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INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT AMENDMENTS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

S. 1899

TO AMEND THE INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT TO IDENTIFY AND REMOVE BARRIERS TO REDUCING CHILD ABUSE, TO PROVIDE FOR EXAMINATIONS OF CERTAIN CHILDREN

MARCH 15, 2006
WASHINGTON, DC

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CONTENTS

	Page
S. 1899, text of	3
Statements:	
Burrus, James H., deputy assistant director, Criminal Investigations Division, FBI, Department of Justice	24
Chaney, Christopher P., deputy bureau director, BIA, Office of Law Enforcement Services	22
Cross, Terry, executive director, National Indian Child Welfare Association	33
Dorgan, Hon. Byron L., U.S. Senator from North Dakota, vice chairman, Committee on Indian Affairs	21
McCain, Hon. John, U.S. Senator from Arizona, chairman, Committee on Indian Affairs	1
McSwain, Robert, deputy director, IHS, Department of Health and Human Services	23
Perez, Jon, IHS, Division of Behavioral Health	23
Ragsdale, Pat, director, BIA, Department of the Interior	22
Steele, Paul, director, Center for Justice Studies, Morehead State University	35
Suppah, Ron, chairman, Confederated Tribes of the Warm Springs Reservation, Oregon	32

APPENDIX

Prepared statements:	
Burrus, James H. (with attachment)	41
Cross, Terry (with attachment)	45
McSwain, Robert	71
Ragsdale, Pat	73
Steele, Paul (with attachment)	75
Suppah, Ron	107

INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT AMENDMENTS

WEDNESDAY, MARCH 15, 2006

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m. in room 485 Senate Russell Office Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain and Dorgan.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning.

Today we will address S. 1899, The Indian Child Protection and Family Violence Prevention Act reauthorization. This bill provides a 4-year reauthorization of appropriations for child sexual abuse prevention and treatment grants; requires data collection to identify the scope of child abuse and family violence in Indian country; and encourages interagency coordination between public and private medical organizations in the treatment and examination of children through the use of tele-medicine.

The Indian Child Protection and Family Violence Prevention Act was enacted in 1990 in response to the findings of the Senate Select Committee on Indian Affairs and the Special Committee on Investigations that certain BIA schools had become safe havens for child abusers. The investigation of these crimes revealed that the perpetrators knew that the reporting and investigation of these heinous acts were in such a sorry state that they would rarely be detected.

Needless to say, the impact of this neglect on child victims, their families and their communities were lasting and tragic.

The 1990 Act mandated the reporting and investigation of child abuse and required character investigations of BIA, IHS and tribal employees who were in contact with children. In addition, the Act authorized appropriations to establish a prevention and treatment program to be operated by the BIA and IHS and by tribes, which authorizations expired in 1997.

Even before 1997, however, many of the programs provided for in the act never materialized. Although the obligation for character investigations is still in effect, it is unclear whether these are being conducted regularly; whether professionals who are required to report incidents of child abuse are actually doing this; and whether

the mandatory investigations of these reports are occurring is also unclear.

What we do know is that the grants and programs envisioned by the bill to address child abuse and family violence have received very little funding since 1990. Other programs to address child abuse, however, have been initiated by Federal agencies and by tribes.

I look forward to hearing from the witnesses on what is being done today to assess and respond to the issue of child abuse and family violence in Indian country and to hear your recommendations on what should be done to give real effect to the goals of the Child Protection and Family Violence Prevention Act.

I want to especially thank Senator Dorgan for his commitment on this issue. He has been ahead of it. He has had hearings back in North and South Dakota. I appreciate very much his leadership on this compelling issue.

[Text of S. 1899 follows:]

II

109TH CONGRESS
1ST SESSION

S. 1899

To amend the Indian Child Protection and Family Violence Prevention Act to identify and remove barriers to reducing child abuse, to provide for examinations of certain children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 2005

Mr. MCCAIN (for himself, Mr. DORGAN, Mr. CRAPO, and Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To amend the Indian Child Protection and Family Violence Prevention Act to identify and remove barriers to reducing child abuse, to provide for examinations of certain children, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Child Protection and Family Violence Prevention Act Amendments of 2005".

SEC. 2. FINDINGS AND PURPOSE.

Section 402 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3201) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(ii) by inserting after subparagraph (D) the following:

''(E) the Federal Government and certain State governments are responsible for investigating and prosecuting certain felony crimes, including child abuse, in Indian country, pursuant to chapter 53 of title 18, United States Code;''; and

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking ''two'' and inserting ''the'';

(ii) in subparagraph (A), by striking ''and'' at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

"(C) identify and remove any impediment to the immediate investigation of incidents of child abuse in Indian country."; and

(2) in subsection (b)—

(A) by striking paragraph (3) and inserting the following:

"(3) provide for a background investigation for any employee that has access to children;"; and

(B) in paragraph (6), by striking "Area Office" and inserting "Regional Office".

SEC. 3. DEFINITIONS.

Section 403 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202) is amended—

(1) by striking paragraph (14);

(2) by redesignating paragraphs (5) through (13) as paragraphs (6) through (14), respectively;

(3) by inserting after paragraph (4) the following:

"(5) 'conviction', with respect to an offense, means a final judgment of guilty through a verdict by a judge or jury or a plea of guilty or no contest, but does not include any final judgment that has

been expunged by pardon, reversed, set aside, or otherwise voided;'';

(4) in paragraph (13) (as redesignated by paragraph (2)), by striking ''that agency'' and all that follows through ''Indian tribe'' and inserting ''the Federal, State, or tribal agency'';

(5) in paragraph (14) (as redesignated by paragraph (2)), by inserting ''(including a tribal law enforcement agency operating pursuant to a grant, contract, or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.))'' after ''State law enforcement agency'';

(6) in paragraph (17), by striking ''and'' at the end;

(7) in paragraph (18), by striking the period at the end and inserting ''; and''; and

(8) by adding at the end the following:

''(19) 'telemedicine' means a telecommunications link to an end user through the use of eligible equipment that electronically links health professionals or patients and health professionals at separate sites in order to exchange health care information in audio, video, graphic, or other format for the

purpose of providing improved health care diagnosis and treatment.''.

SEC. 4. REPORTING PROCEDURES.

Section 404 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3203) is amended—

(1) in subsection (c)—

(A) in paragraph (1), by striking ''(1) Within'' and inserting the following:

''(1) IN GENERAL.—Not later than''; and

(B) in paragraph (2)—

(i) by striking ''(2)(A) Any'' and inserting the following:

''(2) INVESTIGATION OF REPORTS.—

''(A) IN GENERAL.—Any'';

(ii) in subparagraph (B)—

(I) by striking ''(B) Upon'' and inserting the following:

''(B) FINAL WRITTEN REPORT.—On''; and

(II) by inserting ''including any Federal, State, or tribal conviction resulting from the allegation'' before the period at the end; and

(iii) by adding at the end the following:

"(C) MAINTENANCE OF FINAL REPORTS.—The Federal Bureau of Investigation shall maintain a record of each written report submitted under subsection (b) in a manner in which the report is accessible to—

"(i) a local law enforcement agency that requires the information to carry out an official duty; and

"(ii) any agency requesting the information under section 408.

"(D) COLLECTION OF DATA.—Not less frequently than once each year, the Secretary, in consultation with the Attorney General and any appropriate Indian tribe, shall collect any information not otherwise reported under subsection (b), including information relating to, during the preceding calendar year—

"(i) the number of child abuse allegations and investigations in Indian country;

"(ii) the number of child abuse prosecutions declined or deferred in Indian country; and

"(iii) the number of acquittals of charges of child abuse in Indian country."; and

(2) by adding at the end the following:

''(e) CONFIDENTIALITY OF CHILDREN.—No local law enforcement agency or local child protective services agency shall disclose the name of or information concerning the child to anyone other than any person who, by reason of their participation in the treatment of the child, the investigation, or the adjudication of the allegation, needs to know the information in the performance of the duties of the individual.

''(f) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this subsection, and annually thereafter, the Director of the Federal Bureau of Investigation, in coordination with the Secretary and the Attorney General, shall submit to the Committees on Indian Affairs and the Judiciary of the Senate, and the Committees on Resources and the Judiciary of the House of Representatives, a report on child abuse in Indian country during the preceding year.''.

SEC. 5. REMOVAL OF IMPEDIMENTS TO REDUCING CHILD ABUSE.

Section 405 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3204) is amended to read as follows:

"SEC. 405. REMOVAL OF IMPEDIMENTS TO REDUCING CHILD ABUSE.

"(a) STUDY.—The Secretary, in consultation with the Attorney General and the Service, shall conduct a study under which the Secretary shall identify any impediment to the reduction of child abuse in Indian country and on Indian reservations.

"(b) INCLUSIONS.—The study under subsection (a) shall include a description of—

"(1) any impediment to reporting child abuse in Indian country and on Indian reservations;

"(2) any impediment to, or advance in, Federal, State, and tribal investigations and prosecutions of allegations of child abuse in Indian country and on Indian reservations; and

"(3) any impediment to, or advance in, the treatment of child abuse in Indian country and on Indian reservations.

"(c) REPORT.—Not later than 18 months after the date of enactment of the Indian Child Protection and Family Violence Prevention Act Amendments of 2005, the Secretary shall submit to the Committees on Indian Affairs and the Judiciary of the Senate, and the Committees on Resources and the Judiciary of the House of Representatives, a report describing—

"(1) the findings of the study under this section; and

"(2) recommendations for legislative actions to reduce instances of child abuse in Indian country and on Indian reservations, if any.".

SEC. 6. CONFIDENTIALITY.

Section 406 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3205) is amended to read as follows:

"SEC. 406. CONFIDENTIALITY.

"Any Federal, State, or tribal government agency that treats or investigates incidents of child abuse may provide information and records to an officer of any other Federal, State, or tribal government agency that requires the information to carry out the duties of the officer, in accordance with section 552a of title 5, United States Code, section 361 of the Public Health Service Act (42 U.S.C. 264), the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.), and other applicable Federal law.".

SEC. 7. WAIVER OF PARENTAL CONSENT.

Section 407 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3206) is amended—

(1) in subsection (a), by inserting ''or forensic'' after ''psychological''; and

(2) in subsection (c), by striking ''advise'' and inserting ''advice''.

SEC. 8. CHARACTER INVESTIGATIONS.

Section 408(b) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3207(b)) is amended by striking ''guilty to'' and all that follows and inserting the following: ''guilty to, any offense under Federal, State, or tribal law involving—

''(1) a crime of violence;

''(2) sexual assault;

''(3) child abuse;

''(4) exploitation; or

''(5) sexual contact or prostitution.''.

SEC. 9. INDIAN CHILD ABUSE TREATMENT GRANT PROGRAM.

Section 409 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3208) is amended by striking subsection (e) and inserting the following:

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2006 through 2010.''.

SEC. 10. INDIAN CHILD RESOURCE AND FAMILY SERVICES CENTERS.

Section 410 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3209) is amended—

(1) in subsection (a), by striking ''area office'' and inserting ''Regional Office'';

(2) in subsection (b), by striking ''The Secretary'' and all that follows through ''Human Services'' and inserting ''The Secretary, the Secretary of Health and Human Services, and the Attorney General'';

(3) in subsection (d)—

(A) in paragraph (4), by inserting '', State,'' after ''Federal''; and

(B) in paragraph (5), by striking ''agency office'' and inserting ''Regional Office'';

(4) in subsection (e)—

(A) in paragraphs (1) and (2), by striking the commas at the ends of the paragraphs and inserting semicolons;

(B) by striking paragraph (3) and inserting the following:

''(3) adolescent mental and behavioral health (including suicide prevention and treatment);'';

(C) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

''(5) criminal prosecution; and

''(6) medicine.'';

(5) in subsection (f)—

(A) in the first sentence, by striking ''The Secretary'' and all that follows through ''Human Services'' and inserting the following:

''(1) ESTABLISHMENT.—The Secretary, in consultation with the Service and the Attorney General'';

(B) in the second sentence—

(i) by striking ''Each'' and inserting the following

''(2) MEMBERSHIP.—Each''; and

(ii) by striking ''shall consist of 7 members'' and inserting ''shall be'';

(C) in the third sentence, by striking ''Members'' and inserting the following:

''(3) COMPENSATION.—Members''; and

(D) in the fourth sentence, by striking ''The advisory'' and inserting the following:

''(4) DUTIES.—Each advisory'';

(6) in subsection (g)—

(A) in the first sentence—

(i) by striking ''Indian Child'' and inserting the following:

''(1) IN GENERAL.—Indian Child''; and

(ii) by adding before the period at the end the following: ''(25 U.S.C. 450 et seq.)'';

(B) by striking the second sentence and inserting the following:

''(2) CERTAIN REGIONAL OFFICES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if a Center is located in a Regional Office of the Bureau that serves more than 1 Indian tribe, an application to enter into a grant, contract, or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to operate the Center shall contain a consent form signed by an official of each Indian tribe to be served under the grant, contract, or compact.

''(B) ALASKA REGION.—Notwithstanding subparagraph (A), for Centers located in the Alaska Region, an application to enter into a grant, contract, or compact described in that subparagraph shall contain a consent form

signed by an official of each Indian tribe or tribal consortium that is a member of a grant, contract, or compact relating to an Indian child protection and family violence prevention program under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).''; and

(C) in the third sentence, by striking ''This section'' and inserting the following:

''(3) EFFECT OF SECTION.—This section''; and

(7) by striking subsection (h) and inserting the following:

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2006 through 2010.''.

SEC. 11. INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION PROGRAM.

Section 411 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3210) is amended—

(1) in subsection (c), by striking the subsection heading and inserting ''COORDINATING INVESTIGATION, TREATMENT, AND PREVENTION OF CHILD ABUSE AND FAMILY VIOLENCE'';

(2) by redesignating subsections (f) through (i) as subsections (e) through (h), respectively; and

(3) by striking subsection (h) (as redesignated by paragraph (2)) and inserting the following:

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2006 through 2010.''.

SEC. 12. USE OF TELEMEDICINE.

The Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3201 et seq.) is amended by adding at the end the following:

''SEC. 412. USE OF TELEMEDICINE.

''(a) CONTRACTS AND AGREEMENTS.—The Service is authorized to enter into any contract or agreement for the use of telemedicine with a public or private medical university or facility, or any private practitioner, with experience relating to pediatrics, including the diagnosis and treatment of child abuse, to assist the Service with respect to—

''(1) the diagnosis and treatment of child abuse; or

''(2) methods of training Service personnel in diagnosing and treating child abuse.

"(b) ADMINISTRATION.—In carrying out subsection (a), the Service shall, to the maximum extent practicable—

"(1) use existing telemedicine infrastructure; and

"(2) give priority to Service units and medical facilities operated pursuant to grants, contracts, or compacts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) that are located in, or providing service to, remote areas of Indian country or Indian reservations.

"(c) INFORMATION AND CONSULTATION.—On receipt of a request, the Service may provide to public and private medical universities, facilities, and practitioners any information or consultation on the treatment of Indian children who have, or may have, been subject to abuse or neglect.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2006 through 2010.".

SEC. 13. CONFORMING AMENDMENTS.

Section 1169 of title 18, United States Code, is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (B), by inserting ''or volunteering for'' after ''employed by'';

(B) in subparagraph (D)—

(i) by inserting ''or volunteer'' after ''child day care worker''; and

(ii) by striking ''worker in a group home'' and inserting ''worker or volunteer in a group home'';

(C) in subparagraph (E), by striking ''or psychological assistant,'' and inserting ''psychological or psychiatric assistant, or mental or behavioral health professional;'';

(D) in subparagraph (F), by striking ''child'' and inserting ''individual'';

(E) by striking subparagraph (G), and inserting the following:

''(G) foster parent; or''; and

(F) in subparagraph (H), by striking ''law enforcement officer, probation officer'' and inserting ''law enforcement personnel, probation officer, criminal prosecutor''; and

(2) in subsection (c), by striking paragraphs (3) and (4) and inserting the following:

''(3) 'local child protective services agency' has the meaning given the term in section 403 of the In-

1 dian Child Protection and Family Violence Preven-
2 tion Act (25 U.S.C. 3202); and
3 "(4) 'local law enforcement agency' has the
4 meaning given the term in section 403 of that Act.".

○

The CHAIRMAN. Just one additional comment. We all know that the epidemic of methamphetamine has exacerbated dramatically this problem. When adults fall victim to methamphetamine addiction, there is a dramatically increased incidence of child abuse, spousal abuse, and violence. According to most objective observers, this meth epidemic, which is affecting non-Indians and Indians alike, is having especially devastating effects in Indian country.

This is an important issue. I know we have a war in Iraq and I know we have many other issues that take up the time and attention of this Congress, but what is happening in Indian country, and frankly out of Indian country, as caused by this methamphetamine epidemic is something that should gather the attention of all of us and a much higher priority.

I want to again thank Senator Dorgan for all his efforts and leadership on this issue.

Senator Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator DORGAN. Mr. Chairman, thank you very much.

You are certainly right about the methamphetamine issue and how it has accelerated all of these problems. I thank you very much for arranging this hearing. This is an important issue.

I think I have on a previous occasion mentioned a couple of things. I want to do it again. One of my first acquaintances with this issue of child abuse occurred with a young woman named Tamara Demaris. I read about her and then I went down to the reservation and met with her and her grandfather, Reginald Bird Horse.

The story of Tamara was a very simple and tragic story. She was put in a foster home at age 3. The caseworker who put her in a foster home was working on 150 cases, and didn't of course have time to check out the home, so this 3-year old girl gets put in a home.

There is a drunken party at the home on a Saturday night. This 3-year old girl has her arm broken, her nose broken and some of her head hair pulled out by the roots. She will live with those scars forever. One person handling 150 cases, it was impossible.

I held a hearing after that and had all of the tribes in our region in. I remember one of the young ladies who came to the hearing. She said, "On my reservation, I am in charge of these child abuse and sexual abuse issues." She said, "I have a stack of folders that high sitting on the floor in my office of alleged sexual abuse and child abuse on my reservation." She said, "I have no investigators and when I deal with a child who needs some help, I have no car. I have to go beg and borrow a car to take this child to a clinic or something."

And then she began weeping and sobbing uncontrollably. About 2 weeks later, she quit her job. Her point was it is just hopeless. We have allegations, she said, that are uninvestigated.

So my sense is this is a very serious problem. You can make a case that adults can fend for themselves, but not children. Child abuse anywhere in this country is a very serious situation. On

America's Indian reservations, it is very serious because there are so few resources with which to deal with it.

The chairman just talked about the money for the Iraq war. We are going to have, I guess it is a $92-billion request, which includes Katrina, restoration of military funds. Just the small crumbs that would fall off of a request like that would work wonders in addressing some of these issues of child abuse that exist in areas where you have this unbelievable poverty, where you have the ravages of methamphetamine, and all the other things that prey upon these innocent children.

So this is not just some other issue. It is critically important that we find the resources to make sure that these children are protected.

Mr. Chairman, again I appreciate your calling this hearing as evidence of a priority for this committee. Thank you very much.

I appreciate the witnesses coming and sharing with us today as well.

The CHAIRMAN. Thank you very much, Senator Dorgan.

We welcome Pat Ragsdale, who is the director of the Bureau of Indian Affairs [BIA], who is accompanied by Christopher Chaney, who is the deputy bureau director of the BIA; Robert McSwain, deputy director of the Indian Health Service at the Department of Health and Human Services. He is accompanied by John Perez, who is the director of Indian Health Service, Division of Behavioral Health.

And James H. Burrus, who is the acting assistant director of criminal investigation division, Federal Bureau of Investigations.

Welcome, and we will begin with you, Mr. Ragsdale. Welcome back.

STATEMENT OF PAT RAGSDALE, DIRECTOR, BIA, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY CHRISTOPHER B. CHANEY, DEPUTY BUREAU DIRECTOR, BIA, OFFICE OF LAW ENFORCEMENT SERVICES

Mr. RAGSDALE. Thank you, Mr. Chairman.

Good morning, Mr. Chairman, Mr. Vice Chairman. Before I formally begin, I wish to offer our regrets and sympathy to Senator Inouye and his family in the loss and passing of his wife, Margaret. We are very sorry for him and his extended family and friends. He has indeed been a champion for Indian country during his service here in the Senate.

The CHAIRMAN. We will convey those condolences to Senator Inouye. I know he appreciates them. Thank you.

Mr. RAGSDALE. Thank you.

I am pleased to testify on the Indian Child Protection, Family Violence Prevention Act Amendments. With your permission, Mr. Chairman, I will summarize my views and request that my written statement be included in the record.

The CHAIRMAN. All written statements will be made part of the record, without objection.

Mr. RAGSDALE. Thank you, Mr. Chairman.

With me today are Chris Chaney and Jerry Gidner, the deputy directors for the Office of Law Enforcement Services and the Office

of Tribal Services, respectively, whose offices have program elements that would be involved if these amendments are enacted.

I might tell you that I am a former tribal law enforcement officer with about 7 years experience, who investigated child abuse allegations of all kinds. We appreciate the committee's support in this endeavor to better protect our children.

Subject to the views of the Department of Justice and Health and Human Services response for the implementation of this bill, the Department of the Interior supports overall the elements of this bill which would identify impediments to reporting, prosecuting and treating child abuse as proposed. We also believe the committee should consider elements that lead to better prevention, support of good parenting, family and community development.

The department supports the addition of the felony child neglect provision to the Federal criminal code to allow Federal prosecution of serious instances of harm to our children. Currently, these offenses are left to prosecution in tribal courts. While prosecution does occur in tribal forums of justice, the tribal courts are inhibited by Federal law, which limits the sentence and fines to less than 1 year or $5,000 for the conviction of offenses in tribal court.

We cite one example in our testimony of an intoxicated person harming a toddler, a real case scenario. Another example would be adults who manufacture dangerous chemical substances in their homes or exposing children to other toxic substances. There are many examples the provision would be applied to that would be useful to both law enforcement and prosecutors to ensure justice of those who endanger or harm the welfare of our children.

We look forward to working with the committee and our colleagues in tribal and Federal agencies to protect Indian children and ensure justice to those who harm them.

I hope we can be responsive to your questions.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Ragsdale appears in appendix.]

The CHAIRMAN. Thank you.

Mr. McSwain.

STATEMENT OF ROBERT McSWAIN, DEPUTY DIRECTOR, INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY JON PEREZ, DIRECTOR, INDIAN HEALTH SERVICE DIVISION OF BEHAVIORAL HEALTH

Mr. McSWAIN. Good morning. Thank you, Mr. Chairman and Vice Chairman Dorgan.

We are pleased to have this opportunity to testify on behalf of Secretary Leavitt and Dr. Charles Grim, the director of the Indian Health Service, on S. 1899, the Indian Child Protection and Family Violence Act Amendments of 2005. I will summarize my written statement and ask that it be entered into the record please.

Secretary Leavitt has raised awareness of tribal issues within the department by using the authorities of the Native Americans Program Act of 1974 and the Interdepartmental Council for Native American Affairs to address cross-cutting issues throughout the department. This has resulted in many collaborations with other op-

erating divisions within the department. Dr. Grim serves as the vice chair of this council.

Since the enactment of Public Law 101–630 in 1990, the department and the IHS has addressed what we see as two critical parts of the act. First are the administrative parts that ensure that our health care providers and support personnel who have duties and responsibilities involving contact with children, some 9,500 out of 15,000 employees, meet minimum standards of character.

The act requires the IHS and BIA to compile a list of all authorized covered positions. In November 2002, the IHS published its interim final rule establishing minimum standards of character for positions and incorporating the technical amendments contained in the Native American Laws Technical Corrections Act of 2000.

Second, and equally important, are the program elements. As you know, our mission is about raising the health status and spiritual health of American Indians to the highest level possible. Those include our community-based health care delivery system and partnerships with Indian communities and other Federal agencies, namely the BIA. In 1996, the IHS instituted the Domestic Violence and Child Abuse Prevention Initiative to address violence against women and children, and child abuse, and neglect in American Indian and Alaska Native communities.

In collaboration with the BIA, the IHS-BIA Child Protection Handbook was published in 2005. This handbook is linked to a website sponsored by the University of Oklahoma Center on Child Abuse and Neglect. A copy of this handbook, the CD, is submitted as a part of our testimony.

In addition, since 1990, the IHS has enhanced its resource management IT system, which is our automated patient record management system, to enable identification and tracking of child abuse cases that come into our facilities. As you know, the RPMS reporting system has been a mainstay of our total health care delivery system for the last 25 years.

