S. HRG. 108–341

CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

S. 1601

TO AMEND THE INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT TO PROVIDE FOR THE REPORTING AND REDUCTION OF CHILD ABUSE AND FAMILY VIOLENCE INCIDENCES ON INDIAN RESERVATIONS

SEPTEMBER 24, 2003
WASHINGTON, DC

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CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT

WEDNESDAY, SEPTEMBER 24, 2003

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

The committee met, pursuant to notice, at 2 p.m. in room 485, Russell Senate Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senator Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee will be in order.

Welcome to the committee's hearing on a bill to reauthorize the Indian Child Protection and Family Violence Prevention Act, S. 1601, which I was happy to introduce along with my friend and colleague, Senator Inouye. Senator Inouye won't be here this morning. We are both also on Appropriations and he is still in the appropriations hearing. Senators Johnson and Domenici have also cosponsored this bill.

Prepared Statement of Sen. Inouye appears in appendix.

[Text of S. 1601 follows:]

II

108TH CONGRESS
1ST SESSION

S. 1601

To amend the Indian Child Protection and Family Violence Prevention Act to provide for the reporting and reduction of child abuse and family violence incidences on Indian reservations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 9, 2003

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

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A BILL

To amend the Indian Child Protection and Family Violence Prevention Act to provide for the reporting and reduction of child abuse and family violence incidences on Indian reservations, 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 Reauthorization Act of 2003''.

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) by striking paragraph (1) and inserting the following:

''(1) finds that—

''(A) Indian children are the most precious resource of Indian tribes and need special protection by the United States;

''(B) the number of reported incidences of child abuse on Indian reservations continues to rise at an alarming rate, but the reduction of such incidences is hindered by the lack of—

''(i) community awareness in identification and reporting methods;

''(ii) interagency coordination for reporting, investigating, and prosecuting; and

''(iii) tribal infrastructure for managing, preventing, and treating child abuse cases;

''(C) improvements are needed to combat the continuing child abuse on Indian reservations, including—

"(i) education to identify symptoms consistent with child abuse;

"(ii) extensive background investigations of Federal and tribal employees, volunteers, and contractors who care for, teach, or otherwise have regular contact with Indian children;

"(iii) strategies to ensure the safety of child protection workers; and

"(iv) support systems for the victims of child abuse and their families; and

"(D) funds spent by the United States on Indian reservations for the benefit of Indian victims of child abuse or family violence are inadequate to combat child abuse and to meet the growing needs for mental health treatment and counseling for those victims and their families.";

(B) in paragraph (2)—

(i) by striking "two" and inserting "the";

(ii) in subparagraph (B)—

(I) by inserting after "provide funds for" the following: "developing a comprehensive tribal child abuse

and family violence program including training and technical assistance for identifying, addressing, and decreasing such incidents and for''; and

(II) by striking the period at the end and inserting a semicolon; and

(iii) by adding at the end the following:

''(C) implement strategies to increase the safety of child protection workers;

''(D) assist tribes in developing the necessary infrastructure to combat and reduce child abuse on Indian reservations; and

''(E) identify and remove impediments to the prevention and reduction of child abuse on Indian reservations, including elimination of existing barriers, such as difficulties in sharing information among agencies and differences between the values and treatment protocols of the different agencies.''; and

(2) in subsection (b)—

(A) in paragraph (1), by striking ''prevent further abuse'' and inserting ''prevent and prosecute child abuse'';

(B) in paragraph (2), by striking ''authorize a study to determine the need for a central registry for reported incidents of abuse'' and inserting ''build tribal infrastructure needed to maintain and coordinate databases'';

(C) by striking paragraph (3);

(D) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (3), (4), (5), and (6), respectively;

(E) in paragraph (3) (as redesignated by subparagraph (D)), by striking ''sexual'';

(F) in paragraph (5) (as redesignated by subparagraph (D)), by striking ''Area'' and inserting ''Regional'';

(G) in paragraph (6) (as redesignated by subparagraph (D))—

(i) by inserting ''child abuse and'' after ''incidents of''; and

(ii) by inserting ''through tribally-operated programs'' after ''family violence'';

(H) by inserting after paragraph (6) (as redesignated by subparagraph (D)) the following:

"(7) conduct a study to identify the impediments to effective prevention, investigation, prosecution, and treatment of child abuse;"; and

(I) by striking paragraph (8) and inserting the following:

"(8) develop strategies to protect the safety of the child protection workers while performing responsibilities under this title; and".

SEC. 3. DEFINITIONS.

Section 403(3) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(3)) is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) in subparagraph (B), by adding "and" at the end; and

(3) by adding at the end the following:

"(C) any case in which a child is subjected to family violence;".

SEC. 4. REPORTING PROCEDURES.

Section 404(b) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3203(b)) is amended by adding at the end the following:

"(3) COOPERATIVE REPORTING.—If—

"(A) a report of abuse or family violence involves an alleged abuser who is a non-Indian; and

"(B) a preliminary inquiry indicates a criminal violation has occurred;

the local law enforcement agency (if other than the State law enforcement agency) shall immediately report the occurrence to the State law enforcement agency.".

SEC. 5. CENTRAL REGISTRY.

The Indian Child Protection and Family Violence Prevention Act is amended by striking section 405 (25 U.S.C. 3204) and inserting the following:

"SEC. 405. BARRIERS TO IMPLEMENTATION.

"(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Health and Human Services and the Attorney General, shall conduct a study to identify impediments to the reduction of child abuse on Indian reservations.

"(b) MATTERS TO BE EVALUATED.—In conducting the study under subsection (a), the Secretary shall, at a minimum, evaluate the interagency and intergovernmental cooperation and jurisdictional impediments in investigations and prosecutions.

"(c) REPORT.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall submit to Congress a report that describes the results of the study under subsection (a).

"(2) CONTENTS.—The report under paragraph (1) shall include—

"(A) any findings made in the study;

"(B) recommendations on ways to eliminate impediments described in subsection (a); and

"(C) cost estimates for implementing the recommendations.".

SEC. 6. CHARACTER INVESTIGATIONS.

Section 408 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3207) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting "(including contracted and volunteer positions)," after "authorized positions"; and

(B) in paragraph (3), by striking the period at the end and inserting the following: ", which—

"(A) shall include a background check, based on a set of fingerprints of the employee,

volunteer or contractor that may be conducted through the Federal Bureau of Investigation; and

"(B) may include a review of applicable State criminal history repositories."; and

(2) in subsection (c)—

(A) in paragraph (1), by inserting after "who is" the following: "a volunteer or contractor or is"; and

(B) in paragraph (2), by striking "employ" and inserting "contract with, accept, or employ".

SEC. 7. 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—

(1) in subsection (a), by striking "sexual";

(2) by redesignating subsection (e) as subsection (f);

(3) by inserting after subsection (d) the following:

"(e) DEMONSTRATION PROJECT.—

"(1) IN GENERAL.—The Secretary of Health and Human Services shall establish demonstration

projects to facilitate the development of a culturally-sensitive traditional healing treatment program for child abuse and family violence to be operated by an Indian tribe, tribal organization, or inter-tribal consortium.

"(2) APPLICATION.—

"(A) IN GENERAL.—An Indian tribe, tribal organization, or inter-tribal consortium may submit an application to participate in a demonstration project in such form as the Secretary of Health and Human Services may prescribe.

"(B) CONTENTS.—As part of an application under subparagraph (A), the Secretary of Health and Human Services shall require—

"(i) the information described in subsection (b)(2)(C);

"(ii) a proposal for development of educational materials and resources, to the extent culturally appropriate; and

"(iii) proposed strategies to use and maintain the integrity of traditional healing methods.

"(3) CONSIDERATIONS.—In selecting the participants in demonstration projects established under this subsection, the Secretary of Health and Human

Services shall give special consideration to projects relating to behavioral and emotional effects of child abuse, elimination of abuse by parents, and reunification of the family.''; and

(4) in subsection (f) (as redesignated by paragraph (2))—

(A) by striking ''there'' and inserting ''There''; and

(B) by striking ''$10,000,000 for each of the years 1992, 1993, 1994, 1995, 1996 and 1997'' and inserting ''such sums as are necessary to carry out this section for each of fiscal years 2005 through 2010, of which a specific sum shall be specifically set aside each year for the demonstration projects established under subsection (e).''.

SEC. 8. 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'' and inserting ''Regional'';

(2) in subsection (b)—

(A) by striking ''Secretary and'' and inserting ''Secretary,''; and

(B) by striking ''Services'' and inserting ''Services, and the Attorney General'';

(3) in subsection (d)(5), by striking ''area'' and inserting ''Region'';

(4) in subsection (f)—

(A) in the second sentence, by striking ''an area'' and inserting ''a Regional''; and

(B) in the last sentence, by inserting ''developing strategies,'' after ''Center in'';

(5) in the second sentence of subsection (g)—

(A) by striking ''an area'' and inserting ''a Regional''; and

(B) by striking ''Juneau Area'' and inserting ''Alaska Region''; and

(6) in subsection (h), by striking ''$3,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, 1996 and 1997'' and inserting ''such sums as are necessary to carry out this section for each of fiscal years 2005 through 2010''.

SEC. 9. 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)—

(A) in paragraph (1), by inserting ''coordination, reporting and'' before ''investigation'';

(B) in paragraph (2) by inserting ''child abuse and'' after ''incidents of'';

(2) in subsection (d)—

(A) in paragraph (1)(C), by inserting ''and other related items'' after ''equipment''; and

(B) in paragraph (3)—

(i) in subparagraph (B), by striking '', and'' at the end and inserting a semicolon;

(ii) in subparagraph (C), by inserting after ''responsibilities'' the following: ''and specify appropriate measures for ensuring child protection worker safety while performing responsibilities under this title''; and

(iii) by adding at the end the following:

''(D) provide for training programs or expenses for child protection services personnel,

law enforcement personnel or judicial personnel to meet any certification requirements necessary to fulfill the responsibilities under any intergovernmental or interagency agreement; and

"(E) develop and implement strategies designed to ensure the safety of child protection workers while performing responsibilities under this Act;";

(3) in paragraph (6), by striking "and" at the end;

(4) by redesignating paragraph (7) as paragraph (8);

(5) by inserting after paragraph (6) the following:

"(7) infrastructure enhancements to improve tribal data systems to monitor the progress of families, evaluate service and treatment outcomes, and determine the most effective approaches and activities; and"

(6) by redesignating subsections (f), (g), (h), and (i) as paragraphs (e), (f), (g), and (h), respectively;

(7) in paragraph (1) of subsection (g) (as redesignated by paragraph (6)), by striking subparagraph (A) and inserting the following:

"(A) evaluate the program for which the award is made, including examination of—

"(i) the range and scope of training opportunities, including numbers and percentage of child protection workers engaged in the training programs;

"(ii) the threats to child protection workers, if any, and the strategies used to address the safety of child protection workers; and

"(iii) the community outreach and awareness programs including any strategies to increase the ability of the community to contact appropriate reporting officials regarding occurrences of child abuse."; and

(8) in subsection (h) (as redesignated by paragraph (6)), by striking "$30,000,000 for each of fiscal years 1992, 1993, 1994, 1995, 1996 and 1997" and inserting "such sums as are necessary to carry

1 out this section for each of fiscal years 2005 through
2 2010.''.

○

The CHAIRMAN. Today, we will receive testimony on continued incidences of child abuse, the need for tribal infrastructure for managing child abuse cases, and whether there is proper interagency cooperation and character investigations for individuals having regular contact with Indian children.

There is a chart here on the right and as you can see from that chart, studies indicate violence and abuse in Indian country occurs at rates that are higher than other populations. At one time, the rate of violence in Indian country rose by 18 percent while at the same time, it decreased by 8 percent for the general population.

On chart 2, these percentages translate into very startling figures. The numbers of Indian children victimized were over 3,000 out of every 100,000 children which is far too many. In fact one is far too many.

Enacted in 1990, the act established extensive reporting requirements, mandated certain character investigations and authorized funding for prevention and treatment programs. The bill before us today is designed to improve tribal capacity and to identify the impediments to reducing child abuse.

S. 1601 promotes cultural perspectives by giving consideration to tribal programs which incorporate traditional healing methods. Preventing child abuse also requires that individuals having regular contact with children are adequately screened prior to contact. S. 1601 will expand the scope of character investigations to contractors and volunteers in addition to employees who have regular contact with Indian children making its scope consistent with other Federal law.

With that, I look forward to hearing the testimony from our witnesses and we will go ahead and start with pane one which will be Woodro Hopper, acting deputy assistant secretary for Management, Indian Affairs, Department of the Interior and Charles Grim, director, Indian Health Service. We will take you in that order with Mr. Hopper first. Your complete written testimony will be included. If you would like to deviate from that written testimony, that will be fine.

STATEMENT OF WOODROW HOPPER, ACTING DEPUTY ASSISTANT SECRETARY FOR MANAGEMENT—INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. HOPPER. I am pleased to be here today to provide the Department's testimony supporting S. 1601, a bill to amend the Indian Child Protection and Family Violence Prevention Act to provide for the reporting and reduction of child abuse and family violence incidents on Indian reservations.

The Department of the Interior supports expansion of the number and breadth of employment positions that will be subject to the minimum standards of character under the act. The Department of the Interior recommends a review not only of appropriate State criminal history repositories but also tribal criminal history repositories.

We also support inclusion of the certification requirements for education employees who are responsible for child protection at residential and day schools. Certification is critical as almost all Bureau of Indian Affairs [BIA] funded schools contract to provide im-

portant services including mental health and other social services to Indian students. The Department of the Interior supports conducting a study to help identify and reduce the barriers to implementation of the Act, with particular emphasis on tribal, Federal and State investigations and prosecution of Indian and non-Indian abusers.

The study will allow the Office of Law Enforcement Services in the BIA to identify efforts that better serve Indian communities and improve the implementation of the President's citizen centered government initiative. However, we respectfully request additional time in which to complete the more comprehensive report to better identify incidences of child abuse and family violence and steps to improve intergovernmental and interagency cooperation.

The BIA, in cooperation with Indian tribes, must continue to develop more awareness at the local level to prevent child abuse. We must work together to ensure that abusers do not have access to children and that any incidences of abuse are prosecuted.

This concludes my statement. I want to thank you for introducing this legislation and for your support for the protection of our future generations. I would be happy to answer any questions you may have.

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

STATEMENT OF CHARLES W. GRIM, DIRECTOR, INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY JON PEREZ, DIRECTOR, IHS DIVISION OF BEHAVIORAL HEALTH

Mr. GRIM. Good morning, Mr. Chairman and members of the committee.

I am Dr. Charles W. Grim, director of the Indian Health Service. I have accompanying me today, Dr. Jon Perez, director of our IHS Division of Behavioral Health. I will be making the opening statement for the Department and Dr. Perez is here to help with additional questions, should the committee have them.

I am pleased to have the opportunity to testify on behalf of Secretary Thompson on S. 1601, the Indian Child Protection Family Violence Prevention Act of 2003. With your concurrence, I will submit my written testimony for the record and just speak briefly.

