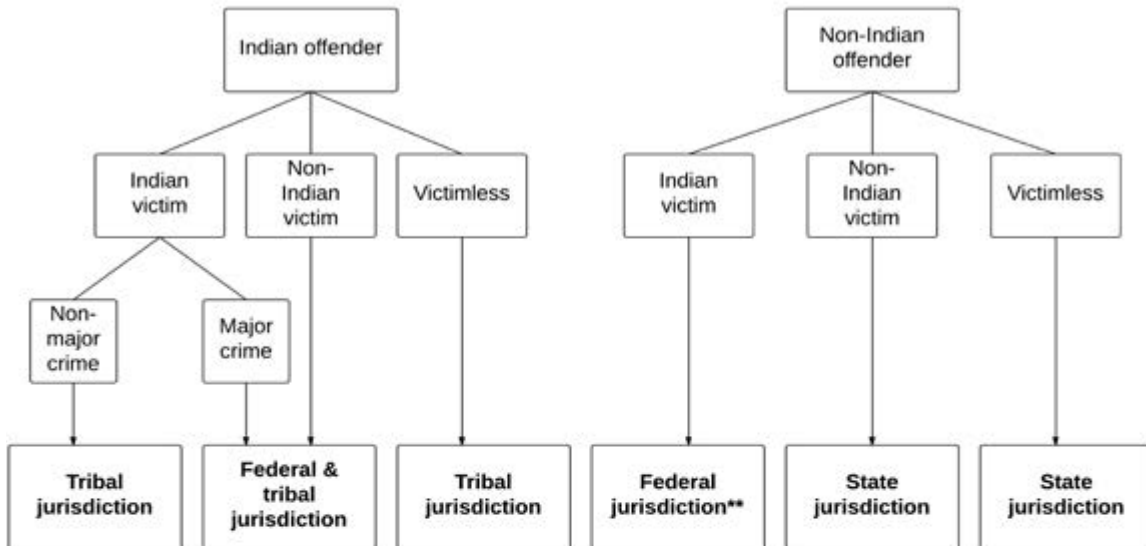
"[C]riminal jurisdiction in Indian country is an indefensible morass of complex, conflicting, and illogical commands, layered in over decades via congressional policies and court decisions and without the consent of tribal nations."

Indian Law and Order Commission
Report to the President and Congress of the United States, ix, November 2013

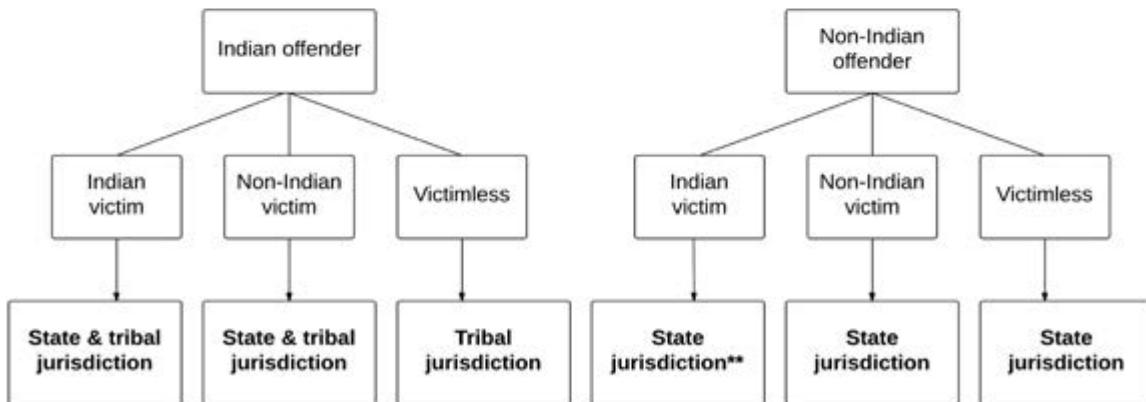
General Summary of Criminal Jurisdiction on Indian Lands (details vary by tribe and state)

From: Indian Law and Order Commission, *A Roadmap for Making Native America Safer:
Report to the President and Congress of the United States* (November 2013): 7.

Non-Public Law 83-280 States



Public Law 83-280 States*



* Under the *Tribal Law and Order Act of 2010*, tribes can opt for added concurrent Federal jurisdiction, with Federal consent. Neither this tribe-by-tribe issue nor the various configurations of "Optional 280" status are shown in this chart.

** Under the *Violence Against Women Act Reauthorization of 2013* (VAWA), after 2015, tribes may exercise Special Domestic Violence Jurisdiction with the Federal government and with States for VAWA-defined domestic violence crimes.

Further impeding justice efforts in Indian country are the restraints placed directly on tribal justice systems. Although the U.S. Constitution does not apply to tribal courts,⁴⁵ Congress, through its plenary authority over tribes, enacted the Indian Civil Rights Act (ICRA).⁴⁶ ICRA further limits the power of tribal governments by requiring them to adhere to certain rights similar to, but not identical to the Bill of Rights protections. Among those limitations is a limit on a tribal court's criminal sentencing authority. Currently, ICRA limits a tribal court's criminal sentencing authority to just one year imprisonment and/or a \$5,000 fine, regardless of the nature of the crime.⁴⁷ In 2010, in the Tribal Law and Order Act (TLOA),⁴⁸ Congress relaxed this sentencing restriction to three years imprisonment and/or a \$15,000 fine, but only for those tribes that could provide certain additional, enumerated due process protections.⁴⁹ To date, only a handful of tribes have adopted this "enhanced sentencing."