It is important to point out that much of our program effort is community-based. It is about enabling American Indian and Alaska Native communities to have tools to address child abuse and neglect. We will continue to reach out and expand our partnerships with other Federal and tribal communities to address child protection.

Thank you, and we will be pleased to answer questions.

[Prepared statement of Mr. McSwain appears in appendix.]

The CHAIRMAN. Thank you very much.

Mr. Burrus.

STATEMENT OF JAMES H. BURRUS, DEPUTY ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIONS DIVISION, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE

Mr. BURRUS. Good morning, Chairman McCain, Vice Chairman Dorgan and members of the Committee on Indian Affairs. I appreciate the opportunity to appear and provide testimony about the FBI and its work in Indian country, especially as it relates to the protection of Indian children.

Before I begin, I would like to ask Senator Dorgan, regarding those allegations of child abuse, if those were on North Dakota res-

ervations, may I work with your staff to resolve those? Thank you, because that should not happen. We have all the reservations in North Dakota and we should not have unaddressed allegations of child abuse.

The FBI has a long history of service to the Native American people throughout the United States, and dedicated special agents of the FBI's Indian country program work hard to deliver quality law enforcement services to tribal communities of all sizes. We remain strongly committed to our role in Indian country and to the partnerships with tribal, local, State and Federal agencies in Indian country.

There are 561 federally recognized tribes in the United States, and 297 Indian reservations with over 1 million Native American residents on or near reservation lands. The FBI has law enforcement responsibility on more than 200 of those Indian reservations and Federal criminal jurisdiction over acts directly related to Indian gaming regardless of jurisdictional status.

The FBI has 114 special agents addressing over 2,000 Indian country crimes and 22 field offices. The FBI's priority in Indian country focuses on the most serious crimes of violence, including homicide, child sexual and physical abuse, and violent assault. FBI investigations in these priority categories comprise over 70 percent of all FBI investigations in Indian country.

The challenges do not end there, as crimes related to gangs and drugs are on the increase, as the chairman and Senator Dorgan talked about. Indian gaming investigations are important, and the FBI always stands ready to protect tribal communities from political corruption. The FBI in Indian country is simultaneously addressing many different aspects of crime in Indian country and remains fully engaged.

From the period covering fiscal years 2003 to 2006, the FBI initiated 1,658 investigations and made 537 arrests in matters involving Indian child sexual abuse. During the same period, the FBI initiated 134 investigations and made 39 arrests involving Indian child physical abuse. This represents approximately 30 percent of all FBI investigations in Indian country during that period. Crimes against Indian children have been and will remain a top priority for the FBI.

The FBI routinely receives reports of Indian child abuse from various law enforcement agencies in Indian country, including the Bureau of Indian Affairs Office of Law Enforcement Services. In cases of Indian child abuse reports received by FBI field divisions, investigations are conducted either by FBI special agents or task force members working with the FBI on Indian country Safe Trails Task Forces.

Additionally, the FBI receives referrals of allegations of Indian country abuse from other public service entities, such as schools, medical professionals, and child protective service organizations. Some of these referrals are a direct result of the FBI's participation on multidisciplinary teams or child protection teams in Indian communities. There may be instances where child abuse complaints are received and investigated by other law enforcement agencies, but the FBI and other law enforcement partners in Indian country

strive to ensure all allegations of child abuse are reported to us and immediately addressed.

Our partnerships with Indian country law enforcement in tribal communities are critical to our success in addressing Indian child abuse. There are several successful programs in Indian country that I would like to highlight.

Since 2004, the FBI has supported a tribal tele-medicine initiative in South Dakota, a joint effort by the FBI's Minneapolis Division, Midwest Children's Research Center, Indian Health Service, the Department of Justice, Rosebud Sioux Tribe, Yankton Tribe, Midwest Regional Children's Advocacy Center, and the National Children's Alliance. The goals of this initiative are to provide a means to introduce forensic, pediatric specialists early into the Indian country child abuse investigations and to build stronger multidisciplinary teams in Indian country.

This program utilizes video tele-conferencing capability, along with specialized audio and video equipment to connect the examining physician in Indian country with child abuse medical experts in an off-site location.

The FBI also supports the Tohono O'odham Reservation Children's House, a joint effort between the Tohono O'odham Nation police department, the FBI, the Southern Arizona Children's Advocacy Center, which serves to exponentially enhance the overall investigative effectiveness in addressing child sexual assaults. TORCH provides child victims and their families an immediate, safe, child-friendly and culturally sensitive environment that is conducive to effective forensic interviewing.

In circumstances where the establishment of a permanent forensic center is not an option, the FBI partners with other organizations to seek creative solutions to the problem. One example is the Child Health Children's Mobile Advocacy Center of Northern Arizona. The mobile unit in Arizona travels to or near the victims' reservations to prevent the child and family from having to travel long distances to an advocacy or medical facility for interview and physical examination. By delivering the forensic interview and sexual assault examination capability to the child victim, the traumatic effect on the child and family is vastly reduced.

The FBI is committed to preparing Indian country law enforcement and specifically special agents with the knowledge skills required to address such important investigations. Since 1997, we have trained nearly 5,500 Indian country law enforcement officers and agents, in close association with the BIA's Indian Police Academy. The FBI is committed to protecting Native American children from abuse, and we look forward to working with this committee to accomplish this worthwhile goal.

I would be happy to answer questions, Mr. Chairman.

[Prepared statement of Mr. Burrus appears in appendix.]

The CHAIRMAN. Thank you very much.

Mr. Ragsdale, you have been around a long time. Do you remember the *Boone* case?

Mr. RAGSDALE. Yes, sir; I certainly do.

The CHAIRMAN. Have you had any followup reports recently as to the situation in that community as regards to recovery from the

terrible psychological blows, as well as immediate problems that they faced?

Mr. RAGSDALE. No, sir; Now that you bring it up, I will do that. I certainly do remember the *Boone* cases, in which Boone was the perpetrator at Cherokee, NC, as I recall.

The CHAIRMAN. Do me a favor and get us a written status there. It was one of the most, as you may recall, one of the most horrendous things I have ever been associated with. We committed at that time that we would have a long-term rehabilitation program there, and I would like to know.

Mr. RAGSDALE. Yes, sir; We had the same situation at Hopi. I was more involved.

The CHAIRMAN. Boone was a Hopi.

Mr. RAGSDALE. Okay, I am confusing that with the Cherokee, North Carolina case.

The CHAIRMAN. I think you are confusing that. The *Boone case was a Hopi situation.*

Mr. RAGSDALE. I do know that in the *Boone* case, there was a massive effort by providers to deal with the families and the victims of child abuse in that particular case.

The CHAIRMAN. I remember. Give me a followup as to what the status is.

Mr. Burrus, Senator Dorgan and I have come to the conclusion that the problems of child abuse in particular, but other problems, have been dramatically exacerbated by the methamphetamine, rise of methamphetamine. Has that been your conclusion?

Mr. BURRUS. That is certainly one of the factors, sir.

The CHAIRMAN. Do you believe that child abuse is on the rise?

Mr. BURRUS. Yes, sir.

The CHAIRMAN. You know something, I know that Senator Dorgan has to go in about 10 minutes. I yield to you, and then go back. Go ahead. I yield to Senator Dorgan.

Senator DORGAN. I have to step out and I will be back. Thank you, Mr. Chairman.

Let me ask a couple of questions. First of all, this authorization occurred back 15 years ago, really. We began with some hearings in 1988 and 1989 in this committee, and then passed a piece of legislation. We had hearings again in 1995 on the reauthorization of the act; hearings in the 108th Congress to reauthorize the act, and hearings now.

I am trying to understand, with a direction from Congress about this issue and with an issue that is pretty clearly a serious issue, what the Indian Health Service has done in terms of requesting funds in its budget. It appears to me that not much has been done in the executive branch to respond to the direction of Congress here. Mr. Ragsdale, Mr. McSwain, can you tell me what your agencies have done?

Mr. MCSWAIN. Senator, I think in terms of the budget request, it is certainly in our mental health budget. In our mental health budget, we have requested increases when we can, and certainly have had increases. I think our current budget for mental health is a little over $60 million. A portion of that is being used for many of the activities, not specifically as authorized under Public Law 101–630.

Mr. RAGSDALE. I left the Department of the Interior in the early 1990's and went back home and went to work for my tribe, the Cherokee Nation. I can tell you that the BIA has strengthened the screening process for all employees, both Federal and tribal, that have duties and responsibilities that entail the care and providing for children.

I will tell you, based on my own personal experience, that our child protection law enforcement system has been strengthened. We have better partnerships with Federal authorities and tribal authorities. We developed child protection teams on many reservations in Indian country. I will not tell you that I think that they are adequate, because we know that there continues to be a growing problem. However, the Federal sponsors when I was on the tribal side did provide us with additional tools to investigate, train and focus on child abuse.

Senator DORGAN. Well, aren't there portions of the 1990 Act that have never been implemented, establishment of a central registry for reports or information on the abuse of children in Indian country, for example?

Mr. RAGSDALE. Yes.

Senator DORGAN. When you tell me what you have asked for, the question is, have you actually implemented a specific program related to the authorizing legislation that we passed? I mean, we in Congress said, here is a problem, here is an authorization bill. Has the Indian Health Service either implemented a specific program or has the Indian Health Service requested funds for the purpose of initiating a separate program or a specific grant program that we described in our authorization bill? If not, why not?

Mr. RAGSDALE. I can address this. The sexual offender registry, I was not here after the bill was enacted, but my understanding is that that particular element of the legislation never has been implemented because of problems with due process and review and how you would coordinate that with the various tribal and State systems. Some States do have sexual offender registries, which law enforcement uses as a resource. But I just cannot answer the question about why the national registry was not implemented.

Senator DORGAN. The original authorizing legislation provided for BIA regional Indian health resource and family service centers to respond to these issues. Have they been implemented?

Mr. RAGSDALE. The only effort that I am aware of, Senator, is that there were some coordinating staff placed at both the central office and at the regions.

Senator DORGAN. Mr. McSwain, are you familiar with any of the implementation of these issues?

Mr. MCSWAIN. Yes; I am familiar with it, Senator. I think in lieu of the actual establishment of the centers, we have been very aggressive on implementing the 408 provisions, which is background checks and the like. Since that time, we have actually, when the technical amendments in 2002, we actually have terminated close to 20 people from service because they did not pass background checks, and going forward, we with background checks, 46 people have not been hired because they did not clear the necessary background checks in accordance with the law. So we have been very aggressive on it.

In fact, we have just consolidated our HR system into five regions. We are sharing information around the regions in terms of providers who are not cleared, so that they don't pop up in another area and attempt to be hired. But that is in lieu of actually asking for any resources to implement the centers.

Senator DORGAN. Yes; But you understand, my disappointment is that we have been through this before, and we are now going to go through it again. Let's assume that we pass this reauthorization bill. What would change, if anything? You either have the will to do these things or you don't in the various portions of the administration. I would say through several administrations, I think what has happened, some administrations have been better than others in their requests, but we now know that, for example, in the Indian Health Service, about 40 percent of the health needs of Indians are unserved; about 60 percent are served, some 60 to 65 percent are served; the rest unserved.

That being the case, you know, you all come and tell us, well, we are doing as well as we can, but there is so much that is not done. I don't know whether it is a matter of the lack of will by the agencies, deciding, well, we are just not going to do that. Or it is a lack of money, and you really can't come to the table and say, we don't have the funds to do this; we are desperately short of funds because the Office of Management and Budget describes to you what you are going to get when it comes up in the President's budget, and then you can't come and say much about that. If you were to be critical of that, you probably wouldn't be up here a second time.

So I mean, it is disappointing to me because this is one of those areas where I think this is not optional. We have a responsibility and a requirement to really aggressively protect these kids. There is not much reason to go through the motions of an authorization bill that addresses these problems if you are not going to implement some of these solutions and consider them seriously.

Mr. Chairman, thank you. I am going to step out. I will be back.

The CHAIRMAN. Thank you. I would also like to point out the obvious to my friend from North Dakota that we in the appropriations process perhaps have not done what we should do as well. Maybe you and I should maybe get a letter to the appropriators requesting some of those funds be directed. But we need the support of the witnesses today in your testimony in order to give us the weight to argue for that.

Thank you, Senator Dorgan.

Mr. Burrus, going back to our previous line of conversation, there is an increase, in your view, of child abuse incidents on Indian reservations. You said one of the causes was, well, tell me some of the other causes?

Mr. BURRUS. There are historical causes, unemployment. I do not have a background in social work, but from my experience as an investigator and as the assistant special agent in charge of Minneapolis, with all these reservations, certainly there are so many different things that contribute to it, alcoholism, unemployment, and despair.

The CHAIRMAN. I understand that. I appreciate it very much, but those problems, tragically, have been with Indian country for a long time, but now we are seeing another increase in child abuse

cases. So it seems to me there is an added factor in there, and that may be methamphetamine. That was what I was trying to get at.

Now, we all know that since 9/11, FBI assets have been diverted from some areas into protecting the homeland in anti-terrorist activities, which is certainly logical. I do not know anyone who would argue with that. Have you had to divert some of your assets from Indian country?

Mr. BURRUS. No, sir; in 2001, our use of Indian country agents was around 100 or 105. Today, it is around 114, so we have actually increased our presence, thanks in large part to the resources that Congress has given us to increase and expand our areas in Indian gaming, in violent crimes, and in gangs.

The CHAIRMAN. In the last, say, year or 2 years, do you know how many child abuse cases were prosecuted and how many convictions were obtained, in whatever period of time you are keeping these numbers?

Mr. BURRUS. Just 1 minute.

The CHAIRMAN. Sure.

Mr. BURRUS. I do not have those figures, sir. I have the figures for arrests and investigations, but I do not have prosecutions. I can get that for you.

The CHAIRMAN. Would you please for the record? I think it would be helpful.

Mr. BURRUS. Thank you, sir.

The Chairman. What is the record of arrests, then?

Mr. BURRUS. From 2003 to 2006, 537 arrests in Indian child sexual abuse, and 39 arrests in Indian child physical abuse.

The CHAIRMAN. Thank you.

Can tribes, Mr. Burrus, access national databases for tracking child abusers? Do you know?

Mr. BURRUS. If you are referring to——

The CHAIRMAN. Maybe Mr. Ragsdale knows the answer to that?

Mr. RAGSDALE. I can only speak based upon my individual experience, but I think depending on how creative tribal law enforcement agencies are, that they can.

The CHAIRMAN. They can.

Mr. RAGSDALE. There are some impediments, but generally if you work cooperatively with the State agencies and with the FBI, information is available.

The CHAIRMAN. Mr. McSwain, do you share the view of Mr. Burrus that these incidents are on the increase in Indian country, of child abuse?

Mr. MCSWAIN. We have a system, in fact I will have Dr. Perez answer, but we have averaged about 4,500 events hitting our system, understanding that with the health care system, the ones that hit us are the critical ones. They are the ones that hit our system where they are captured. We have a fair amount, and I think I need to say that in the program side of the house, we have a lot going on with the dollars that are appropriated.

I would like to have Dr. Perez answer.

The CHAIRMAN. I think maybe you did not understand me. Let me repeat the question. Is it your view that the incidence of child abuse in Indian country is going up? That was my question, not the non-response you just gave me.

Mr. MCSWAIN. Well, let me just reflect on the data.

The CHAIRMAN. Is it your view? Mr. McSwain, I am asking your opinion. You can answer yes or no.

Mr. MCSWAIN. It is going up.

The CHAIRMAN. Thank you very much.

Mr. Ragsdale, is that your view also?

Mr. RAGSDALE. Yes, sir; in fact, on the San Carlos Reservation, I understand that we have, 30 to 60 meth babies that we are now going to have to treat. I want to be forthright with the committee. It is my view that we do not have enough adequate resources in law enforcement and health services to treat the victims of not only child abuse, but the epidemic of meth and other dangerous substances in Indian country. I know that from personal experience.

The CHAIRMAN. I thank you.

Mr. McSwain, would you like to elaborate for the record? Go ahead please. I am sorry if I interrupted you.

Mr. MCSWAIN. What I was explaining, Senator, is the fact that we have put in place a system that is actually tracking more carefully the actual incidence of child abuse as it hits our system. Dr. Perez is actually the one who is managing this whole process, and we have seen some numbers. The problem we have is, is it the reporting or is it the events? But generally speaking, even controlling for both, there is a definite increase.

The CHAIRMAN. Thank you very much.

Doctor, would you like to add anything to that? It is not necessary, but if you would like to, please go ahead.

Mr. PEREZ. Let me just add a couple of things. I think when we are talking about the legislation, particularly from the program side, that what has happened with us at IHS is there are many promises that are not completely realized yet. If I were to frame it, that would be how I would put it.

We have, for example, demonstration projects that we started. The demonstration projects were a direct result of the legislation. The fact is that we actually have hard numbers now. We may not know exactly how to interpret those numbers, but we have hard numbers.

We are not guessing anymore. These are actual hard data. That is a result of the Act, the fact that we are actually routinely doing reviews now of everyone that comes through. On top of what I do here in Washington, DC, I am also on staff at Phoenix Indian Medical Center. I can assure you that the staffing requirements and the background checks are exhaustive.

But what you are asking is how do we bring this forward. From a program point of view, we have lots of roads that we can go down depending upon the funding that might be there for them.

The CHAIRMAN. Thank you very much.

We may be a little bit unfair here because methamphetamine is a national problem, international problem. But from most of the information that I have received, including a very in-depth study that was in the New York Times a couple of weeks ago, the burden is falling disproportionately on Indian reservations. So I appreciate the witnesses's testimony today. We will try to get the attention of our colleagues on this issue.

If you have additional information or recommendations how we can best address this issue, we would dearly love to hear about it.

Go ahead, Mr. Burrus. Thank you.

Mr. BURRUS. Senator McCain, if I might, when you asked me child abuse cases, or if child abuse in my opinion is on the increase, I said yes. I think so much of what we hear about empirically was the basis for my opinion. My colleague has handed me some information. Actually, the number of cases has leveled off, and that is a little bit troubling, but I think it may be a bit misleading, too, because we certainly do not have all the data from all the reservations.

So I am going to stick by my story and say I believe it is on the increase, but I wanted to qualify that by saying it is difficult to prove when I look at the number of FBI cases and specifics. I want to clarify that.

The CHAIRMAN. Thank you. But I think if you talk to any Indian tribal leader, especially those that are in border areas where a lot of this stuff is coming through, I think you would receive not only anecdotal evidence, but hard evidence of a dramatic increase as a result of meth, just as in non-Indian country. Any local law enforcement person in Arizona will tell you we are seeing an increase because, again, this meth does such terrible things to people and one of the first victims seems to be the helpless.

I thank the witnesses. Thank you very much.

Our next panel is Ron Suppah, who is the chairman of the Confederated Tribes of Warm Springs Reservation of Oregon, who is becoming a frequent visitor here; and Terry Cross, who is the executive director of the National Indian Child Welfare Association; and Paul Steele, who is the director of the Center for Justice Studies at Morehead State University in Kentucky.

Welcome back to you, Mr. Chairman, and we will begin with you. Please proceed, Mr. Chairman.

STATEMENT OF RON SUPPAH, CHAIRMAN, CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

Mr. SUPPAH. Mr. Chairman, members of the committee, good morning.

The CHAIRMAN. Thank you.

Mr. SUPPAH. I am Ron Suppah, tribal council chairman of the Confederated Tribes of the Warm Springs Reservation of Oregon. Thank you for this opportunity to be here today to testify in support of S. 1889, the Indian Child Protection and Family Violence Prevention Reauthorization Act of 2005.

This is extremely needed legislation. The Warm Spring Tribe located in north-central Oregon, share many of the modern characteristics of Indian reservation life. Our communities are rural and many individual dwellings are isolated. Economic opportunities are limited and unemployment and poverty rates are persistently high. Unfortunately, so too are rates of child abuse and family violence.

About 4,400 people live on the Warm Springs Reservation; 3,300 are tribal members and of them about 1,600 are 18 years old or younger. Last year during 2005, 453 Warm Springs children received services from our child protective services or CPS. That is up from 402 children that received CPS services in 2002. These

numbers are very distressing and our tribe is doing all we can to try to address this problem.

Because we are exempt from Public Law 280, and our reservation is almost all tribal trust land, we have exclusive jurisdiction over child welfare issues, allowing us to fashion and run a program without competing State regulations. But we try to work closely with the State of Oregon and are one of the few tribes in the Nation with a tribal-State title IV(e) foster care maintenance payment agreement that treats us much like a State for developing and maintaining a foster care program.

But even with our fairly comprehensive child protective services program, key jurisdiction differences do remain. Non-Indians on our reservation with criminal child abuse charges have to be referred to the State, and Federal child abuse charges require calling in the FBI. Also, the local public schools that educate our children first report signs of child abuse to the county, and the county then sends them along to us.

S. 1899 seeks to address these sorts of problems by providing for a broader sharing of child abuse data among jurisdictions and urging cooperation among agencies. But more than anything else, the act itself and its funding must be reauthorized.

Addressing child abuse and family violence is very labor-intensive. Our police, our courts, prosecutors, youth services and medical services are all involved. But child protective services must tie together and provide a tremendous range of services. One on one care and attention often from specialists is essential.

At Warm Springs, our CPS capacity to deliver those services is severely strained. We have a staff of just 19, including three caseworkers, who must each handle well in excess of 100 cases a year. We need assistance almost across the board.

Mr. Chairman, I am sure other tribes across the country have similar problems. Child abuse and family violence are silent and generally out of the public eye, but they are devastating to our communities.

So this act must be reauthorized and the BIA and IHS must commit to seek the appropriations that will help fulfill the hopes that our children represent for our communities and our future. S. 1899 will help meet that promise.

That concludes my testimony. Thank you. I guess maybe just a general statement for the committee. Mr. Chairman, I was not able to bring our child protection expert with me today, so I may have to submit answers to your questions for the record.

[Prepared statement of Mr. Suppah appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Chairman. Thank you for coming.

Mr. Cross, welcome.

STATEMENT OF TERRY CROSS, EXECUTIVE DIRECTOR, NATIONAL INDIAN CHILD WELFARE ASSOCIATION

Mr. CROSS. Thank you.

I want to thank the committee for asking for this testimony. My name is Terry Cross. I am the executive director of the National Indian Child Welfare Association. We are an organization national in scope, membership-driven. We work with tribes all over the Na-

tion, providing training, technical assistance, consultation, policy analysis and conducting research in this area.

The problem of child abuse and neglect is growing in Indian country. The methamphetamine epidemic is affecting tribes across the Nation, not just in border communities, but across our Nation. We have an increasing problem, at the same time we have decreasing resources.

This is a complex area. Child protection, whether it is in Indian country or not, is complex. It is one of the most important responsibilities of any government. It requires three major things to address it. One is ownership, a belief that there is a problem, and the right to sovereignty to do something about it; the stewardship to address the problem, in other words, the political will to address it; and finally, the capacity, which means the infrastructure and the resources to do something about it.

That complexity is a major challenge across the country, but more so in Indian country. While reporting is difficult everywhere, who to report to, where to report in Indian country can be a major challenge. Investigations can be a major difficulty when it is not clear who is to investigate. Jurisdictional issues give us a challenge because it is not always clear who is responsible, either for the prosecution or even the services, whether those services are child protection services or the mental health services that you mentioned following up on serious cases of child abuse and neglect.

Funding is a major area, complex both in Indian country and mainstream America, but in Indian country. It seems that this Committee has the obligation to address those issues that are unique to Indian country, but the whole Nation's child welfare system should be addressing the needs of all children. The lack of tribal access to programs like title XX social services block grants that are used for child welfare services across the Nation is appalling.

The fact that CAPTA, the Child Abuse Prevention Treatment Act, does not reach tribal communities is unacceptable. The fact that under Title IV(b) of the Social Security Act that helps fund the Safe and Stable Families Act, tribes across the country on average receive less than $20,000 apiece. This is a major funding source for States and counties across the country to prevent child abuse and work with families.

The fact that there are children's trust funds for child abuse prevention in every State in this Nation, not one of them available to Indian children, is not acceptable.

Particularly, these things are appalling when we know what helps. We know that tribal-State agreements and local protocols, like the chairman from Warm Springs just talked about, are essential to providing effective services; cross-deputization and interagency agreements between law enforcement agencies, child protection teams and multidisciplinary teams when they are implemented properly. I recently conducted a training on child protection teams for a number of people from across the country in tribal communities, most of whom had no child protection teams in place.