The CHAIRMAN. It will be included in the record.

Mr. GRIM. Thirteen years ago, this committee authorized the Indian Child Protection and Family Violence Prevention Act because of the incidences of abuse of children on Indian reservations was underreported and because many perpetrators of sexual abuse of children on Indian reservations were Federal Government employees and because funds were inadequate to meet the increasing needs for mental health treatment and counseling for victims of child abuse and family violence. This act was passed to help preserve the continued existence and integrity of Indian tribes by protecting American Indian and Alaska Native children and families.

Thirteen years later, these reasons, while somewhat diminished, are still valid reasons to reauthorize the act. Indian country has higher rates of child abuse and domestic violence than other population groups in the United States. Child abuse and family violence

are crimes and there are tribal, State and Federal laws that address the criminal aspects of these behaviors.

The Indian Child Protection and Family Violence Prevention Act enables us to undertake treatment and prevention program activities to reduce the risk factors associated with child abuse and family violence. The available statistics you presented briefly in your opening comments show an alarmingly high level of child abuse and family violence in Indian country and this Act gives us an opportunity to do something about it. Abuse and neglect have short and long term consequences and long term means a lifetime of physical and psychological scars.

Experiencing abuse, neglect or violence or even its threat increases the risk of the victim becoming a perpetrator of violence. Children who have experienced such abuse are also at increased risk for experiencing the adverse health effects and behaviors as adults that include smoking, alcoholism, drug abuse, physical inactivity, obesity, depression, suicide, sexual promiscuity, and certain chronic diseases and being a perpetrator of abuse as well.

As we all know, these health effects and behaviors also are risk factors for many other diseases and chronic conditions. The consequences of child abuse and neglect can be seen throughout the life cycle. Among our youth who are incarcerated, there are a large number who are victims of child abuse and neglect.

We must protect our children and our families from violence and must provide treatment if we are to break the cycle. There is no simple solution. There are many factors commonly associated with abuse and neglect but the presence of these factors alone does not guarantee abusive situations will develop. If we can reduce the risk factors, we can also reduce the incidence of child abuse and family violence and can break the cycle of abuse and its consequences.

The Indian Health Service has been a partner with five tribes in funding grants to establish programs for child protective services, child abuse prevention, family violence prevention and abuse prevention and identification education programs. The programs developed from these grants incorporated culturally relevant aspects of prevention programs that have shown positive effectiveness in reducing abuse and violence. Programs of home visiting and family intervention, parent education and school based programs for the prevention of child sexual abuse appear to increase the number of children more likely to use protective strategies.

The IHS also funded the development of a Child Protection Technical and Training Manual for use in Indian country. In addition, the Administration for Children and Families, Office of Child Abuse and Neglect within the Department of HHS funded the Making Medicine Project that has trained 150 professionals on providing culturally sensitive treatment to Indian victims of child physical and sexual abuse. These professionals are working with American Indian and Alaska Native communities around the country.

The IHS has also established an interagency agreement with the Department of Justice, Office of Victims of Crime for a four year training program for IHS physicians and nurse practitioners in the application of forensic and telemedicine equipment in child sexual abuse cases.

In addition, as required by the current and the proposed act, the IHS published an interim final rule that established minimum standards of character for IHS employees, volunteers and contractors who are in positions identified by the IHS as involving regular contact or control over American Indian and Alaska Native children.

The rate of child abuse and family violence in Indian country is high and is unacceptable. It happens for many reasons but it doesn't happen in isolation from the economic and social problems that are faced in Indian country resulting in poverty, a lack of resources, limited opportunity and a sense of hopelessness and isolation at times.

The reauthorization of the Indian Child Protection and Family Violence Prevention Act as I mentioned earlier will continue to help us protect our children and treat the survivors of family violence and abuse. It will take further investment and a broad range of Federal and tribal programs to achieve the goal of prevention. The Department and IHS are committed to working with you to achieve those goals of prevention.

In conclusion, the Department fully supports enactment of S. 1601. I would be pleased to answer any questions you or any other members of the committee might have.

Thank you.

[Prepared statement of Dr. Grim appears in appendix.]

The CHAIRMAN. Thank you both, Mr. Hopper and Dr. Grim.

It really kind of amazes me when we look at the statistics dealing with child abuse. Historically, Indian people were the most loving families you could ever ask for where they all participated in raising their children. They are literally known for that kind of loving family and yet we have some of the highest child abuse in the country. I can only attribute it to some of the factors you mentioned, drugs, alcohol and so on, the things that go with a depressed economy and a depressed society. Sometimes that anger turns inward.

Mr. Hopper, I am interested in the progress the Department has made and its experience over the past 8 years in implementing the act. First of all, let me ask is there a backlog now of security checks of people?

Mr. HOPPER. My understanding as of last evening is there is no backlog of security checks.

The CHAIRMAN. There is not. Explain this to me. Is the Security Division now in two parts with one part being in Albuquerque and one part being in Washington?

Mr. HOPPER. That is somewhat correct, sir. The Office of Indian Education has its own separate Personnel Security Office right now that is located in Albuquerque. The other entities within the BIA have a separate office.

The CHAIRMAN. What does one do that the other one does not do?

Mr. HOPPER. They both perform similar duties. One office concentrates primarily on the 5,000 or so educators and people who work in the schools, while the other office concentrates on the employees who work in the trust and tribal services related programs.

The CHAIRMAN. It works better to have one group in Albuquerque?

Mr. HOPPER. Under the reorganization we are going through right now, they will be merged into one unit and will be located, at the moment, in Albuquerque, NM, within in the Office of Law Enforcement Services.

The CHAIRMAN. Currently the act requires all authorized positions within the Department to have regular contact with children to undergo a character investigation. What is the Department of the Interior's process for determining whether a position requires the investigation or not? Is it direct contact with the children?

Mr. HOPPER. Yes; it is. The security personnel in conjunction with the program side of the house determine which positions require an investigation. However, when you look at our education programs, virtually every position has the preponderance of contact with children and virtually every position requires a character background checks, whether it is a janitor or a school principal. We have been doing that now for many, many years.

The CHAIRMAN. In addition to Indian students lot of the tribal schools now have non-Indian children in the schools because their parents employees of the tribe or something. In the process you describe, what governs the positions outside the BIA Office of Indian Education? Say it is a non-Indian kid that is enrolled in that school, an Indian school.

Mr. HOPPER. Would you mind restating the question?

The CHAIRMAN. Many of the schools now on reservations have mostly Indian children but have some non-Indian children in the schools because their parents are employees of the tribe or something of that nature. They are isolated from the city, so they have them in the same schools with Indian children. How do you interact with them? What governs the positions dealing with kids that may not be Indian but are in Indian schools who may have been abused?

Mr. HOPPER. It is the employees that have the background check, not the children. Are you asking if something happens to one of the children?

The CHAIRMAN. Yes.

Mr. HOPPER. The reporting process for any child in the school would be the same.

The CHAIRMAN. The same?

Mr. HOPPER. Yes; I would have to defer to one of the staff to give you an idea of the number of non-Indian children that may be attending a BIA school.

The CHAIRMAN. I don't need the numbers, that is all right.

In 1998, the Office of Inspector General conducted surveys of character investigations for certain area offices of the Office of Indian Education and there appears to be a significant delay in conducting character investigations. Have you taken any steps to try to speed up that or to improve the process?

Mr. HOPPER. What happened was, the Office of Indian Education established within their own ranks, an office to deal with personnel security and that backlog has been reduced. They are expeditiously processing the background investigations.

The CHAIRMAN. The act also requires the Department to establish an Indian Child Resource and Family Services Center with a multidisciplinary team. What is the progress of that?

Mr. HOPPER. The BIA does use the Child Protection Team concept if that is what you are referring to in the event that we have an incident. We have a multidisciplinary team that works in conjunction with Indian Health Service, the Justice Department, law enforcement, and whoever else is necessary.

The CHAIRMAN. So there is not a physical center where they work together?

Mr. HOPPER. No, sir; it is not a center.

The CHAIRMAN. The act also required the Department to conduct a feasibility study for the Central Registry to collect data and reports on child abuse. I understand that was not established but there are apparently some alternatives and resources for tracking child abuse in Indian country, are there not?

Mr. HOPPER. I don't have the answer to that. I can provide it to you or call on BIA staff who may know.

The CHAIRMAN. Bill, do you know? If somebody does know, otherwise I would have you provide that to me. Identify yourself for the record, Bill.

Mr. MEHOJAH. I am Bill Mehojah, director, Office of Tribal Services.

Presently, we do not have a central registry in place. Any reports of child abuse incidents are reported to law enforcement and they maintain a database or system of counting those cases but we do not have a central registry.

The CHAIRMAN. Then how do you monitor a perpetrator moving from one jurisdiction to another when he gets a little worried that somebody may uncover what he has been doing and he moves to someplace else? Mr. Hopper, if you know that?

Mr. HOPPER. If we find a perpetrator and we identify the individual as an employee, we will take immediate action to put him on administrative leave until we can perform the due process. That is when the Department of Justice steps in if they are going to prosecute. The employee could be fired and incarcerated. They could never be reemployed with the Bureau of Indian Affairs.

If you are asking if there is any possibility they could somehow be employed with another agency at some later date, there is no second chance in BIA.

The CHAIRMAN. There is no second chance, in other words.

Mr. HOPPER. There is no second chance in BIA, that is correct.

The CHAIRMAN. They can't just be transferred as we have read about and seen in the news with some churches, for instance?

Mr. HOPPER. No; that does not happen. The individual isolated until such time that we either prosecute or remove them administratively.

The CHAIRMAN. As I understand your testimony, you are pretty supportive of the bill, S. 1601?

Mr. HOPPER. Absolutely.

The CHAIRMAN. We want to mark this bill in October and are kind of running out of time. As you know, we only have maybe another 6 weeks and we will be out of here for the year. If you have any suggestions of how we can improve the bill, if you would contact staff, I would certainly appreciate it because I would like to mark this up in October if we can.

Mr. HOPPER. Yes, sir.

The CHAIRMAN. Dr. Grim, thank you for appearing today.

What role does the Indian Health Service play in this whole child abuse investigation realm?

Dr. GRIM. We perform a number of services in the child abuse arena. We perform both clinical, forensic, supportive and training roles. Clinical services we provide involve direct assessment and treatment of those people who have been abused.

The CHAIRMAN. Counseling programs or something of that nature?

Mr. GRIM. Yes; counseling services, as well as substance abuse and treatment services may be needed as a result of abuse. We also provide forensic exams when necessary in our facilities like the sexual assault forensic exams. We have protocols and procedures in place to deal with those and oftentimes our providers who are doing those exams are sometimes called upon to testify in judicial proceedings.

We also provide supportive services for both families and victims in the way of social services, counseling, and other sorts of services that may be necessary. We also train IHS personnel across the clinical spectrum in identifying, assessing and treating victims of child abuse or their families.

The CHAIRMAN. We are always talking about budget crunches around here as you know. Do you find the resources we provide adequate for you to do a first class job in this area?

Mr. GRIM. As always, Senator, we try to do the best we can with the resources that are available. The major issues that usually arise are often in our smaller facilities whenever a provider is called upon, has done a forensic exam perhaps and is called upon to testify in court. It pulls that provider away from a clinic for a half a day or a day, then we may experience decreased access to care in that given clinic. So it does place occasional burdens on us to deal with these issues but we always participate fully with the judicial system when necessary.

The CHAIRMAN. I am sure everyone on this committee appreciates that. With regard to the traditional methods for restoring health and well being of Indian people, studies researched by our staff support incorporating cultural awareness into treatment methods. I understand the Indian Health Service has an agreement with the Substance Abuse and Mental Health Service Agency to promote that kind of culturally appropriate action, particularly with children's mental health services in Indian country. What type of research have you been conducting on whether that is a successful program or not?

Mr. GRIM. You are correct. We do have agreements going on with SAMHSA right now that have demonstrated successes in Indian country. Right now we have two Indian Health Service personnel detailed to SAMHSA, one in the Center for Substance Abuse Treatment, one in the Center for Substance Abuse Prevention to help better coordinate the resources of the two agencies going into Indian country.

Specifically to the culturally appropriate care children's programs you brought up, we have something called the Circles of Care Grant Program. It is funded by SAMHSA and both IHS and SAMHSA are sharing technical assistance roles with tribes and

also evaluation for the 16 tribal programs. We have been primarily providing technical assistance. SAMHSA has been providing evaluations through a contract with the University of Colorado's Health Science Center.

We feel the evaluations provided thus far by Colorado have indicated a high success in helping tribal programs build the infrastructure to deal with these problems.

The CHAIRMAN. Do you work with Dr. Jim Shore? Do you know that name? He is with the Medical Sciences Group at the University of Colorado but I know he has extensive background in Indian health, having worked on many reservations. I was just wondering about that.

Mr. PEREZ. I know the name. I worked with Dr. Manson.

The CHAIRMAN. Dr. Grim, I assume you also support this bill, do you not?

Mr. GRIM. Yes, sir; we fully support the bill.

The CHAIRMAN. As with Mr. Hopper, if you can give us any suggestions on how to improve it, I would appreciate it because we are going to try to mark up the bill in October, as I mentioned.

Mr. GRIM. Yes, sir.

The CHAIRMAN. Thank you for appearing.

We will now go to our second panel which will be: Mark Lewis, director of the Guidance Center, Hopi Tribe; Garland Brunoe, chairman, Confederated Tribes of Warm Springs; and Terry Cross, executive director, National Indian Child Welfare Association from Portland.

As with our previous panel, if you would like to submit your complete written testimony, that will be in the record and we will study that very carefully. If you would like to abbreviate or diverge from your written testimony, that would be fine.

We will go ahead and start in the order that I mentioned with Mr. Lewis first.

STATEMENT OF MARK LEWIS, DIRECTOR, GUIDANCE CENTER, HOPI TRIBE OF INDIANS

Mr. LEWIS. Good morning, Chairman Campbell.

My name is Mark Lewis and I am the administrative director for the Hopi Guidance Center, Behavioral Health and Social Services for the Hopi Tribe. I am here as a representative of the Hopi Tribe and Chairman Wayne Taylor, Jr., who could not be here today.

The tribe wanted to convey to you that we are very pleased and honored to be invited to testify on S. 1601, the Indian Child Protection and Family Violence Prevention Act of 2003.

Again, my name is Mark Lewis. I am a member of the Hopi Tribe, a professional social worker by trade and have been with the Guidance Center for 10 years, beginning as a mental health clinician and in the last 6 years, administering both behavioral health and social services which is responsible for child protective services and behavioral health of our tribe.

The tribe wishes to describe to you our very real experience as a community and government in implementing the original act of 1990 and provide important input in advocacy that we believe will improve and strengthen this act that we believe is critical in effec-

tively addressing child protection, child abuse prevention and treatment.

We also wish to endorse the changes of the Act that Chairman Campbell has provided and we hope to provide other information that will also strengthen what you have proposed.