In May 2013, Congress passed the VAWA.⁵⁰ In response to congressional findings that 34 percent of Native women will be raped in their lifetimes and 39 percent will be the victim of domestic violence,⁵¹ Congress passed Title IX of VAWA, "Safety for Indian Women." Among its provisions, Congress amended the ICRA to authorize "special domestic violence criminal jurisdiction" to tribal courts over non-Indian offenders who (1) commit domestic violence, (2) commit dating violence, or (3) violate a protection order. This was the first time in the thirty-five years since the 1978 *Oliphant* decision that Congress authorized tribes to reassert tribal sovereign authority to prosecute non-Indian offenders who commit certain egregious crimes in Indian country. Unfortunately, despite numerous and horrific findings that non-Indians are committing sexual assault at high numbers in Indian country,⁵² Title IX of VAWA did not extend special domestic violence criminal jurisdiction over non-Indians for the crime of sexual assault.

It is troubling that tribes have no criminal jurisdiction over non-Indians who commit heinous crimes of sexual and physical abuse of AI/AN children in Indian country. Congress has restored criminal jurisdiction over non-Indians who commit domestic violence, commit dating violence, and violate protection orders. Congress should now similarly restore the inherent authority of AI/AN tribes to assert full criminal jurisdiction over all persons who commit crimes against AI/AN children

in Indian country including both child sexual abuse and child physical abuse.

There are no statistics concerning the percentage of non-Indian perpetrators who commit crimes against AI/AN children on tribal land, but it is clear from what we do know that it is a very substantial problem. We know that 70 percent of violent crimes generally committed against AI/ANs involve an offender of a different race.⁵³ This statistic includes crimes against children twelve years of age and older. We also know that in domestic violence cases, 75 percent of the intimate victimizations and 25 percent of the family victimizations involve an offender of a different race.⁵⁴ Furthermore, national studies show that men who batter their companion also abuse their children in 49 to 70 percent of the cases.⁵⁵

Furthermore, the Advisory Committee believes that Congress should fully implement the recommendations contained in chapter 1, “Jurisdiction: Bringing Clarity Out of Chaos,” of the Indian Law and Order Commission’s 2013 Final Report, *A Roadmap for Making Native America Safer*. The recommendations are summarized in the following text. More details, including the complete ILOC chapter 1 recommendations, are provided in the ILOC Executive Summary provided as an appendix to this report.

1. Any tribe that so chooses can opt out, fully or partially, of federal Indian country criminal jurisdiction and/or congressionally authorized state jurisdiction, except for federal laws of general application. Upon opting-out, Congress would immediately recognize the tribe’s inherent criminal jurisdiction over all persons, Indian or non-Indian, within the exterior boundaries of the tribe’s lands.
2. To implement tribes’ opt-out authority, Congress should establish a new specialized federal circuit court, the U.S. Court of Indian Appeals, in order to provide a more cost-effective and familiarized forum, such as the U.S. Court of Appeals for the Federal Circuit, which hears matters involving intellectual property rights protection.
3. A tribe’s opt-out authority includes the choice to return to partial or full federal or state criminal jurisdiction.
4. The opt-out authority should necessarily include opting out from the sentencing restrictions of ICRA.

Emphasis should be added to the first ILOC recommendation in the preceding text, with regard to tribes subject to congressionally

authorized state jurisdiction, like Public Law 280 (PL-280), which authorized state criminal and civil jurisdiction and eliminated federal criminal jurisdiction for Indian country and major crimes in those six mandatory states.⁵⁶ There are multiple layers of concern over this piece of legislation. The tribal opposition to PL-280 has focused on the state's failure to provide law enforcement services and the encroachment on tribal sovereignty.⁵⁷ The states' opposition focuses on the failure of PL-280 to provide federal funding to the states for this additional jurisdiction amounting to an unfunded mandate on Indian lands that are not taxable. For tribes subject to PL-280,⁵⁸ effective investigations of child maltreatment crimes are compromised by the lack of clarity surrounding PL-280 and subsequent inconsistent interpretations of the law have contributed to another layer of confusion and complexity that could be resolved with clarifying legislation.⁵⁹

The Advisory Committee also recommends implementation of four additional related ILOC recommendations (ILOC recommendations 4.2, 4.3, 4.4, and 5.2) that would allow tribal governments to more effectively protect AI/AN children exposed to violence. These four recommendations require federal and state courts (1) to inform the relevant tribal government when a tribal citizen is arrested or convicted of a crime; (2) to collaborate, if the tribal government so chooses, in choices involving corrections placement or community supervision; and (3) to inform the tribal government when that offender is slated for return to the community. More details concerning each of these four ILOC recommendations is provided in the ILOC Executive Summary provided as an appendix to this report.

The Advisory Committee wishes to emphasize the dire importance of the following recommendation:

- **1.4 Congress and the executive branch shall direct sufficient funds to AI/AN tribes to bring funding for tribal criminal and civil justice systems and tribal child protection systems into parity with the rest of the United States; and shall remove the barriers that currently impede the ability of AI/AN Nations to effectively address violence in their communities. *The Advisory Committee believes that treaties, existing law and trust responsibilities are not discretionary and demand this action.***

"We lack adequate resources and funding. Many times it feels like we are losing ground, losing our children."

Erma J. Vizenor, Chairwoman, White Earth Nation.
Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Fort Lauderdale, FL, April 16, 2014

"Historically the responsibility of development of solutions has been given to other entities, such as state, federal, or private agencies, rather than tribal governments, resulting in interventions and outcomes that were not effective."