We have seen that tribal control in exercising tribal sovereignty on child welfare issues improves services across the board. There are cultural strengths models, holistic models that work with the whole family, that prevent child abuse and help families solve their

own problems. These things work in Indian country. Family group conferencing, family group decisionmaking are approaches that work in Indian country. Systems of care approaches work in Indian country.

But none of these can be in place without the resources, and without the help to get those things in place. Technical assistance is needed throughout Indian country to help implement programs where there are resources.

The National Indian Child Welfare Association is deeply committed to improving data collection. It is essential to informing the stewardship with a public will to do something about this. We continue to work on a demonstration project showing how tribal data can be shared across the Federal data systems.

A study to examine the impediments of reducing child abuse in Indian country is essential. We recently completed a report for the Bureau of Indian Affairs on the status of child welfare and child abuse and neglect in Indian country. That report needs broad dissemination.

I want to also declare that the availability of treatment and prevention and technical assistance is essential, but it has been unfunded. There is a fundamental problem with insufficient resources, particularly under this particular law. But among many of the other things that I mentioned, and I will just mention the Pew Commission report on foster care financing reform and their recommendation that tribal children be covered, and tribes have the same access as all other children to title IV(e), the foster care reimbursement program.

We also believe that that should be extended to CAPTA and other programs, as I mentioned. I would urge this committee to inform your colleagues about supporting those reforms as they emerge in the coming year.

In conclusion, we have several recommendations. We support the legislation. I want to make sure that we support the authorization of funding for tribes to operate their own child welfare programs, and tribes cannot currently access resources from other programs; to provide authorization for funding to build on and refine the tribal child abuse data collection systems, where they are just emerging; to provide for the establishment of national technical assistance and training centers for tribes; to provide authorization for funding for tribes to support background checks; and to correct a flaw in the system in which tribes are required today to have three background checks on the same family because the legislation in the Adoption and Safe Families Act and the Child Protection and Family Violence Act and the Child Care Act are similar, but not in alignment with each other, so we have duplication of this background check issue. That is easy to correct.

[Prepared statement of Mr. Cross appears in appendix.]

The CHAIRMAN. Thank you very much.

Mr. Steele.

STATEMENT OF PAUL STEELE, DIRECTOR, CENTER FOR JUSTICE STUDIES, MOREHEAD STATE UNIVERSITY

Mr. STEELE. Good morning, Chairman McCain, Vice Chairman Dorgan.

My name is Paul Steele and I am currently director of the Center for Justice Studies at Morehead State University in Morehead, KY. Prior to assuming this role in January, I was associate professor of Sociology and Senior Research Associate of the Institute for Social Research at the University of New Mexico, and director of the New Mexico Criminal Justice Analysis Center, which is the statistical analysis center for that State.

I was recently involved in research supported by the Department of Justice, Bureau of Justice Statistics, and the Justice Research and Statistics Association, which allowed me to study child sexual abuse on Indian lands in New Mexico. My testimony today will draw from that research, an updated version of which I have submitted for the record.

I want to direct my comments today to three topics addressed in S. 1899: reporting procedures, removal of impediments to reducing child abuse, and the use of tele-medicine.

Concerning section 4, recording procedures, this section is amended to denote specific information concerning child abuse that should be collected and reported to Congress. The collection and reporting of this information should be very useful in promoting Congress's awareness of the impact of child abuse on Indian lands.

Since the general intent of the law is to ensure Indian child protection, I recommend that this report to Congress also present findings of child protective service activities, as well as criminal justice interventions. Both law enforcement and child protective service agencies are legally mandated to conduct investigations.

Since just a small portion of child abuse criminal cases from Indian country result in criminal convictions, the bulk of protection against re-victimization enjoyed by children and other family members is the result of tribal court and child protective service administrative interventions. In addition to the number of allegations and investigations, information concerning the number of cases validated through investigation, the results of court and administrative supervision, the length of time under child protective service supervision, and civil court outcomes should also be documented.

Concerning section 5, removal of impediments to reducing child abuse, the report to Congress concerning removal of impediments also has great potential for improving conditions in Indian country and protecting Indian children. The report to accompany the bill states that:

> The committee is aware that Indian children continue to be traumatized by multiple interviews and physical examinations due to the lack of a coordinated approach by Federal, State, and tribal investigators, prosecutors and mental health professionals.

My research lends support to the committee's assertion that Indian children are unnecessarily subjected to re-interviewing. It seems that each investigative agency requires its own interview. Recent research suggests, however, that system-induced trauma experienced by child victims is more a result of encountering multiple interviewers, rather than multiple interviews.

Very effective and non-traumatic techniques for eliciting children's disclosures through a series of carefully planned sessions with a single forensic interviewer have been developed. For exam-

ple, the forensic evaluation model developed by Connie Carnes at the National Children's Advocacy Center is a multiple interview, single interviewer model that has been evaluated as very helpful with some children. This model has not been implemented in Indian lands as of yet.

Concerning section 12, the use of tele-medicine, tele-medicine technologies have great potential for improving the welfare of Indian children. Research has shown that only a small proportion of sexual abuse cases are confirmed through medical evidence. Rather, health professionals with particular expertise in child abuse often best serve by helping local practitioners to interpret the medical evidence in combination with the demeanor and comments of the child, parents, and others to reach conclusions about suspected abuse episodes.

There is a dearth of professionals with special expertise in the diagnosis of child abuse. Still, those that are available should be actively recruited to increase the application of tele-medicine technologies. As with our experience in New Mexico using tele-medicine to connect pediatric specialists to rural practitioners in cases of infants who were fetally exposed to drugs, improved diagnostic capabilities can result in identifying the need for increased treatment capacity.

Tele-medicine can also be very helpful in supporting on-site mental health treatment providers, addressing risk factors associated with child abuse such as alcohol and drug problems, and many of the consequences of child abuse such as depression and suicide.

I thank the committee for the opportunity to present these comments, and I would be happy to respond to any questions you might have.

[Prepared statement of Mr. Steele appears in appendix.]

The CHAIRMAN. Thank you very much, Dr. Steele.

Mr. Cross, what is your view of what the administration and/or Congress has been doing about this issue?

Mr. CROSS. Well, there is failure to implement this particular legislation. I think the questions earlier were very appropriate. When you have a Federal law that is designed to deal with an issue and then there is no appropriation, not even a request for an appropriation that comes out of any administration from either side of the aisle, it is extremely disappointing to our tribal communities who are struggling to do something about this issue.

The CHAIRMAN. Dr. Steele, you state that few child abuse criminal cases from Indian country result in convictions. Why is that?

Mr. STEELE. Many reasons. First of all, the issue of disclosure, I think because of cultural issues and communal living patterns, these cases are not as often reported. I think there are certainly issues of communication and coordination between tribal police and Federal Bureau of Investigation. I know that U.S. attorneys that in our district in New Mexico were often dissatisfied with the information that they were presented with to go forward with a criminal prosecution in those cases. That is a start.

The CHAIRMAN. Chairman Suppah, how long have you been a member of your tribe? All your life? I guess my question was, how long have you been in tribal government?

Mr. SUPPAH. This is my second term on the tribal council. Each term is three years. So I have been in tribal government for 6 years. I have lived there all of my life, except for about 6 years when I was away to college.

The CHAIRMAN. And what trends have you seen in your time on the reservation, both as a tribal member and as a member of the tribal government, on child abuse?

Mr. SUPPAH. I guess I can tell just generally, Senator. But I guess in looking, reflecting back, when the effort was made for maybe something called sexual predator registration in Indian country, and the roadblocks that immediately came up as far as sovereignty, et cetera, et cetera. I guess, parroting what my fellow witnesses have said, I guess the lack of good communication, linkage between all of the parties, whether they are tribal, IHS, or BIA, and the lack of coordinated data and statistics.

As far as like your questions earlier, it is good to arrest somebody, but then what is your conviction rate? I think that data is not sufficient for us as a tribal government to really kind of take a closer look at this stuff and coordinate and proactively do something for that.

I think that this is a very cross-cutting issue, as are many issues in Indian country in that I think that maybe just an example of what I talk about is, say, the new IHS policy of if my tribe chooses to develop and hire a new position, say, like a tribal psychiatrist, to, say, work with the, I guess the victims in this sense. We could do that under the existing money in IHS, but there would be no contract support dollars that would come along with that. So we are kind of like in a catch-22 situation, just like we are in many other places.

I guess investigation, we are very restricted as far as how many FBI or Federal people or staff we have 638-ed over to Warm Springs. The one maybe that we do have is multi-tasks, and depending on his schedule et cetera, then we are at the mercy of if he has time to take these investigations on.

The CHAIRMAN. I thank you.

Mr. SUPPAH. May I say one more thing, Senator?

The CHAIRMAN. Go ahead, please. Sure, absolutely.

Mr. SUPPAH. I think that a common issue and problem among Indian country today in many areas is, say, like a transition house, you know, whether it is for meth or whether it is for sexual abuse or whatever, but it seems like that the tribes have a very difficult time in accessing money for anything like that. You know, it would make sense for us to maybe put together some sort of proposal, say, like on a Northwest regional basis to say how can we work together as Northwest tribes to maybe develop a centralized regional transitional house to where our victims have someplace to go to.

Thank you.

The CHAIRMAN. Thank you very much.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you.

I would like to ask Mr. Cross, I mentioned that 60 or 65 percent of the health care needs are met, according to the Indian Health Service. They will not say that on the record, but off the record they will say that. I think the fact is, no administration is asking

for sufficient money, not the previous administration, not this one. But what happens to us is the Indian Health Service and folks in the agencies come to that table and they can't say anything other than what OMB asks them to say, and that is support the President's budget and telling us everything is nirvana and just fine.

But isn't it the case, as you view these agencies and view the Congress, that the reason that this is not implemented, these authorization requirements are not implemented, is that they do not have the resources to implement them?

Mr. CROSS. That is correct. You heard I think in the testimony two things I think that are very telling. One is the mental health budget that was talked about in behavioral health. What was not said was that the current budget for mental health is for adult chronically mentally ill, less than 2 percent of that figure goes to children's mental health. In that behavioral health budget, that 2 percent of that is a fairly small amount of money when you start lumping all of these things in. That is where the child protection stuff falls out.

So by the time you get to the crumbs for any kind of child protection issue, there is very little left for any meaningful program.

Senator DORGAN. Would you submit some additional information about the 2 percent? We could use that as well.

Mr. CROSS. I would be glad to.

I think the other issue that I would mention that, with all due respect to Mr. Burrus, those 100 agents that he talked about, 114 agents addressing tribal communities, somewhere in the neighborhood of 30,000 Indian children are thought to be abused and neglected each year. Most of that is neglect, about 80 percent, somewhere in that neighborhood.

Of those that experience abuse, probably about 10 percent of those are raised to the level of any kind of criminal investigation, prosecution. That means there is about somewhere in the neighborhood of 3,000 cases to be investigated each year, and 100 agents to try to investigate 3,000 cases serious enough to be taken to Federal prosecution is not even close to what is needed for an effective response.

So I think it is important to take a look at these numbers and to see what the reality is on the ground. What we are hearing in the Northwest, for example, is that of 100 cases that rose to that level, only two will go to Federal prosecution.

Senator DORGAN. Chairman Suppah, have there been youth suicide problems on your reservation or the reservations in Oregon?

Mr. SUPPAH. Senator Dorgan, yes, there have been. A lot of it, like the Chairman kind of speaks to, is because of the meth epidemic and its implications to push our people from 2002 to 2005 to have an increase of approximately 50 percent. So yes, everything is bumping everything.

Senator DORGAN. I had a listening session a while back—I guess it was probably 6 months ago—with some tribes and some people that just showed up. One young woman stood up and she said that she had tried to kill herself. I think she was about 19 years old. She said she had tried to take her own life. She said, "My father repeatedly raped me over many, many years," and she described

the circumstances of her youth and what had caused her to try to take her own life.

I asked, was there not someone you could report to, or could call? She said, "Well, I obviously couldn't tell my mother. My mother would not have believed me." She went through the whole list of things that a young child goes through in a circumstance like that. It was really pretty unbelievable testimony. It wasn't at a hearing, but just a listening session, and pretty unbelievable.

Obviously, she tried to take her life, and she survived. She is now in college and doing pretty well, but she was a victim of child abuse, very serious child abuse, for a long period of time, and felt like there was nothing really that she could do to reach out. So she didn't, and it took her some years then to stand up at a meeting at some point and say, "I was a victim."

I do think one of the things that the chairman and I have done is introduce a piece of legislation that provides for some funding for what is called tele-mental health. That is not certainly a full substitute for the mental health services that ought to be available to children, abused children, but it nonetheless at least begins walking down the road to address some of these mental health issues that are at this point not available on these reservations. So we are trying to find some other innovative ways, but the fact is we are not ever going to begin to address this issue in a significant way unless we add some resources and require there to be programs established on these reservations and in the regions.

As I said, just the crumbs that would fall off of a $92-billion request would more than adequately fund most of these things, but we don't even get the crumbs in most cases, and that is regrettable. I think the reason the chairman and I have been holding these hearings dealing with a wide range of Indian issues, today child abuse and child protection, is because there is such a need and there is such an important requirement for us to determine how we can provide some focus to this and get the Congress to understand its urgency.

So I appreciate the testimony from all three of the witnesses. You and the previous panel will add to the information that we have and give us the opportunity to decide exactly how we want to proceed to see if we can't better address this problem as the U.S. Congress.

The CHAIRMAN. I thank the witnesses. Thank you very much.

This hearing is adjourned.

[Whereupon, at 10:50 a.m., the committee was adjourned, to reconvene at the call of the chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF JAMES H. BURRUS, JR., ACTING ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION FEDERAL BUREAU OF INVESTIGATION

Good morning Chairman McCain, Vice Chairman Dorgan, and members of the Committee on Indian Affairs. I appreciate the opportunity to appear and provide testimony about the FBI and its work in Indian country, especially as it relates to the protection of Indian children.

The FBI has a long history of service to the Native American people throughout the United States and dedicated Special Agents of the FBI's Indian Country Program work hard to deliver quality law enforcement service to tribal communities of all sizes. We remain strongly committed to our role in Indian country and to our partnerships with tribal, local, State, and Federal agencies in Indian country.

There are 561 federally recognized Indian tribes in the United States and approximately 297 Indian reservations with over 1 million Native American residents on or near reservation lands. The FBI has Federal law enforcement responsibility on more than 200 of those Indian reservations and Federal criminal jurisdiction over acts directly related to Indian gaming regardless of jurisdiction status.

The FBI currently has 114 Special Agents addressing 2,076 Indian country matters in 22 field offices. Eight FBI field offices account for nearly 90 percent of all Indian country casework in the FBI and the FBI's Indian country resources are focused on reservations where the FBI has primary Federal investigative authority. The FBI's priorities in Indian country focus on the most serious crimes of violence, including homicide, child sexual and physical abuse, and violent assault. FBI investigations in these priority categories comprise over 70 percent of all FBI investigations in Indian country. The challenges do not end there as crime related to gangs and drugs are on the increase, Indian gaming investigations remain important, and the FBI always stands ready to protect tribal communities from political corruption. The FBI in Indian country is simultaneously addressing many different aspects of crime in Indian country and remains fully engaged.

During the period covering fiscal years 2003 through 2006, the FBI initiated 1,658 investigations and made 537 arrests in matters involving Indian child sexual abuse. During the same period, the FBI initiated 134 investigations and made 39 arrests in matters involving Indian child physical abuse. This represents approximately 30 percent of all FBI investigations in Indian country during that period. Crimes against Indian children have been, and will remain, a top priority for the FBI.

The FBI routinely receives reports of Indian child abuse from various local law enforcement agencies in Indian country, including the Bureau of Indian Affairs, Office of Law Enforcement Services [BIA-OLES]. In cases of Indian child abuse reports received by FBI field divisions, investigations are conducted either by FBI Special Agents or task force members working with the FBI on Indian Country Safe Trails Task Forces [STTF]. In limited circumstances, the allegations may be referred to tribal, BIA, or other law enforcement agencies for investigation and presentation to tribal courts as deemed necessary.

Additionally, the FBI receives referrals of allegations of Indian child abuse from other public service entities such as schools, medical professionals and child protective service organizations. Some of these referrals are the direct result of FBI participation on Multi-Disciplinary Teams [MDT] or Child Protection Teams [CPT] in Indian communities. There may be instances where child abuse complaints are received and investigated by other law enforcement agencies in Indian country and the FBI is not made immediately aware of those allegations. However, the FBI and other law enforcement partners in Indian country strive to ensure all allegations of child abuse are reported to us and immediately addressed.

Allegations of child abuse are documented in FBI investigative files if an investigation is initiated. In cases where the FBI refers the allegations to either tribal law enforcement or BIA–OLES, the allegation may be documented in a complaint form or other communication. Child abuse allegations received by the FBI and documented in a format other than an investigative file represent child abuse reports with various dispositions, including unsubstantiated reports, referral to other investigative agencies, or immediate declinations of prosecution.

The Office for Victim Assistance [OVA] ensures that victims of Federal crimes investigated by the FBI are afforded the opportunity to receive notification of investigation status and receive victim services. OVA employs 31 Victim Specialists dedicated to Indian country, serving 38 Indian nations. In addition to providing information on victim's rights and the criminal justice process, these Victim Specialists also provide on-scene crisis intervention, accompany agents to interviews, arrange forensic exams, and accompany victims to court proceedings. Victim Specialists establish working relationships with tribal councils to coordinate services and assure cultural understanding.

Our partnerships with Indian country law enforcement and tribal communities are critical to successfully addressing Indian child abuse. There are several successful programs in Indian country that I would like to highlight.

Since fiscal year 2004, the FBI has supported the Tribal Tele-Medicine Initiative in South Dakota, a joint effort by the FBI's Minneapolis Division, Midwest Children's Research Center, Indian Health Service, Department of Justice, Rosebud Sioux Tribe, Midwest Regional Children's Advocacy Center, and the National Children's Alliance. The goals of this initiative are to provide a means to introduce forensic pediatric specialists early into Indian country child abuse investigations and to build stronger multi-disciplinary teams in Indian country. This program utilizes video teleconferencing capability, along with specialized audio and video equipment, to connect the examining physician in Indian country with child abuse medical experts in an offsite location. This process not only allows expert medical evaluation of the child victim but also minimizes trauma to the child that may result from multiple medical examinations and interviews. Through this project, experienced medical and treatment personnel are also accessible to service areas and tribal facilities in rural or isolated communities.

The FBI also supports the Tohono O'Odham Reservation Children's House [TORCH], a joint effort between the Tohono O'Odham Nation Police Department [TOPD], FBI, and the Southern Arizona Children's Advocacy Center [SACAC], which serves to exponentially enhance the overall investigative effectiveness in addressing child sexual assaults. TORCH provides the child victims of sexual/physical abuse and their families with an immediate, safe, child-friendly and culturally sensitive environment that is conducive to effective forensic interviewing. These two efforts are directly aimed at improving the quality of child abuse investigations while minimizing additional trauma to the child victim.

In circumstances where the establishment of a permanent forensic center is not an option, the FBI partners with other organizations to seek creative solutions to problems. One example is the FBI's use of the Childhelp Children's Mobile Advocacy Center of Northern Arizona during child abuse and sexual assault investigations. This mobile unit in Arizona travels to or near the victim's reservation to prevent the child and family from having to travel long distances to an advocacy and medical facility for interview and physical examination. By delivering the forensic interview and sexual assault examination capability to the child victim, the traumatic effect on the child and family is vastly reduced.

The FBI faces many unique obstacles in investigating crimes against children in Indian country. Included among those are remote territories requiring substantial travel for investigation, long travel distances for access to technical expertise, reluctant witnesses due to close family structures in most tribal communities, and cultural sensitivities in tribal relations.

The FBI is fully committed to preparing Indian country law enforcement, including FBI Special Agents, with the knowledge and skills required to address such important investigations. Pursuant to a mandate from Congress to provide training to

Indian country law enforcement officers, the FBI has trained nearly 5,500 Indian country law enforcement officers and agents since 1997. This training is closely coordinated with the BIA's Indian Police Academy and together the FBI and BIA will offer 21 regional training conferences during fiscal year 2006, including specialized training in child abuse, forensic interviewing of abused children, crime scene investigation, child sexual assault and abuse investigations.

The FBI is committed to protecting Native American children from abuse and what clearly constitutes a threat to the future of Indian children and their communities. We look forward to working with this committee to accomplish this worthwhile goal. I would now be happy to answer any questions.

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

April 25, 2006

Honorable John McCain
Chairman
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Dear Mr. Chairman:

Thank you for sending me the transcript of my recent testimony before the Committee about the FBI and its work in Indian Country, especially as it relates to the protection of Indian children. I appreciate the opportunity to review the transcript and provide you with additional information you requested.

You asked about the number of child abuse cases that were prosecuted and how many convictions were obtained, in the last year or two years. Our Indian Country/Special Jurisdiction Unit has been working with the Executive Office of United States Attorneys (EOUSA) to gather data about the number of prosecutions; however, that office advised that there is no method at this time to retrieve the exact number of *prosecutions* for child abuse and sexual assault victims in Indian Country matters.

I can, however, to provide you with the number of *convictions* in child sex abuse and physical abuse cases opened by the FBI. For child sex abuse cases in 2005 and 2004, those numbers were 177 and 179, respectively. For child physical abuse cases in 2005 and 2004, those numbers were 17 and 9, respectively. Our conviction data would not include any conviction or prosecution numbers from tribal prosecutions, which would most likely be limited to misdemeanor-severity cases. This FBI conviction data would be the most comprehensive data for federal prosecutions in the absence of any information from the EOUSA.

Indian Country crime data from territory covered under Public Law 280 (state jurisdiction) would not be recorded through federal law enforcement agencies such as the FBI. This would include most Native American populations in states such as Alaska, California, Minnesota, New York, and Wisconsin. The crime data from these areas would be reported by the servicing agencies through the Uniform Crime Reports process.

I appreciate your continued support of the FBI's work in Indian County. If you have any additional questions or concerns, please do not hesitate to contact this office.

Sincerely yours,

James H. Burrus, Jr.
Acting Assistant Director
Criminal Investigative Division

NICWA

National Indian Child Welfare Association

Protecting our children • Preserving our culture

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STATEMENT OF THE

NATIONAL INDIAN CHILD WELFARE ASSOCIATION

PRESENTED BEFORE THE SENATE COMMITTTEE ON INDIAN AFFAIRS

Regarding

THE INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT AMENDMENTS OF 2005
S. 1899

MARCH 15, 2006

Terry L. Cross
Executive Director

President Donna Harris-Fleagle, Athabaskan *Vice President* Tracy Charles King, Assiniboine *Secretary* Delores Greyeyes, Navajo *Treasurer* Dan Gangan, Rosebud Sioux *Executive Director* Terry L. Cross, Seneca Nation

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The National Indian Child Welfare Association submits this testimony on the the Indian Child Protection and Family Violence Prevention Act Amendments of 2005. The focus of our testimony will be a national look at the issues that shape child protection services in Indian Country, strategies for addressing challenges to providing effective protections for Indian children living on tribal lands and comments on the legislation. A brief description of the National Indian Child Welfare Association is provided below.

National Indian Child Welfare Association – The National Indian Child Welfare Association (NICWA) is a national, private non-profit organization dedicated to the well-being of American Indian children and families. We are the most comprehensive source of information on American Indian child welfare and work on behalf of Indian children and families. NICWA services include: (1) professional training for tribal and urban Indian child welfare and mental health professionals; (2) consultation on child welfare and mental health program development; (3) facilitation of child abuse prevention efforts in tribal communities; (4) analysis and dissemination of public policy information that impacts Indian children and families; (5) development and dissemination of contemporary research specific to Native populations; and (6) assisting state, federal, and private agencies to improve the effectiveness of their services to Indian children and families.

In order to provide the best services possible to Indian children and families, NICWA has established mutually beneficial partnerships with agencies that promote effective child welfare and mental health services for children (e.g. Substance Abuse and Mental Health Services Administration, Indian Health Services, Administration for Children, Youth and Families, National Congress of American Indians, Federation of Families for Children's Mental Health, and the Child Welfare League of America).

Introduction

Child protection is a very complex, but very important responsibility for any government. To be successful, it requires a commitment to involve people from all areas of the government and community in planning and implementation. This requires community ownership of the problem and support for the solutions. Unfortunately, tribal governments have not always had the opportunity to be involved in protecting their children despite having sovereign authority. The exercising of that authority has been the greatest challenge, with resources and authority being given to other governmental entities, such as states or the Bureau of Indian Affairs. Over time, this created a sense of hopelessness and dependency in many tribal communities that interfered with tribal efforts to nurture the responsibility that they do feel for their children's well-being. Nonetheless, since the 1970's there has been a rapidly increasing

trend for tribal governments to seek out solutions to child abuse and neglect that embrace their culture and recognize their sovereign rights to be involved in the protection of their children. New approaches are being developed and community support is increasing.