As you may be aware, the Hopi Tribe has experienced directly the tragedy and immense pain associated with abuse of over 100 of our children, apparently beginning sometime in the last 1970's which continued until 1987 when a BIA school teacher was exposed as a prolific pedophile. As a result of this tragedy and other similar deplorable circumstances in Indian country, the original act was passed into law and became one of the primary vehicles for child protection and child abuse prevention and treatment in Indian country.

We wish to convey that it also must be understood that tribes in general lacked services, programs and funding to effectively address child abuse issues prior to the passage of this act. S. 1601 will improve the act in a number of important ways. While we encourage Congress to make the changes outlined in the bill, we also ask that the Act provide adequate funding to help tribes carryout the original important functions of the act.

First, the bill expands the current law's requirements for background checks to include volunteers and employees of other Federal entities beyond the Bureau and IHS. While the tribe supports this amendment, it is critical that while adding to the list of who must have a background check, actual funding must accompany not just the additions but the current background check requirements of the act.

By way of background, the Hopi Tribe's law enforcement departments lack proper funding to adequately meet all of its law enforcement and investigative needs. We are still a Bureau operated law enforcement, so they lack adequate funding to properly meet all of its needs, investigative needs and investigation of child sexual abuse which many know is a specialized service.

Today, the Hopi has just two investigators but that is for all of its criminal investigations across our on-reservation population of 8,000. The Hopi Guidance Center, the entity for which I am responsible, and also responsible for child protective services and mental health and substance abuse services on the Hopi Reservation has had to rely on periodic surplus from its Bureau funding base or find alternative funding streams for these background checks. There is no money coming as a result of the act to conduct these.

As a governing board member, elected official of the Hopi Junior/High School they will attest as well that there is no funding to conduct the background checks on those teachers and we often rely on the surplus in order to be able to do those background checks.

S. 1601 calls for the establishment of safety measures for child protection workers. We certainly support that but it is indicative of the training needs and other costs associated with implementing stronger systems and protocols and procedures in the provision of child protection and child abuse prevention as well as treatment.

S. 1601 expands the definition of child abuse, mental health, emotional and well being and self esteem are important factors in the health of Indian children and children facing family violence

should be able to access child abuse services. The Tribe agrees with the expanded definition. However, it is indicative of once again the need to provide adequate financial resources to investigators, to prosecutors, to courts who will see more of these cases coming through an already overcrowded door.

S. 1601 replaces the feasibility study from the original act and Federal study of impediments to reducing child abuse. The feasibility study was conducted but the law doesn't reflect it. The tribe supports what you are doing with your proposal. We must study and understand the impediments to reducing abuse in order to make effective decisions at our tribal levels.

S. 1601 emphasizes strengthening tribal infrastructure to develop effective tribal programs including databases for accessing current, national central registries for child abuse. The tribe supports not only this provision but the general building of administrative infrastructure in general. Management information systems and other related forms of technology must be funded as they are necessary these days and in the height of greater accountability for tribal programs to effectively administer our particular programs.

While many of these wonderful mandates have come down, the BIA of Social Services which has the primary responsibility for social services in Indian country, never receives any increases as we all know. We need to be able to address those issues with this act as well as with the current provision of social services through the Bureau.

In conclusion, the tribe urges the committee to move forward with the proposed amendments and also to ensure that its provisions, as well as those of the original act, receive full funding in order to meet all of these mandates.

Once again, on behalf of the Hopi Tribe and Chairman Taylor, we thank you for this opportunity to present the issues and concerns of the Hopi Tribe.

[Prepared statement of Mr. Taylor, Jr., appears in appendix.]

The CHAIRMAN. Thank you for appearing here.

Chairman Brunoe, we will go to you now.

STATEMENT OF GARLAND BRUNOE, CHAIRMAN, THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

Mr. BRUNOE. Mr. Chairman, members of the committee, good afternoon.

I am Garland Brunoe, the tribal council chairman of the Confederated Tribes of Warm Springs of Oregon.

Our tribe thanks you for the opportunity to be here today to testify in support of S. 1601, the Indian Child Protection and Family Violence Prevention Reauthorization Act of 2003. This is extremely needed legislation.

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

About 4,100 people live on the Warm Springs Reservation, 3,300 are tribal members and of them, 1,617 are younger than 18 years of age. Last year, during 2002, 402 Warm Springs children were placed under the custody of our Child Protective Services by tribal court order. This year for 2003, we project 460 of our children will be placed in CPS custody, a 14-percent increase over 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.

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 4(e), Foster Care Maintenance Payment Agreement that gives us much the same footing as a State for developing and maintaining a foster program.

Even with our fairly comprehensive Child Protection Service Program, key jurisdictional differences do remain. Non-Indians in 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 State and the State then sends them along to us.

S. 1601 seeks to address these sorts of problems by requiring that non-Indians with criminal child abuse charges be reported to the State and by requiring a study of how jurisdictional differences hinder the reduction of child abuse. We also support the bill's expansion of coverage by including family violence and child abuse, allowing Indian Health Service's treatment grants for all child abuse victims and making the Justice Department a part of the Regional Resource Centers.

We also applaud the clarification that tribal responsibilities under 638 contracts include cooperation and reporting on abuse cases, training child protection worker safety and improved data collection.

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, our prosecutors, our youth services and our medical services are all involved but Child Protective Services must tie it together and provide a tremendous range of functions. One on one care and attention often from specialists is essential. At Warm Springs, our CPS capacity that delivers those services is severely strained if not becoming broken.

We have a staff of just 15 including four cases workers who must each handle more than 110 cases a year. We need assistance almost across the board.

I am sure other tribes across Indian 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. Consequences are long lasting and far reaching. This is an issue that must be addressed and passage of S. 1601 is essential to that task.

Thank you, Mr. Chairman. This concludes my testimony.

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

The CHAIRMAN. Thank you.

Mr. Cross.

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

Mr. CROSS. Mr. Chairman, I am Terry Cross. I am the executive director of the National Indian Child Welfare Association located in Portland, OR.

Thank you for inviting me to provide this testimony in support of reauthorization of the Indian Child Protection and Family Violence Prevention Act. I am submitting full written testimony for inclusion in the record.

The CHAIRMAN. Fine.

Mr. CROSS. The National Indian Child Welfare Association is a national, private, non-profit organization, a membership organization of tribes and tribal child welfare workers and tribal child protection workers that provides support to those workers and tribes who are providing these services in the field with training, technical assistance, advocacy and research.

You mentioned in your opening remarks what we call the natural system of child protection that has existed amongst our people for generations. This historical framework still helps support our families and those sacred teachings about children being gifts of the Creator are still very central to our way of life and our extended families. If it weren't for those, this problem would be even worse than it is. In a few minutes I will come back to talking about how those natural systems can be supported.

Those natural systems of child protection have been broken down in the context of substance abuse, poverty, interrupted parenting, removal and oppression and we all know that one of the major assaults on Indian people was the removal of the authority and capacity to protect our own children. I think Chief Joseph said in his remarks, "Let me gather the children." Our tribal leaders of the past knew the children were at the top of the list. There is no expression of tribal sovereignty more important than the protection of your own children.

What has happened historically is that the sacred authority to protect children has been limited and constricted by Federal policy. Where tribes should be the agent of statutory authority for the investigation and treatment of child abuse, instead today we have a patchwork quilt, a tangled web of complex Federal Indian policy and Federal child welfare policy that overlap to leave our children out of the configuration of services. To give you an example of some of that complexity, you heard here today that because of the Dawes Act, when reservations are checkerboarded, you sometimes need a guidebook to know who has authority to investigate which cases. Because of Public Law 280, you have to have intergovernmental agreements just to know who has jurisdiction in which cases, in which States. CAPTA, the Child Abuse Prevention and Treatment Act that provides funding to States in this area of child abuse leaves out tribes completely.

My testimony goes into depth in this area but what I want to say about this tangled web is it has a lot of consequences and serious consequences. One of those is there is no good data about child

abuse in Indian country. The number you have here of 1 in 30 kids abused is the best information we have but we know that it only accounts for probably 61 percent of the cases in the country. You can add another 40 percent probably on top of that 1 in 30.

Part of that untold story is the amount of this issue attributable to substance abuse. We know that at least 65 percent of child abuse cases are substance abuse related. We know when you single out the neglect cases, that goes much higher, as high as 83 percent. We also know the term child abuse lumps together several different items; neglect, child abuse and child sexual abuse, and that child neglect actually accounts for about 83 percent of those overall numbers. When you look at the relationship between child neglect, poverty and substance abuse, you start to see why we have such serious problems.

In addition to that, when we are taking a look at how the numbers play out, the numbers for child sexual abuse are actually somewhat lower than mainstream society as best we can tell. The numbers for child abuse and neglect vary by community but a surprising piece of information is that most child deaths in Indian country are not the result of abuse, but are the result of neglect. Our kids are three times more likely to die of accidents than any other children in the country. The Indian Health Service has not addressed this issue at all.

It is important for us to keep in mind that these statistics have important social impacts and you have heard several of those talked about, mental health, juvenile justice, family violence, and other areas. Basic to that, -is the impact on the very development of our communities themselves, the development of infrastructure, the economic development, the impact of life long suffering of children who don't get enough medical care, children who don't get treatment for serious depression or for family violence, being victims of family violence, the costs are very high.

The consequence of this overlapping, tangled web I mentioned is a very confused set of jurisdictions with unclear roles and reporting problems. One of the reasons we don't have good data is because there is no central place for data to be reported. The national NCANDS database is a database that records all cases of child abuse reported to States for the purposes of tracking how many and where. Indian data does not go in there unless the State has provided the service. If the tribes have provided those services, then the data doesn't go in there. It may get reported to the Bureau of Indian Affairs but the BIA does not report to the NCANDS database and the numbers you have here on the wall come from the NCANDS database. That is why I say that 40 percent of the cases out there are not getting counted.

Another problem is that children end up not getting protected. We have children in situations where there are no services, where people point at each other thinking the other one should be doing it. I want to point out that in child welfare policy, it is well known that somebody has to be responsible and the entity with statutory authority is the place for that responsibility to lie. We know from our work around the country that when tribes exercise and are empowered to exercise that statutory authority, then things happen. The tribe can negotiate those local agreements to overcome this

tangled web. The tribes should be leading the child protection teams and not the Federal agencies because the Federal agencies do not have statutory authority. If the tribe doesn't want to provide the services, they should be able to delegate that authority to someone else and make that decision themselves.

Again, I reiterate that there is no expression of sovereignty more important than the protection of children. That goes for both the criminal and civil side and the only meaningful solutions to the problems pointed out by Chairman Brunoe pointed out are local solutions, agreements and protocols and cross deputizations driven by strong tribal authority. That strong tribal authority only can come through funding. We need programs that are non-discretionary, that are funded to allow tribes to operate the very basics of child protection. In this very complex arena, tribes need training and technical assistance. They need to have access to culturally designed prevention and intervention strategies and those are growing around the country. Those need to be shared with one another.

We also need to have the capacity to do child abuse prevention activities. Every State in the Nation has a children's trust fund that funds child abuse prevention that the Federal Government matches under CAPTA. Tribes don't have access to those dollars unless they go hat in hand to States and apply for a grant like every non-profit in a State. There needs to be a Tribal Indian Children's Trust Fund established so that tribes can do child abuse prevention.

We need to clarify and simplify the background checks and support it. Right now, it is an unfunded mandate. We need to reconcile the minimum definitions in this Act with the minimum definitions in CAPTA.

We support the provisions as proposed. We think S. 1601 is on the right track but we also want you to consider making sure the tribes have the funds to operate the programs. It was disappointing for me every year when I go to the Appropriations Committee and to see neither the Bureau of Indian Affairs, nor the Indian Health Service, budget requests funding for this legislation. We can't continue to have our children treated this way to have a Federal policy that says they should be protected but have it be empty and in name only on paper. Without the appropriations to follow up and provide the services, it is meaningless.

Thank you.

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

The CHAIRMAN. Thank you.

Let me start with you, Mark. I was amazed that you had somebody down there that in a period of 7 or 8 years, sexually abused over 100 Hopi kids. Where is that person now?

Mr. LEWIS. I understand he is still in Federal prison.

The CHAIRMAN. He is in prison?

Mr. LEWIS. Yes.

The CHAIRMAN. I visited Oraibi a long time ago and I noted with great interest that those cliffs are pretty high. Too bad this man got as far as prison, he should have been thrown off the edge.

Mr. LEWIS. They are pretty high.

The CHAIRMAN. Mr. Brunoe, I am interested in the issue of intergovernmental cooperation. We certainly need everybody we can to

be involved in this. You said you had 402 kids in protective custody and it was a 14-percent increase just from last year. To what do you attribute that huge increase in a year?

Mr. BRUNOE. The noted increase is coming from substance abuse.

The CHAIRMAN. Substance abuse. Is it the crude stuff like paint and "canned heat," nail polish, things like that? Is that the problem you have at Warm Springs with substance abuse?

Mr. BRUNOE. I think it is the more readily available meth labs that are available now in different areas that easily put this stuff on the street. Since we live on the main highway that goes from Portland, OR, the major metropolitan and the State of Oregon, through our reservation on the way to Bend, OR, we get around 8,000 cars a day that go through our reservation. So easily some of that stuff is flowing through our reservation on the way to Bend.

The CHAIRMAN. You heard Dr. Grim testify about some of the forensic exams that can be done, some of the people they have working in those areas. Are those components with the Indian Health Service been of value to your tribe when you deal with the components of child abuse?

Mr. BRUNOE. Not responding directly to what Dr. Grim said, we have five HIS doctors in our wellness center there, the Indian Health Service clinic and one of the doctors there has been trained on some of the equipment. She is at the point where she is overtaxed in the number of child abuse cases that need the kind of investigation that goes on. Then we need to send our children to Bend, OR for more in-depth types of review and the waiting list is about 3 to 4 months long to get a child in there, to have them see a professional.

The CHAIRMAN. 3 to 4 months?

Mr. BRUNOE. 3 to 4 months.

The CHAIRMAN. For a youngster, that is a lifetime in remembering some of the things that happened. You said each of your case workers handles 110 cases a year, about one every three days is a new case to deal with?

Mr. BRUNOE. Right.

The CHAIRMAN. How do you balance that with ensuring the safety of the child protection workers? That is a high caseload.

Mr. BRUNOE. Talking to our CPS manager that runs that, they do it with a lot of overtime, work beyond your regular 8 hour days and they know they are pushed to capacity. Since the Federal funds we get for the 4(e) moneys come through the State to the tribes, we are very careful to make sure when we go through our audit from the Federal Government, that we are doing everything that is required of the Federal Government along with the State because if they find a finding, we could end up hurting the State, so the State of Oregon and the Warm Springs Tribe work closely to make sure our case reviews are done carefully, that the foster parents are qualified, that the foster homes are qualified.

It also reaches to the tribal council chambers where not long ago I had a tribal member come to me who was having their grandchild removed from them because of the condition of the home and she wanted me to override that. I explained to her that if she loved her grandchild, she would go back and take care of the issue of what the court and the child protective services wanted, and that I

wasn't going to, neither was the tribal council, tell them what to do and that is difficult to do.