Brian Cladoosby, President, National Congress of American Indians.
Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Fort Lauderdale, FL, April 16, 2014

To break the cycle of violence which grips Native communities the Advisory Committee believes that this nation must make the investment necessary to create an environment where AI/AN children, today and for generations to come, may thrive. This investment is not only the right thing to do, but is part of the legal obligation of this nation to those communities; an obligation which has never been adequately addressed. In order to more effectively address the needs of AI/AN children exposed to violence, substantial changes must be made in the methods by which AI/AN tribes are able to access federal funding and substantially increased levels of federal funding will be required.

In each Advisory Committee hearing and Listening Session, witnesses repeatedly expressed concern about the limited funding currently available for Indian country criminal and civil justice systems and child protection systems along with extreme frustration with the challenges involved in obtaining and utilizing the limited funding that is available.

Funding for child maltreatment prevention and child protection efforts is especially limited in Indian country.⁶⁰ Tribes recognize the importance of prevention and do incorporate limited child abuse prevention activities, despite little to no federal support.⁶¹ Meanwhile, states receive proportionately more funding for prevention and child protection while tribes are not even eligible for the two major programs that fund these state programs—Title XX of the Social Services Block Grant and the Child Abuse Prevention and Treatment Act.⁶²

The U.S. Department of the Interior (DOI) through the Bureau of Indian Affairs (BIA) provides limited funding for tribal court systems, but the funding level is far too low and the BIA has historically denied any tribal law enforcement and tribal court funding to tribes in jurisdictions—such as PL-280 jurisdictions⁶³—where congressionally authorized concurrent state jurisdiction has been established. Furthermore, efforts to fund tribal justice systems such as the Indian Tribal Justice Act of 1993 (which authorized an additional \$50 million per year in tribal court base funding) have repeatedly *authorized* increased tribal court funding, but the long promised funding has never materialized in the form of actual *appropriations*.⁶⁴

Since the late 1990s,⁶⁵ the U.S. Department of Justice (DOJ) has also become a significant additional federal source of tribal justice funding.⁶⁶ Tribes have utilized DOJ grant funding to enhance

various and diverse aspects of their tribal justice systems, from the enhancement of tribal codes, to the implementation of Juvenile Healing to Wellness Courts (tribal drug courts), to the design of unique tribal youth programs.⁶⁷ While these grants have offered immense support, they are a far cry from the consistent, tribally driven approach that is needed in Indian country. The Advisory Committee heard repeated frustration expressed concerning the competitive funding approach that the DOJ utilizes. Witnesses often describe it as a process in which you are forced to hope your neighboring tribe loses. The following are some of the most common concerns raised about this competitive federal funding process:

- Tribes most in need, often smaller tribes and those with the least amount of resources, are the least likely to be able to submit a “winning” grant application.
- Unlike their state and local governmental counterparts, tribes are forced to “compete” for core governmental funding, flying in the face of both tribal sovereignty and federal trust responsibility.
- Nonrenewable, short-term grants fail to allow for long-term planning, and often result in high turnover and the continuous shuttering of programs once the one-, two-, or three-year grant funding ends.
- Unlike current federal funding programs within the DOI and Department of Health and Human Services (HHS), DOJ single-issue pet projects reflect federal priorities and do not allow tribes to determine their own governmental priorities.

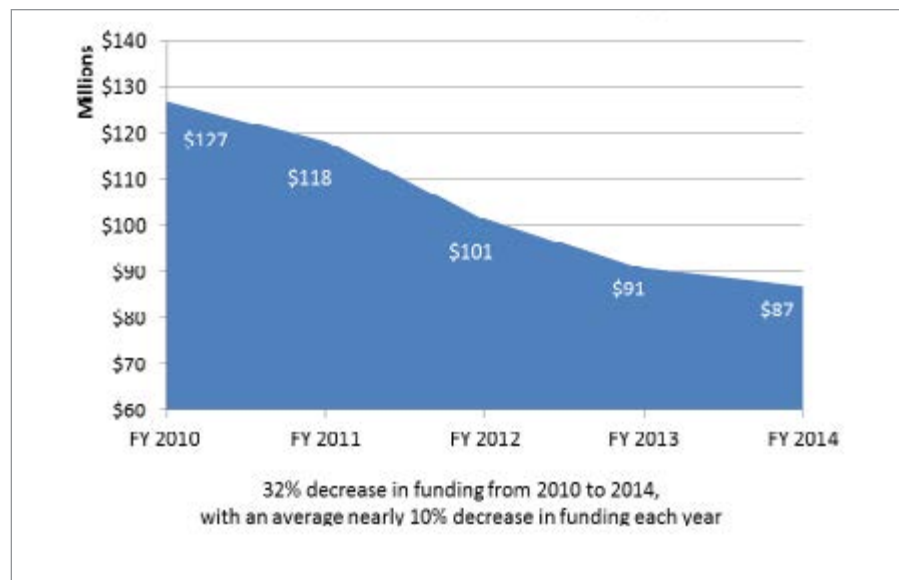
It is important to note that DOJ funding for tribal justice systems has been consistently decreasing in recent years. For example, when DOJ’s main consolidated funding program—the Coordinated Tribal Assistance Solicitation (CTAS)—was introduced in FY 2010, a total of more than \$126 million in DOJ grant funds were dispersed through CTAS. In the following four years, however, CTAS funding has consistently decreased by an approximate average of nearly 10 percent per year (see Coordinated Tribal Assistance Solicitation annual funding chart). In FY 2014, only \$87 million was dispersed through CTAS.⁶⁹

It is particularly troubling that the CTAS grant program with the closest direct connection to AI/AN children exposed to violence—the Office for Juvenile Justice and Delinquency Prevention (OJJDP) Tribal Youth Program (TYP)—has suffered the greatest decrease in funding levels. In the past four years, OJJDP TYP funding has plummeted from \$25 million in FY 2010 down to only \$5 million in FY 2014 (see TYP Annual Funding Chart).