Our testimony will discuss: how we view the implementation of the Indian Child Protection and Family Violence Prevention Act through examination of the effects of child abuse and neglect in Indian Country, issues related to reporting and investigation, and the need for prevention and treatment programming. We will also offer comments on the S. 1899, the Indian Child Protection and Family Violence Prevention Act Amendments of 2005, including recommendations under each of the areas identified above. Our conversations with committee staff have been encouraging and helpful in understanding the intent of different sections and have also allowed us to share our expertise. Our view is that S.1899 is a positive step towards improving the existing law and child protection on tribal lands. While we believe there are areas that will need further attention, the Chairman and Vice-Chairman have put forth a proposal that will support some much-needed changes.

Summary of Recommendations

- Provide authorization for funding to allow all tribal governments resources to operate a basic level of child protection services. Currently, tribes, unlike states, do not have access to federal funding source(s) that can support comprehensive child protection services. The funding should allow tribes to enhance existing child protection services or work to develop capacity to offer services in the future (planning, infrastructure development).

- Provide authorization for funding to build on and refine tribal child abuse and neglect data demonstration work that has already taken place over the last three years with an emphasis on collection of data, reporting and interface with the National Child Abuse and Neglect Data System (NCANDS).

- Provide for the establishment of a national technical assistance and training center designed to support tribal programs and tribal child protection workers in all areas of child protection services, including comprehensive training for tribes on the background check requirements.

- Provide authorization for funding for tribes to support the costs of conducting background checks.

- Clarify that criminal background checks performed under this law will be sufficient to meet criminal background check requirements under other federal laws related to the use of tribal foster care and adoptive homes.

- Provide support for an examination of state and federal rules of evidence that make it easier to use child victim testimony in federal court. The study should make recommendations on how to bring current rules into best practice to assist in successful prosecution of child sexual abuse involving Indian children.

Effects of Child Abuse and Neglect in Indian Country

Historical Factors – Historical policies and practices of the United States government and its agents have played a great role in how protections for Indian children operate today. Prior to contact with European immigrants, tribal practices and beliefs in child rearing allowed for a natural system of child protection to flourish. At the heart of this natural system were beliefs, traditions, and customs involving extended family with clearly delineated roles and responsibilities. Child rearing responsibilities were often divided up between extended family and community members. (Cross, Earle, and Simmons, 2000). In this way, the rearing and protection of children in the tribe were the responsibility of all people in the community.

Traditional Indian spiritual beliefs reinforced that all things had a spiritual nature that demanded respect, including children. Not only were children respected, but they were also taught to respect others. Extraordinary patience and tolerance marked the methods that were used to teach Indian children self-discipline. Management of behavior or obedience was obtained from the fear and respect of something greater than the punishment of a parent. Putting together respect for children and the teaching of self-discipline, along with child rearing responsibilities being spread out over many people in the extended family and community resulted in child abuse and neglect rarely being a problem in traditional tribal settings (Cross, Earle, and Simmons, 2000).

As European migration increased, to what is now the United States and Canada, traditional tribal practices in child rearing became more susceptible to the influences of the dominant society. Efforts to "civilize" the native population were almost always focused on Indian children. The "Civilization Fund Act" was one of the first federal laws targeting Indian children. Passed by Congress in 1819, it authorized grants to private agencies, primarily churches, to establish programs to "civilize the Indian." Later the federal government and private agencies established large militaristic boarding schools or institutions where Indian children were placed involuntarily and forced to abandon their traditional beliefs, customs, and traditions. Severe punishment in the forms of

beatings, being chained and shackled, bound hand and foot, and locked in closets was not uncommon (Johansen, 2000).

> *Now, by educating the children of these tribes in the English language, these differences would have disappeared, and civilization would have followed at once. Nothing then would have been left but the antipathy of race, and that too is always softened in the beams of a higher civilization* (Prucha, 1190, p. 107).

By 1900, after decades of forced removal of Indian children from their families and communities and the stripping of their culture from them, the natural child protection system that once flourished in every tribal community began to break down. During the next half-century, tribal traditional practices continued to be discouraged and banned by federal and private agents, while oppression, alcoholism, disease, and poverty were allowed to take hold in most tribal communities. As these destructive elements took hold in Indian Country, child abuse and neglect became more prevalent too.

While government policies towards Indian people shifted in the 1950's towards a more humanitarian view, this effort was not without serious deficiencies and consequences. Humanitarian efforts still viewed assimilation as the best answer to the "Indian problem" and viewed tribes as incapable of caring for their children. New projects were begun, such as the Indian Adoption Project, which used public and private agencies to remove and place hundreds of Indian children in non-Indian homes far from their families and communities (Mannes, 1995). Few efforts were made or resources committed to help tribal governments develop services on tribal lands that would strengthen Indian families.

As efforts to out place Indian children continued into the 1960's and 1970's, the Association on Indian Affairs conducted a study in the 1970's that found between 25 percent and 35 percent of all Indian children had been separated from their families (George, 1997). This study also found that in 16 states in 1969, 85 percent of the Indian children were placed in non-Indian homes (Unger, 1977). The long-term effects of these massive out placements of Indian children were only just beginning to be understood in the 1970's, which included effects not only on individuals, but also the well-being of entire tribal communities. Not until 1978, after the passage of the Indian Child Welfare Act (P.L. 95-608), did the federal government acknowledge the critical role that tribal governments play in protecting their children and maintaining their families.

The long-term effects from these removals and efforts to strip Indian children of their culture produced generations of Indian adults who have weak ties to their families and

tribal communities, unresolved grief and trauma, and few supports or resources to help them. Other factors that are attributed to the rise of child abuse and neglect in Indian Country include the inappropriate interpretations of Indian parenting practices; exposure to known risk factors for abuse and neglect, such as alcoholism, poverty, and unemployment; federal policies that have supported family and community disintegration, such as termination and relocation; and learned responses that result from oppression and exploitation.

Incidences and Data Reporting Issues – The National Indian Child Welfare Association is deeply committed to the improvement of data involving Indian children. We have witnessed first hand in a variety of contexts what happens when data is either not available, of limited scope and reliability, or is misinterpreted. Historical use and misuse of tribal data has created an environment where many tribal governments are very skeptical about data or research concerning their citizens and cautious about providing data themselves. Nonetheless, as tribal governments are able to develop their own data systems and protocols for the handling of that data they understand the value it plays in telling their story and creating opportunities to address their most critical social problems.

In 2002 the National Indian Child Welfare Association was awarded a three-year grant from the Administration for Children, Youth and Families to study and develop a tribally-based child abuse and neglect data system with five tribes and pilot this new system. This new system was developed with idea in mind of creating a system that could be replicated with other tribes and promote tribal reporting of their child abuse and neglect data into a national, centralized system, similar to the National Child Abuse and Neglect Data System. During this time 142 data elements relating to child abuse and neglect were created with tribal input and then incorporated into a computer based collection system for use by each of the pilot tribes. The research that went into this project allowed NICWA and tribes to closely examine the NCANDS system that states report into and take advantage of this learning to improve on the system they have developed and create something that worked more effectively for tribal service delivery systems, where the NCANDS system had limitations. The next phase of this project, which is currently not funded, is to refine the collection and reporting functions of the system, explore a client management information system that this system could interface with and be used by tribes, identify a national centralized site for this tribal data and explore the interface with the NCANDS system. This project has enormous potential for developing the first national collection of tribal data that could be available to inform tribes and policymakers and attract tribal interest in a way that other data systems can't based upon this being a tribally designed and piloted system.

Reporting of data regarding child abuse and neglect of Indian children is under-reported, with only 61 percent of the incidents ever being reported to a national database. Data regarding incidents of child abuse and neglect for Indian children come from a variety of sources, depending upon who is involved in the investigation process, which can be just one agency or several. Agencies that could potentially be involved in investigations and reporting include state or county agencies, tribal agencies, Bureau of Indian Affairs (BIA), Indian Health Service (IHS), or Federal Bureau of Investigation (FBI). The types of data being reported also vary based upon definitions being used, specific role of the agency reporting, capacity of the agency to collect and report data, and legal or program requirements that the reporting agency is subject to. There can also be overlaps in the data reported by different agencies, especially when more than one agency is involved. This makes developing reliable and accurate estimates of abuse and neglect experienced by Indian children very difficult to make. A thorough analysis of the accuracy of existing figures of child abuse and neglect and a picture of what the data tells us is presented in two research reports, 1) Child Abuse and Neglect Among American Indian/Alaska Native Children: An Analysis of Existing Data (Earle, 2001) and 2) Child Abuse and Neglect: An Examination of the American Indian Data (Earle, 2000).

State or county child protection agencies are involved in approximately 61 percent of child abuse and neglect investigations that originate on tribal lands in the United States (Earle, 2000). Each of the states and presumably counties, report their child abuse and neglect data to a national database called the National Child Abuse and Neglect Data System (NCANDS). However, the data states report regarding incidence of child abuse and neglect involving Indian children is not separated out by whether the child lives on or off tribal lands. This limits the ability to clearly understand how NCANDS data for Indian children on tribal lands compares to that for Indian children not living on tribal lands. Nonetheless, data reported by the NCANDS database reveals that Indian children represent 1.6 percent of substantiated child abuse and neglect cases nationwide, yet are only 1 percent of the child population (Child Welfare League of America, 1999). The victimization rate for Indian children is 20.1 victims per 1,000 children of the same race, compared to a rate of 10.6 for White children (DHHS, 2001).

Tribes are involved in 65 percent of child abuse and neglect reports on tribal lands, 23 percent as the sole investigators. The Bureau of Indian Affairs is involved in approximately 19 percent of these investigations (Earle, 2000). In fiscal year 1997, the Bureau of Indian Affairs reported 9,040 incidents of child abuse and 19,200 incidents of child neglect for Indian children living on tribal lands (U.S. Department of Interior, 1998). The Bureau of Indian Affairs also reported 4,567 incidents of child sexual abuse for tribes in 1997. Data from the Bureau of Indian Affairs that was compared to NCANDS data also shows that in two states with significant Indian populations (Arizona and Utah), the child

abuse and/or neglect rates per 1,000 children was significantly higher for Indian children than for all children in that state (Earle, 2001).

Data collected by the tribes and the Bureau of Indian Affairs regarding child abuse and neglect reports is not submitted to NCANDS or any other centralized database. Tribal data is either kept within the tribe or is submitted to the Bureau of Indian Affairs, which does not make data available to the public, tribes, or Congress, as far as we can tell. NICWA also has questions about how the data is compiled and analyzed once it reaches the Bureau of Indian Affairs regional and central offices. What data can be located from the Bureau of Indian Affairs only identifies the total number of child abuse and neglect cases without any further analysis on rates or trends. We also understand that not all tribes are reporting their data, and definitions used by tribes may vary. Other impediments to the Bureau of Indian Affairs data collection and reporting also include limitations of the agencies legal mandate to collect data and tribal attitudes and experiences regarding sharing data (Earle, 2001). The ability to effectively address these barriers is impacted by the very limited capacity of the Bureau of Indian Affairs and tribes to support effective data collection. Funding and technical assistance resources in particular are in short supply.

The Department of Justice collects child abuse and neglect data on Indian children based on several sources including NCANDS and the National Crime Victimization Survey. The department of Justice data revealed that Indian children were found to have shown an 18 percent increase in incidents of maltreatment from 1992 to 1995, while all other races except Asians (6 percent) reported a decrease. They also reported that data from 1995 indicates about 1 substantiated report of child victim of abuse or neglect for every 30 Indian children age 14 or younger. The national average during that period was about one report for every 58 children of any race (Department of Justice, 1999).

Analysis of other existing studies also shows that Indian children experience abuse and neglect in high numbers (Earle, 2001). The findings from this analysis also show increases in overall cases of child abuse and/or neglect involving Indian children, lower rates of sexual and physical abuse when compared to White children, and high rates of child neglect among Indian children.

Indicators of Risk and Linkages to Other Social Problems – Risk factors for child abuse and neglect have been widely researched, although not as much with Indian populations. Nonetheless, current studies have demonstrated correlations between increased risk for child abuse and neglect when families live in poverty, households have only one parent, alcohol and substance abuse are present, families are geographically isolated, and domestic violence occurs. These risk factors are present to a large degree in most tribal

communities. Earle (2001) found in her examination of existing data that there was more violence among Indian families, more abuse related to alcohol, and higher rates of public assistance in Indian families compared to White families. We also know from the U.S. Census that 34.2 percent of Indian households in the 25 largest Indian tribes are headed by a single parent, and 27.2 percent of Indian families in these communities are living at or below the poverty level (U.S. Bureau of the Census, 1995).

Reports of neglect are the largest category of abuse that Indian children are exposed to. In a study by Nelson et al. (1994) the findings confirmed that substance abuse and poverty were the two key contributing factors to child neglect in a sample of 77 Indian families. However, family functioning, parenting skills, and educational level were not correlated with neglect, while trouble with the law, having more children, and multiple problems were found to contribute to neglect. These findings seem to suggest that the families in the study knew how to care for their children, but being overwhelmed with multiple problems, particularly substance abuse, were at the greatest risk for neglecting their children. The effects of child neglect in Indian Country can also be seen in statistics related to accidental deaths of children. Indian children die almost three times more often of accidents than other children, and the leading cause of death for Indian children under the age of 14 is accidents (Indian Health Service, 1990).

Research studies have demonstrated a linkage between children who have been abused or neglected and risk for other social problems, in particular mental illness, poor school performance, juvenile delinquency, violence, sexual and relationship dysfunction, and alcohol and substance abuse (National Research Council, 1993). It is also known that children who are abused or neglected are at a higher risk for abusing or neglecting their own children, otherwise referred to as intergenerational abuse. For tribal communities and funders, the cost of addressing child abuse and neglect is more than the immediate services to children and families. It is also the long-term consequences of abuse and neglect that are not immediately known, but will be abundantly clear later as children grow into adolescence and adulthood. This can be viewed as the "do we pay now or pay later" question, which is being asked by communities and governments everywhere.

Obviously, child abuse and neglect has some very serious consequences for individuals, but also for communities too. Steven Cornell in his discussion of "nation building," as an approach to successful economic development for Indian tribes, describes a community where both businesses and humans can flourish (Cornell and Kalt, 1998). Cornell argues that success in economic development is more than just jobs, but also includes social impacts and making a community a place where investors will want to do business. Chronic social problems that hold back the community and go unaddressed will ultimately interfere with efforts to create deeply rooted economic development. Tribal

resources that could be used for economic and infrastructure development will be drained off trying to "manage" chronic and persistent social problems. Child abuse and neglect, because of its correlation to so many other social issues, is a key social problem that needs to be addressed effectively in order for the tribal community to attain prosperity.

Reporting of Child Abuse and Neglect in Indian Country

Issues in Reporting – Effective reporting of child abuse and neglect is the first step in helping address existing incidents and preventing further abuse or neglect. Unfortunately, it is also an area that is not well understood by most people, including professionals, and is fraught with misinformation and challenges.

Prior to the passage of the Indian Child Protection and Family Violence Prevention Act, other than a handful of tribes that had protocols, there were no consistent standards for how suspected incidents of child abuse and neglect should be reported. Many tribes depended upon the Bureau of Indian Affairs or state or county agencies to provide direction, which resulted in a variety of standards and practices, most of which did not fully involve tribal governments. For a tribal community member or professional it was difficult to know who should report, who should be notified, and if an agency would respond to the report. Tribes, while having the sovereign authority and responsibility to protect their children, were left out of the picture in most places leaving the methods and protocol development to others. This led to the view in many tribal communities that reporting of child abuse and neglect was not a community responsibility and confusion about what an individual's responsibility was, further weakening traditional beliefs and practices that supported extended family and community involvement in protecting children. The agencies in charge of taking reports did little to encourage tribal involvement or pursue systems that reflected community values and practices. The overall result were systems of reporting that were neither clear nor readily supported in Indian Country.

Today, almost 13 years after the passage of the Indian Child Protection and Family Violence Prevention Act, reporting has improved. Requirements to conduct background checks for BIA, IHS, tribal workers, and prospective tribal foster and adoptive parents has increased awareness of individuals to report suspected child abuse and neglect. The availability of more Indian specific information, tribal protocols, and services related to child abuse prevention has also made a difference in Indian people's awareness of child abuse and neglect in general and the need to report. However, barriers still remain to developing effective reporting systems in Indian Country and the community support they need to succeed.

One barrier that is present may be related to individual interpretations or lack of understanding of the law. For example, if a teacher observes what he/she believes might be abuse, do they report it directly to a local law enforcement or child protection agency or do they report to their school principle first? NICWA's understanding is that in many instances the person making the observation may want to report to their supervisor first, creating an increased risk for the information to be filtered or the report being submitted late or not being submitted at all.

Another barrier may be related to the dynamics of living in a small tribal community where many people know each other well. While the well-being of children is very important to all tribal communities, situations where an individual tribal member might suspect child abuse, but may not be sure, causes a dilemma for that individual when they know the child's family well or the child is the relative of a respected leader in the community. This is especially true when individuals do not understand the reporting system or do not trust the agency involved to respond appropriately. Confidentiality for the reporter is also an important consideration, even when the agencies involved have strong measures in place to safeguard the reporter's identity.

A third possible set of barriers includes resistance to reporting based upon an unclear understanding of what child abuse and neglect is. No one wants to make a report that turns out to be false and creates problems for a family or an individual, but any number of people in a community can be exposed to evidence of child abuse and neglect and mandated to report. This includes primarily professionals, but may also include non-professionals. While most professionals that work with children get extensive training in their area of expertise, not enough get good training in how to recognize or respond to suspected incidents of child abuse or neglect. If your next-door neighbor is not working with children chances are he/she has had little or no exposure to helpful information in this regard. Mainstream media, a primary source of information for many people, has not helped much either. Coverage of child abuse and neglect seems primarily geared towards horror stories of child protection agencies that did not respond well or people that were wrongly accused and how their lives were ruined.

Tribal and state relationships are important to effective reporting. Many tribes still depend upon a local state or county agency for child protection services and if that relationship is not productive, reporting can be impeded. In this case, reporting problems may stem from conflict not even related to child protection, which has spilled over into other areas. Sometimes state agencies may not be prepared to address reporting issues on tribal lands for a variety of reasons, including questions about who has jurisdiction and resources available to respond effectively. Tribal members may not

want to report to a state or county agency if they perceive that the agency is biased towards Indian people or the response will be heavy handed.

What can be done to improve reporting? Common to all of these barriers are themes regarding a lack of understanding, mistrust, and sense of ownership and responsibility for what happens to children. Lack of understanding often results from information not being available, accurate, or presented appropriately. For many years Indian people have not been in control of the information that was being broadcast in their communities, including information related to child abuse and neglect. A reporting system that works is dependent upon people in the community understanding the effects of child abuse and neglect, what can be done about it, and why reporting is important to the solution. This information must be relevant to the tribal community and dissemination should occur through tribally sanctioned pathways. Tribal community leadership should be in control of these processes to effect the change necessary to improve reporting.

Mistrust often develops when relationships with child protection agencies are characterized by conflict and misunderstanding. Child protection agencies are often viewed with skepticism, but even more so when the community has been left out of key decision making processes. State and county agencies, because of the long history of removing Indian children with bias and preferring non-Indian homes to tribal homes, have a very difficult task to operate effectively in Indian Country, one that at the very least requires significant tribal involvement to succeed.

A preferred situation is to have tribes operating their own child protection services, which is happening with more frequency in all parts of the country. As resources become available, more and more tribes have made a conscience effort to operate their own child protection services. The result is often a reporting system that tribal members feel more comfortable with and respond to. Community ownership of the problem of child abuse is much easier to promote and so is implementing workable solutions. When this is not possible, state, county, and other agencies involved in reporting and investigation need to be held more accountable for developing and implementing practices and policies that are responsive to the needs of Indian children and their communities. This can be accomplished through tougher requirements for joint planning between these entities, resources to support collaboration, and evaluation of those efforts.

Investigation

Who are the Key Players – Unlike most child abuse and neglect investigations involving non-Indian children, knowing who is involved and what their role is can be complicated in an investigation involving an Indian child. An investigation on tribal lands may involve tribal, state, and federal authorities from law enforcement and child protection. The roles may not be clear and it is not uncommon for an investigation to get sidetracked because of this. For example, in a Public Law 280 state, the state has concurrent jurisdiction with the tribe for the investigation of child abuse and neglect, unless the tribe decides to retrocede and assume exclusive jurisdiction on tribal lands. Under concurrent jurisdiction, the state and tribe shall share authority and responsibility for the investigation of child abuse and neglect. However, Public Law 280 does not spell out how that jurisdiction or responsibility shall be shared. In some cases, the state may perform almost all of the investigative functions using only state agents, in other situations the tribe may participate as an equal partner providing child protection and law enforcement agents for the investigation. In order to keep investigations running smoothly, tribes and states must define their authority and the roles. This is most successfully done through intergovernmental agreement, but in the absence of an agreement problems can arise very quickly and often do.

In a non-Public Law 280 state, where tribes have exclusive jurisdiction on tribal lands, it is still not uncommon to see a variety of governmental agencies involved in investigations. If the child abuse being investigated is determined to be sexual abuse this falls under the Major Crimes Act (18 USC §1153), which makes the crime a federal offense and prosecutable under federal law. In many cases this pulls in the FBI in an investigative role and the U.S. Attorney Generals office if prosecution of the offender is sought. The tribe may have their own child protection investigative team or one that includes the Bureau of Indian Affairs representatives from law enforcement and/or social services. It is also possible that state child protection officials may be involved in a non-Public Law 280 state depending upon the role that has been established for them with the tribe. Agreements or Memorandum of Understanding that clarify authority and responsibilities are important here too, but are not always present.

The role of tribal courts is also important here and the ability to honor tribal law and court orders must be recognized if investigations and court proceedings are going to serve the best interests of Indian children. In Public Law 280 states a tribe may retrocede and assume exclusive jurisdiction under federal law. Usually, this means that the tribe will also have an operational tribal court that addresses child abuse and neglect complaints. Unfortunately, sometimes states do not recognize tribal jurisdiction in this situation or enforce tribal court orders, even though federal law requires them to. This

situation leads to confusion, duplicative efforts, and a weakening of tribal authority to effectively address child abuse and neglect.

Barriers to Investigation – Coordination and resources are the primary barriers that tribes face in pursuing effective investigations. As described above, investigations in Indian Country can involve a variety of agencies, some of which are from different governmental entities (tribal, state, or federal). Each has a different experience, role, and authority. If efforts are not carefully coordinated, the opportunity for things to go wrong can happen very quickly with children becoming victims once again.

Resources are the most prominent item missing from this equation. Many tribes are ready to take a more active role in the investigation of child abuse and neglect and have the critical knowledge and experience needed to do it well. This includes not only the doing part of investigations, but also the development of capacity through tribal code development, cross-agency protocols, and agreements. However, federal funding for tribal child protection services is very limited and what funding is available comes primarily from the Bureau of Indian Affairs and is available in very small amounts. These BIA funds are also expected to support a variety of other child welfare services too. Tribal access to other sources of federal funding that could support child protection services is also in short supply. Of the four leading sources of federal child welfare funding that can be used for these purposes (Child Abuse and Treatment Act, Title XX, Title IV-B Subparts 1 and 2) tribes are not eligible to receive funding from Title XX the largest of these and a number of the Child Abuse Prevention and Treatment Act grant programs and only receive very small grants from the remaining two, typically less than $20,000 in most cases.

While tribal children are the focus of these investigations, tribes sometimes have the least amount of control over how investigations occur. This is especially true in Public Law 280 states. When other governmental entities are in the lead on the development of protocols and techniques, methods for investigation are at a higher risk for not being responsive to the needs of the children, families, and the tribal community. Tribal governments have unique knowledge and qualifications needed in doing effective investigations, however in many cases they are not fully consulted. Child protection or multi-disciplinary teams that are not under the authority of the tribe or whose membership is biased towards other governmental agencies is an example of this problem.