The CHAIRMAN. Did it work?

Mr. BRUNOE. Yes; it worked because she spent the weekend doing what they asked her to do for 4 months.

The CHAIRMAN. She didn't initiate a recall, huh?

Mr. BRUNOE. No; not yet.

The CHAIRMAN. A lot of times we think in terms of additional resources. The code word for resources, and I shouldn't say resources but the code word for money in many cases around here, as you know, and I know we are not doing a good enough job of providing enough money for a lot of the problems we have in Indian country. Is there anything you could speak to or know about that would help in this case that does not deal specifically with more Federal funding?

Mr. BRUNOE. Not at the moment, Mr. Chairman, but if I do, I will forward it.

The CHAIRMAN. If we do a data collection reporting system, should that include training of tribal employees or would that be effective?

Mr. BRUNOE. That would be important because gathering the data is something that is essential to funding eventually and it stabilizes the findings which I know is lacking across Indian country.

The CHAIRMAN. Thank you.

Mr. Lewis, I understand the Hopi Children's Code has been a model code for many Native American communities to follow. When you set that up, did your tribe invite Federal or State agencies with any particular expertise to do that or did you do it with your own tribal resources?

Mr. LEWIS. The code was being developed when I was still on the line so I wasn't able to necessarily be a part of that.

The CHAIRMAN. You were where?

Mr. LEWIS. I was still on the line providing clinical services but what I do remember is that the local Federal and tribal attorneys involved with our cases were a part of development of that code. I think it is very related to the Chairman of the Warm Springs Tribe, and that was done with tribal resources and there were no resources that the tribe had to do that. When the code was eventually passed, if you look at the written testimony provided to your office, you will see the tribe made a decision even I passed its own code, we didn't know how to necessarily enact it because we didn't have any money. We ended up doing that with our BIA Social Services funding because there was no funding to implement child protective services, part of the code, actually. I can leave the Hopi Children's Code here if you want it.

We made that decision but we made that decision at the risk of impacting other important social services like services to the developmentally disabled, children and adults as well as substance abuse and chemically addicted populations.

The CHAIRMAN. Chairman Brunoe said they have an average of 110 cases a year. What is the Hopi workload?

Mr. LEWIS. We have two CPS investigators carrying caseloads of about 30 apiece.

The CHAIRMAN. Per year?

Mr. LEWIS. No; at any given time. The issue with that is that child protective services is a rather burdensome process, so our efficiency is not as good as it could be because we simply need more child protective services workers, in addition to just trying to handle the ICWA cases that come to our agency which we don't have a worker which we are working on developing.

The CHAIRMAN. Based on your experience with what is considered a model of this children's code, has your relationship in working with Federal agencies been good?

Mr. LEWIS. I like to believe that we at the Hopi Guidance Center have really good relations with our State and a lot of that has to do with approaching the States with a certain attitude but that doesn't mean there aren't certain barriers within the States. What I have found in my dealings with the State is they didn't know how to work with tribes and when they were willing and ready to work with tribes, they haven't done enough of it so we had to really form a good collaboration.

We are also the only tribe in Arizona to have a 4(e) agreement with our State. We are assuming the TANF program under the guidance center with our State. We are also a mental health provider with our State system as well as a Medicaid provider, so we have pretty good experience working with the State but it hasn't come without its barriers because they simply don't know how to work well with tribes.

The CHAIRMAN. That is rather surprising considering the number of tribes in Arizona and the long history of Indian people since there has been a State of Arizona.

Based on your experience, have there been any particular Federal barriers to what you are trying to do?

Mr. LEWIS. As you mentioned before, one of them is having the unfunded mandate so that puts us in the position of trying to be as creative as possible. One of the ways we have done that by obtaining resources like through the State mental health system and through being very creative and strategic with our funding that does come down from the Bureau and how we utilize our surplus but that's certainly been a challenge.

I think related to what the chairman and particularly what my colleague, Terry Cross mentioned, you mentioned a good point about is funding the answer to everything. Well, it is the answer to a lot of things but not everything. When a lot of this legislation has come down, we don't believe as a tribe, and it is in our written testimony, that enough clarity is provided to the Bureau and the IHS in helping to work together collaboratively to make these Acts happen. These are two of the major and primary overseers of services and regulation in Indian country and they are still not in a position where they are collaborating and sharing information as well as they should be.

It is wonderful to see my colleagues, Dr. Grim and Dr. Perez who I know very well, Larry Blair and these folks here sitting at the table but that is not indicative of how it is day in and day out at our levels, the Bureau and the IHS communicating and collaborating together and encouraging the sharing of Federal resources. There is simply not enough of that coming from those entities.

The CHAIRMAN. Dr. Grim is listening very intently back there, I notice.

This bill, S. 1601, requires a study of the impediments to reducing child abuse in Indian communities. Your testimony certainly supports this idea. What role do you envision the tribes playing in the study?

Mr. LEWIS. There are a couple things I see as the role of the tribes being involved in the study. One of them is to act as a principal, if you will, to be able to help guide what some of the research issues are and we are providing an ongoing role in the consultation or any sorts of committees that you usually have when you are doing studies and evaluations.

I also think some money needs to come now to encourage tribes and encourage the Bureau and the IHS to allow tribes to be creative in how they can develop better and more expanded programs to meet the specific needs of its population and the problems we are seeing associated with child abuse.

The CHAIRMAN. I have many Hopi friends and have visited a few times down there. They are very, very traditional people, very in tuned with their religious beliefs. Do you feel that culturally sensitive programs are effective in assisting Indian children and their families, especially in dealing with sensitive issues like violence and abuse?

Mr. LEWIS. Certainly I agree and the provision that you are proposing in your legislation is important in all Federal programming that they take into account the cultural ways and mores and that they allow that as part of the regulation of those particular programs, not just with these particular programs and providing access to traditional healing but also if you look at the child welfare laws, the Federal legislation that comes down to our level, the Bureau only more recently has yet to take into consideration the family and kinship system and allowing that as a way for us to provide effective child welfare, mental health and substance abuse services. We are sometimes limited in the usage of our funding because they haven't fully taken into account our kinship system. By that, I mean about 95 percent of Hopi children moved from their homes are placed within relative homes or clan homes, if you will. Sometimes the Bureau won't allow us to provide funding to help provide food for that family because that is not "under the Federal regulations." They have to be licensed as a foster home.

Those are some of the ways where we need to allow the cultural practices to be allowed to be part of our actual day to day practice and that the funds follow that.

The CHAIRMAN. There is no appeal or something that can be addressed in dealing with that problem, that they are not licensed as a home but they are still related and want to take care of those kids?

Mr. LEWIS. I am sure if Chairman Taylor was here, he would laugh and say that is why we sent Mark up here to kind of rebel rouse and I am sure my colleagues from the Bureau and IHS can attest to that. They are tired of hearing me at the regional levels.

The CHAIRMAN. I am not tired of hearing it, I think it is a very good point.

Mr. LEWIS. So simultaneously I think our strategy is to come here and continue to advocate that but on behalf of our kids, we have done our best effort to try and encourage and influence families, the relative caretakers, to go ahead and get the foster care license even though they don't want it. They just want to take care of their kin but we have had to work very hard to encourage them to just get licensed so we can provide you with some funding. We will continue to advocate these issues here as well.

The CHAIRMAN. Is it difficult to get licensed?

Mr. LEWIS. Sometimes it is and you have to go through a number of background checks and families just want to take care of their kids and need money to help pay for food. I those are wonderful questions I am glad you asked. If you look in our written testimony, to bring home the point of social services, people have forgotten, at least for Arizona, 638 tribes are the primary funder, the primary regulator of child welfare services. They have come out with these new regulations in 2000. The problem is in theory, they are okay but they never consulted Indian Health Services and never consulted Bureau of Education and they are requiring us to have all those people help fund a portion of a child's cost if they have to go into residential treatment but those regulations are not binding on IHS, nor are they binding on Education and both will tell you they have no money, yet we are still out of compliance with the Bureau because of those specific social services regulations. Again, it is an example of a lack of meaningful consultation and collaboration between those three entities and then imposing it on tribal programs such as ours. It is very difficult to be in compliance with those. The money, we can't use it.

The CHAIRMAN. That means in some cases a youngster would be taken out of the family and would be put into a home as a first priority but the family that would want to take care of him often cannot? I am not a child psychologist but it wouldn't seem to me that is in the best interest of the child.

Mr. LEWIS. It is not in the best interest of the child but sometimes it is in the best interest of the child to put somebody in a professional treatment facility because the extended family are kin that are willing to take them in are maybe as dysfunctional as the family they come from. That is where it is key and it is critical.

The CHAIRMAN. Thank you for that insight.

Terry, thank you for your testimony. In your written testimony, your concerns related to the data reporting of child abuse and neglect and recommended technical assistance provided in this area. From your perspective, what infrastructure do tribes need to develop an effective reporting and data collecting system?

Mr. CROSS. First of all, it is access or the capability to have a management information system to track and record that information and then report it so the development of technology. Also, the technical assistance with which to develop their own fields for those management information systems, the words they use for how they are defining abuse and neglect or how they are defining family an all those are things that have to be developed locally but in a framework that can be translated to a central database. We are working on a project funded by ACF to demonstrate with five tribes how that can be done.

The CHAIRMAN. You say in your testimony that about 61 percent of the incidents are reported to a national database. Is that correct?

Mr. CROSS. Those are the cases that make it into the NCANDS database through the State systems.

The CHAIRMAN. So you do support having Indian children reported to the NCANDS database?

Mr. CROSS. I do because that is the central database that measures trends nationally. To create a system parallel to that would be one more layer. It is an ongoing, funded program in the Federal Government that Indian tribes should have access to just like States.

The CHAIRMAN. You are from Portland, correct?

Mr. CROSS. That's right.

The CHAIRMAN. Are there data available to the extent of Indian kids living in Portland, urban Indian kids?

Mr. CROSS. There is not good data available for urban Indian children. There is a tremendous under count in the urban centers largely because Indian children are often not identified even for purposes of ICWA in State systems.

The CHAIRMAN. Also, in your testimony you mention that some tribes have a memoranda of understanding with Federal and State agencies to ensure that all appropriate agencies respond to incidents of child abuse. Do most in your State have that agreement?

Mr. CROSS. They do. As I mentioned the local protocol agreements, when you have a reservation that is checkerboarded or where you in a 280-State and there is the sharing of jurisdiction, there are tribal police, county sheriffs and the FBI, if those agencies don't come together, put down on paper and sit down at the table together and discuss who is going to do what when, historically cases of abused children just fall through the cracks and nobody responded. Unfortunately there is not enough of those agreements because they are complex to put together and they end up being caught up in other kinds of politics like water rights, taxation or just getting people to sit down at the table with one another to work out those things can be very difficult.

The CHAIRMAN. In some cases, we have looked into trying to consolidate Federal programs to decrease duplication to get a better result for the money we have appropriated. Are there any other Federal programs that you think could be a model that would be applicable to abuse, neglect, alcoholism related problems that we could look at here?

Mr. CROSS. Earlier you mentioned resources in your questions. One of the major issues is if we just had access to the entitlements that all children have, title 4(e) being the major one. As you know, we have a bill pending right now to get tribes direct access to Title 4(e). That would be the biggest thing to happen to tribal child welfare since the Indian Child Welfare Act.

It would provide resources to tribes and those tribes who have agreements are tapping into those resources somewhat but many tribes only get the foster care payment and don't get the caseworker dollars, don't get the recordkeeping dollars, don't get the training dollars associated with 4(e). If that alone was corrected, it would make a huge dent in this.

The formula distribution of funds under CAPTA to States is very small. I understand recently two States turned back their money because the mandates were too stringent for them to take for $200,000. I think HHS ought to give any money turned back by States to the tribes to do prevention work.

The major concern I would have in consolidating funding across programs is that when it is child abuse and neglect, you have to be careful to ensure the provision of that service for children and somehow protect those dollars from being drained off into other important priorities of the tribe.

One of the ways in general that the Federal Government enforces policy is through its power of the purse strings and saying you can have this money if you, meet certain conditions. As a child advocate, I need to say it is important to say to everyone, you can have these Federal dollars if you protect your children. I want to make sure in any creative solutions we come to, that those services currently available and any future services might be available for children are protected in some way.

The CHAIRMAN. I think that is all the questions I have. Other members may have questions and they will submit them in writing to you. Senator Inouye probably does.

I appreciate your being here and as I told the first witnesses, if you have some suggestions on how we can improve this bill—and we have been jotting down a few of them that we got from your testimony today—I certainly would appreciate your supplying them. We are going to keep open the record for about 2 weeks and if you could forward any suggestions to us, we are going to try to mark this bill up in October as I mentioned.

Thank you so much for being here and the committee is adjourned.

[Whereupon, at 3:10 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

I am pleased to join my chairman today in receiving testimony on a bill to reauthorize the Indian Child Protection and Family Violence Act. Surely, there can be no more precious resource than our children.

It is essential that we work together to assure that the children of Indian country are protected from abuse, and that we continue to improve upon our data collection efforts as well as our ability to track those who have abused children in the past and who are looking for havens in Indian country, so that we may 1 day be able to eliminate this scourge from the lives of those we hold so dear.

I am glad to see that the departments who will present testimony to the committee today support the reauthorization of this important act.

PREPARED STATEMENT OF GARLAND BRUNOE, CHAIRMAN, CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

Mr. Chairman, members of the committee, I am Garland Brunoe, 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. 1601, the Indian Child Protection and Family Violence Prevention Reauthorization Act of 2003.

In presenting this testimony, I would like to acknowledge Warm Springs Tribal Judge Lola Sohappy, who is very involved in child welfare on our reservation, an active member of the National Indian Child Welfare Association, and who has been communicating with your staff regarding this legislation.

The 650,000 acre Warm Springs Reservation in north Central Oregon is the home of about 3,287 of our 4,160 tribal members. Additionally we estimate about 950 nonmembers also reside on our reservation. Within our residential population, 1,617 of our tribal members, or close to 40 percent, are younger than 18 years old.

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.

Unfortunately, this applies at Warm Springs. In 2002, 402 Warm Springs children were placed in custody of Warm Springs Child Protection Services [CPS] by tribal court order. This is 25 percent of all our children. For 2003, we project 460 children will be in the custody of CPS, a 14-percent increase from 2002.

Our tribe is doing all we can to address this 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 for Public Law 280 and our reservation is almost a solid block of tribal trust land, we exercise ex-

clusive 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 the competing demands of State regulation, we 1 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 of Oregon 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 tribal 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 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 strongly support section 4 of S. 1601, which would require tribes to report non-Indians to State law enforcement agencies in abuse or family violence occurrences where a criminal violation is indicated.

For similar reasons, we also support section 5, directing a study of impediments to the reduction of child abuse, including intergovernmental and Jurisdictional impediments.