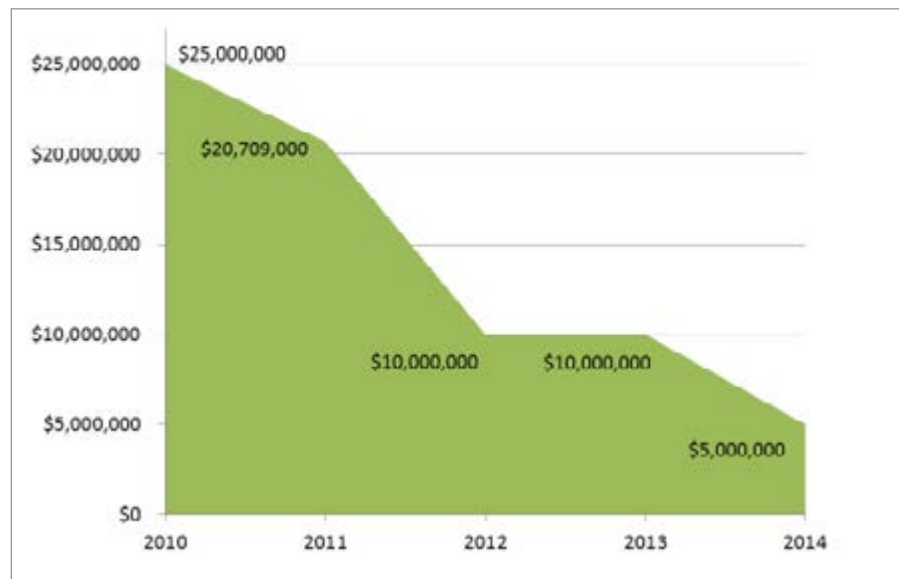
“There are 566 recognized tribes in this country the winners of CTAS will have a start, but the losers way out-number the possible winners.”

Abby Abinanti, Chief Judge,
Yurok Tribal Court.
Testimony before the Task
Force on American Indian/
Alaska Native Children
Exposed to Violence, Phoenix,
AZ, February 11, 2014

Total Coordinated Tribal Assistance Solicitation (CTAS) Funding



Tribal Youth Program (TYP) Appropriations



Tribes, like their state and local counterparts, deserve the benefit of reliability in their quest to build robust tribal justice systems that can adequately serve their youth. Base funding from pooled resources would offer tribes the reliability and flexibility that is needed. As both the ILOC Report⁷⁰ and the National Congress of American Indians (NCAI) FY 2015 Funding Request Report⁷¹ note,

DOJ has already taken steps toward consolidated base funding through the creation of CTAS.⁷² DOJ has also recently considered the possibility of base funding through formula grants with regard to the Office on Violence Against Women (OVW) Tribal Governments grant program.⁷³

AI/AN children are generally served best when tribes have the opportunity to take ownership of the programs and resources that they provide. PL-93-638 contracts, self-governance compacts, and PL-102-477 funding agreements are all examples of successful federal programs that afford tribes the option to take over the management of federal funds. However, none of the programs currently applies to the DOJ.

1.4.A Congress and the executive branch shall provide recurring mandatory, not discretionary, base funding for all tribal programs that impact AI/AN children exposed to violence including tribal criminal and civil justice systems and tribal child protection systems, and make it available on equal terms to all federally recognized tribes, whether their lands are under federal jurisdiction or congressionally authorized state jurisdiction.

Part of the United States' trust responsibility to AI/AN Nations is the provision of basic governmental services in Indian country. Funding to fulfill this obligation, however, is currently provided in the *discretionary* portion of the federal budget despite the fact that the treaties that made promises to Indian tribes did not promise "*discretionary*" support and the trust responsibility is not *discretionary*. Because the spending is discretionary and not mandatory as it should be, public policies, like sequestration, are implemented and cut programs that clearly should not be cut.

The Advisory Committee heard repeated testimony concerning the vital need for ongoing reliable funding to meet the needs of AI/AN children exposed to violence. The disparate impact of sequestration in Indian country is but one example of why mandatory spending is necessary. The Advisory Committee heard repeated stories of critical tribal funding being cut across sectors—housing, law enforcement, health care, education—and how that negatively impacts children. Many of the recommendations in this report depend on new appropriations for vital programs that provide critical services and care to AI/AN children exposed to violence, but AI/AN communities cannot

"Villages and regions across the state are developing important and effective measures that need to be supported by the federal and state governments, not through temporary three or five year grants. I'll repeat that. Not through temporary three or five year grants; but ongoing, sustainable funding, allowing Native communities to take responsibility for the health/safety of their children, families and communities."

Gloria O'Neil, President/CEO,
Cook Inlet Tribal Council, Inc.
Testimony before the Task
Force on American Indian/
Alaska Native Children
Exposed to Violence,
Anchorage, AK,
June 11, 2014

“By funding tribal governments directly from federal resources, the federal government is honoring the trust relationship and empowering tribal communities and governments with the best opportunity to change the dynamics that bring children, youth and families into child welfare, mental health, and juvenile justice service systems.”