Varying definitions of child abuse and neglect can also be a problem. Federal law requires that states establish definitions for a variety of different types of abuse and neglect without specifying exactly what these should contain. The Indian Child

Protection and Family Violence Prevention Act also provides definitions for those involved in investigating child abuse and neglect in Indian Country, and tribes may also have developed their own as defined in their codes. When a state agency is involved in investigating child abuse and neglect of an Indian child on tribal lands, they are most likely going to be operating from definitions they use even if the tribe and federal law have different definitions. Inappropriate judgments of what is child abuse can easily occur when state or county officials do not understand tribal child rearing or family practices. Although many of these definitions will have similar elements it can create unnecessary confusion, which can lead to differing standards being applied on Indian lands, some of which may not be valid.

In several states, and to some extent in federal rules, rules of evidence have been changed to make it easier to use the testimony of child victims in prosecution of their perpetrators. Because prosecutions of perpetrators who sexually abuse Indian children on tribal lands may occur in federal court, it would be beneficial to examine the federal rules of evidence carefully and see if changes are needed to improve the chances of successful prosecution. New practices and policies in this area may be needed to prevent further abuse of Indian children.

Training and technical assistance for tribal child protection personnel is another potential barrier. The proper investigation of child abuse and neglect is very sensitive and requires critical skills in interviewing, observation/interpretation, and evidence collection. These issues are only magnified in Indian Country where years of inappropriate investigation by non-Indian public and private agencies have created a strong skepticism of child protection services in general. For example, law enforcement personnel are often chosen as the first responders to complaints of child abuse and neglect; there primary training is in law enforcement techniques, which may not include how to carefully interview an Indian child that has been the victim of child abuse. Inappropriate techniques can lead to further trauma for the child and their family and possibly taint the evidence needed to prosecute offenders. Tribes also need help in developing or enhancing their capacity to investigate, including protocol and cross-agency agreement development.

What is Working in Investigations – Numerous tribes, in both Public Law 280 and non-Public Law 280 states have developed agreements to cross-deputize with local county law enforcement and clarify roles through agreements or Memorandum of Understanding with tribal, Bureau of Indian Affairs, and state agencies. These collaboration efforts pay big dividends for Indian children and the tribes, as professionals involved in child protection find new and innovative ways to address problems, receive support from

other professionals, conduct and receive joint training, and participate in larger community efforts to prevent child abuse and neglect.

When tribes have been in leadership positions with respect to investigations, whether they perform all the functions or not, better methods for investigation have been developed and utilized. Other benefits from tribes being in leadership positions include: greater community acceptance of investigative services; clearer expectations and definitions of what constitutes child abuse and neglect; and use of natural helping systems and other cultural practices that are more effective in protecting Indian children.

The development of culturally relevant trainings and technical assistance has helped many tribes initiate improvements in investigative services. NICWA has been instrumental in developing curriculum and training on child protection services that is tailored to the needs of tribal agencies. Our partnership with four of the ten National Resource Centers in Child Welfare has enabled us to provide technical assistance to tribes on topics such as child protection team development, interviewing skills, child abuse and neglect assessment, intergovernmental agreement, and investigation protocol development. However, even NICWA's partnership these resource centers are many times not able to respond to tribal requests for assistance and depend heavily on the National Indian Child Welfare Association to not only perform much of the work, but also subsidize a portion of it.

Strong tribal court systems have also had an important impact. Where they have been supported, tribal courts have been effective in prosecuting and deterring child abuse in tribal communities. Some courts have adopted more traditional methods of addressing child abuse that utilize elders and leaders from the community to influence positive changes in abusive behavior that are difficult to get in state courts. Tribal courts also support investigation by providing some oversight into the process and failures that may occur.

Prevention

Prevention Approaches in Indian Country - Prevention of child abuse and neglect in Indian Country is one of the least supported child welfare activities, but has one of the highest potential benefits for Indian children, families, and tribal communities. Indian communities have characteristics that help protect children from abuse or neglect. Historically, tribes have had customs and traditions for regulating civil matter such as child custody. Tribal elders acted as judges; traditional chiefs governed as the protectors of child well-being. Clans, bands, societies, and kinship systems functioned as social

service providers. The teachings of the past and natural prevention support systems continue to facilitate prevention today. When new families are intact, new parents can receive a lot of support. In tribal communities almost everyone knows everyone else. These networks of people can often help identify and support child abuse victims. When communities are intact and aware, neighbors, friends, and family can provide checks and balances against unacceptable behavior.

The key to prevention is making sure that services are community-based, culturally appropriate, and adequately funded. Promoting awareness of child abuse and neglect is the starting place and then facilitating ownership of the problem by the community follows. Everyone in the community that wants to support prevention efforts should have an opportunity to do so. Community involvement can take many forms; from participating in larger community prevention planning to helping out with child care for members of your own family that are experiencing stressful events. In Indian Country the primary approaches to prevention include, public awareness, parent support, child resistance education (safe touch and stranger danger, etc.), intervention to reduce problem behavior, social risk reduction (restoring cultural norms, substance abuse prevention, wellness projects, etc.), and promoting cultural strengths (Cross and Oligaard, 1999).

Funding of Prevention Efforts - Funding for child abuse and neglect prevention in Indian Country is very limited. Most funding for child welfare services comes from federal sources, such as the Bureau of Indian Affairs or Department of Health and Human Services. Because tribal funding in child welfare overall is very limited, available funding is often used to support non-prevention services, such as foster care or child welfare case management. What little prevention funding is available, such as Title IV-B, Subpart 2 Promoting Safe and Stable Families, only goes to approximately 90 tribes in the United States and is allocated in amounts that are very small. State governments, while not having access to adequate prevention funding either, still receive funding from sources that tribal programs are not eligible for, such as the Title XX Social Services Block Grant and the Child Abuse Prevention and Treatment Act.

Related to funding is the need for technical assistance and training resources for tribal communities and programs that want to engage in prevention efforts. While numerous tribes have developed effective prevention strategies, this information is not widely available to other tribes who may want to learn from and replicate. Historically, technical assistance that has been available was created with mainstream communities in mind and had limited application to diverse tribal communities. The National Resource Centers in Child Welfare have tried to meet some of the need, but are not well equipped to provide ongoing technical assistance in Indian Country. The Indian Child Protection

and Family Violence Prevention Act authorizes the establishment of Indian Child Resource and Family Services Centers and Indian Child Protection and Family Violence Prevention Program, which include technical assistance and prevention activities respectively, but neither program has received appropriations by Congress.

One of the key funding sources for state prevention efforts are the Children's Trust Funds, which are set up in states to raise funding for child abuse and neglect prevention efforts. All states have established trust funds, which raise public and private prevention funding through a variety of methods including partnerships with private foundations, private donors, and state tax return donations (check offs) to name a few. These trust funds together raise $100 million dollars annually through their fund raising efforts and leverage even more. They also have been effective at keeping prevention in the eye of the communities, policymakers, and service providers. They are a strong voice for prevention efforts, and millions of families have reaped the benefits of their work. Unfortunately, no such effort is working on behalf of Indian children, families, and communities. NICWA believes that a national Indian Children's Trust Fund could be developed, that would provide functions similar to what a state Children's Trust Fund does.

Character and Criminal Background Checks - Central to prevention efforts under the Indian Child Protection and Family Violence Prevention Act is the requirement to conduct character investigations and criminal background checks with the Bureau of Indian Affairs, Indian Health Services, and tribal employees or individuals who are being considered for employment with these entities. Character investigations are generally rigorous investigations into the suitability of a person's character to perform duties assigned in a job. In this case, the suitability pertains to working with or having control over Indian children. This can include interviews with the subject of the investigation, as well as interviews with people who have knowledge of the character of the person being investigated. Criminal background checks generally use fingerprints and the name of the individual to investigate the criminal record of a person regarding arrests, warrants that were issued, or convictions related to crimes that have been determined unsuitable to the duties of the job. Both the BIA and IHS have regulations regarding the implementation of this requirement.

The implementation of these character and background checks, however, is less certain in Indian Country. In an article published in American Indian Report (Hinkle, 2003), the author interviews several people involved in or with knowledge of the implementation of these checks. Available information from 1998 points to serious problems in completing these checks, primarily with the Bureau of Indian Affairs education employees. The article does not provide any information on how the checks are being

implemented elsewhere, such as Indian Health Services or in tribal settings. However, our experience is that many tribes remain unaware of the law's specific requirements for character and criminal background checks or the knowledge to conduct them effectively and appropriately. In some instances, we have had tribes tell us about the considerable expense of doing a character check, which requires special expertise and considerable time. Tribes that have tried to contract for character checks found out quickly that one check can cost as much as $1,500 or more and take months to complete.

Criminal checks, which can be done through the Bureau of Indian Affairs in most cases for a small fee and take much less time to complete, have not been well publicized to tribes. Some tribes are not aware that the requirements also apply to checks on prospective tribal foster and adoptive homes. There are also technical issues involved in providing readable fingerprints for a criminal background check that have caused delays in some cases. Contractors and volunteers have also been viewed as exempt in many cases from the character and background checks even if they are in contact with Indian children. Overall, it appears that much more information and training is needed to achieve consistent implementation of the checks. Resources also seem to be an issue for tribes and possibly the Bureau of Indian Affairs and Indian Health Service in facilitating and completing these checks. Without funding to support this requirement many tribes may not be able to meet the expectations of the law.

After the passage of the Adoption and Safe Families Act in 1997, states were required by federal law to conduct criminal background checks on prospective foster and adoptive homes that were under state custody. Because state and county agencies want to use tribally licensed foster and adoptive homes for placements of Indian children, tribal agencies would get requests for tribally licensed homes to undergo state criminal background checks. The state background check would be in addition to tribal background checks performed under the Indian Child Protection and Family Violence Prevention Act. Tribes that assert that their foster care and adoptive homes have already been screened face the risk of a state agency not understanding how the two background check standards interface and rejecting the tribally licensed home, which is in opposition to other federal law that says that tribally licensed homes should be viewed as equivalent to state licensed homes. The inadvertent conflict in federal policy has states unnecessarily cautious about using tribally licensed homes and has created an undue burden for Indian families and tribes who want to provide a good home to an Indian child in need. It is our view that Congress never intended tribal foster and adoptive homes to be subjected to two different criminal background check requirements simultaneously, especially since the requirements under both laws are similar and tribes were already doing criminal background checks under the Indian Child Protection and Family Violence Prevention Act.

Treatment Services for Victims

Treatment programs and services for child abuse victims are in very short supply. Evidence for this conclusion can be found in the statistic that only 17 child trained therapist or mental health counselors were working in the Indian Health Services' service areas for a population of almost 400,000 children living on tribal lands (U.S. Congress, 1986). Indian Health Services is the primary provider of mental health services in Indian Country. While this data is over 15 years old, recent budget requests and justification notes (less than 50 percent of all health needs being met) from the Indian Health Service have implied that this situation has not changed much, if at all. In addition, the Surgeon General in a report on mental health wrote that the need for mental health services is still great; availability of services is severely limited and a higher number of Indian people do not have health insurance than the average for Whites (U.S. Department of Health and Human Services, 2001). Where mental health and treatment programs do exist at the tribal level, they often are overwhelmed with trying to meet crisis proportion needs for both adults and children. This can often result in treatment services being slow in coming and not being designed for the specific needs of child abuse victims.

In the President's New Freedom Commission on Mental Health report the commission set out goals for transforming the mental health system and ensuring proper treatment for all those who need it. Three of the goals were 1) making the mental health system consumer and family driven, 2) eliminating disparities in mental health services, and 3) ensuring that early health screening, assessment and referral become common practice. These goals also describe the goals that many tribal child health advocates and leaders espouse, but also realize that tribal children have some of the greatest challenges here of any children. With children's mental health services in such short supply in tribal communities, tribes are rarely able to provide the kind of early intervention strategy that the commission is recommending that could reduce disparities and promote more family and community driven services.

Traditional Healing Based Services - Issues related to utilization and effectiveness of services by Indian families is a critical factor in the ability of Indian children receiving treatment and becoming well again. It is well-known that many tribal communities and families rely on natural helping systems or traditional healers in their pursuit of healing, which have been reported to be some of the most effective treatment. Treatment services supported by the Indian Health Services, the primary provider of mental health services on tribal lands, uses a primarily western model of providing mental health services. Consequently, besides services availability being limited in many communities, services may not be culturally matched to the tribal community and their values, beliefs,

customs, and traditions. This has a tendency to limit the effectiveness of treatment for Indian children and families, and provides a disincentive for families to seek mental health services from providers that only offer services in a mainstream model.

What has begun to surface is more advocacy for the establishment of treatment services that incorporate traditional healing. In 1999 the Substance Abuse and Mental Health Services Administration and the Indian Health Services entered into a partnership to promote the development of more culturally appropriate children's mental health services in Indian Country designed around the System of Care principles that encourage community-based and family involved service delivery. These agencies have funded over 15 tribes in their efforts to plan for children's mental health services and the majority of these tribal grantees have gone on to implement their service designs by leveraging federal, state, county, tribal, and private funding. The services that they have designed and are now offering in several communities have had widespread community support and have reached children and families in ways that were not evident with other mental health treatment.

Training and Technical Assistance - Training and technical assistance is also important to ensuring that tribal programs have access to information and skills development in treatment. NICWA has provided technical assistance to the Circles of Care grantee communities since the inception of the program in 1999. Assistance offered has helped tribes assess their community planning efforts, develop new culturally appropriate methods for designing and offering services, and provided support to parent groups who want to be more involved in services for their children, to name a few. At the University of Oklahoma, Delores Subia BigFoot, PhD has developed a training program, Making Medicine, for tribal mental health providers that trains them in culturally appropriate treatment approaches to working with Indian children who have been victims of child abuse, primarily sexual abuse. This is the only tribal specific children's mental health training program in the country to our understanding.

Comments and Recommendations Regarding the Indian Child Protection and Family Violence Prevention Act Amendments of 2005 (S. 1899)

As we stated earlier in the testimony, NICWA is supportive of the direction that S. 1899 is taking in addressing child protection issues in Indian Country. While the realities that challenge efforts to improve protections for Indian children are daunting, S. 1899 provides some remedies for a number of these problems. In this portion of our testimony we are offering specific comments and recommendations on sections of S. 1899.

Section 4 Reporting Procedures – We applaud the added emphasis that is being placed on the collection and reporting of data regarding child abuse and neglect of Indian children. The provisions in S. 1899 recognize the variety of federal and tribal agencies that may have a role in collecting and reporting this information, the importance of this information being shared among key stakeholders, and of the value it plays in defining the scope of this problem. We would recommend that you broaden your approach to data collection and consider that in order to truly improve data collection and reporting in this area, tribal capacity will need to be improved as well. By improving tribal capacity you will be reducing some of the most serious barriers to development of reliable data, which are duplication amongst too many agencies and collection of comprehensive data that can identify important trends and characteristics that existing systems can not. In consideration of this request, we would note that state governments have literally received 100's of millions of dollars in federal support to develop and operate their child welfare and mental health data collection systems and we think it is time for the federal government to invest in tribal capacity to perform this vital government function.

Section 5 Removal of Barriers to Reducing Child Abuse – We commend you for establishing a study to look at the core issues that hinder the reduction of child abuse in Indian Country. Under contract with the Bureau of Indian Affairs in February of 2005 we submitted a study on the status of child welfare and child abuse and neglect in Indian Country that came from a request from Congress in an appropriations bill. Our report identified many of the barriers that tribes face in addressing child abuse and neglect, but the study you are suggesting may provide a more focused examination of this issue and recommended solutions. We believe our study could serve as a useful compliment and resource to the study being proposed.

Section 6 Confidentiality – We support your changes to improve the flow of information that could assist in the investigation and treatment of child abuse. With each agency having different mandates and protocols the potential for information barriers to appear has been significant.

Section 8 Character Investigations – Under this section of the bill we would recommend that an amendment occur that would make it clear that volunteers and contractors working for the tribe that are working with or have control over children are in the list of people that need to undergo background checks. While many tribes have applied these background checks to these people the law is not clear on this point and some confusion has occurred.

We also would request an amendment to clarify that criminal background checks performed by tribes under this law would be sufficient to meet similar criminal

background check requirements under other federal laws as they apply to prospective foster care and adoptive homes. Tribes have been given an unfair burden to have to meet more two or more background check standards simultaneously when licensing their tribal foster care and adoptive homes, even though the different standards are very similar. This lack of clarity needs to be addressed and the undue burden taken off of tribes and Indian families trying to provide loving homes to Indian children.

Section 9 Indian Child Sexual Abuse and Treatment Grant Program – We have been supportive of this program since the inception of the law in 1990, but have been disappointed that neither the BIA or IHS have requested funding in their budget requests and the Congress has not sought to add funding to their appropriations bills. For several years after the enactment of the law NICWA provided testimony to the House and Senate Interior Appropriations Subcommittees that requested appropriations for this program, but was never provided. We share the Chairman's frustration in this situation and request the committee's help to ensure that the appropriate Senators and Congressman understand how important this program is to Indian children.

Section 10 Indian Child Resource and Family Service Centers – We believe that these resource and service centers could play a vital role in assisting tribes and others to reducing child abuse and neglect in Indian Country, however, they have also not received appropriations since enactment. We would reiterate our request for the committee to assist tribes in communicating the importance of these centers to the appropriate Senators and Congressman.

We note that the current law requires that the Secretary of Interior in consultation with the Service and Attorney General establish these regional centers and that the Secretary will be instrumental in appointing members to the advisory board for each of these centers. In the spirit of community ownership and previous experience in working with child protection teams that have been controlled by outside groups for tribes, we are requesting that the committee support an amendment that would give the tribal governments in that area full control in making appointments to this advisory board. This will ensure that tribal priorities are adequately addressed and that tribes will bear the responsibility for the oversight of these centers, which are designed to serve them.

Section 11 Indian Child Protection and Family Violence Prevention Program – We support the establishment of this grant program that could help address much needed prevention efforts. We have advocated in the past for the development of a national Indian Trust Fund that could increase private/public fundraising and awareness for tribal child abuse prevention and think that this might be an appropriate legislative vehicle for this initiative. This grant program has also not seen funds appropriated for it and we

would ask for the committees support in helping tribes secure funding through the appropriation process.

Section 12 Examinations of Children – We applaud the committee's decision to encourage the use of telemedicine to benefit child victims of abuse and neglect. A number of tribes have been successful at developing this resource in their communities and have reported great satisfaction in being able to access professional services that they otherwise would not be able to.

Section 13 Conforming Amendments – We support the broadening of the class of mandated reporters.

Should the Committee want to consider other provisions, we would direct you to our recommendations and invite you to discuss these with us further.

Recommendations

- Provide authorization for funding to allow all tribal governments resources to operate a basic level of child protection services. Currently, tribes, unlike states, do not have access to federal funding source(s) that can support comprehensive child protection services. The funding should allow tribes to enhance existing child protection services or work to develop capacity to offer services in the future (planning, infrastructure development).

- Provide authorization for funding to build on and refine tribal child abuse and neglect data demonstration work that has already taken place over the last three years with an emphasis on collection of data, reporting and interface with the National Child Abuse and Neglect Data System (NCANDS).

- Provide for the establishment of a national technical assistance and training center designed to support tribal programs and tribal child protection workers in all areas of child protection services, including comprehensive training for tribes on the background check requirements.

- Provide authorization for funding for tribes to support the costs of conducting background checks.

- Clarify that criminal background checks performed under this law will be sufficient to meet criminal background check requirements under other federal laws related to the use of tribal foster care and adoptive homes.

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PREPARED STATEMENT OF ROBERT MCSWAIN, DEPUTY DIRECTOR OF THE INDIAN HEALTH SERVICE [IHS]

Mr. Chairman and members of the committee:

Good morning, I am Robert McSwain, Deputy Director of IHS. Today, I am accompanied by Dr. Jon Perez, director, Division of Behavioral Health, IHS. We are pleased to have this opportunity to testify on behalf of Secretary Leavitt on S. 1899, the "Indian Child Protection and Family Violence Prevention Act Amendments of 2005".

The IHS has the responsibility for the delivery of health services to more than 1.8 million federally recognized American Indians and Alaska Natives through a system of IHS, tribal, and urban [I/T/U] operated facilities and programs based on treaties, judicial determinations, and Acts of Congress. The mission of the agency is to raise the physical, mental, social, and spiritual health of American Indians/Alaska Natives to the highest level, in partnership with the population we serve. The agency goal is to assure that comprehensive, culturally acceptable personal and public health services are available and accessible to the service population. Our foundation is to promote healthy American Indian/Alaska Native people, communities, and cultures and to honor and protect the inherent sovereign rights of tribes.

Secretary Leavitt has also been proactive in raising the awareness of tribal issues within the Department by contributing to our capacity to speak with one voice, as One Department, on behalf of tribes. As such, he recognizes the authority provided in the Native American Programs Act of 1974 and utilizes the Intra-departmental Council for Native American Affairs to consider cross cutting issues and seeks opportunities for collaboration and coordination among Department programs serving Native Americans. The council serves as an advisory body to the Secretary and has responsibility to assure that Native American policy is implemented across all divisions in the department including human services programs. As vice chair of the secretary's council, the IHS Director facilitates advocacy within the department, promotes consultation, reports directly to the Secretary, collaborates directly with the assistant secretary for Health, advises the heads of all the department's divisions and coordinates activities of the Department on Native American Health and Human Services Issues.

Our Indian families are strong, but many are besieged by the numbing effects of poverty, lack of economic resources, and limited opportunity. The Indian Child Abuse and Family Violence Prevention Act [title, IV of Public Law 101–630] was enacted in 1990 and the IHS has since endeavored to meet the spirit and intent of that act. In 1996 the IHS instituted the Domestic Violence and Child Abuse Prevention Initiative to address more directly the concerns regarding violence against women and child abuse and neglect in American Indian/Alaska Native communities. The initiative's purpose is to improve the IHS, tribal, and urban Indian health care response to domestic violence by providing education, training, and support to health care providers. The overarching goal is to improve health care providers' capability to provide early identification and culturally appropriate responses to victims of familial violence, particularly women and children, in American Indian/Alaska Native communities.

In support of the initiative, the IHS works independently as well as collaboratively with other Federal agencies concerned with domestic violence issues to:

1. Provide programs and products.
2. Provide training and training materials.
3. Identify other resources and potential funding streams for American Indian/Alaska Native programs.
4. Seek to identify sources for funding and services for IHS and American Indian/Alaska Native tribal community clinics and organizations that provide services to domestic violence victims and their children.
5. Facilitate the development of protocols on domestic violence that are being implemented in IHS clinics and hospitals to ensure that victims of domestic violence receive appropriate treatment and referrals.
6. Insure the quality and character of the IHS staff providing services to our American Indian/Alaska Native families and children.

Some of the actions taken to achieve these goals include:

The IHS and the Bureau of Indian Affairs [BIA] published the *IHS/BIA Child Protection Handbook* in 2005. It contains a wealth of information for everything from forming child protection teams to offering model tribal legislative language for child protection codes on reservation. In addition, it is a comprehensive guide to child protection for community programs. The Handbook is also connected to the University of Oklahoma's Center on Child Abuse and Neglect website (www.ccan.ouhsc.edu), so up-to-date information is shared in realtime with pro-

grams nationally. We are submitting a copy of the handbook on CD as part of this testimony for the committee's information and use. We believe it is a landmark publication and a means to support communities with limited resources for such efforts.

As part of this overall approach, a train-the-trainer child protection model project is funded through an Interagency Agreement with the Department's Administration for Children and Families, Office of Child Abuse and Neglect. As part of this program, the University of Oklahoma's Making Medicine project was funded for several years and trained over 150 professionals working with Native children on reservations around the country. Currently the project is being implemented by Support Services International, Inc. The project is a 2-week, culturally sensitive training program on the treatment of child physical and sexual abuse with consultation and follow-up. Once the participant completes the 2-week training, the Project Making Medicine staff schedules an on-site visit at the participant's local community and assists the participant in conducting a community wide training in the prevention and awareness of child abuse and neglect.

With funds provided by IHS, the University of Oklahoma Health Sciences Center has completed a child protection manual available to the IHS, BIA, and tribal and urban Indian health staff involved with providing child abuse and neglect and domestic violence services in American Indian/Alaska Native communities. The Handbook is formatted to serve dual purposes as a training manual (goals, objectives, agenda, small group activities, et cetera.) and/or as a technical manual (statistics, definitions, indicators, legal and ethical responsibilities, group dynamics, confidentiality, referrals, treatment issues, standard forms/templates, resources, et cetera.)