We strongly support the various ways in which the act is expanded. Section 3 extends the "child abuse" definition to children subjected to family violence. Section 6 includes Federal and tribal contract and volunteer personnel in background checks, and makes those investigations tougher. Section 7 extends applicability of IHS treatment grants to all child abuse victims, not just sexual abuse victims. And the addition of the Department of Justice in the staffing and operation of the Regional Resource Centers, as provided in section 8, will advance communication, cooperation, and successful prosecution of child abuse matters.

The clarification and extension of responsibilities are also applied to tribes, which we agree is essential. Section 9 requires that tribes operating their own Child Protection and Family Violence Prevention program under a contract from the BIA must clearly designate responsibility for child abuse case coordination and reporting, and for the treatment and prevention of child abuse. The section further helps tribally operated programs by authorizing tribes to provide training for any required child protection certifications, to help ensure the safety of child protection workers while on the job, and to improve data systems for case and program monitoring and evaluation. Annual tribal program reports to the Interior Secretary would also have to include information on training, threats to worker safety, and community outreach and awareness efforts.

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

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. At Warm Springs, as I noted earlier, children in custody of our Child Protection Services this year are projected to increase by 14 percent from 2002. For last year, 2002, our Police Department reported 338 child abuse and 50 family violence cases opened for investigation for criminal charges, an increase of 29 percent from 2001 for these two types of violence. I should note that some of this increase should be attributable to improved data collection started in 2002. But in any event, whether the real increase might have been 10 percent or 15 percent or more, the fact remains we experienced a significant jump in the level of child abuse and family violence. At least at Warm Springs, and most probably nationwide, child protection and family violence prevention absolutely requires increased attention and assistance.

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 Protective Services agency, child protective activities significantly involve the tribal police, the tribal court, tribal prosecution, community services, and medical personnel including mental health practitioners and physicians experienced in child abuse forensics.

But the leading agency that ties these diverse function together is Child Protective Services. CPS has a multi-faceted and complicated task. It must investigate child abuse charges, it must remove children, it must temporarily shelter abused children, and find short term and long term foster residences, which must be monitored. Currently, Warm Springs CPS maintains 40 foster homes. CPS must provide for the direct needs of the child, including medical, counseling, and treatment needs, the child's clothing and education, and even, if needed, transportation to appointments. And CPS is also responsible for working to reunite the family, including all family counseling activities. CPS must be engaged with the prosecution of child abuse-related criminal charges. And throughout all this, they must meet rigorous reporting requirements. At Warm Springs, where CPS will have a projected 460 children under its custody this year, the regular CPS staff totals about 15 personnel, including 4 case workers, each of whom must handle more than 110 cases a year. We also engage seven full time Protective Care Providers to operate our 24 hour Emergency Shelter.

Clearly, our child protection capacity at Warm Springs desperately needs attention and assistance, almost across the board. But based on our own circumstance, areas of particular need include an additional Warm Springs police investigator and tribal prosecutor to develop and try solid child abuse cases against adults. We need improved access to examinations and forensic interviewing in sexual abuse cases, and because of the traumatic nature of child abuse, mental health and follow-on care need to be significantly expanded. Juvenile Services needs support. And we need training for our CPS staff. We also need a means of capturing and interpreting data.

Mr. Chairman, this is a long list just from our tribe. But it serves to highlight the level of attention that Indian child protection and family violence prevention needs nationwide. S. 1601 is an essential step in meeting that challenge, and the Warm Springs Tribes support it and urge the committee to approve it.

Thank you. That concludes my testimony. I shall be pleased to respond to any questions.

STATEMENT OF THE

NATIONAL INDIAN CHILD WELFARE ASSOCIATION

PRESENTED BEFORE THE SENATE COMMITTTEE ON INDIAN AFFAIRS

Regarding

REAUTHORIZATION OF THE INDIAN CHILD PROTECTION AND
FAMILY VIOLENCE PREVENTION ACT
S. 1601

SEPTEMBER 24, 2003

Terry L. Cross
Executive Director

The National Indian Child Welfare Association submits this testimony on the reauthorization of the Indian Child Protection and Family Violence Prevention Act and S. 1601. The focus of our testimony will be a national look at the issues that shape child protection services in Indian Country and strategies for addressing challenges to providing effective protections for Indian children living on tribal lands. 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. 1601, the Indian Child Protection and Family Violence Prevention Reauthorization Act of 2003, including recommendations under each of the areas identified above. Our initial view is that S. 1601 is a positive step towards improving child protection on tribal lands. While much work is yet to be done, the Chairman and Vice-Chairman have put forth a proposal that will support some much needed changes.

Summary of Recommendations

- Provide non-discretionary funding that will allow all tribal governments to operate a basic level of child protection services if they choose. 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 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.

- Provide support and funding for research into how character and criminal background checks are being implemented in Indian Country and recommendations on how to improve compliance.

- Provide funding to establish non-discretionary funding for tribes to use to support prevention and treatment services for Indian children that have become the victims of child abuse or neglect.

- Amend S. 1601 to reflect that tribal governments who are approving or licensing foster care and adoptive homes only need to meet the federal background checks under P.L. 101-630 in order for their homes to be accepted for use by state or county placing agencies. Currently, states are asking tribal foster care and adoptive homes to undergo state background checks, in addition to tribal background checks required under P.L. 101-630.

- 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.

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 – 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.

Another study that provided data on child abuse and neglect as it affects Indian youth was conducted by the University of Minnesota (University of Minnesota, 1992). This study surveyed 13,923 Indian youth in sixth through twelfth grade. In the sample, 18 percent reported they had been a victim of physical or sexual abuse. While this study relied on self-reporting, it does reveal a perceived rate of abuse that is significant when compared to national averages using NCANDS data.

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 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 service 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 only available to those tribes in non-Public Law 280 states.

While tribal children are the focus of these investigations, are members of 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.

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 Ollgaard, 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 66 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 and have often not utilized tribal people in the development of their trainings and technical assistance. 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 our understanding is that 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, possibly organized along the lines of what is proposed in S. 555 the Native American Health and Wellness Foundation Act of 2003 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 and the availability of resources to conduct them. 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 to conduct background checks on prospective foster and adoptive homes where they place children under their custody. Because state and county agencies also use tribally licensed foster and adoptive homes for placements of Indian children under their custody, tribal child placing agencies would get requests for tribal homes to undergo state background checks. The state background check would be in addition to tribal background checks that tribal foster and adoptive families had already undergone. Federal law also requires that states view tribally licensed foster and adoptive homes as equivalent to state licensed homes. The inadvertent conflict in policy has states unnecessarily cautious about using tribally licensed homes

and has made it difficult for Indian families who want to volunteer their home to needy children. It has also created a burden for tribal governments. It is our view that Congress never intended tribal foster and adoptive homes to be subjected to a double standard and has primarily been concerned with making sure that tribal foster and adoptive homes receive a criminal background check and not who administers the check.

Central Registry - The existing law authorized a feasibility study on the need for and establishment of a central registry in Indian Country. Central registries operate in all 50 states and were established with the help of federal government with funding authorized under the Child Abuse Prevention and Treatment Act. Registries were originally created to help in the identification and treatment of abused and neglected children and their families, although these registries perform an expanded list of functions today. This includes: data for researchers to assess trends; reveal patterns of re-reporting and re-abuse on the same child or parent; develop a plan for intervention in a particular case to use as an intrajurisdictional and interjurisdictional source of information; to find mandated reporters in protective custody actions; to assess risk in new reports; and to generally determine who is accessing and using the registry information. How information on a central registry is used and collected depends upon the agency or government that sets up the registry and what their priorities are. In many cases, central registries have been an important tool in helping protect children.

The downside to a central registry is the risk of infringing upon a person's right to due process and the liability that comes from putting people on a registry where access is difficult to manage. The feasibility study that was conducted under the authorization of the Indian Child Protection and Family Violence Prevention Act came to some of the same conclusions to our understanding. They concluded that a registry could only safely provide records of criminal convictions, which could be found through criminal records check rendering the idea of a central registry as providing little real benefit. Alternatives to developing a central registry should be looked at nonetheless.

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 an a higher number of Indian people who 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.

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 on Indian Child Protection and Family Violence Prevention Reauthorization Act of 2003 (S. 1601)

As we stated earlier in the testimony, NICWA is supportive of the direction that S. 1601 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. 1601 provides some remedies for critical problems.

Specifically, we are supportive of the amendments to cover contractors and volunteers under the character and background check requirements. This will add to the list of required individuals, additional people who either work with or have control over Indian children. However, given the uneven levels of compliance with this requirement under the existing law, we urge the Committee to consider providing resources for those government agencies and tribal governments that are engaged in conducting and providing administration of this requirement.

We also support the proposed study to identify impediments to the reduction of child abuse on Indian reservations. As our testimony revealed, there are a large number of potential pediments to our knowledge and little information known about the scope of these problems. With accurate and reliable data, we believe Congress will be able to make informed decisions about how to reduce and eliminate impediments to child protection for Indian children.

Grant programs under Sections seven, eight, and nine are also important additions to the legislation. Funding is probably the key impediment to Indian children not getting the protections they need. Child Abuse and Neglect Prevention and treatment services are desperately needed by all tribes, along with quality technical assistance and information to support necessary services. Infrastructure development is also a welcome addition to the eligible grant activities. Our only concerns are that the programs seem to be discretionary grant programs, which will likely mean that not all tribes who are eligible and have the capacity will be funded. Our other concern is that unless the statute provides specific information on what tribes will be eligible, how the funds will be allocated to tribes and what the criteria are for funding tribes, it could result in funding decisions not intended by the Committee or sponsors.

Including children subjected to family violence under the definitions for child abuse is also a positive addition. We know that family violence is present in high rates in Indian Country and that many times children also suffer because of their exposure to this violence. Measures for the safety of child protection workers is also a good addition to the bill. This is an issue that has not been addressed adequately.

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 non-discretionary funding that will allow all tribal governments to operate a basic level of child protection services if they choose. 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 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.

- Provide support and funding for research into how character and criminal background checks are being implemented in Indian Country and recommendations on how to improve compliance.

- Provide funding to establish non-discretionary funding for tribes to use to support prevention and treatment services for Indian children that have become the victims of child abuse or neglect.

- Amend S. 1601 to reflect that tribal governments who are approving or licensing foster care and adoptive homes only need to meet the federal background checks under P.L. 101-630 in order for their homes to be accepted for use by state or county placing agencies. Currently, states are asking tribal foster care and adoptive homes to undergo state background checks, in addition to tribal background checks required under P.L. 101-630.

- 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.

Conclusion

Child protection has to be one, if not the most, important government responsibility. We know that rates of child abuse and neglect of Indian children are higher than that for many other ethnic and racial groups, and the system for protection of Indian children is fragmented and needing attention. We also know that resources to address this issue from prevention to prosecution are not nearly enough to get the job done. This is the reality for thousands of Indian children, their families, and communities. Tribal governments have the authority, responsibility, and knowledge to set things right, but resources to exercise that authority are not available. S. 1601 is an important step in the right direction and, if enacted, will definitely help, but there is much more that can be done. We thank the Committee for inviting us to provide testimony and look forward to continuing the good work of ensuring protection and well-being for Indian children.

References

Child Welfare League of America. (1999). *Child abuse and neglect: A look at the states. 1999 CWLA Stat Book.* Washington, DC: CWLA Press.

Cornell, S. and Kalt, J. (1998). *Sovereignty and Nation-Building: The Development Challenge in Indian Country Today.* Cambridge, MA: Harvard University.

Cross, T.A., Earle, K.A., and Simmons, D. (2000). Child abuse and neglect in Indian Country: policy issues. *Families in Society,* 81 (1). 49.

Cross, T.L. and Ollgaard, S. (1999). *The Status of Child Abuse and Neglect Prevention in American Indian Communities.* Portland, OR: National Indian Child Welfare Association.

Earle, K. (2000). *Child Abuse and Neglect: An Examination of the American Indian Data.* Seattle, WA: Casey Family Programs.

Earle, A. and Cross, A. (2001). *Child Abuse and Neglect Among American Indian/Alaska Native Children: An Analysis of Existing Data.* Seattle, WA: Casey Family Programs.

George, L.J. (1997). Why the need for the Indian Child Welfare Act? *Journal of Multi-Cultural Social Work,* 5, 165-175.

Hinkle, J. (2003). A Law's Hidden Failure. *American Indian Report,* 19 (1). 12-14.

Indian Health Service. (1990). *Trends in Indian Health.*

Johansen, B.E. (2000). Education – The nightmare and the dream: A shared national tragedy, a shared national disgrace. *Native Americas,* 17 (4), 10-19.

Mannes, M. (1993). Seeking the balance between child protection and family preservation in Indian child welfare. *Child Welfare,* 72 (2), 141-152.

National Clearinghouse on Child Abuse and Neglect. (2002). *Due Process and Central Registries: An Overview of Issues and Perspectives.* Washington, D.C: National Clearinghouse on Child Abuse and Neglect.

National Research Council Panel on Research on Child Abuse and Neglect (1993). *Understanding Child Abuse and Neglect.* Washington, DC: National Academy.

Nelson, K. et al. (1994). *Family Functioning of Neglectful Families: Final Report*. Iowa City: University of Iowa.

Prucha, F.P. (1990.) *Documents of the United States Indian Policy*, 2nd Edition, Expanded. Lincoln: University of Nebraska Press.

Unger, S. (1977). *The destruction of American Indian Families*. New York: Association on American Indian Affairs.

University of Minnesota, Adolescent Health Program. (1992). *The State of Native American Youth Health*. St. Paul, MN: University of Minnesota.

U.S. Bureau of the Census. (1995). Selected Social and Economic Characteristics for the 25 Largest American Indian Tribes: 1990. U.S. Bureau of Census Website http://www.census.gov/population/socdemo/race/indian/ailang2.txt

U.S. Congress, Office Technology Assessment. (1990). *Indian Adolescent Mental Health*. OTA-H-446. Washington, D.C: U.S. Government Printing Office.

U.S. Department of Health and Human Services, Administration for Children and Families. (2001). *Child maltreatment 1999*. Washington, DC: U.S. Government Printing Office.

U.S. Department of Health and Human Services. (2001). *Mental Health: Culture, Race and Ethnicity – A Supplement to Mental Health: A Report of the Surgeon General – Executive Summary*. Rockville, MD: U.S. U.S. Department of Health and Human Services, Public Health Service, Office of the Surgeon General.

U.S. Department of the Interior, Bureau of Indian Affairs. (1998). *"Indian Child Abuse Report"* (Unpublished).

U.S. Department of Justice. (1999). *American Indians and Crime*. Washington, DC: U.S. Government Printing Office.