Brian Cladoosby, President,
National Congress of
American Indians.
Testimony before the Task
Force on American Indian/
Alaska Native Children
Exposed to Violence,
Fort Lauderdale, FL,
April 16, 2014

depend upon the funding when it is repeatedly subject to cuts like the cuts that slashed the OJJDP TYP from \$25 million per year to only \$5 million per year in four short years.

Federal funding for these programs serving AI/AN children should be mandatory spending, not discretionary. This funding will guarantee direct benefits for AI/AN tribes. Funding should be awarded by formula as an open-ended entitlement grant, contingent upon AI/AN tribes submitting children exposed to violence plans for federal approval. Federal agencies administering these programs should submit yearly estimates of program expenditures as well as quarterly reports of estimated and actual program expenditures in support of the awarded funds. The funds should provide for, but not be limited to, monthly maintenance payments for the daily care and supervision of eligible AI/AN children; administrative costs to manage the program; training of staff and practitioners; recruitment of community representatives; and volunteers and costs related to the design, implementation, and operation of a national tribal-wide data collection system to support services to AI/AN children exposed to violence.

1.4.B Congress shall appropriate, not simply authorize, sufficient substantially increased funding to provide reliable tribal base funding for all tribal programs that impact AI/AN children exposed to violence. This includes tribal criminal and civil justice systems and tribal child protection systems. At a minimum, and as a helpful starting point, Congress shall enact the relevant funding level requests in the National Congress of American Indians (NCAI) Indian Country Budget Request for FY 2015.⁷⁴

In order to more effectively address the needs of AI/AN children exposed to violence, substantially increased levels of federal funding will be required. For the past ten years, the National Congress of American Indians (NCAI) has published an annual Indian Country Budget Request Report developed in collaboration with tribal leaders, Native organizations, and tribal budget consultation bodies. The NCAI request provides a helpful starting point for the initial minimum levels of increased funding that will be needed. The NCAI annual budget requests are rooted in the attempt to honor the United States’ trust responsibility, which includes providing basic governmental services in Indian country; honoring and fully supporting Indian self-determination; and elevating

funding for Indian country governments and services to be equivalent to similarly situated non-Indian governments and services. The annual NCAI budget reports also provide insightful details concerning a wide range of federal programs required to implement these recommendations.

Because the formulation of the federal budget is a very complex process involving many players, it is essential as the recommendations in this report are implemented that:

- Each federal agency includes the requisite funding in its budget submissions;
- The Office of Management and Budget include the request in the President's Annual Budget Requests to the Congress;
- Both Houses of Congress appropriate sufficient recurring funds so that all tribes realize benefit; and
- Those funds are provided to tribes on a recurring basis.

1.4.C Congress shall authorize all federal agencies, beginning with the Department of Justice (DOJ), to enter into 638 self-determination and self-governance compacts with tribes to ensure that all tribal system funding, including both justice and child welfare, is subject to tribal management. Further, the Department of Health and Human Services (HHS) should fully utilize its current 638 self-determination and self-governance authority to the greatest extent feasible for flexible funding programs in Department of Health and Human Services (HHS) beyond the Indian Health Service (IHS) and seek additional legislative authority where needed.

In 2000, PL-106-260 included a provision for designating HHS to conduct a study to determine the feasibility of a demonstration project extending tribal self-governance to HHS agencies other than the IHS. The HHS Feasibility Study, submitted to Congress in 2003,⁷⁵ determined that a demonstration project was feasible. Since that time, tribes identified the HHS self-governance expansion as a top priority and requested to work in collaboration with the department to identify how to develop the needed legislative language. However, up to this point, HHS has not moved forward on this action. The choice to self-govern represents for some tribes efficiency, accountability, and best practices in managing and

"If we really want to end childhood violence, we have to get out of the way of the people who have the solutions. It's our people. It's our culture. It's who we are that was ripped out of us and we're wounded and we're acting wounded and we're hurting each other, and it's a perpetual cycle that will not end until we are restored."

Elizabeth Medicine Crow,
President/CEO, First
Alaskan Institute.
Testimony before the Task
Force on American Indian/
Alaska Native Children
Exposed to Violence,
Anchorage, AK,
June 12, 2014

operating tribal programs and administering federal funds at the local level. Expanding the option for self-governance translates to greater flexibility for tribes to provide critical social services within agencies such as the Administration on Aging, Administration on Children and Families, Substance Abuse and Mental Health Services Administration, and Health Resources and Services Administration. It is imperative that HHS work closely with tribes to strengthen current self-governance programs and advance initiatives that will streamline and improve HHS program delivery in Indian country. HHS should include not only the eleven programs⁷⁶ identified in the 2003 feasibility study, but also programs such as the direct Tribal Title IV-E foster care program established under the 2008 Fostering Connections Act.⁷⁷ The Advisory Committee agrees with the HHS Secretary's Tribal Advisory Committee, which recently sent HHS Secretary Burwell a Brief on Priority Issues⁷⁸ that indicated that HHS should (1) utilize current administrative authority to expand self-governance within HHS through demonstration projects; and (2) reconvene the Self-Governance Tribal Federal Workgroup in order to develop legislative language that would expand self-governance within HHS. Moreover, HHS should utilize its existing authority to provide the most flexible funding mechanisms currently available such as the block grant process HHS utilizes to provide Title IV-E funding for the territories.