The IHS has developed the Mental Health and Community Safety Initiative [MHCSI] for American Indian/Alaska Native Children, Youth, and Families. This grant program currently receives annual funding of $400,000. For fiscal years 2003–2006, the project has operated under cooperative agreements to develop innovative strategies that focus on the mental health, behavioral, substance abuse, and community safety needs of American Indian/Alaska Native young people and their families who are involved in or at risk for involvement with the juvenile justice system. Beginning in fiscal year 2007 the projects will be implemented as grants. This effort was first initiated through the White House Domestic Policy Council to provide federally recognized tribes and eligible tribal organizations with assistance to plan, design, and assess the feasibility of implementing a culturally appropriate system of care for American Indians/Alaska Natives. The MHCSI Planning Phase [years 1–3] cooperative agreements will be completed at the end of fiscal year 2005 with an Implementation Phase beginning in fiscal year 2007 which will provide program services planned in the first phase. An important focus will be to integrate traditional healing methods indigenous to the communities with conventional treatment methodologies. One of the primary foci of the program is child abuse and neglect to identify and develop systems of care for victim of child abuse and neglect who are involved and/or at risk of being involved with the juvenile justice system. These cooperative agreements are established under the authority of 25 USC 1621h(m). Plans are to continue funding of only one cycle for each of the fiscal years.

Section 408 of Public Law 101–630 requires the IHS and the BIA to compile a list of all authorized positions within the IHS where the duties and responsibilities involve regular contact with, or control over, Indian children; to conduct an investigation of the character of each individual who is employed, or is being considered for employment in a position having regular contact with, or control over, Indian children and to prescribe by regulations the minimum standards of character that an individual must meet to be appointed to positions having regular contact with, or control over, Indian children. The law also requires that the IHS and BIA regulations prescribing the minimum standards of character ensure that none of the individuals appointed to positions which involve regular contact with, or control over, Indian children have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any two or more misdemeanor offenses under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

Section 408 (c) requires that tribes or tribal organizations who receive funds under the Indian Self-Determination and Education Assistance Act, Public Law 93–638, employ individuals in positions involving regular contact with or control over Indian children only if the individuals meet standards of character no less stringent than those prescribed under the IHS regulations.

The IHS published an Interim Final Rule establishing minimum standards of character and the regulations became effective November 22, 2002. The final regulations incorporate technical amendments enacted by Congress on December 27, 2000, pursuant to section 814, the Native American Laws Technical Corrections Act of

2000. The final regulations established that the minimum standards of character have been met only after individuals, in positions involving regular contact with or control over Indian children, have been the subject of a satisfactory background investigation and it has been determined that these individuals have not been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any two or more misdemeanor offenses under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

The results of the efforts highlighted above, as well as the increased IHS and tribal emphasis on daily clinical identification of and care for victims of abuse have served to stabilize, not reduce this problem. Data indicate an average of approximately 4,500 clinical contacts a year related to child abuse, neglect, and the psychological after effects of such victimization. The number of contacts has remained at approximately the same level for several years. It is high, it is unacceptable, it happens for many reasons, but it does not happen in isolation from the economic and social problems plaguing Indian Country. It will take resources, not only for IHS, but for a broad range of Federal and tribal support to improve not just clinical services for abuse victims, but to positively affect the underlying economic and social conditions from which so much of the violence in Indian Country springs. IHS's fiscal year 2007 budget request includes a total of $212 million for behavioral health. (mental health, alcohol and substance abuse), an increase of 5 percent over fiscal year 2006.

The IHS plans to continue its present projects and initiative efforts to address domestic violence and child abuse and neglect. It will also seek to expand services within American Indian/Alaska Native communities by consulting with IHS health care facilities, tribes, and urban Indian clinics as well as through collaboration with other Federal agencies because the goal of reducing and ultimately preventing violence among our families and against our children will require all our efforts. I am confident in IHS's commitment to that goal and its ability to effectively and innovatively use the resources it is given to maximum positive effect. There is a long road ahead of us, but we are prepared to continue our efforts to address these important issues.

Mr. Chairman, that concludes my prepared remarks and I would be pleased to answer any questions you or other members of the committee may have.

PREPARED STATEMENT OF WILLIAM P. RAGSDALE, DIRECTOR, BIA, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman, Mr. Vice Chairman and members of the committee. My name is Patrick Ragsdale and I am the director of the BIA at the Department of the Interior. I am pleased to be here today to provide the department's testimony on S. 1899, a bill to amend the Indian Child Protection and Family Violence Prevention Act to identify and remove barriers to reducing child abuse, to provide for examinations of certain children and for other purposes.

The department appreciates the committee's efforts to prevent violence to children and families in Indian country. As Chairman McCain stated when introducing the bill, the benefits of the existing act have not been fully realized. We do not have a firm grip on the extent of violence to families and children in Indian country and that information is crucial for any planning effort to reduce such violence. Therefore, the data collection provisions proposed in section 4 of the bill are critical.

The department supports the bill's efforts to identify and remove impediments to reducing child abuse. The majority of governmental efforts regarding child abuse have focused on treatment or law enforcement options after the abuse has occurred. While these are important aspects of a comprehensive child protection program, of course, it is equally essential that we develop ways to assist tribes in their ability to prevent the abuse before it occurs. Therefore, the department supports the study to identify impediments to reducing child abuse, but believes the study should not only include descriptions of reporting, prosecuting, and treating child abuse, as proposed in the bill, but should include an assessment of impediments to preventing child abuse as well. We believe that there may be other provisions that could be added to the bill that would bolster our efforts to develop culturally appropriate prevention techniques, and we would be happy to discuss these ideas with the committee.

With regard to the implementation of the law, we agree there may be circumstances in which a pardon, set aside, or reversal should be considered, but we recommend the definition of "conviction" at section 3202(5) require a judicial funding regarding the guilt of the individual to avoid inclusion of expungements, par-

dons, reversals, and set asides for "employment purposes" or that are limited and intended only to "restore certain civil rights". Limiting the exclusion to pardons, set asides, or reversals based on innocence gives clarity to the application of the minimum standards of character at section 3207 and is consistent with Merit Systems Protection Board decisions regarding suitability for Federal service and eligibility for access to classified information. See also *Delong* v. *Department of Health and Human Services,* 264 F.3d 1334 (Fed. Cir. 2001), *cert* denied, 536 U.S. 958 (2002) and *Bear Robe* v. *Parker,* 270 F.3d 1192 (8th Cir. 2001).

Under the Indian Law Enforcement Reform Act the BIA is responsible for, or for assisting in the provision of, providing law enforcement services within Indian country.

Our Office of Law Enforcement Services meets that function by enforcing Federal criminal laws. In our efforts to protect children we have become all too aware of a hole in the law that should be addressed. Under the Major Crimes Act 18 U.S.C. 1153, child neglect within Indian country is not a Federal felony. For example, if an intoxicated driver runs over a toddler, and the child dies, Federal felony manslaughter, may be charged. If the child survives but is disabled for life, no Federal charges can be filed. The department supports fixing the omission by adding the words "felony child neglect" to the list of Federal offenses.

The BIA, other Federal agencies, and Indian tribal governments are ready to work together to develop and implement a comprehensive child protection program that addresses abuse prevention, law enforcement, and treatment efforts in those unfortunate cases where abuse does occur.

This concludes my prepared statement. I want to thank you for introducing this legislation and for your support for the protection of Indian children. I will be happy to answer any questions you may have.

Statement of Dr. Paul D. Steele
Director, Center for Justice Studies, Morehead State University, Morehead, KY
Before the Senate Indian Affairs Committee
On S. 1899,
The Indian Child Protection and Family Violence Prevention Act
Amendments of 2005

March 15, 2006

Good morning, Chairman McCain, Vice Chairman Dorgan. My name is Paul Steele, and I am currently the Director of the Center for Justice Studies at Morehead State University in Morehead, Kentucky. Prior to assuming that position in January, I was Associate Professor of Sociology, and Senior Research Associate of the Institute for Social Research at the University of New Mexico, and Director of the New Mexico Criminal Justice Statistical Analysis Center, the Statistical Analysis Center for the State. I was recently involved in research supported by the United States Department of Justice, Bureau of Justice Statistics, and the Justice Research and Statistics Association, which allowed me to study sexual child abuse on Indian lands in New Mexico. My testimony today will draw from that research, an updated version of which I would like to submit for the record. I want to direct my comments today primarily toward three issues addressed by S. 1899: Reporting Procedures, Removal of Impediments to Reducing Child Abuse, and the Use of Telemedicine.

S. 1899 - Section 4 – REPORTING PROCEDURES.

Section 404 (c) (2) (B) FINAL WRITTEN REPORT. This section is amended to require local child protection services and law enforcement to send final conviction information to the FBI. In reality, child protection service agencies, as defined in Section 403, are civil justice agencies that are unlikely to know the outcome of criminal court proceedings. I suggest that law enforcement agencies, particularly federal and tribal courts, be solely responsible for submitting final conviction information to the FBI.

Section 404 (c) (2) (C) MAINTENANCE OF FINAL REPORTS. The proposed language in this amendment to the law suggests that final reports of investigations conducted by law enforcement or local child protective services agencies be maintained by the FBI. A potential area of concern is having the FBI maintain reports in cases where the suspect has been exonerated, for an indefinite period of time. This may not be consistent with state laws concerning the management of reports of child protective service investigations that do not validate the claim of abuse (see New York, for example).

Section 404 (c) (2) (E) COLLECTION OF DATA. This section is also amended to denote specific information concerning child abuse in Indian country that the Secretary of the Interior should collect and report to Congress, in consultation with the Secretary of Health and Human Services, the Attorney General, and any appropriate Indian Tribe. As a general impression, the collection and reporting of this information could be very useful in realizing the intention of

informing Congress about the impact of child abuse on Indian lands. However, to improve the report and address questions from members of Congress and others, I recommend that the information collected and reported be more detailed in nature.

Concerning the number of child abuse allegations and investigations, I note that both law enforcement and child protective service agencies are legally required to conduct investigations. In spite of mandatory cross-reporting laws, the number of criminal and civil allegations and investigations are likely to differ between law enforcement and child protective services agencies. Reasons for this include differences in case and geographic jurisdiction, definitions of allegations and investigations, and imperfect cross-reporting. Typically child protective service agencies are more likely to receive reports from the community concerning suspected child abuse, and engage in more investigations. Since the intent of the legislation is to promote Indian child protection, I recommend that allegations reported to child protective services and the number of civil investigations that these agencies conduct be reported as well. In a general sense, since so few child abuse criminal cases from Indian country result in convictions and thus restriction of offenders, the bulk of protection against re-victimization enjoyed by children and other family members is the result of civil interventions (i.e., restraining orders, victim compensation, supervised visitation, treatment interventions) ordered in Tribal, civil, or family courts. I recommend that the report to Congress also present findings of child protective service activities, as well as criminal justice system interventions. Beyond the number of allegations to and investigations conducted by child protective service agencies, information concerning the number of cases validated through investigation, the results of court and administrative supervision, length of time under civil supervision, and civil court outcomes should be collected and reported.

Further, not all allegations result in criminal investigations, depending on the definition of the latter. For example, a preliminary discussion with the child or a caregiver might result in a law enforcement professional choosing not to initiate a formal investigation of the allegation. In a similar manner, not all investigations are cleared with an arrest, either because there is no suspect identified or no arrest is made, or because the case is cleared exceptionally (i.e., death of the suspect, transfer of the case to another jurisdiction). Also, not all criminal prosecutions result in either convictions or acquittals; cases can be no-billed in Grand Jury, or dismissed by the court. I suggest that the list of criminal justice system activities include the number of: reports to law enforcement agencies; criminal investigations; joint/transfer of investigations between law enforcement agencies; referrals for prosecution; cases accepted for prosecution; indictments; trials; convictions by trial and plea bargain; and sentences (incarceration and community supervision).

This portion of the bill also mandates (in IV) reporting of "...the number of child victims that report abuse in Indian country...." Depending on one's interpretation of this phrase, this might be difficult to accomplish. One interpretation is that the number of reports to mandated agencies be documented and shared with Congress. This is most likely the intent of the bill, and easiest to accomplish in some scientifically valid manner. Still, it present a logisitical challenge at this time, given the limited quality of agency data. A second interpretation is that a child is not documented as a victim until child protective services and/or a law enforcement agency has

validated this status as victim. Only a minority of such reports result in civil or criminal validation. A final interpretation is an attempt to estimate the number of children that are victimized and determine the rates at which they, or some other person, report their victimization to mandated agencies. This figure is extremely difficult to estimate, without independent data collection mechanisms. What little we know about reporting rates have come from reputational (second party) studies, and adult survivor of victimization reports. Off of tribal lands, similar yet more sophisticated research has been done. We have elaborate methods developed for the national Crime Victim Survey, which could be applied to all types of victimization on Tribal Lands, and could be modified to consider collection of child abuse information. However, this would be a significant and costly proposition. At the present time, including these types of estimates as a part of the Congressional report might not be practical (or valid).
However, given the increasing prevalence of offenders returning to the community, the Congressional report might also include information concerning sex offender management and sex offender registry information on Indian Lands.

Finally, while not necessarily within the purview of the annual Congressional Report, I recommend that collateral information also be collected concerning child abuse cases from mandated agencies. This information is critically important for strategic planning purposes, policy and program assessment, and budget planning. While knowing the number of cases at various stages of the justice system is a reasonable indicator of agency activities. However, case information must be coupled with information describing the victim, offender family, abuse episode, and community to produce a reasonable understanding of the dynamics of abuse on a particular reservation, and how those vary between Tribes and locations. It would be useful if the proposed legislation would facilitate such research through appropriations for research, developing mechanisms to ensure the validity and comprehensiveness of reporting, and facilitating access to critical data elements for legitimate research purposes, within appropriate confidentiality parameters.

S. 1899 - Section 5 – REMOVAL OF IMPEDIMENTS TO REDUCING CHILD ABUSE.

The report to Congress concerning the Removal of Impediments to Reducing Child Abuse has great potential for improving conditions in Indian country and protecting Indian children. I would encourage a broad consideration of impediments, including but not restricted to risk factors associated with abuse such as poverty, substance abuse and (physical and mental) health problems, and social isolation. Impediments related to reporting child abuse should consider cultural and social network concerns, while impediments and advances in investigation and prosecution of suspected cases should consider these factors as well as structural influences on interagency communication and cooperation, professional skills, and the adequacy of timely and valid information for tactical and strategic responses to child abuse. Finally, impediments and advances in treatment should consider the relevance of culture-based definitions and modalities of healing for the child, the family, and the community.

As noted in the REPORT (draft, page 5) to accompany S. 1899, the "...Committee is also aware that Indian children continue to be traumatized by multiple interviews and physical examinations due to the lack of a coordinated approach by federal, state and tribal investigators, prosecutors

and mental health professionals." My research lends support to the Committee's perspective that Indian children are unnecessarily subjected to re-interviewing, as the authority for investigating allegations of child abuse are transferred from one law enforcement agency to another. Specifically, federal agencies such as the FBI are unwilling to accept the results of child interviews conducted under the authority of tribal police. This is the case even when the same forensic interviewers, such as those employed by a Children's Advocacy Center, repeat interviews. We have also experienced uncomfortable situations where interviews conducted by highly skilled Native American forensic interviewers who are employees of tribal child protective service agencies have been re-done by a non-tribal forensic interview specialist at the behest of a federal investigating agency. It seems that each investigative agency requires its own interview of the child, even when they contract the original forensic professional to repeat the interview.

I would note, however, that recent research suggests that system-induced trauma experienced by child victims is more a result of encountering multiple interviewers, not multiple interviews. Some very effective models for eliciting children's disclosures through a series of carefully developed sessions with a forensic interviewer have been developed. For example, the Forensic Evaluation approach developed at the National Children's Advocacy Center is a multiple-interview protocol, with interviews conducted by the same professional interviewer, that has been evaluated as an effective and non-traumatic technique for some suspected child victims.

S. 1899 - Section 12 – USE OF TELEMEDICINE.

This section authorizes the Indian Health Service to enter into contracts of agreements with experienced medical and treatment professionals to use telemedicine in the treatment and diagnosis of Indian children. I agree that this is amendment has great potential for improving the welfare of Indian children. I would bring to the attention of the Committee that there is a dearth of physicians and other health professionals with expertise in the diagnosis of child abuse. Research has shown that only a small proportion of sexual abuse cases are confirmed through medical investigation, since the investigation often occurs some weeks or months after the abusive incident, and incident does not leave permanent indications. Further, while some medical indications, such as spiral fractures, are strong indicators of child physical abuse, only a small portion of physically abused children present these indicators. Very skilled and experienced health professionals often conclude that child abuse might have occurred by linking the physical evidence with the comments of the child, their parents and care givers, and other professionals.

In summary, while there are relatively few pediatric specialists that have forensic expertise in child abuse cases, they should be actively recruited to participate in the assessment of Indian children, using telemedicine technology to link them to practitioners located in medical facilities more accessible to tribal members. As a final thought, attention should be given to the facilities and staff of the medical facilities receiving advice through this technology. Examination rooms should be child-friendly environments, culturally oriented, and well equipped (i.e., with colpascopes as well as the necessary equipment for telemedicine). Staff should be trained to conduct investigations in a manner that is both professionally competent, and sensitive to the

child. As the Committee is aware, and has been the experience with the original law, many concerns about child welfare are not with the law as written, but with its implementation (or lack thereof). While this amendment has the potential to be greatly beneficial, its ultimate impact depends on how it is implemented.

Comment Regarding Safe Placements and Disclosures

In earlier information shared with the Committee, I suggested that the placement of the child at the time of the forensic interview is related to the child's willingness to disclose child sexual abuse. Further examination of my research data suggests a more detailed explanation.

A fundamental influence on the child's willingness to disclose their victimization is their perception of the reactions of others. Through experience, even very young children learn that "telling" can result in harm to themselves, certainly in the form of retaliatory victimization, but also in the very real sense of system-induced trauma, such as removal from their home, school, and friends. The latter can be especially troublesome when law enforcement and child protective services professionals have reassured the child that their lives will get better, not worse, by formally disclosing their victimization. In summary, a child's willingness to disclose is related to their perceptions of the benefit or harm resulting from the disclosure, to themselves and others. It is also related to their perceptions about who they believe they can trust to protect their welfare, as they define it.

Taking all of this into account, it is a testament to skilled forensic interviewers, supportive family members, sensitive agency professionals, and courageous children that any disclosures are made at all. Recognize that the child is expected to describe very personal, traumatic and embarrassing acts — in detail and terms that are meaningful and unambiguous to investigators, prosecutors and others — to a stranger, and in an unfamiliar environment. If the child has already concluded that they are at risk as a result of seeking help to stop the abuse, they are especially not likely to formally disclose in a forensic interviewing environment.

A child's estimate of risk from disclosure includes their perceptions of potential physical and emotional retaliation from the original offender and those who side with the offender. It can also include perceptions of the loss of normal relationships, status and esteem, and their daily routine. It might also include perceptions of harming those who have abused them but for which they still feel a strong attachment.

Counter this estimation with that of the civil justice professional. Child protective services and the courts are more likely to limit their definition of the child's risk as that of further sexual victimization and/or acts of retaliation. They make decisions to place children in foster care and group home arrangements to minimize the likelihood that the offender or others can physically and/or emotionally harm the child. Child protection in this sense is of critical importance to agencies that are legally responsible for the child's physical welfare. However, from the child's perspective, placing them in a foster care or group home living arrangement might be perceived as more harmful or threatening than living in their own home, since they are placed with strangers with whom they have not established a trusting relationship. The child might not

appreciate that home removal is in their best interest to avoid continued victimization; but they are painfully aware that when they sought help from adults about a situation they wanted stopped that they were taken away from home and sent to live with strangers. The rational child in this situation attempts to their estimates of risk and harm to themselves, which considers other elements besides the possibility of revictimization and retaliation. Conversely, the child's estimations do not necessarily consider some of the factors important to professionals, such as improving the likelihood of a criminal conviction. From this perspective, it should not be surprising that children often do not disclose, and the formal disclosure rate of children in my research population who are in the legal custody of child protective services is the lowest of all living arrangement options.

So how shall we proceed? The optimal solution is to allow the child to remain at home. This meets all the needs of the child and professional agencies, if the care giver is loving and is able to protect the child from the offender and those who would intimidate the child not to disclose. The next best option is to place the child with other protective adults with whom the child has a prior loving, trusting relationship. An example would be a grandparent who is willing to protect the child from offending family members and those that intend to manipulate the child's disclosure through threats or inducements. However, these options are not as available as we might need them to be.

Justice professionals should at least be aware that placing a child in less optimal living arrangements will impact disclosures and thus impede their investigation and prosecution. From the standpoint of maximizing the likelihood that a child will disclose valid incidents of sexual abuse in a formal forensic interview, the interview should be conducted as soon as possible, i.e., before the child experiences the system-induced trauma of home removal or the risk of retaliatory acts. A second option is to wait until the child has adjusted to an alternative living arrangement and coped with the loss of friends and family. If the child is placed in foster care, they should be given the opportunity to establish a trusting relationship with their foster parents before expecting them to disclose. Unfortunately, high quality foster care options on Indian Lands are not sufficient to meet the need. Additionally, children already exposed to, or threatened with, system-induced trauma should be given the opportunity to develop trust in the forensic interviewer before formal disclosures are sought. This can be accomplished, if necessary, by using multi-session models such as the Forensic Evaluation format discussed above. It is important for investigative professionals to recognize that system demands for a timely investigation can sometimes result in an untimely interview of the child victim, especially if they have been removed from their home or experienced similar forms of system-induced trauma.

I thank the Committee for the opportunity to present these comments and stand ready to respond to any questions that Committee may have for me.

CHILD SEXUAL ABUSE ON NEW MEXICO TRIBAL LAND 1999 – 2004[1]

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Table of Contents

I. Introduction: Native Americans and Crime 1

II. Literature Review 2
Child Sexual Abuse in the United States 2
Child Sexual Abuse on Tribal Lands 3

III. Data and Methodology 5

IV. Analyses 6
Demographics 6
Relationship to Accused 12
Characteristics of Abuse Episode 13
Disclosure of Abuse 15

V. Conclusion and Discussion 19

Bibliography 22

Appendix One: Map of New Mexico's Tribes 24

I. Introduction: Native Americans and Crime

There are twenty-two distinct pueblos or tribes in the state of New Mexico that, for the most part, are grouped in the North-central and Northwest portions of the state.[3] The tribes have a distinct heritage, and each operates under its own sovereign government. Nonetheless, the tribes share commonalities in terms of history and current social concerns. They are affected by many of the same issues—from poverty and underemployment to domestic violence and alcohol related crime. And though the tribes are sovereign entities, they are intricately linked to the outside world.

Recent national reports have highlighted the crime problem amongst Native American populations (Greenfield and Smith: 1999; Perry 2004). Interestingly, a 2004 report conducted by this office did not find that rates of violent crimes reported by tribal law enforcement agencies to the Bureau of Indian Affairs exceed those of Albuquerque, the state of New Mexico, or the nation (Steele, Damon, and Denman: 2004). While a few of the tribes were found to have high rates across several offending categories, the research indicated that most New Mexico tribes do not report high rates of violent crime on Tribal Lands, either because of fewer criminal events, fewer crimes reported to or detected by tribal law enforcement agencies, or poor agency recording and reporting practices.

Still, the majority of government reports and research studies indicate that Native Americans suffer victimization either on or off tribal lands at higher rates than the general population. The average violent crime rate among Native Americans was estimated at 101 per 1000 persons 12 or older between 1992 and 2001 —a rate almost 2 ½ times the national rate (Perry 2004). According to the Office of Justice Program's 1999 Fiscal Year Program Plan report,[4] rape and sexual assault, aggravated assault, simple assault, and robbery rates translate into 1 violent crime for every 8 Native Americans 12 or older, compared to 1 for every 20 residents 12 or older nationally. Additionally, these violent crimes are correlated with alcohol abuse. Alcohol related offending also constitutes a significant problem for Native Americans (Greenfield and Smith 1999; Perry 2004). Native American youth—while only one percent of the national youth population—are arrested at double (or in some cases triple) the rate of other youth (Bad Wound 2000). Gang activity has increased among Native American youth; in 2000 it was estimated that there were at least 113 gangs on American tribal lands (Bad Wound 2000). Gang problems are rapidly growing (Martinez, 2005), and greater for larger tribes. In an OJJDP study of gang violence in Indian Country conducted in 2000, researchers found that 7% of tribes with populations of less than 2000 had gang problems, while 69% of those with larger populations had gang problems (Major et al. 2000:4).