NICWA responses to Senate Committee on Indian Affairs questions regarding S. 1601

Submitted October 20, 2003

1. **In your written testimony, you noted concerns relating to data reporting of child abuse and neglect and recommended technical assistance be provided in this area.**

    a. **From your experience, what infrastructure do tribes need in order to develop an effective reporting and data collection system?**

Infrastructure needs regarding data collection and reporting for tribes is varied. A small number of tribes who have resources to invest in this effort have been able to develop sta alone databases that have the capacity to collect and report child protection data. The da they are reporting is typically used for internal planning but may be used in reporting to th other federal or state funders. The vast majority of tribes, however, do not have a reliable and adequate database system in place. The continuum starts with tribes that have very limited computer access and no database system and proceeds to tribes that have a triba network based computer system but no database system to use in collection and reportin child protection data.

Other resources that are needed for quality data collection and reporting are:

- Training for tribal staff involved in collection of data to ensure reliable methods are used in data collection and reporting;
- Technical assistance regarding database set up, operation, and necessary modifications required to protect data integrity;
- Support for purchases of necessary hardware and software needed in data collecti and reporting; and
- Support for planning to integrate data collection across tribal agencies and outside agencies that are involved in child protection activities on tribal lands.

NICWA, more than any other organization, is engaged in researching and developing solutions so that tribal data capacity in child welfare can be improved. We have learned much about tribal, state, and federal data collection in child welfare and can see that only when tribes become empowered to collect their own data will lawmakers have accurate a reliable data to inform them. One of our goals is to have tribes collect their own data, mu like states do, and submit this to a national repository where the aggregate data can be organized and made available to policymakers. Because tribes have not shared in the federal data funding and technical assistance like states, tribal capacity as a whole is a lo ways beyond state capacity. However, tribal governments in almost every part of the country are recognizing the importance of data and making efforts to improve, even in sm ways, their ability to collect and report child welfare data.

a. How would accurate reporting lead to a reduction in child abuse?

Accurate reporting can provide assistance in a variety of ways to reduce child abuse. Reduc child abuse depends upon awareness of the problem, an understanding of the history and sc of the problem, community ownership of the problem, and solutions and necessary resources

support solutions. Accurate data is key to all of these components. Awareness comes from knowing that there is a problem, and data can play an important role in informing people with the community and outside of the community. History and scope of the problem need data o trends regarding child abuse so that accurate analysis can be performed to better understan what has caused or contributed to the problem. Community ownership is assisted by communities having data that is specific to them, which can then help in understanding what been done before to address the problem and how that impacted the problem. It is also an important community tool in tribal program and policy-making decisions, as well as on the national level. Developing effective solutions relies on an examination of all of the data discussed in this section. Reducing child abuse depends upon good information that can be used at a community level and national level to inform policymaking that can make a differen

5. **Your testimony states that tribes need help in developing their capacity to investigate.**

    a. **What resources are currently available to tribes to obtain specialized training?**

The resources available to tribes to obtain effective training in child protection investigatio especially as it pertains to child abuse on tribal lands, are very limited. The National Resource Centers in Child Welfare do some work with tribes, but often times the training i geared towards state child protection workers and is missing critical information about pol and practice on tribal lands. The National Indian Child Welfare Association has small subcontracts with three of the National Resource Centers, but none of the subcontracts cover child protection investigation. Some states offer opportunities to have tribal worker attend state training academies in child welfare, but again these trainings are designed fo state workers and do not address policy and practice on tribal lands. The Bureau of India Affairs and the Indian Health Services offer investigation training from time to time, but th training is not consistently offered in all areas or always available when tribes need it. Th National Indian Child Welfare Association also offers training for a fee on these types of issues, but our budget does not allow us to reach all the tribes that request the training or offer scholarships to tribes that do not have funding to support staff travel and training fee

Training is critical to developing a skilled and informed child protection service team. Chil protection activities demand such a high level of skill, coordination, and commitment that when training is not there we often see a high staff turnover and investigations that miss opportunities to help protect children effectively and with the least amount of trauma to th child.

b. What types of curricula and personnel should be included in that capacity building?

Child protection in Indian Country involves a greater variety of agencies and bodies of law than in any other jurisdiction and involves sensitive cultural issues that are unique and not covered in mainstream curricula. To be the most effective and to ensure that what is developed can contribute to an overall reduction of child abuse in Indian Country, Indian people need to be involved in the development, implementation, and evaluation of training. This includes tribes, tribal organizations, and Indian organizations with special expertise. Training curricula need to cover all aspects of investigation of child abuse in Indian Country and need to address the unique cultural issues involved in this activity and all the potential policies and agencies that may have a role. Investigation curricula should include skills and knowledge development in:

- Understanding historical issues that have contributed to and helped prevent child abuse and neglect in Indian communities
- Intake procedures
- Basic investigative techniques
- Child and family interviewing
- Risk assessment for abuse and neglect
- Decision making practice
- Evidence collection
- Multi-Disciplinary and Child Protection Team operation
- Court preparation and involvement, including expert witness testimony
- Planning and implementing intervention strategies
- Basic case management, including record documentation
- Understanding abuse and neglect, community, cultural identity, and lifestyle issues for both workers and clients and how these interface in child protection work

Personnel included should include tribal social workers, members of tribal multi-disciplinary teams, tribal law enforcement and tribal courts, as well as other agencies critical to child protection activities involving Indian children on tribal lands. Additional training could be implemented with other outside agencies after core tribal child abuse investigation team members are properly trained.

m. Your testimony mentioned your partnership with 4 National Resource Centers, which enabled you to provide technical assistance to tribes. Is this technical assistance available to tribes free of charge?

This technical assistance is free to tribes, but because the sub-contracts are very small, w often have to turn away tribes that make requests. It is important to note that while states have access to specialized training through all of National Resource Centers, tribes only have access to a very small portion of the resources that these National Resource Center receive that result in specialized training to meet their needs.

2. **Child abuse generates additional costs and burdens on various systems. Your written testimony also identified negative impacts on tribal economic development from child abuse.**

    a. **Can you elaborate on the correlation between child abuse and the chronic social problems, which prohibit successful economic development?**

One of the key resources needed to develop and maintain a sound economy is a skilled, relia workforce. In small, rural communities, which most tribes would be characterized as, it is eve more critical. Social problems, like child abuse, if not addressed effectively, can not only rob government of limited funding, but it can also contribute to the development of other social problems that will continue to manifest themselves as children grow into adults. Research ha shown that children whom are abused will be at a greater risk for other social problems as th become adolescents and then adults. There is also a greater risk of child abuse victims becoming abusers themselves after they become adults. The implications are clear. If child abuse and neglect is not addressed effectively, children will continue to be abused and adult continue to suffer from the childhood trauma they experienced as child victims, resulting in a reduced ability to contribute to their community and families. Workers who are suffering from type of unaddressed trauma will likely not be good workers and instead be engaged in a daily struggle with their emotional, physical, spiritual, relational, and possibly sexual challenges. Investments in preventing and treating child abuse have both short-term and long-term benef for tribal governments as they work to develop a strong work force and ultimately a sound economy.

3. **Your testimony indicates that reporting and background check standards differ and tribes often have to duplicate efforts.**

    a. **Can you outline the differences in the standards?**

Our testimony identified an area of background checks that focuses on tribal foster care a adoptive homes. This does not effect background checks for BIA, HIS, or tribal employee

It is commonly understood that foster care and adoptive homes are volunteers and not employees. The funding they receive when caring for children is a subsidy that is to be u: for expenses incurred in taking care of these children (e.g. clothing, food, school supplies etc.). It is not compensation for the care that the foster or adoptive families provide.

The chronology of the problem is after the passage of the Indian Child Protection and Far Violence Prevention Act the regulations required that tribes that license foster and adopti homes conduct background checks under the standards in the law to ensure that children placed in these homes would be safe. Tribes began implementing this requirement, although many were already conducting these background checks on their own. States tl are required to place Indian children in their custody in Indian foster or adoptive homes frequently use tribal homes to help meet the requirements of the Indian Child Welfare Act No state that we know has enough Indian foster or adoptive homes to meet the number o Indian children in need of placement under their care. The Indian Child Welfare Act also provides that tribally licensed homes will be viewed as equivalent to state licensed homes In 1997, the Adoption and Safe Families Act was enacted and codified requirements for background checks of state foster and adoptive homes. States were already doing background checks, but the new federal law made the requirement more prescriptive. St that continued to want to use tribal foster care and adoptive homes began to be concerne that if a tribal home had not undergone a state background check, the state might be out compliance with the Adoption and Safe Families Act if they used a tribal home that had a background check under the Indian Child Protection and Family Violence Act. This result in some states beginning to require tribes to subject their families to a second backgrounc check before they could be used by state agencies, which was confusing, expensive and of sync with the Indian Child Protection and Family Violence Prevention Act and the India Child Welfare Act.

The specific requirements for background checks under the Indian Child Protection and Family Violence Prevention Act are similar to those required by states using the Adoption and Safe Families Act. In some cases, the tribes may be doing background checks that perform a broader search than those used by the states under the Adoption and Safe Families Act. An example of this is a state that only checks for criminal offenses within th state boundaries, while a tribe can use FBI background checks done through an agreeme with the BIA that search national databases. Background checks done under the Indian Child Protection and Family Violence Prevention Act and the Adoption and Safe Families both look for felony convictions relating to harm to children and related offenses that can argued are predictors of risk for harm to children.

b. What steps have been taken to reconcile these standards?

Little has been done to reconcile these standards. The National Indian Child Welfare Association has raised the issue with the Administration for Children and Families under t Clinton Administration and the Bureau of Indian Affairs, but no policy changes or further discussions were forthcoming.

3. Tribal child protection systems are seriously under funded.

   a. You proposed a national Indian Children's Trust Fund as a mechanism to provide additional funding for tribal child protection services. How successful has this type of program been for states in generating additional funding for child abuse prevention efforts?

Some key funding sources for state child abuse prevention efforts are the Children's Trus 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, priv 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 preventior efforts, and millions of families have reaped the benefits of their work. Without these stat children's trust funds, it is very possible that not only funding, but awareness and support preventing child abuse would be much lower in states. These Children's Trust Funds hav been very important to helping improve responses to child abuse and neglect at the local, state, and national level.

   b. Your testimony also noted that this proposed trust fund could be similar to the Foundation established under S. 555, the *Native American Health and Wellness Foundation Act of 2003.* The Committee has received testimony that child abuse can lead to serious health problems, which are matters that could be addressed by the Foundation created under S. 555. Please explain how this proposed trust fund could be an appropriate activity under the Wellness Foundation or why it would not be.

We are supportive of the idea of a national Indian Children's Trust Fund being establishe a public trust similar to the one being proposed under S. 555. However, we have some concerns about the level of attention child abuse prevention would get in a larger foundati committed to overall health and wellness and the need for more specialized expertise in c abuse needed to inform decision making around the allocation of resources. The state

Children's Trust Funds, organized under the authority of the Child Abuse, Prevention, anc Treatment Act, have the ability to receive federal match for funding raised at the state lev which is not evident in S. 555. These state trust funds also provide an important service i keeping prevention in front of key local and national policymakers, service providers, and funders.

Over the years we have seen child abuse prevention issues get overwhelmed when they a one part of a focus on overall health and well-being, resulting in very little attention or resource development for child abuse prevention. Decision-making about how resources and information dissemination on child abuse prevention should occur need the help of individuals, tribes, and organizations that have specialized expertise in this area. We wou recommend that any oversight board include representatives with demonstrated expertise child abuse prevention, with special emphasis on these issues within an Indian context. I these goals can be achieved within a charitable and non-profit federally chartered corporation, then we could support this development.

4. **Indian children are a precious resource and their protection begins while they are still in the womb. Current federal law does not provide additional criminal penalties for an offender who harms a pregnant woman and either injures or kills the Indian child she is carrying.**

    a. **Have there been instances in Indian Country where an offender has harmed or injured a pregnant woman in some way, thereby causing injury or death to her unborn Indian child?**

The National Indian Child Welfare Association is aware that there are situations where an individual has harmed or injured a pregnant woman in some way, which may have causec injury to her unborn Indian child. However, our awareness comes from anecdotal information, some of which is difficult to document. We are very concerned about the wel being of all Indian children, as reflected in our mission statement and activities, but the ex to which this is occurring and how it is being addressed are not well understood in Indian Country. This is primarily because reliable data is not collected regarding these types of assaults. and programs to address this issue are rare in Indian Country.

    b. **Should there be additional protections for this special class of victims?**

We are not comfortable making a recommendation on whether there should be additional protections for this special class of victims. Our reluctance comes from not having the data understand the problem better and not being experts in criminal law regarding domestic violence or assault. We don't have enough knowledge of what the current remedies are foı this class of victim and prosecuting attorneys. We would refer you to the Tribal Law and Pc Institute (323) 650-5467 and the National Indian Justice Center (707) 579-5507 for an additional perspective on this issue.

If you have further questions about our responses to your questions, please contact David Simmons, director of policy and research, at (503) 222-4044 or e-mail desimmons@nicwa.c

Thank you.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATEMENT

OF

CHARLES W. GRIM, D.D.S, M.H.S.A,

DIRECTOR

INDIAN HEALTH SERVICE

BEFORE THE

SENATE COMMITTEE ON INDIAN AFFAIRS

ON S. 1601, A BILL TO REAUTHORIZE THE INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT

September 24, 2003

STATEMENT OF THE INDIAN HEALTH SERVICE
HEARING ON THE
REAUTHORIZATION OF THE INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT

September 24, 2003

Mr. Chairmen and Members of the Committee:

Good morning, I am Dr. Charles Grim, Director of the Indian Health Service (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 Thompson on S. 1601, the Indian Child Protection and Family Violence Prevention Act of 2003.

The IHS has the responsibility for the delivery of health services to more than 1.6 million Federally- recognized American Indians and Alaska Natives (AI/ANs) 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 AI/ANs 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 AI/AN people, communities, and cultures and to honor and protect the inherent sovereign rights of Tribes.

Secretary Thompson, too, has been extremely 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 has recognized the authority provided in the Native American Programs Act of 1974 and reestablished the Intradepartmental Council for Native American Affairs which considers 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 facilities advocacy, 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 besieged by the numbing effects of poverty, lack of resources, and limited opportunity. The Indian Child Abuse and Family Violence Prevention Act (P.L. 101-630) was passed in 1990 and the IHS has since endeavored to meet the spirit and intent of the 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 AI/AN 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 AI/AN 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 AI/AN programs
4. advocate for funding and services for IHS and AI/AN 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 AI/AN families and children.

Some of the actions taken to achieve these goals include:

- The Indian Child Protection and Child Abuse Prevention Demonstration Projects for Mental Health/Social Services for AI/ANs. Directly funded by IHS, this program initiative provided $4,275,019 in financial assistance to federally-recognized Indian tribes or tribal organizations or to non-profit organizations serving primarily AI/ANs to establish programs for child protective services, child abuse prevention (including family violence prevention), and educational programs aimed at child abuse prevention, which were community based and culturally relevant to AI/ANs. The grants spanned the period from August 1997 through July 2002.

  Included over this period were:

  1. Pueblo of Isleta-- provided interventions, activities and community awareness campaigns across the Pueblo. In cases of child abuse and neglect the program supported temporary placement of children out of the home with extended family placements. As a community based program, it collaborated with other treatment providers in the community (Tribal Courts, Isleta Substance Abuse Program, Mental Health, Diabetes Program, Isleta Elementary School and the Isleta Police Department) to provide a more comprehensive child abuse support and intervention safety net than had been possible before.