While changes are underway to establish and implement the previous funding recommendations, Congress and the executive branch should implement the three following recommendations as interim steps as soon as possible.

1.4.D Congress shall end all grant-based and competitive Indian country criminal justice funding in the Department of Justice (DOJ) and instead establish a permanent, recurring base funding system for tribal law enforcement and justice services.

As soon as possible, Congress should end all grant-based and competitive Indian country criminal justice funding in the DOJ and instead pool these monies to establish a permanent, recurring base funding system for tribal law enforcement and justice services. Federal base funding for tribal justice systems should be made available on equal terms to all federally recognized tribes, whether their lands are under federal jurisdiction or congressionally authorized state jurisdiction.

1.4.E Congress shall establish a much larger commitment than currently exists to fund tribal programs through the Department of Justice's Office of Justice Programs (OJP) and the Victims of Crime Act (VOCA) funding. As an initial step towards the much larger commitment needed, Congress shall establish a minimum 10 percent tribal set-aside, as per the Violence Against Women Act (VAWA) tribal set-aside, from funding for all discretionary Office of Justice Programs (OJP) and Victims of Crime Act (VOCA) funding making clear that the tribal set-aside is the minimum tribal funding and not in any way a cap on tribal funding. President Obama's annual budget request to Congress has included a 7 percent tribal set-aside for the last few years. This is a very positive step and Congress should authorize this request immediately. However, the set-aside should be increased to 10 percent in subsequent appropriation bills. Until Congress acts, the Department of Justice (DOJ) shall establish this minimum 10 percent tribal set-aside administratively.

The 2012 National Task Force on Children Exposed to Violence determined that:

- AI/AN children have a significant degree of unmet needs for services and support to prevent and respond to the extreme levels of violence they experience;
- the federal government has a unique legal responsibility for the welfare of AI/AN children;
- the federal government also has a special relationship with Indian tribes based, at least in part, on its trust responsibility; and
- AI/AN communities confront additional burdens in meeting the needs of children exposed to violence.

After determining that AI/AN women face the highest levels of violence in the nation—along with the highest rates of unmet needs—Congress has set-aside a percentage of VAWA funding for tribal governments since VAWA's enactment in 1994. Since the 2005 VAWA Reauthorization, the tribal set-aside has been 10 percent. The Advisory Committee finds that the 10 percent VAWA tribal set-aside is a highly relevant precedent that should be applied to all

discretionary OJP programs because that could potentially impact AI/AN children exposed to violence.

The same rationale applies to the VOCA funding that has served as a major funding source for states to provide services to victims of crime since its establishment in 1984. The vast majority of VOCA funds are distributed to the states. While tribes are eligible to apply to the state for funding, only a tiny percentage of VOCA funding has ever been distributed to tribes. Consequently, the Advisory Committee agrees with the NCAI⁷⁹ that Congress should specifically establish a 10 percent tribal set-aside of the overall full VOCA funding or at least a tribal set-aside in the range of at least \$30 million annually similar to the Children's Justice Act fund for purposes of meeting the needs of AI/AN children who are victimized by or exposed to violence.

1.4.F The Departments of Justice (DOJ) and Department of Interior (DOI) should, within one year, conduct tribal consultations to determine the feasibility of implementing Indian Law and Order Commission (ILOC) Recommendation 3.8 to consolidate all DOI tribal criminal justice programs and all DOJ Indian country programs and services into a single "Indian country component" in the DOJ and report back to the President and AI/AN Nations on how tribes want to move forward on it.

The Advisory Committee agrees with the Indian Law and Order Commission that the DOJ and the DOI (1) currently serve duplicative roles in funding, providing technical assistance and training, and providing direct services for tribal justice systems; and (2) these agencies often do not communicate well with each other, which results in substantial confusion and waste. While the Advisory Committee is in general agreement with the ILOC's Recommendation 3.8 to consolidate all DOI tribal criminal justice programs and all DOJ Indian country programs and services into a single DOJ "Indian country component," the Advisory Committee recommends that tribal consultation be conducted prior to making such a significant and far-reaching move.

■ **1.5 The legislative branch of the federal government along with the executive branch, under the direction and oversight of the White House Native American Affairs Office, should provide adequate funding for and assistance with Indian country research and data collection.**

Research and data collection are critical components of developing effective responses to AI/AN children exposed to violence.⁸⁰ Tribal governments, like every government, need the ability to track and access critical data involving their citizens across service areas and to accept the responsibility of gathering data. Tribal governments currently do not have adequate access to accurate, comprehensive data regarding key areas affecting AI/AN children exposed to violence, and frequently when data is gathered, it is not shared with tribes. Federal leadership is required to break down barriers that prevent the accurate collection of data relative to AI/AN children and the sharing of that data with tribes. Tribal governments must also find ways to improve their own data collection and sharing.

The collection of data on maltreatment of AI/AN children illustrates this problem. The current data collection system requires states to submit their child maltreatment data to the National Child Abuse and Neglect Data System (NCANDS). HHS uses the aggregate level data in its annual reports on the characteristics of child abuse and neglect. Unfortunately, this data does not include children within the tribal child welfare system. The federal requirements for reporting and investigating child abuse in Indian country require different action, and three different law enforcement agencies (federal, tribal, state) might be responding and collecting different or similar data. The policies of the three governments regarding confidentiality and sharing of information may impede the sharing of information.⁸¹ It is critical to the understanding of child maltreatment of AI/AN children that data be collected on AI/AN children under federal, tribal, or state jurisdiction in a comprehensive data collection system.