Where victimization rates are high, women and children often suffer the most. Among low-income Native American women, rates of domestic abuse (physical and sexual) are

[3] See Appendix I for a map of New Mexico's tribal lands.
[4] http://www.ojp.usdoj.gov/99progplan/chap11.htm

higher than among average American women (BMC Medicine News Release May 23, 2004). Estimates are that one in four girls and one in seven boys will suffer sexual abuse on tribal lands (Indian Health Service and Office for Victims of Crimes 2003, "Child Abuse Project"[5]). Though existing data indicate that victimization rates are higher for Native American women and children, much of the available crime data is thought to be unreliable, due to low levels of reporting and a lack of law enforcement manpower available to record and maintain crime reports in tribes across the country.[6] In recent decades, the Justice Department has funded multiple projects aimed at improving crime data collection on tribal lands, but improvement has been sporadic and uneven in nature. However, as reports of the Native American victimization problem were published, the government also increased funding for the treatment and counseling of victims of crime. The Indian Health Service Child Abuse Project provides for telepediatric medical care, affording medical evaluation and quality health care to sexually and physically abused children in rural and isolated areas, although there is no evidence that this practice has become widespread on Indian Lands.

As the state with the fifth largest Native American population, New Mexico has a unique interest in issues impacting Native Americans. Issues impacting the tribal community have a significant effect on the state as a whole. This report explores the problem of reported child sexual abuse among Native Americans in New Mexico. The report draws upon data collected by the All Faiths Safehouse of Albuquerque. The Safehouse maintains a database of all child abuse cases reported to and processed by them.

II. Literature Review

Child Sexual Abuse in the United States

Child abuse is a national problem. In 2002, the National Child Abuse and Neglect Data System reported 1400 child fatalities resulting from abuse or neglect. Though child abuse rates have increased in recent years, experts disagree as to whether this represents a true increase in the incidence of child abuse and neglect, or whether reporting procedures have improved (NCANDS). Though numbers have increased, data most likely continues to suffer from underreporting. Additionally, the National Crime Victimization Survey does not include victims under twelve, thus children and child abuse are not represented.

Children suffer from sexual abuse at high rates. According to the Bureau of Justice Statistics, 33% of all victims of sexual assault were aged 12 to 17, while 34% were under 12 (in a sample of those cases reported to law enforcement from 1991 to 1996) (Snyder 2000:2). The age of victims varies based on the type of offense; juveniles were victims in 84% of forcible fondling cases, 79% of forcible sodomy cases, and 75% of sexual assault with an object cases (Snyder 2000). Approximately half of these victims were under the age of 12 (Snyder 2000). In the case of forcible rape, juveniles were the victims in 46% of cases. In another survey of sexual assault and rape, researchers found

[5] http://www.ihs.gov/nonmedicalprograms/cap/index.asp
[6] http://www.ojp.usdoj.gov/99progplan/chap11.htm

that 90% of victims under 12 knew their offender (Chaiken and Robinson in Greenfield 1997:iii). A self-report survey of rapists and sex offenders serving time in prison found that two-thirds of the offenders admitted to raping victims under 18; 58% of those individuals admitted that their victims were 12 or younger (Chaiken and Robinson in Greenfield 1997:iii). A 1994 BJS study of eleven states and Washington D.C. found that half the victims who reported being raped in 1992 were under 18 years old (Langan and Harlow 1994).[7]

In general, girls are more likely to be sexually victimized than are boys. Females were six times more likely than males to be the victims of sexual assaults (in a sample of those cases reported to law enforcement from 1991 to 1996) (Snyder 2000:4). Seven percent of girls in grades five to eight, and twelve percent in grades nine through twelve report that they've been sexually abused (RAINN Statistics). Though not at such high rates, boys are also victims. Three percent of boys in the fifth to eighth grades and five percent in ninth to tenth report have been sexually abused (RAINN Statistics). The peak year of victimization for girls is 14, while the peak year for boys is 4 (Snyder 2000).

In terms of victim-offender relationship, 27% of all offenders were family members of victims (in a sample of those cases reported to law enforcement from 1991 to 1996) (Snyder 2000:10). As child victims get older, they are increasingly likely to have been assaulted by non-family members. Forty-nine percent of victims under age six, 42% of those aged six to eleven, and 24 % of those twelve to seventeen were assaulted by family members (Snyder 2000:10). Female offenders (4% of cases reported to law enforcement) are most likely to victimize children under 6 (Snyder 2000:8).

Child Sexual Abuse on Tribal Lands

A recent literature review indicated that there have been five self-report studies of sexual abuse and two studies of reported sexual abuse cases among Native Americans (Malley-Morrison and Hines 2004). In general, these studies suggest that the rates of child sexual abuse among Native Americans reflect those of the larger society—between 14 and 18 percent of females and between 2 and 3 percent of males (Malley-Morrison and Hines 2004:83). These studies also indicate that child sexual abuse rates likely differ from tribe to tribe. Some studies indicate that rates may actually be higher among Native Americans. A study of adults from a southwestern tribe found that 49% of the adult women surveyed and 14% of the adult men had experienced child sexual abuse (Robin et al. 1997). This same study revealed that in the majority of cases, the perpetrators were either family members of others known to the victim, and that the majority for both males and females involved penetration (Robin et al. 1997).

Any analysis of child abuse or domestic violence on tribal lands must be conducted with attention to the unique cultural heritage and experience of Native Americans. Though Native American women experience the highest rate of violence (when compared to

[7] June 22, 1994 (202-307-0784)

females of other ethnic groups); it is estimated that 70% of sexual assaults are not reported to law enforcement agencies (Greenfield and Smith, 1999). Tribal law enforcement—like that off tribal lands—is not always well trained to process domestic abuse cases. According an activist with Indigenous Perspectives, native women may be treated as if their claims of abuse are false (Bhungalia 2001).

> In a reservation community, 911 would dispatch police to a scene of domestic violence, but police would call the victim by cell phone and decide himself when or if he should go to the victim's home. Often the women would wait for an hour and other times the abuser would answer when the police called, and would say everything was fine, and there was no need for them to come. Native women...who called for help were often re-victimized by the police (Wilson in Bhungalia 2001).

Not only do Native American victims of abuse learn to distrust local law enforcement. They also have an inherent distrust of "the system." Historically, Native Americans were subject to internment, forced sterilization, separation from their children, and other atrocities. The legacy of these experiences is a mistrust of outside agencies. Consequently, when women and children are not being well-served by local tribal agencies, they may be resistant to seeking help off of the reservation. Additionally, where outside agencies do come across cases of domestic violence, they may ignore these cases due to "alleged confusion between federal and tribal jurisdiction" (Bhungalia 2001). This becomes especially complicated where the perpetrators are non-native and the victims are native (70% of violence against native women is committed by perpetrators of different races) (Bhungalia 2001). Thus, justice may be illusive for these women, as cases often fall through the cracks.

When it comes to child abuse (sexual and physical), cultural differences in parenting may impact the way cases are processed and handled. Because Native Americans have a long history of losing children to the Anglo-American culture, there may be extreme distrust of Child Protective Services and other related agencies (Malley-Morrison and Hines 2004:60). In interactions with native families, child welfare workers may perceive native parents' emotional withdrawal and passivity as neglect. In fact, these behaviors may be rooted in fears of the old historical reality—once a child is taken away, "there is no hope for return" (Malley-Morrison and Hines 2004:60).

Child sexual abuse has long-term negative impacts for victims. Survivors suffer from anxiety, sleep disorders and developmental difficulties, running away and school drop out, and later from higher rates of alcoholism, drug use, depression, suicide attempts, and involvement in abusive intimate relationships (Malley-Morrison and Hines 2004:91). Indeed, the incidence of adult domestic violence is higher among Native Americans than among the general population. In a study of 341 Native American women seeking health care at a Navajo health care facility, 52.5% reported at least one episode of spousal abuse in their lifetimes (Fairchild et al. 1998:1515). Children who witness domestic violence may be more likely to enter into abusive relationships. Children who experience abuse may be more likely to become abusers themselves.

III. Data and Methodology

The New Mexico Criminal Justice Analysis Center[8] obtained a data set detailing reported child sexual abuse cases on Tribal Lands and throughout the State (primarily in Albuquerque and surrounding communities) from 1999 to December 2004. It came to us from the Safehouse, a Children's Advocacy Center located at All Faiths Receiving Home in Albuquerque. Established in 1956, All Faiths is a comprehensive prevention, intervention, and treatment agency serving abused, neglected and traumatized children and their families. The home provides services to 2,700 children and family members each year. The Safehouse operates under the auspices of All Faiths. Trained Safehouse staff members conduct hundreds of forensic interviews with suspected victims of child sexual abuse each year. Safehouse interviews assist formal law enforcement and child protective service agency investigations and interventions.

A multi-disciplinary response to alleged cases of abuse is employed in jurisdictions using the Safehouse's interviewing capacity, to improve case processing and reduce trauma to the victims. Agencies usually become aware of an abuse allegation with a report to Child Protective Services or, less often, to the police by an outside source, such as a family member, teacher or counselor. Occasionally a CPS caseworker or police officer suspects or is made aware of abuse firsthand, and so the agency becomes involved. Once the alleged abuse is brought to the attention of these professionals, an initial preliminary interview with the child is conducted.

Either the detective or social worker completes the preliminary interview, but it is desirable that both are present. The purpose of this interview is to establish that the child is stating that sexual abuse occurred and to assess the child's safety (Albuquerque Police Department, et al., 1993). A second, more extensive, interview is conducted at the Safehouse. Representatives from each agency may attend this interview: Children's Protective Services, Albuquerque Police Department or Bernalillo County Sheriff's Office, and the District Attorney's Office. These professionals sit in a separate room and are able to watch the interview via a television monitor. If there are questions that they want asked, they inform the interviewer who wears an earpiece.

The Safehouse data is quite detailed, providing information on the nature of the offense and the disclosure, offender and victim demographics, and the relationship of the victim to the offender. The data is maintained in a Microsoft Access electronic environment. The research team imported relevant data fields into a Statistical Package for the Social Sciences (SPSS) database to conduct analyses.

The primary purpose of this research is to determine whether there are any differences between reported child sexual abuse cases that originate on tribal lands as compared to

[8] The New Mexico Criminal Justice Analysis Center is the research agency designated by the State of New Mexico and the U.S. Department of Justice, Bureau of Justice Statistics as the Statistical Analysis Center for the State.

non-tribal areas. We conduct primarily bivariate analyses using chi-square statistics and ANOVA to determine statistical significance.

These results should be interpreted with the understanding that this data is representative only of cases that are reported to officials and are referred to the Safehouse for a forensic interview. Thus, the cases here may not be representative of all child sexual abuse cases either on or off the reservation. These cases may be different from all child sexual abuse cases in terms of offense severity or difficulty in ascertaining the facts of the case. Further, it does not represent child sexual abuse on all of the reservations since not all tribal justice agencies use the services of the Safehouse.[9] However, we consider the findings useful in beginning to understand some differences in reported cases of child sexual abuse that may exist between tribal and non-tribal areas.

IV. Analyses

As our primary task was to determine any differences between "tribal" and "non-tribal" cases reported to the Safehouse, the first step was to differentiate between these two categories. We were able to identify tribal cases by the referral agency and the law enforcement agency investigating the case. Of 3412 sexual abuse cases,[10] we found that 402 cases were "tribal," while 3006 were "non-tribal" cases. We were not able to identify tribal or non-tribal affiliation for four cases; thus, those cases were excluded from our analysis. Cases are defined as each child who comes into the Safehouse for an interview. Thus, there may be a single incident represented by multiple cases if multiple victims were identified. Also, a single child could have been interviewed on multiple occasions.

Demographics

We examined several demographic variables for both the victims and the accused perpetrators. These variables include age at the time of the interview, gender and ethnicity and residential status of the victim.[11] Analyses indicate that there are some demographical differences among tribal versus non-tribal cases. The results are presented in detail below.

Victim demographics

[9] Nine of the twenty-two tribes utilized the services of the Safehouse at least once during the period for which we have data.

[10] A total of 4172 cases were in the Safehouse database. 760 were eliminated from analysis because they did not involve allegations of sexual abuse.

[11] The age variable noted above had to be computed; we did not have any official "age at time of incident" data. We did have date of birth information for both the accused and victims as well as the date of the interview. To maintain consistency, we computed an age at time of interview variable for both the victim and offender. Additionally, often children are abused repeatedly, so there is no one age that captures the age at incident. Thus, age at interview is the most standardized age that can be used for these data.

- *Victim gender*

As is the case in most studies of child sexual abuse, this analysis reveals that the majority of victims are female, for both the tribal and non-tribal groups (see Table 1). It is interesting to note that fewer tribal cases involve boys. This relationship is statistically significant (p=.01).

Table 1. Victim gender.

	Tribal Cases		Non-Tribal Cases		Total	
	N	%	N	%	N	%
Gender						
Male	75	18.7	744	24.8	819	24.0
Female	327	81.3	2262	75.2	2589	76.0
N	402	100.0	3006	100.0	3408	100.0

($x2 = 7212$, df = 1, p=.01)

- *Victim age*

We analyzed age in two ways: categorically and average (mean) age. We constructed a categorical age variable for the victims, utilizing the age at interview. Note that there are no cases for victims under two years of age; the Safehouse generally does not handle these cases. Victims this young are unable to participate in the forensic interview process, which is the primary service provided by the Safehouse.[12]

Table 2. Victim age at interview

	Tribal		Non-tribal		Total	
	N	%	N	%	N	%
Age at interview						
Under 6 years old	102	25.4	791	26.3	893	26.2
6 to 11 years old	187	46.5	1375	45.7	1562	45.8
12 to 17 years old	113	28.1	840	27.9	953	28.0
N	402	100.0	3006	100.0	3408	100.0
Mean Age at Interview						
Mean (standard dev.)	9.2 (3.99)		9.0 (3.81)			
N	402		3006			

n/s

[12] This is an important point, when one considers that national data indicates that "children three and younger are the most frequent victims of child fatalities (National Clearinghouse on Child Abuse and Neglect Information 2004:2). Sexual and physical abuse certainly impact these youngest children as well as those over two.

The age of victims is similar for the tribal and non-tribal cases when looking at age both categorically and at average age. According to this data, of the three age groups, children interviewed at the Safehouse are most likely to fall into the 6 to 11 year old category. The mean age of victims is approximately 9 years old for both groups.

- *Victim ethnicity*

Table 3 details the ethnicity of the victim. The vast majority of victims in tribal cases are Native American. Nine children were identified as of other ethnic background, but all were at least of partial Native American ethnicity. With non-tribal cases, the majority of child victims are Hispanic, followed by Caucasian. Very few of the victims in either tribal or non-tribal cases are Black or of some other ethnic background.

Table 3. Ethnicity of Victim.

	Tribal cases		Non-tribal cases		Total	
	N	%	N	%	N	%
Ethnicity						
Native American	393	97.8	178	5.9	571	16.8
Caucasian	3	.7	1194	39.7	1197	35.1
Hispanic	3	.7	1503	50.0	1506	44.2
Black	3	.7	111	3.7	114	3.3
Other	0	.0	20	.7	20	.6
N	402	100.0	3006	100.0	3408	100.0

$X2 = 2144.89$, $df = 4$, $p < .001$

- *Residential Status*

Though the database does not indicate where the child was living at the time of the abuse, it does indicate where the child is staying at the time of interview at the Safehouse. A smaller percentage of victims in the tribal cases are living at home at the time of the interview; a slightly greater percentage of victims in the tribal cases are living with friends or relatives. These differences are statistically significant. Literature indicates that Native people are more likely to live in communal and extended family arrangements, so these findings are not surprising. It is also likely that child protective service professionals on tribal lands rely more on extended kinship placements than their non-tribal counterparts. It is also interesting to note the high proportion of Native American children living outside of the home (such as in foster care, a shelter, correctional facility, etc.), both in aggregate and as compared to non-tribal cases. Anecdotal information suggests that tribes rarely have facilities on the reservation to house child victims. Since many of the cases in the current analysis come from the Navajo reservation, it could be that more out of home placement options are available there than with smaller tribes. It is also possible that Native American children are housed in facilities off the reservation, at least on a temporary basis. These data must be viewed with caution, since the child's residence at the time of the interview might constitute an emergency placement, and not a more permanent one selected by child

protective services or the court. Still, residential status at the time of the forensic interview is pertinent to the discussion of disclosure rates that follows later in this report.

Table 4. Residential Status of Child at Interview.

	Tribal		Non-tribal		Total	
	N	%	N	%	N	%
Residential status						
Living at home	190	61.1	1901	76.5	2091	74.8
Living with friend/relative	50	16.1	176	7.1	226	8.1
Out of home	70	22.5	400	16.1	470	16.8
On street/homeless	1	.3	8	.1	9	.3
N	311	100.0	2485	100.0	2796	100.0

X2= 43.20, df= 3, p < .001

Accused offender's demographics

- *Gender of accused*

As would be expected, the vast majority of accused perpetrators are male. Usually this involves one adult allegedly abusing the child, but occasionally involves two or more assailants. Relatively few tribal cases involved accusations against females, or against multiple offenders of different gender. There were significantly more females accused of sexual assault among non-tribal cases (p<.05).

Table 5. Gender of Accused

	Tribal		Non-tribal		Total	
	N	%	N	%	N	%
All Male	363	97.6	2707	93.5	3070	94.0
All Female	8	2.2	123	4.3	131	4.0
Both Male and Female	1	.3	64	2.2	65	2.0
N	372	100.0	2894	100.0	3266	100.0

X2= 10.45, df = 2, p < .05

- *Age of accused*

The age of the accused was examined both categorically and as an average. The categorical age variable included here was constructed in the original Safehouse data. Adults are defined as individuals over the age of 18 at the time of the incident, teens are those between ages 13 and 18, and children are those below age 13. Table 6 illustrates

the age combinations of offenders in incidents that involve single and multiple suspects. Though limited in terms of detail, this variable has much more complete information than the mean age, which was often missing the offender's date of birth.

The majority of offenders are adults, followed by teenagers and children. Age distributions of single and multiple offender incidents are practically identical for tribal and non-tribal cases. The differences are not statistically significant. The average age of accused offenders among tribal cases is approximately 32 for both tribal and non-tribal cases. Again, this difference is not statistically significant.

Table 6. Accused Age: Categorical Breakdown.

	Tribal Cases		Non-Tribal Cases		Total	
	N	%	N	%	N	%
Age of accused						
Adult only	313	79.8	2301	78.2	2614	78.4
Adult and teen	6	1.5	19	.6	25	.7
Adult and child	0	.0	10	.3	10	.3
Teen only	55	14.0	418	14.2	473	14.2
Teen and child	1	.3	6	.2	7	.2
Child only	17	4.3	188	6.4	205	6.1
N	392	100.0	2942	100.0	3334	100.0
Mean age (standard dev.)	32.3 (14.50)		32.0 (13.95)		32.1 (14.02)	
N	151		1466		1617	

n/s

- *Ethnicity of accused*

As one might expect, the vast majority of the accused in tribal cases are Native American, while the majority of the accused in non-tribal cases are Hispanic (see Table 7). As with the accused age variable, a substantial amount of data was missing. The percentages below reflect ethnicity only for those cases for which this information was available. In 19% of the tribal cases accused ethnicity was missing, while in 25% of non-tribal cases it was missing.

Victim and accused demographic relationship

In this section, we look at the relationship between the victim and accused offender in terms of their race and gender to determine whether offenses tend to be committed against victims of the same race and gender as the accused. In terms of race, we looked specifically at cases involving either Native American victims or accused offender.

Table 7. Ethnicity of Accused.

	Tribal cases		Non-tribal cases		Total	
	N	%	N	%	N	%
Ethnicity						
Native American	291	94.5	132	5.9	423	16.6
Caucasian	5	1.6	830	37.1	835	32.8
Hispanic	7	2.3	1177	52.6	1184	46.5
Other	5	1.6	98	4.4	103	4.0
N	308	100.0	2237	100.0	2545	100.0

$X2 = 1538.92$, $df = 3$, $p < .001$

- *Race dyad in cases involving Native Americans*

When we compared the Native American status of the accused offender and the victim by tribal versus non-tribal status, we found that tribal cases were significantly more likely to be intraracial. That is, child abuse committed by Native Americans off of tribal lands was more likely to include a victim who is not Native American as compared to those offenses committed on tribal lands. This finding is intuitive, as Native Americans living in urban (or other non-tribal areas) might be more likely to encounter non-Native victims.

Table 8. Race Dyad.

	Native American accused					
	Tribal		Non-tribal		Total	
	N	%	N	%	N	%
Native American victim	257	98.5	98	78.4	355	92.0
Non-Native American victim	4	1.5	27	21.6	31	8.0
N	261	100.0	125	100.0	386	100.0

$X2 = 46.08$, $df=1$, $p<.001$

- *Gender dyad*

Table 8 illustrates the gender relationship between accused offender and victim. Most cases involve a male perpetrator and female victim, regardless of tribal affiliation. While there was not a statistically significant difference between tribal and non-tribal cases, when the accused perpetrator is female, non-tribal cases appear to be more likely to include a male victim. However, this apparent relationship should be interpreted with great caution due to the very small number of female perpetrators.

Table 9. Gender Dyad.

	Tribal				Non-Tribal				Total	
	Male accused		Female accused		Male accused		Female accused			
	N	%	N	%	N	%	N	%	N	%
Female victim	216	80.3	12	75.0	1556	76.5	95	56.9	1879	75.6
Male Victim	53	19.7	4	25.0	478	23.5	72	43.1	607	24.4
N	269	100.0	16	100.0	2034	100.0	167	100.0	2486	100.0

n/s

Relationship to Accused

- *Relationship between accused and victim*

The Safehouse data details the relationship of the victim to the accused. The original data are comprehensive narrative fields, which allowed for open-ended data coding. Thus, we discovered many different narrative statements from the child victim and law enforcement personnel, ranging from "crack-dealer" to "classmate" to "Grandpa Joe." Table 10 illustrates the distribution of suspected offenders, relative to the child victim, by tribal or non-tribal status of the case.

Table 10. Relationship of Accused to Victim.

	Tribal		Non-tribal		Total	
	N	%	N	%	N	%
Relationship						
Parent/Step	84	22.2	976	32.0	1060	30.9
Parents's boy/girlfriend	30	7.9	317	10.4	347	10.1
Sibling (including step)	10	2.5	128	4.2	138	4.0
Extended family	164	43.4	594	19.5	758	22.1
Known, unrelated	84	22.2	967	31.7	1051	30.7
Stranger	6	1.6	67	2.2	76	2.2
N	378	100.0	3049	100.0	3427	100.0

X2= 111.79, df=5, p<.001

There is a statistically significant difference in the distribution of the tribal and non-tribal cases. As can be seen in Table 10, non-tribal cases were more likely to include parents or parents' boy/girlfriends than tribal cases. The tribal cases were much more likely to include extended family members (43.4% compared to 19.5%). We might expect this, as research indicates that children residing on tribal lands are more likely to live in extended family arrangements than non-tribal children. Using Census data, Fields (2001) found that 23.8% of Native American children live in extended family households, while 10%

of white (non-Hispanic) and 21.9% of Hispanic youth live in extended family arrangements (Fields 2001:11).

- *Relationship by victim age*

We also compared the distribution of cases by relationship, age of victim and tribal affiliation. The reader may recall that Snyder (2000:10) that reports 49% of victims under age six, 42% of those aged six to eleven, and 24 % of those twelve to seventeen were assaulted by family members. Interestingly, although the percentages show the same pattern (an inverse relationship between victim's age and sexual abuse attributed to family members), the percentages for the Safehouse data are substantially higher—for both the tribal and non-tribal cases. Among cases reported to the Albuquerque Safehouse, family members appear to be more likely perpetrators. One possible explanation for this is that in some jurisdictions extra-familial sexual assaults are not routinely submitted to multi-disciplinary investigation and law enforcement do not rely on specialized forensic interviewers outside of their own department or agency.

As illustrated in Table 11, tribal cases are slightly more likely to include family members in each of the three age groups; data indicated that grandparents, aunts/uncles, and cousins were slightly more likely to be perpetrators amongst tribal cases. Consistent with Snyder (2000)) in both tribal and non-tribal cases, as the child gets older, the perpetrator is increasingly likely to be a non-family member. This is intuitive, as children's extra-familial relationships grow as they age. Amongst the non-tribal cases, these are statistically significant ($X2 = 54.79$, $df=2$, $p <.001$). This indicates that there is some significant relationship between the age of the child and whether the perpetrator is a family or non-family member, but only for non-tribal cases. As noted, this difference also exists in the tribal cases, but it is not statistically significant, suggesting that they are equally likely to be victims of abuse by family members regardless of age.