2. Little Traverse Bay Bands of Odawa - the Grandmother's Wisdom program offered the Odawa membership a counseling/therapy component that provided intensive therapeutic services: 1) A treatment protocol that focused on traditional Anishnabe childrearing practices; worked with the Human Services Department in the child protection program which is the first-point-of contact for Anishnabe families of child abuse or family violence 2) Provide educational outreach training to the public on topics of child abuse, domestic violence issues, anger management, positive parenting, self-esteem.

3. Southern California Indian Center, Inc. - provided both treatment services and prevention education through outreach, crisis intervention and referrals, professional counseling, assistance with emergency services, and educational workshops to the urban Indian population of Southern California, primarily the Los Angeles area.

4. Indian Health Care Resource Center of Tulsa, Inc.- provided individual and family counseling for victims of child abuse/neglect as well as those who have been convicted of child abuse or neglect. Psychiatric services were provided to children who had significant emotional or behavioral problems which would benefit from such treatment.

5. Confederated Tribes of Siletz Indians - conducted child developmental assessments, mental health evaluations, and provided therapy planning to address the children's needs. Therapy often included family therapy for assisting adult care providers to meet their child's needs and promote health, safety and to strengthen parenting skills. This program also worked with 11 counties to allow for Police backup in the event such support was needed for conducting a child intervention/investigation and for emergency services.

- The University of Oklahoma's Project Making Medicine, is funded through an Interagency Agreement with the Administration for Children and Families, Office of Child Abuse and Neglect, DHHS. Project Making Medicine 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 schedule 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. Project Making Medicine has trained over 150 professionals working with Native children on reservations around the country.

- With funds provided by IHS, The University of Oklahoma Health Sciences Center is finalizing the development of a child protection manual available to the IHS, Bureau of Indian Affairs, Tribal and Urban Indian health staff involved with providing child abuse and neglect and domestic violence services in AI/AN communities. The Handbook will be in a format so it can serve dual purposes as a training manual (goals, objectives,

agenda, small group activities, etc.) and/or as a technical manual (statistics, definitions, indicators, legal and ethical responsibilities, group dynamics, confidentiality, referrals, treatment issues, standard forms/templates, resources, etc.).

- The IHS entered into an Inter-Agency Agreement with the Department of Justice, Office of Victims of Crime, to provide $414,000 in funding over a period of four years, from 1999 through 2003, to provide training for IHS physicians and nurse practitioners in the application of forensic and telemedicine equipment in child sexual abuse cases. The funding provided 5 day intensive trainings in forensic evaluation techniques and telemedicine, and included the purchase of telemedicine equipment, coloscopes, and accessories at many Indian health facilities.

- The IHS has developed the Mental Health and Community Safety Initiative (MHCSI) for AI/AN Children, Youth, and Families. This grant program for Fiscal Years 2003 through 2011 (assuming continued appropriations), funds $500,000 annually for cooperative agreements to develop innovative strategies that focus on the mental health, behavioral, substance abuse, and community safety needs of AI/AN young people and their families who are involved in or at risk for involvement with the juvenile justice system. 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 AI/ANs. The MHCSI Planning Phase cooperative agreement program (years 1-3) will fund development of actual services. The Implementation Phase (years 4-8) will follow with the provision of 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 victims 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). There will be only one funding cycle during fiscal year (FY) 2003.

- Section 408 of P.L. 101-630 requires the IHS (and BIA) to compile a list of all authorized positions within the IHS where the duties and responsibilities of which 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 individual must meet to be appointed to positions having regular contact with, or control over, Indian children. The law also requires that the IHS 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, P.L. 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.

- Section 6 of S. 1601 amends section 408 to extend the character investigation requirements to "volunteer and contractor" positions." The IHS regulations, at 42 CFR 136.403, includes volunteers and contractors within the definition of individuals covered by section 408. Section 6 further amends section 408 to specifically require a background check, based on a set of fingerprints conducted by the Federal Bureau of Investigations (FBI) and a review of applicable State criminal history repositories. The IHS regulations, at 42 CFR 136.406, includes these requirements as part of the background investigation of an individual to determine whether minimum standards of character have been met. I have enclosed a copy of the Interim Final Rule as an addendum to my testimony.

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 only served to stabilize an alarming 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 cauldron of despair from which so much of the violence in Indian Country springs.

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 AI/AN communities by consulting with IHS health care facilities, tribes, and urban Indian clinics as well as through collaboration and advocacy 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

SENATE COMMITTEE ON INDIAN AFFAIRS
Hearing on
Indian Child Protection and Family Violence Prevention Re-authorization Act of 2003
September 24, 2003

1. The Indian Health Service (IHS) plays a significant role in child abuse investigations. The Committee received testimony that on at least one Indian reservation, five doctors at the IHS facility were trained to conduct forensic examination, but were overtaxed. This situation raises concerns about the quality of examinations and resulting prosecutions.

   Question A: What sort of resources are needed to improve the medical aspect of the investigations?

   Answer A: Highly specialized training is required for forensic examinations and interviews. Interview rooms for forensic interviewing, examination equipment, release time to provide testimony and depositions are all necessary to creating the least invasive and most effective intervention for child victims and their families.

2. Your testimony indicated that several child abuse demonstration projects established by the IHS were funded through July, 2002.

   Question A: How successful were these projects and would the Department support future similar demonstration projects or permanent programs?

   Answer A: IHS has a number of mutually supportive programs with Substance Abuse and Mental Health Services Administration (SAMHSA) with demonstrated successes. IHS has two headquarters personnel assigned directly to SAMHSA programs at Center for Substance Abuse Treatment and Center for Substance Abuse Prevention for a total of .8 FTE (two personnel at two days per week each) to provide coordination between our two agencies. Specific to culturally appropriate children's programs is the Circles of Care grant program funded by SAMHSA. Both IHS and SAMHSA share technical assistance and evaluation efforts for 16 tribal programs. IHS provides the technical assistance via a contract with the National Indian Child Welfare Association and SAMHSA provides evaluation via a contract with the University of Colorado Health Sciences Center (UCHSC), Circles of Care Technical Assistance Center. The evaluations provided by UCHSC indicate high success in building tribal infrastructures to deliver high quality, innovative, and culturally appropriate services to children in a wide array of settings and locations.

   Question B: As you have testified, traditional Anishinabe Childrearing practices is one treatment protocol used in child protection programs. What are other cultural methods used in child protection programs? What obstacles have arisen in their implementation?

   Answer B: The Navajo tribal child abuse programs, as well as other tribal programs,

utilize traditional ceremonies for those families who prefer this kind of treatment. Some of the tribal programs make every effort to accommodate the implementation of the traditional ceremonies when the family does not have the means to do so. The ceremonies sometimes require various kinds of supplies and objects to be used in the ceremony. The families are sometimes not able to purchase what is needed and may not be able to pay the nominal amount expected as payment for the services of the traditional practitioner. Historically these ceremonial arrangements were done utilizing the barter system, but due to the impact of a cash economy this has become more difficult for some families. In some cases tribes will assist with the healing ceremony to the extent they are able. The problems this may present will vary among the tribes who utilize such practices.

3. Child abuse and family violence result in more than mere physical injuries. Afflictions such as depression, substance abuse and mental pathologies also result and they also tax the health care system. Your testimony also reported the same conclusions.

Question A: Have you conducted any research to determine the correlation between child abuse and health care burdens and the associated costs?

Answer A: While a number of organizations (especially Prevent Child Abuse America and its various State Chapters) have estimated the costs associated with child abuse and neglect, we have not funded any research specifically focused on the costs, particularly on the health care costs resulting from child abuse and neglect. However, the Children's Bureau's National Clearinghouse on Child Abuse and Neglect Information published (2003) a bulletin on this topic, "Prevention Pays: The Costs of Not Preventing Child Abuse and Neglect." This bulletin discusses both the direct and indirect costs of child maltreatment similar to the Clark Foundation study. Both the Clark Foundation study and the Clearinghouse bulletin use numbers from the early 1990s. Using more current data on numbers of children abused and costs for services would likely result in even higher costs associated with child abuse and neglect.

Prevent Child Abuse America has estimated the costs of child abuse and neglect based on data from a variety of sources, including the U.S. Department of Health and Human Services, U.S. Department of Justice, and U.S. Census.

None of the estimates from these studies, however, consider costs specific to the Indian Health Service or the American Indian/Alaska Native population.

Question B: Obviously, strong prevention programs are needed. What other resources are needed to break these collateral afflictions and costs?

Answer B: Child abuse and neglect 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 communities springs. Where there is opportunity; economic security and self sufficiency; and where there are more possibilities than obstacles to impede success, that is where we need to direct what resources we can to finally break the cycles of abuse and neglect that we see today.

4. Your testimony also indicated that child abuse can lead to serious health problems which are matters that could be addressed by the Wellness Foundation created under S. 555, the Native American Health and Wellness foundation Act of 2003. The Committee has also received testimony that child protection programs are seriously underfunded.

   Question A: Please explain how the Foundation created by S. 555 could address child abuse issues and create an additional funding mechanism or why it would not. Would you support bringing child abuse issues within the auspices of this proposed Foundation as part of a comprehensive approach to reducing child abuse?

   Answer A: S. 555 is currently under review by the Administration; so, we are unable to comment, at this time, on how this bill could address these issues.

5. Indian Children are a precious resource and their protection begins while they are still in the womb. Current federal law does not provide additional criminal penalties for an offender who harms a pregnant woman and either injures or kills the child she is carrying.

   Question A: Have there been instances in Indian Country where an offender has harmed or injured a pregnant woman in some way, thereby causing injury or death to her unborn Indian child?

   The Child Abuse Prevention and Treatment Act (CAPTA) allows states to draw down federal dollars if the states have laws in place that define what constitutes child abuse and neglect, among other things. It also authorizes HHS to collect data from states regarding child abuse and neglect perpetrated against children from birth to age 18. States have the authority to define what constitutes child abuse, as long as the state meets the CAPTA definitions. The state can go further in its definitions of what constitutes abuse and neglect; but it cannot do less than the requirements of CAPTA. Therefore, a state could classify harm to an unborn child as a form of child abuse, but CAPTA does not require the state to do so nor does it call for that particular information to be reported to Federal authorities. CAPTA calls for states to report child abuse information but it does not require states to disaggregate the data to report the level of such abuse within Indian Country. However, the Indian Health Service reports that there is anecdotal information to suggest that assaults against pregnant women that injure or kill their unborn children have occurred in Indian Country. Since HHS is not a law enforcement agency, the Department of Justice or the Bureau of Indian Affairs might be in a better position to provide more concrete data.

Question B: Should there be additional protection for this special class of victims?

Answer B: Yes. In fact, the Administration has expressed support for Unborn Victims of Violence legislation in the 107th (H.R. 503, S. 480) and 108th (H.R. 1997, S. 1019) Congresses. The legislation would make it a separate Federal offense to cause death or bodily injury to a child, who is in utero, in the course of committing any one of numerous Federal offenses. Appropriately, this legislation would cover instances in Indian Country where an offender has assaulted a pregnant woman and caused injury or death to her unborn child.

If a pregnant woman has been physically victimized through assault, then she would certainly be in need of special considerations such as an escort to and from a medical clinic or hospital where she is receiving her medical services if she has left the home and is in a shelter or other designated residence unknown to the offender. Also she may need a security support system much in the same way as others who have left a battering situation in the home. If she is still in the home then she would need to be seen in isolation from the batterer to assist her with deciding what she can do to diminish the risk to her safety. Special precautions would need to be taken by the clinic and hospitals providing medical care to make every effort to ensure the safety of the patient victim and her unborn child.

TESTIMONY

OF

WOODROW HOPPER

ACTING DEPUTY ASSISTANT SECRETARY FOR MANAGEMENT

FOR INDIAN AFFAIRS

U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

Hearing on

S. 1601, the "Reauthorization of the Indian Child Protection and Family Violence Prevention Act"

September 24, 2003

Mr. Chairman, Mr. Vice Chairman and Members of the Committee, my name is Woodrow Hopper and I am the Acting Deputy Assistant Secretary for Management for Indian Affairs at the Department of the Interior. I am pleased to be here today to provide the Department's testimony supporting S. 1601, a bill to amend the Indian Child Protection and Family **Violence** Prevention Act to provide for the reporting and reduction of child abuse and family **violence** incidences on Indian reservations.

The Department supports expansion of the number and breadth of employment positions that will be subject to the minimum standards of character under the Act. The Department recommends a review not only of applicable State criminal history repositories but also applicable tribal criminal history repositories. We also support the inclusion of the certification requirements for education employees who are responsible for child protection at residential and day schools. Certification is critical as almost all Bureau of Indian Affairs (BIA)-funded schools contract to provide important services, including mental health and other social services, to their students.

The Department supports conducting a study to help identify and reduce the barriers to implementation of the Act, with a particular emphasis on Tribal, Federal and State investigation and prosecution of Indian and non-Indian abusers. The study will allow the Office of Law Enforcement Services to identify efforts that better serve Indian communities and improve the

implementation of the President's citizen-centered government initiative. However, we respectfully request additional time in which to complete the more comprehensive report to better identify incidences of child abuse and family violence, and steps to improve intergovernmental and interagency cooperation.

The BIA, in cooperation with Indian tribes, must continue to develop more awareness at the local level to prevent child abuse. We must work together to insure that abusers do not have access to children, and that any incidences of abuse are prosecuted.

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

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 2 2004

The Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510-6450

Dear Mr. Chairman:

I am pleased to provide the responses to the questions submitted following the September 24, 2003, Committee on Indian Affairs' hearing on S. 1601, the "Indian Child Protection and Family Violence Prevention Reauthorization Act of 2003."

Should you have any questions, please contact my office at (202) 208-5706.

Sincerely,

Aurene M. Martin

Aurene M. Martin
Principal Deputy Assistant Secretary - Indian Affairs

Enclosure

1. Currently, the Indian Child Protection and Family Violence Prevention Act (Act) requires *all* authorized positions within the Department that have regular contact with children to undergo character investigations.

QUESTION 1-A: What is the Department's process for determining whether a position requires an investigation? That is, on what basis does the Department decide a position has "regular contact" with children? Must the contact be direct, on a daily, weekly, or monthly basis? What about seasonal workers? For instance, would the Act govern construction workers who are doing repair, rehabilitation or construction work on Indian schools?