Additionally, the BIA and IHS collect data about children exposed to violence pursuant to their role as a funder or service provider, but this data is not always readily available to tribes. Moreover, there is little coordination between the collections of different sources of data; thus, tribes lack the comprehensive information necessary to inform policy and practice.⁸² Finally, most data collection methods are not based on indigenous ways and are not sensitive to cultural differences.

“[T]he statistics are dire, but we only have a third of the picture.”

Theresa M. Pouley, Chief Judge, Tulalip Tribal Court.
Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014

“There is little information on the risk factor for child maltreatment in AI/AN families. . . . This is problematic because national policy and child welfare practice focus on the prevention of child maltreatment and successful prevention programming requires an understanding of the culturally specific risk factors.”

Sarah Hicks Kastelic, Deputy Director, National Indian Welfare Association.
Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Bismarck, ND, December 9, 2013

"Most data collection methods are not based on indigenous ways of knowing."

Iris PrettyPaint, Native Aspirations Project Director, Kauffman and Associates, Inc. Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Fort Lauderdale, FL, April 16, 2014

Tribal Nations also need access to research initiatives to help develop effective prevention and intervention strategies for children exposed to violence. Currently, many tribal communities are developing and implementing culturally based prevention and intervention programs. However, most do not have the resources necessary to evaluate the effectiveness of these programs. Tribal leaders also have called for evaluations of research on the adaptation of evidence-based practices to meet cultural and linguistic needs. Tribes may deem some evidence-based programs culturally inappropriate for the families and children they service. Studies used to establish evidence-based practices almost never include AI/AN populations so the trustworthiness of these studies and their relevance to AI/AN populations is suspect.⁸³ Federal, state, and private funders have increasingly focused on projects that contain evidence-based (proven) practices.⁸⁴ Tribes and urban Indian organizations are increasingly finding themselves unable to successfully compete for grant funding, because of the lack of research on effective practices in AI/AN populations.

Collecting and sharing data on crime and AI/AN youth in the state juvenile justice systems and the federal system is problematic as well. Currently, there is almost no data about the serious problems that AI/AN youth experience in urban and rural communities such as drug trafficking, gang violence, human trafficking, bullying, etc. Research on AI/AN children has largely been limited to the prevalence of violence in the home and sexual abuse, but there is a dearth of studies on the use of traditional ways of healing. Research could provide unique solutions that could be helpful to the general population, as well as AI/AN children.

As a final comment regarding data collection for tribes, it should be noted that the National Incidence Study of Child Abuse and Neglect did not include AI/AN data because the sample was too small to be significant and because study methods did not lend themselves to such a small data set. Study methods utilized by federal agencies must be adjusted, for instance by oversampling, to ensure that AI/AN children can be either included in national reports or in supplementary reports.⁸⁵ Without inclusion in these major studies, AI/AN children who face elevated levels of maltreatment and high-risk factors are ignored, thus severely limiting the opportunities to create helpful policies and provide adequate funding to meet their needs.

■ 1.6 The legislative and executive branches of the federal government should encourage tribal-state collaborations to meet the needs of AI/AN children exposed to violence.

The criminal justice, juvenile justice, and child welfare systems are too often ineffective, because tribes and states do not always act collaboratively. The failure to collaborate can result in unanswered calls for service to law enforcement, unprosecuted cases, juveniles languishing in detention far from their families, and child victims falling through the service cracks. In the juvenile justice system, it can lead to re-victimizing AI/AN children and contribute to their disproportionate involvement in the system and overrepresentation in juvenile detention facilities. The failure of tribes and states to collaborate in child welfare contributes to the unnecessary removal of AI/AN children from their families and communities, which often re-traumatizes children rather than healing them. The federal government should use its power and funds to encourage tribal-state collaborations.

Federal support and encouragement for intergovernmental agreements is mandated by TLOA. Currently, cross-jurisdictional agreements to deputize tribal and state officials and federal peace officers for the enforcement of federal criminal laws within Indian country show promise in some places, but are plagued with unconscionable administrative delays and impediments.⁸⁶ Historically, relationships between states and tribes have been poorly defined and frequently problematic, resulting⁸⁷ in protracted legal battles over jurisdiction.⁸⁸

Collaboration between tribal and state court systems can produce great benefits. Some states and tribes have developed tribal and state court forums to deal with complex issues relative to ICWA compliance and criminal issues.⁸⁹ Local tribal and state courts, in some instances, have developed cooperative processes for civil commitment, protection order enforcement, adult and juvenile probation, joint drug courts, and cross-educational opportunities.⁹⁰ Local courts finding solutions to local problems is effective, but the collaboration must be much more widespread to produce a greater impact. The federal government should encourage state juvenile courts to develop collaborations with local tribes to enable involvement of the local tribe in the state proceedings when a tribal member is before the juvenile court.

Some state child welfare agencies cooperate with tribes in many ways, such as Title IV-E agreements.⁹¹ Sharing resources is common in child

“State governments and tribal governments have far more in common than in conflict. Both types of government have a primary interest in protecting the health and welfare of their people. . . . As tribal and state governments gain resources and responsibilities, their capacity and incentive to cooperate increases.”

Terry Cross, Executive Director, National Indian Child Welfare Association.

Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Fort Lauderdale, FL, April 16, 2014

protection cases. Other states and tribes share training and educational opportunities. Some states share child welfare information with tribes. ICWA certainly encourages and requires collaboration. However, tribal governments need increased federal support to develop tribal-state agreements or protocols on child welfare and coordinated domestic violence programming. The federal government should improve the monitoring of tribal-state relations in the child welfare system and increase efforts to educate states about the benefits of tribal-state collaboration and strategies that work. The federal government should also incentivize state participation in efforts to improve service coordination and collaboration in child welfare and encourage development of cross-jurisdictional multidisciplinary teams to help in both criminal enforcement and child welfare matters. True collaborations require commitment and effort on all sides.

Finally, collaborations between state and urban Indian organizations can also prove to be effective. For example, the Denver Indian Family Resource Center (DIFRC) has provided in-home supportive services to the AI/AN population living in the front range and in and around Denver, Colorado. To help families meet their basic needs and provide safe homes for their children, DIFRC provides supportive services that include job search assistance, life skills education, housing assistance, and health advocacy.⁹² At its Listening Session at Ain Dah Yung Center in Saint Paul,⁹³ Minnesota, the Advisory Committee also learned about effective collaborations between urban Indian organizations and state agencies.⁹⁴

- **1.7 The federal government should provide training for AI/AN Nations and for the federal agencies serving AI/AN communities on the needs of AI/AN children exposed to violence. Federal employees assigned to work on issues pertaining to AI/AN communities should be required to obtain training on tribal sovereignty, working with tribal governments, and the impact of historical trauma and colonization on tribal Nations within the first sixty days of their job assignment.**

Providing training and technical assistance to all service providers attending to the needs of AI/AN children is another fundamental obligation of the federal trust responsibility.

Professional education and training on the issues of children exposed to violence was underscored in the 2012 Children Exposed to Violence

Task Force Report including recognition of the critical role law enforcement played in responding to violence.⁹⁵ The ILOC Report emphasized the importance of training law enforcement personnel working in Indian country.⁹⁶ For example, law enforcement personnel may be the first responders to complaints of child abuse and neglect however, law enforcement training does not always include how to carefully interview an Indian child who has been the victim of abuse.⁹⁷ Inappropriate techniques can result in further trauma and possibly taint evidence needed for prosecution.⁹⁸ Training and technical assistance for tribal child protection personnel is critical as well.⁹⁹

AI/AN communities struggle to ensure access to a qualified AI/AN workforce in the trauma treatment area.¹⁰⁰ Tribal and urban AI/AN professionals often have difficulty obtaining training that is tailored to the tribal community being served and oftentimes trainings are offered far from the tribal communities.¹⁰¹

Properly credentialed professionals that lack the cultural knowledge to identify and understand tribal familial needs face challenges in providing effective services.¹⁰² Additionally, attracting and keeping credentialed professionals in rural areas, has proven difficult. However, there are resources available to AI/AN children in rural areas that are not being tapped. This includes interested and knowledgeable people within AI/AN communities who may be unlicensed, but either have the skills or are willing to develop the skills needed to support AI/AN children exposed to violence. Training community members and developing their skills can expand the workforce to provide services to families and children in need. Alaska's model of Community Health Aid is a useful example of this approach. The Community Health Aid model was initially developed by the IHS to combat the tuberculosis epidemic in Alaska.¹⁰³ It now enables a wide range of services including dental and behavior health services to be provided to people who would otherwise go without services. Training local people to provide services needed to treat trauma would be effective in rural areas that have difficulty attracting and retaining credentialed staff.

Federal agencies should require leadership, policy staff, program staff, and contractors that work with tribes or tribal programs that address children exposed to violence and independent grant reviewers who review grants submitted by tribes to receive training on sovereignty, culture, and history. Staff providing direct service or working specifically in a region should receive additional cultural and historical training specific to the community they serve.

“One of the main barriers both our youth and their families face are professionals who have the proper credentials required by the state but lack the cultural knowledge and ability or desire to even try to understand where our children and their families are coming from.”

Darla Thiele, Director, Sunka Wakan Ah Ku Program. Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Bismarck, ND, December 9, 2014

AI/AN communities need an assessment of the current cultural-based training and technical assistance resources and recommendations for easily accessible online courses (such as Working Effectively with Tribal Governments¹⁰⁴), improvements in current offerings, and recommendations for addressing the continued updating and monitoring of website and staff training. Tribal and urban AIAN organizations should be involved in the assessments.

Notes

1. Tribe – For purposes of this report, we use the term “tribe” to refer to federally recognized tribes from the Secretary of Interior’s list. 79 Fed. Reg. 4,748 (Jan. 29, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-01-29/pdf/2014-01683.pdf>.
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6. Indian Law and Order Commission, *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013): 154, available at: <http://www.aisc.ucla.edu/iloc/report/index.html>.
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57. Written Testimony of Brian Cladoosby, Hearing of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Fort Lauderdale, FL, April 16–17, 2014 at 22, available at: <http://www.justice.gov/defendingchildhood/fl-briefingbinder.pdf>.
58. PL-83-280, 18 U.S.C. § 1162 (“Each of the State or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the area of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offense committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere. .”).
59. Written Testimony of Sarah Hicks Kastelic, Hearing of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Bismarck, ND, December 9, 2013 at 29, available at: <http://www.justice.gov/defendingchildhood/nd-briefingbinder.pdf>.
60. *Ibid.*, 32.
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93. Urban Listening Session of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Minneapolis, MN, May 20–21, 2014. See: <http://adycenter.org/>.
94. Ain Dah Yung Center has family preservation programs where they work with the state child protection services, mental health programs working with Ramsey County, ICWA compliance program, and other programs that are collaborative. See <http://adycenter.org/programs>.
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