Table 11. Age of Child By Relationship to Perpetrator: Family or Non-family.

	Tribal				Non-tribal					
	Family		Nonfamily		Family		Nonfamily		Total	
	N	%	N	%	N	%	N	%	N	%
Age of Child										
Under 6 years old	69	82.1	15	17.9	562	77.1	167	22.9	813	100.0
6 to 11 years old	119	76.8	36	23.2	841	63.5	483	36.5	1479	100.0
12- 17 years old	68	72.3	26	27.7	431	60.1	286	39.9	811	100.0
N	256		77		1834		936		3103	

Characteristics of the sexual abuse episode

This section describes characteristics of the abuse episode that are documented in the Safehouse database to determine whether the cases interviewed at the Safehouse differ by tribal status. These characteristics include the number of alleged offenders involved in the abuse episode, the extent of injury experienced by the child, and the duration of abuse for tribal and non-tribal cases.

- *Number of accused offenders*

Table 12 indicates the number of accused offenders associated with the offense in tribal and non-tribal cases. As indicated there, the vast majority of tribal and non-tribal cases involve a single offender. However, tribal cases are somewhat more likely to involve multiple offenders, but this relationship is not statistically significant.

Table 12. Number of Accused Offenders.

	Tribal		Non-Tribal		Total	
	N	%	N	%	N	%
Number of offenders						
1	363	90.3	2792	92.9	3155	92.6
2	27	6.7	189	6.3	216	6.3
3 or more	12	3.0	25	.8	66	1.1
N	402	100.0	3006	100.0	3412	100.0

* less than .1% of cases.
n/s

- *Degree of injury to child*

Table 13 below details any injuries sustained by the child as a result of the abuse. The results were quite similar for both groups. Fortunately, the largest response category for each was "none" (no injuries), followed by the mild injuries. Injuries in the moderate and severe categories were relatively rare in this sample. While it is not statistically significant, it is interesting to note that severe abuse is more likely to be reported among non-tribal cases.

Table 13. Injury to Child.

	Tribal		Non-tribal		Total	
	N	%	N	%	N	%
Injury						
None	84	62.2	794	61.3	878	61.4
Mild	46	34.1	410	31.6	456	31.9

Moderate	3	2.2	35	2.7	38	2.7
Severe	2	1.5	57	4.4	59	4.1
N	135	100.0	1296	100.0	1431	100.0

n/s

- *Duration of abuse*

For both groups, most of the abuse cases occurred over the period of one day (46% for tribal, 51% for non-tribal cases). Interestingly, the next largest response category for both of the groups was six months to five years, followed by two days to six months. Least common were cases lasting longer than five years. The differences described in Table 14 were not statistically significant.

Table 14. Duration of Abuse.

	Tribal		Non-tribal		Total	
	N	%	N	%	N	%
Duration						
One Day	57	46.3	565	50.8	622	50.4
2 days to 6 months	25	20.3	225	20.2	250	20.2
6 months to 5 years	35	28.5	281	25.3	316	25.6
Over five years	6	4.9	41	3.7	47	3.8
N	123	100.0	1112	100.0	1235	100.0

n/s

Child disclosures of abuse

As noted in earlier, children are brought to the Safehouse to be interviewed by a skilled forensic interviewer concerning a report and/or suspicions that they might have been the victim of child sexual abuse. While a disclosure by the child in this interview is not the only information collected by criminal and civil justice administrators to determine if abuse occurred, it is very helpful in the investigation process. The child's report to a forensic specialist under controlled, child-friendly conditions, and observed by investigators and other justice system professionals can lend greater credibility to other evidence collected by investigators. The research literature suggests that characteristics of the child, their relationship to the offender, the abuse episode, the interviewer and interview process, and community context influence the child's willingness to disclose sexual victimization. This section reports on our analysis of differences in disclosure patterns, for variables available in the Safehouse database, between tribal and non-tribal children during forensic interviewing.

- *Disclosure Rates*

Table 15 presents information concerning the rates of disclosure among tribal and non-tribal children. Non-tribal child interviewees are significantly more likely to disclose that

they have been sexually abused to forensic interviewers. There are a number of possible explanations why tribal children are less likely to disclose abuse, some of which are explored later in this section of the report. From a cultural perspective, when one considers historic distrust of government and social service agencies amongst Native Americans, this finding is not too surprising. Forensic interviewing strategies also must be sensitive to cultural differences in the child's attribution and interpretation of behaviors, styles of presentation, and comfort in culturally-specific interview environments. In sum, disclosure is as much an artifact of the forensic interview process as the nature of the abuse episode in question.

Table 15. Whether abuse was disclosed by the child

	Tribal		Non-tribal		Total	
	N	%	N	%	N	%
Disclosure						
Disclosed abuse	238	59.2	1975	65.7	2213	64.9
Did not disclose	164	40.8	1031	34.3	1195	35.1
N	402	100.0	3006	100.0	3408	100.0

X2 = 6.58, df=1, p<.01

- *Disclosure by severity of sexual offense*

As noted in Table 16, children in both groups are more likely to disclosure acts of criminal sexual contact more often than criminal sexual penetration. Differences between the groups are not statistically significant.

Table 16. Disclosure of Criminal Sexual Contact or Criminal Sexual Penetration.

Offense Type	Disclosure	Tribal		Non-tribal		Total	
		N	%	N	%	N	%
Criminal Sexual Contact	Yes	164	67.5	1298	64.7	1462	65.0
	No	79	32.5	708	35.3	787	35.0
Criminal Sexual Penetration	Yes	109	44.9	966	48.2	1075	47.7
	No	134	55.1	1040	51.8	1174	52.3
N							

n/s

- *Disclosure by family status*

Results comparing disclosure rates of tribal and non-tribal children by relationship to the alleged offender are illustrated in Table 17. There is a strong positive relationship between social distance from the offender and disclosure evident in non-tribal cases.

Table 17. Disclosure By Family Relationship of Offender to Child Victim.

Tribal Cases	Immediate family only		Immediate & extended family		Immediate & Non-family		Extended family only		Extended & Non-family		Non-family only	
	N	%	N	%	N	%	N	%	N	%	N	%
Disclosed	47	56.6	5	62.5	1	50.0	104	65.8	5	62.5	73	67.6
Did not disclose	36	43.4	3	37.5	1	50.0	54	34.2	3	37.5	35	32.4
N	83	100.0	8	100.0	2	100.0	158	100.0	8	100.0	108	100.0
Non-Tribal Cases	**Immediate family only**		**Immediate & extended family**		**Immediate & Non-family**		**Extended family only**		**Extended & Non-family**		**Non-family only**	
	N	%	N	%	N	%	N	%	N	%	N	%
Disclosed	577	58.0	16	88.9	26	72.2	402	71.2	13	81.3	935	74.3
Did not disclose	417	42.0	2	11.1	10	27.8	163	28.8	3	18.7	323	25.7
N	994	100.0	18	100.0	36	100.0	565	100.0	16	100.0	1258	100.0

X2 = 77.30, df=6, p<.001

That is, the less intimate the family affiliation, from immediate to extended to non-family members, the greater the likelihood that the non-tribal child will disclose sexual abuse. This relationship is statistically significant (X2 = 33.22, df=2, p<.001). The relationship between disclosure and social distance from the offender is not as nearly pronounced with tribal cases: children from Indian Lands are much less likely to increase rates of disclosure as the offender is less intimately a member of their family.

- *Disclosure by gender of the victim*

We also examined the impacts of gender on type of abuse disclosed within the sample. Results are detailed in Table 18. There is a very marked difference in disclosure patterns by gender. First, females are much more likely to disclose than their male counterparts. Second, and most interestingly, disclosure rates are relatively similar between tribal and non-tribal females, but radically different among male children. While roughly one-half of non-tribal males disclose, only 37.3% of tribal males are willing to disclose sexual abuse in the forensic interview.

Table 18. Disclosure by Child's Gender.

	Tribal				Non-Tribal			
	Female		Male		Female		Male	
	N	%	N	%	N	%	N	%
Disclosed	210	64.2	28	37.3	1600	70.7	375	50.4
Did not disclose	117	35.8	47	62.7	662	29.3	369	49.6
N	327	100.0	75	100.0	2262	100.0	744	100.0

X2 = 102.69, df=1, p<.001

- *Disclosure by age of the victim*

Table 19 examines the relationship between the age of the child victim and their likelihood of disclosure. As noted there, tribal children are less likely to disclose than their non-tribal counterparts in the younger age categories. This difference disappears by the time that the child is a teenager. Disclosure among very young tribal children is remarkably low, resulting in a very strong positive relationship between age and disclosure among tribal children. While a similar pattern exists for non-tribal children, it is not nearly as profound.

Table 19. Disclosure By Child's Age

Tribal Cases	Less than 6 years old		6 to 11 years old		12 to 17 years old	
	N	%	N	%	N	%
Disclosed	32	31.4	115	61.5	91	80.5
Did not disclose	70	68.6	72	38.5	22	19.5
N	102	100.0	187	100.0	113	100.0
Non-Tribal Cases	**Less than 6 years old**		**6 to 11 years old**		**12 to 17 years old**	
	N	%	N	%	N	%
Disclosed	386	48.8	922	67.1	667	79.4
Did not disclose	405	51.2	453	32.9	173	20.6
N	791	100.0	1375	100.0	840	100.0

X2 = 171.40, df=2, p<.001

- *Disclosure by living arrangement at the time of the interview*

The relationship between disclosure and living arrangement of the child at the time that the forensic interview is conducted is illustrated in Table 20. This table shows

Table 20. Disclosure By Child's Living Arrangement

Tribal Cases	At Home		Friend/Relative		Out of Home	
	N	%	N	%	N	%
Disclosed	108	52.9	37	61.7	54	72.0
Did not disclose	96	47.1	23	38.3	21	28.0
N	204	100.0	60	100.0	113	100.0
Non-Tribal Cases	**At Home**		**Friend/Relative**		**Out of Home**	
	N	%	N	%	N	%
Disclosed	1405	66.2	148	72.2	362	64.6
Did not disclose	717	33.8	57	27.8	198	35.4
N	2212	100.0	205	100.0	560	100.0

X2 = 14.41, df=1, p<.001

statistically significant differences between tribal and non-tribal cases. In general, disclosure rates increase in a linear fashion for tribal children as they are removed to a greater distance from their immediate home. This relationship does not appear in non-tribal cases, as the highest disclosure rates are apparent when the child is residing with a friend or a relative. One possible explanation of this finding is that family friends and extended family members are more closely associated with others living in the child's original home on tribal lands than is the case off of tribal lands. Given more communal and clan-based settlement patterns on tribal lands, this seems like a plausible explanation.

V. Conclusion and discussion

The primary purpose of these analyses was to determine whether there are any differences between cases originating from tribal areas versus other areas. The data discussed here are limited to acts of alleged child sexual abuse reported to authorities, and of those, only those referred to the Albuquerque Safehouse. Thus, we cannot speculate on the actual extent of child physical or sexual abuse in New Mexico, and cannot determine whether there are any differences in the amount of abuse that occurs on or off tribal lands. We can, however, discuss the differences in cases reported to the Albuquerque Safehouse.

While cases originating from tribal lands were similar to other cases in many respects, we did find some statistically significant differences. These findings are discussed in more detail below.

The majority of cases that are reported involve female victims and male perpetrators. However, there is a greater proportion of male victims and female perpetrators among non-tribal cases as compared to tribal cases.

As one might expect, the majority of tribal cases involve Native American offenders and victims; relatively few Native Americans appear amongst the non-tribal offenders and victims. When looking only at offenders who are Native American, we found that tribal cases almost exclusively included Native American victims while non-tribal cases involved a greater proportion of non-Native American victims. This finding is perhaps not surprising due to the demographic make-up of tribal versus non-tribal areas.

One interesting discovery was that although most victims were living at home at the time of the interview, cases originating from tribal areas were more likely to include victims who live with friends or relatives as compared to non-tribal cases. These findings speak to the culturally specific and unique living arrangements of Native American youth. The literature supports this conclusion. According to the Native American Cultural Center in Vermillion, South Dakota, the extended family is the basic family unit.[13] This differs from the Anglo definition of the family unit, which typically includes only immediate family. A recent Census Population Report of the living arrangements of American

[13] See http://www.usd.edu/trio/nac.shtml

children revealed that 36% of Native American children lived in traditional nuclear families (two married biological parents; only full-siblings present; no relatives or friends living with the family), compared to 62% of white children, 48% of Hispanic children, and 26% of black children[14] (Fields 2001:4).

The victim-offender relationship is also of interest. Our analyses yielded results consistent with the above discussion. Amongst non-tribal cases, perpetrators were more likely to be the parent of the victim, as well as boy or girlfriend of a biological parent. However, amongst tribal cases, perpetrators were significantly more likely to be extended family members. The more varied family and living arrangements of Native American youth appear to be associated with this relationship—to who it is that victimizes them. Also of significance is how the victim-offender relationship is mediated by age among tribal and non-tribal cases. Age non-tribal children age, they are much more likely to make allegations against a non-family member. This pattern is much less pronounced among tribal children; it seems that they continue to be often victimized by family members regardless of age.

Differences in disclosure patterns were particularly interesting and relevant to the criminal and civil investigation of sexual abuse allegations. We found that non-tribal victims were significantly more likely to disclose sexual abuse than tribal victims. This is not surprising, given the history of distrust between Native Americans and governmental agencies, the foreignness of the interview process and, in many cases, the investigators themselves.

In addition, we found that among non-tribal cases only, disclosure increased as the intimacy of the relationship decreased. This was not true of tribal cases: disclosure was almost equally likely regardless of the victim-offender relationship. These differences may again be rooted in the different community structures of Native Americans. Youthful Native Americans (especially rural New Mexican tribes) may have more exposure to extended family members, non-related adults, and other community members than non-Native American children. Thus, within the tribal cases themselves, the type of relationship may have less impact on a child's disclosure of abuse.

Considering the gender of the child, male victims on tribal lands are particularly less likely to disclose sexual abuse than their non-tribal counterparts. Also, the age of the victim is a much stronger predictor of disclosure among tribal children than non-tribal children.

Finally, we found that the living arrangement of the child at time of the forensic interview was differentially associated with disclosure rates among tribal and non-tribal children. Tribal children are more likely to disclose the further they are removed from their home and family, while non-tribal children are more likely to disclose when living in a safe environment with extended family members or trusted family friends.

[14] The percentage of black children (and perpetrators) is extremely small in the Safehouse data; it is too small to warrant a comparison.

- *Recommendations for further research*

The Safehouse data provides a valuable glimpse into the factors surrounding child sexual abuse, allowing for a comparison of differences in cases originating from tribal areas and those from non-tribal areas. In general, data sharing across tribal and non-tribal lines is quite limited. This data has provided us with a means of examining a very sensitive issue and bridging that communication gap.

Current literature indicates that Native Americans are victimized at higher rates than members of other ethnic groups. In order to determine whether Native American youth suffer from higher rates of sexual or physical abuse, data collection techniques should be improved. The nation's most commonly cited victimization survey (NCVS) does not include crimes committed against children under 12, nor is it administered in a manner that valid subsamples by tribal unit can be analyzed. Currently, these youngest victims of violence are voiceless and unrepresented in official data. Access to youth presents ethical and methodological dilemmas; however, until this access is gained our knowledge of the true extent of child sexual abuse will be extremely limited.

Concerning our understanding of the response to child abuse on tribal lands, further research should include data that originates from tribal and other civil and criminal justice agencies. This research has the potential of mitigating the impediments to child abuse reduction on tribal lands. Of course, any such research assumes several things:

- Agency data must be accurate and comprehensive.
- Agency data must be collected in standard formats, to allow for comparisons.
- Agency data must be reported in a timely manner.
- Agency data must be accessible by researchers with the skills necessary to produce research findings that are scientifically valid and useful to policy makers.
- Researchers must provide their findings to decision-makers in a timely manner.
- Researchers must enlist tribal leaders and members in the interpretation of research findings, and participate as needed in the policy making process.
- Tribal authorities and other decision-makers must facilitate the collection of timely and accurate data, scientifically rigorous analysis of the data, and use the results of analysis in strategic planning activities.

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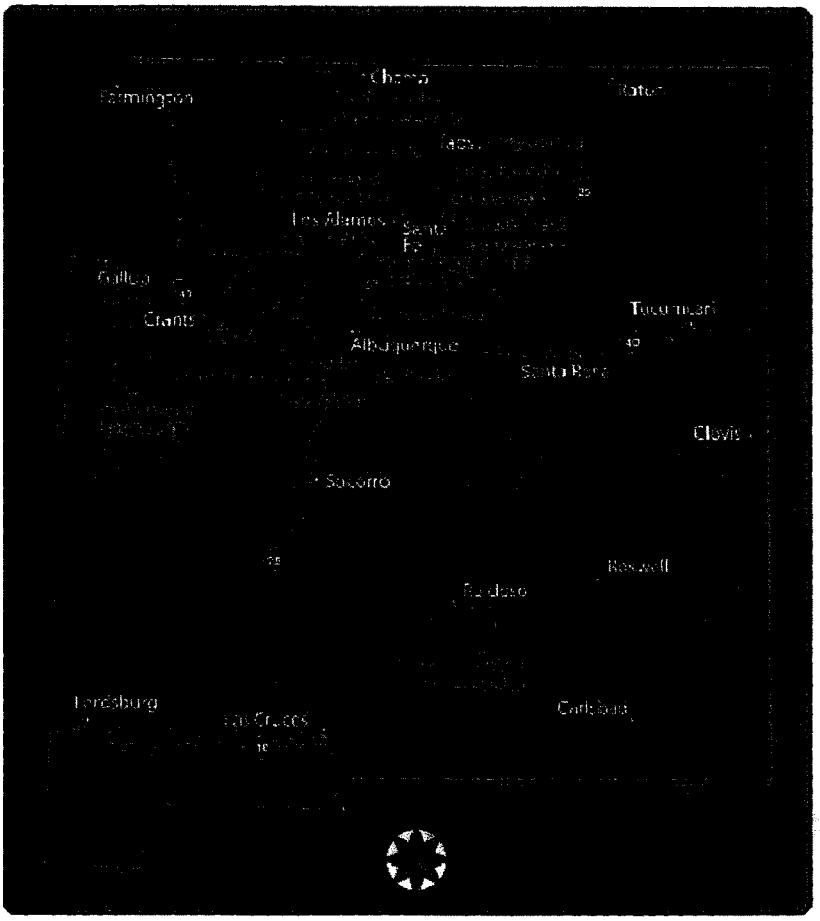
APPENDIX ONE
MAP OF NEW MEXICO'S TWENTY-TWO TRIBES



Source: New Mexico Tourism Department http://www.newmexico.org/go/loc/bymap/page/bymap-pueblomap.html

PREPARED STATEMENT OF RON SUPPAH, CHAIRMAN CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

Mr. Chairman, members of the committee, I am Ron Suppah, chairman of the tribal council of the Confederated Tribes of the Warm Springs Reservation of Oregon. Thank you for the opportunity to testify today in support of S. 1899, the Indian Child Protection and Family Violence Prevention Reauthorization Act of 2005.

In presenting this testimony, I would like to acknowledge former Warm Springs Chairman Garland Brunoe, who testified last Congress before this committee, in September 2003, on very similar legislation, S. 1601. I would also particularly like to acknowledge Warm Springs Tribal Judge Lola Sohappy, who retired this past July after many years of dedicated service to our community and to our young people. Judge Sohappy was very active in the National Indian Child Welfare Association.

The 650,000 acre Warm Springs Reservation in north Central Oregon is the home of about 3,300 of our 4,400 tribal members. Additionally, we estimate about 950 non-members reside on our reservation. Within our residential population, about 1,600 of our tribal members, or better than 40 percent, are 18 years old or younger.

Like many reservations, our communities are rural, and individual residences are often isolated. Economic opportunities are limited, and unemployment and poverty are well above national averages by almost any measure. So, too, are substance abuse and violence, including family violence. When much of your population is young, that violence all too often involves children.

As Chairman Brunoe testified last Congress, unfortunately this applies to Warm Springs. In 2002, 402 Warm Springs children were served by Warm Springs Child Protection Services [CPS]. In 2005, the number of our children that received CPS services was 453. The trend appears to be increasing and, in any event, is persistently too high.

Our tribe is doing all we can to address the very serious issue. While our basic capacity in this field is strained, we are trying to make use of our unique circumstances.

Our population is not large, and because Warm Springs is exempt from Public Law 280 and our reservation is almost a solid block of trust land, we exercise exclusive jurisdiction over our tribal child welfare cases. We have our own Child Protective Services agency, and do not have to rely on the State for case management, investigations, and other services. Without competing demands of state regulation, we are able to craft our policies and actions in a manner that is sensitive to the needs of our own community.

While we exercise our own jurisdiction, we do try to work closely with the State of Oregon. Warm Springs is one of the few tribes nationwide that has developed a tribal-State title IV-e Foster Care Maintenance Payment agreement with the State that allows the tribe to receive Federal funds for maintenance payments for children placed in foster care. The agreement also allows the tribe to receive an administrative match for services, training, and associated expenses for children qualifying for IV-e support. This allows the tribe to participate on the same footing as a state in developing and maintaining a foster care program for children rather than placing them in the custody of the state for these services.

Warm Springs still has an array of jurisdictional issues with which we must deal. Criminal child abuse actions by non-Indians must be addressed by the State. When Federal crimes are specifically identified, be they Indian or non-Indian related, the Federal Bureau of Investigation [FBI] must be called in. And because Warm Springs children attend local public schools, any child abuse or neglect issues identified there are reported first to the county, and only thereafter to our Child Protective Services or the Warm Springs Police Department.

Jurisdictional issues are complicated and not easy to resolve, but improved communication and coordination can help. Accordingly, we support S. 1899, including section 4 which will provide centralized gathering of data on Indian child abuse and annual reporting to Congress so a clearer picture of this often unreported or underreported activity can be developed. We also understand the need for section 5, to address due process and other central registry implementation issues. We particularly support section 8, which clarifies the range of personnel who may be subject to background checks and specifies standards for those checks.

But more than anything else, the overall reauthorization of the Indian Child Protection and Family Violence Prevention Act, and its funding, is essential.

As Chairman Brunoe testified last Congress, child abuse and family violence continue to devastate Indian communities. Because these problems tend to occur in private and the victims are frightened and silent, they do not attract much public attention. But their consequences are far reaching and long lasting.

Because child abuse and family violence are often hidden from view and their consequences can be so personal and profound, child protection and the prevention of associated family violence is very labor intensive. Abused or neglected children require attentive and careful handling. Their family situations can often be explosive. At Warm Springs, in addition to our Child Protection Services agency, child protective activities significantly involve the tribal police, the tribal courts, tribal prosecution, community services, and medical personnel, including mental health practitioners and physicians experienced in child abuse forensics.

But Child Protection Services is the agency that ties all these functions together, and their task is multi-faceted and complicated. CPS must remove children from the home, temporarily house them, and find short term and long term foster homes, which must be monitored. CPS must provide for the direct needs of the child, including counseling and treatment, clothing and education, and transportation. And CPS seeks to reunite families and help their stability. They have to investigate and help prosecute child abuse charges. And throughout all this, they must meet rigorous reporting requirements. At Warm Springs, our Child Protective Services staff totals nineteen full time personnel and three part time. Currently, we have three case workers, each of whom must handle well in excess of 100 cases a year. We also engage five full-time and two part-time Protective Care Providers to operate our 24-hour emergency shelter.

Clearly, our child protection capacity at Warm Springs desperately needs assistance, almost across the board. Based on our circumstances, we particularly need at least two additional case workers, and two additional CPS assistants, who monitor and assist in-home situations. We also need a supervisor to oversee personnel and help gather and process reporting requirements. We also need our own investigator, because the single investigator now on our reservation can only devote a very insufficient portion of his time to child abuse cases. The need stretches out to other community service agencies, including Juvenile Services, police and medical services, and our court system.

Mr. Chairman, this long list only serves to highlight that the Indian Child Protection and Family Violence Prevention Act needs to be reauthorized. But more importantly, it highlights that the basic promise of the act needs the commitment of Federal agencies—the BIA and the IHS—to be realized. The BIA and the IHS must live up to their obligations to the act and to our communities by budgeting and pursuing the appropriations that are vital to securing our children's future. As many tribes know, our children are our future, and our children all too often are hanging by a thread.

Mr. Chairman, that concludes my testimony. Thank you very much.

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