ANSWER: All employees and contractors within the Department of the Interior (Department) are subject to a background investigation. The Department uses the position and sensitivity designation process developed by the United States Office of Personnel Management. The Department has adapted this designation into *Department Manual 441, Chapter 3, Position Sensitivity and Risk Level Designation Criteria*, (441 DM 3) to determine the level of investigation for each individual. In addition to the Department's existing policies, all individuals who have regular contact with or control over Indian children are subject to background investigations in accordance with the *Indian Child Protection and Family Violence Prevention Act of 1990* and the *Crime Control Act of 1990 – Subchapter V – Child Care Worker Employee Background Checks.*

"Regular contact" has been defined as any contact that lasts for more than five days in a school year and is contact that is not within view or supervision of someone who has already been the subject of a favorable background investigation. All volunteers, regardless of the extent of their contact, are subject to a minimum investigation of an FBI fingerprint check and a local law enforcement check prior to contact with Indian children.

"Seasonal workers," who are Federal employees or service contractors are subject to a background investigation. Construction, utility service, maintenance, and delivery type contractors who do not have regular contact with or control over Indian children are not subject to a background investigation. However, they are segregated from Indian children and, in the event that it is necessary for these types of contractors to be in the vicinity of Indian children, they are escorted by an individual who has already received a favorable background investigation.

QUESTION 1-B: Does this process apply solely for the BIA and Indian education programs? If so, what governs the positions outside the BIA and Office of Indian Education Programs?

ANSWER: No, this process does not apply solely to the Bureau of Indian Affairs (BIA) and Indian education programs. All Indian tribes or tribal organizations receiving funds under the authority of the *Indian Self-Determination and Education Assistance Act* (P. L. 93-638) are required to comply with the *Indian Child Protection and Family Violence Prevention Act*. Tribes that contract or compact a law enforcement program

must conduct and adjudicate background investigations on law enforcement personnel or volunteers that have regular contact with or control over Indian children. This requirement is clearly stated in 25 C.F.R. § 12.32 and § 63.13 (b). Such individuals are subject to the disqualifying factors identified in the *Indian Child Protection and Family Violence Prevention Act of 1990.* Tribal law enforcement contractors and those individuals under compacts are bound by the regulations regarding the background investigation and adjudication requirements found in 25 C.F.R. Part 63.

QUESTION 1-C: How has the background investigation process accommodated the pending reorganization and has a complete, updated personnel list been developed and assessed for compliance with Pub. L. 101-630? Will there be a need for more security personnel to conduct these investigations.

ANSWER: Before the reorganization, personnel security was managed by two separate offices. As a result of the reorganization, the Office of Law Enforcement Services (OLES) Programs now manages the personnel security program for the entire BIA. The BIA anticipates no major change in the security clearance process as a result of the reorganization other than the centralization of the management within law enforcement.

Public Law 101-630 includes contractors who provide services to the BIA. Contracting Officers and their Technical Representatives are advised of the investigative requirements for each contract employee and consultant. Like the risk designation for each position, risks accruing from service agreements and contracts are determined following a review of contract activities, including access to information technology systems and/or trust resources. The OLES Security Program will ensure that staff is dedicated to meet the timeliness for screening and adjudication.

Prior to the reorganization, the Office of Indian Education Programs (OIEP) employee positions had been designated as having contact with or control over Indian children. Except for the administrative type positions, all other Education Program positions stayed within the OIEP and, therefore, the current background investigation process was not affected. The OIEP security staff has an updated personnel list and we are in compliance with the *Indian Child Protection and Family Violence Prevention Act of 1990.* At this time, it does not appear that additional security personnel will be required to continue to execute the background investigation program for the OIEP security office.

QUESTION 1-D: How are non-suitability determinations made and addressed?

ANSWER: The Department's policy found at 441 DM 3, clearly identifies suitability issues and criteria. In reviewing the background investigation, if certain issues arise, the individual is given a letter identifying these issues and the applicant/employee is given the opportunity to respond to them. The individual is afforded due process, i.e., advised of the information received and given the opportunity to refute, deny, or correct criminal records information. If determined unsuitable for a position with duties and responsibilities involving contact with or control over Indian children, the individual cannot work for the BIA. The individual may apply for positions that are not designated subject to Pub. L. 101-630, but the BIA is not required to identify an alternative placement. Lastly, a determination based upon a statutory bar may be reconsidered at any time and upon receipt of a certified Pardon, based on innocence, or appellate opinion and an order overturning a conviction.

For example, the suitability of an individual, who has been employed 15 years as a Superintendent, may be reviewed if that individual enters a plea of guilty to aggravated assault (which is classified by the prosecuting jurisdiction as a felony). The individual is afforded due process, i.e., advised of the information received and given the opportunity to refute, deny, or correct the information within the criminal records.

OIEP has Title V employees and Pub. L. 95-561 contract educator employees. Although unsuitable determinations are made in accordance with the suitability criteria established for all Federal employees, individuals having contact with or control over Indian children are further subject to the disqualifying factors identified in the *Indian Child Protection and Family Violence Prevention Act of 1990* and the *Crime Control Act of 1990 – Subchapter V – Child Care Worker Employee Background Checks*. Once an individual has been determined unsuitable to occupy their position, they are immediately removed from contact with or control over Indian children pending a termination of employment. Service contractors and volunteers are removed immediately.

QUESTION 1-E: In 1998, the Office of the Inspector General (OIG) conducted a survey of background investigations for Navajo Area education employees. The OIG found at least three instances where employees were found unsuitable for contact with children, but were still employed at the same position three years after the unsuitability determinations were made. What prevented the removal of these individuals? What assurances or procedures are in place to ensure that, in the future, employees receiving such determinations are not allowed contact with children?

ANSWER: The Bureau of Indian Affairs immediately responded by centralizing the background investigation function under the Director, Office of Tribal Services, in February of 1998 and by hiring an additional security specialist.

In August 2002, we assigned personnel security specialists to address the needs of the Education Programs. Standard Operating Procedures were released in November of that same year. The OIEP Security staff are co-located with the Human Resources staff in Albuquerque, New Mexico, which provides them with ready access to the personnel systems, reports, and the managers they service. The procedures and location of this office have significantly improved the coordination and communication to ensure that individuals who receive unsuitable determinations are promptly removed from contact with Indian children. As a result of the reorganization, the personnel security program for Indian programs and Indian Education will be managed within the Office of Law Enforcement Services.

QUESTION 1-F: What is the timeframe for completing a character investigation and what is the cost for each investigation?

ANSWER: The background investigation is completed in four phases. The first phase is the pre-employment screening. Prior to making an offer to an individual, the hiring official conducts reference checks by contacting all former employers for the last five years, three references, and a local law enforcement check. That information is forwarded to the respective Security Offices, who review the information, search the tracking systems maintained by their office, and contact the Office of Personnel Management to request a search of their investigative system. If no derogatory information is identified, an offer is made.

The second phase takes approximately 10-15 days and consists of the individual completing all required security forms. The forms are submitted to the Security Office who reviews the forms and screens them for any derogatory information. If no derogatory information is identified, a background investigation through the Office of Personnel Management is initiated with a request for an Advanced Fingerprint check. The results of the Advanced Fingerprint check take between 7 – 14 days. If the results of the fingerprint check are returned with no disqualifying information, the individual may have contact with or control over Indian children but must be observed and supervised by an individual who has already received a favorable background investigation. This action will be in effect until there is a final suitability determination issued by the Security Office.

The third phase is the background investigation itself and takes 75 days. Upon completion of the background investigation, the Office of Personnel Management forwards all information obtained to the Security Office. In the fourth and final phase, the Security Office has 90 days to make a final suitability determination.

The minimum cost of a background investigation is $88. However, the cost can be as high as $3,300, depending on the duties and responsibilities identified for the position to be occupied.

QUESTION 1-G: What resources have been made available to tribes to process the character investigations and cover the costs?

ANSWER: The BIA Fingerprint Program was established in 1995 to assist tribes and tribal organizations in complying with the character (background) investigation requirements for child care workers and persons having regular contact with or control over Indian children, specifically Pub. L. 101-630 and Pub. L. 101-647. An interagency agreement with the Federal Bureau of Investigation (FBI) allows the BIA to serve as the conduit by which tribes access criminal record data maintained by the FBI for non-criminal, regulatory purposes. In FY 2003, the BIA Fingerprint Program processed 5,819 child care workers employed by tribes and tribal organizations.

The OLES Security Program is developing a distance-learning program that will provide training to tribal personnel responsible for initiating and adjudicating character investigations. In addition, the OLES Security Program will schedule 1,500 child investigations with OPM for Pub. L. 93-638 contracted and self-governance compacted social services, law enforcement and judicial personnel.

Currently, training and technical assistance are provided to tribally operated schools.

QUESTION 1-H: Your testimony noted that any offender may be tracked through the administrative system if they are employees. However, the Act provides for significant law enforcement involvement and governs more than simply Department employees. How would you monitor a perpetrator that moved from jurisdiction to jurisdiction to avoid being caught?

ANSWER: The majority of child abuse cases investigated on reservations result in federal prosecution. Those cases that do not meet the criteria for federal prosecution are pursued in Tribal Court. If a person is charged with any Federal or Felony Offense and flees the jurisdiction to avoid prosecution, it is considered a Federal Offense. In the case of a Federal Offense, Indian country law enforcement officers must work with the Federal Bureau of Investigation and the United States Attorney's Office to obtain an arrest warrant for Unlawful Flight to Avoid Prosecution. The warrant is entered into the National Crime Information Center's (NCIC) database, which is accessible to local law enforcement agencies.

In the cases where a suspect is pursued under Tribal jurisdiction, the local police department and investigators work cooperatively with the Tribal Court. If a person has moved to another location to avoid being caught, the local law enforcement officers are responsible for notifying and working with the other jurisdiction to receive appropriate authority for the return of the suspect to stand trial. Tribal law enforcement and the Tribal judiciary will follow the appropriate Tribal administrative procedures.

QUESTION 1-I: What is the rate of recidivists tracked through the monitoring system and what is done in response to address recidivism?

ANSWER: The rate of recidivism is not currently being tracked. However, when a case of child abuse is reported, the investigator will check the National Crime Information Center's database to see if the individual has been entered into the system for an arrest and/or conviction of any charges including repeat offenses. The investigator will also track the individual suspect's history in any Tribal Court jurisdiction to ensure this is reported to the appropriate prosecutors to be used in pursuing charges and for sentencing if the individual is convicted.

For the administrative side, if an employee is separated through the adverse action process due to unsuitability, the final personnel action reflects the nature of the action and remarks are made on the document. This is a permanent record that will follow the perpetrator throughout his or her federal career and be part of the official personnel record.

2. Continued occurrences of child abuse and the difficulty in tracking the data are significant concerns. Appropriations language required the Department to conduct a study on child abuse.

QUESTION 2-A: Please provide an update on the status of that study.

ANSWER: Senate Report 107-201, to accompany the Department of the Interior and Related Agencies FY 2003 Appropriations Act, included language requesting the Bureau of Indian Affairs (BIA) to undertake a study on child abuse. The Conference Committee provided the following Report language:

> "...The managers direct the Bureau to develop a study dealing with child abuse and child welfare. This study should detail the adverse effects of child abuse on American Indians and Alaska Natives. As part of the study the Bureau should provide recommendations for reducing incidents of child abuse including the potential for developing cost-shared pilot projects with tribal organizations, states, and non-profit organizations. The Bureau should provide this study to the Committee by April 30, 2003..."

The FY 2003 Appropriations were enacted at the end of February 2003, leaving two months to complete the study. The BIA identified about $200,000 from program funds, to initiate the study in accordance with the Conference Committee Report language.

In June 2003, the BIA entered into a contract with the National Indian Child Welfare Association, to conduct a study of child abuse of American Indians and Alaska Natives. The BIA expects to complete this study by May 2004. The BIA will provide recommendations based upon this study regarding potential cost-shared pilot projects and ways of reducing child abuse and neglect in Indian country.

QUESTION 2-B: How many incidences of child abuse have occurred, been prosecuted and convicted in Indian Country? How many are still remaining to be prosecuted?

ANSWER: Child abuse crime statistics compiled by Law Enforcement Services reflect the number of child abuse incidents that are reported to BIA/Tribal law enforcement programs. Child abuse incidents do not have a single line specifically designed to track the number of prosecutions or convictions. The OLES does not currently track child abuse cases once they are referred to federal or tribal courts for prosecution. Information of this nature would be tracked by the individual federal and tribal courts. The Department of Health and Human Service's National Abuse and Neglect Data System may be able to provide additional information.

3. Combating child abuse is a partnership effort, but there may be other existing barriers to reducing child abuse. The Committee received testimony that the BIA and the Indian Health Service needed to work together on these matters.

QUESTION: What efforts has the Department taken to improve intergovernmental cooperation?

ANSWER: The BIA and the Indian Health Service have initiated meetings to discuss cooperative efforts to prevent and reduce child abuse. The agencies expect to meet several times during the course of the year to continue these discussions.

4. The Act required an Indian Child and Family Resource Center to be created. You testified that a physical center has not been created, but that the BIA employs a child protection team concept.

Question 4-A: How is the multi-disciplinary team assembled?

ANSWER: The Federal Interagency work group on Child Abuse and Neglect was established that includes the Departments of Interior, Justice, and Health and Human Services. This team meets periodically to discuss all matters related to child protection and family violence prevention.

QUESTION 4-B: Who is the lead agency?

ANSWER: The lead agencies are the Bureau of Indian Affairs and the Indian Health Service.

QUESTION 4-C: What are the benchmarks for success?

ANSWER: Each tribe establishes its own benchmarks for success because tribes have different and unique child abuse issues that they must address.

5. In this era of scarce resources, it is incumbent upon the Federal government to make the most of the limited resources. Consolidating administrative requirements for accessing federal resources has proven to be a big benefit for tribes, as in the "477" program, under Pub. L. 102-477.

QUESTION 5: With all the resources available to tribes for child abuse programs, how beneficial would consolidating the administrative processes for many of these programs similar to the "477" program be for tribes? Would the Department support a demonstration project for consolidating programs? Who should serve as the lead agency?

ANSWER: The "477" program has been very successful and beneficial to the participating tribes. The BIA would support a demonstration project for consolidating programs and resources for child abuse programs and would be willing to serve as the lead agency.

The Federal security program function should be separate and apart from the "477" program for the tribes. A granted "477" security program for the tribes would be beneficial especially if the program (process) is set up at a central location. As stated in response to item number 1-G, the OLES Security program is developing a long distance-learning program that will provide training to tribal personnel responsible for initiating and adjudicating character investigations. The lead agency should be the Department of the Interior.

6. Indian children are a precious resource and their protection begins while they are still in the womb. Current federal law does not provide additional criminal penalties for an offender who harms a pregnant woman and either injures or kills the Indian child she is carrying.

QUESTION 6-A: Have there been instances in Indian Country where an offender has harmed or injured a pregnant woman in some way, thereby causing injury or death to her unborn Indian children?

ANSWER: The crime statistics compiled by Law Enforcement Services does not have a line item that specifically singles out an action to harm or injure a pregnant women thereby causing injury or death to an unborn Indian child. Information of this nature is contained in individual police reports at each tribal and Bureau of Indian Affairs' police station.

QUESTION 6-B: Should there be additional protections for this special class of victims?

ANSWER: The Administration has already determined that such legislation, which covers assaults in Indian Country, is necessary and desirable by supporting H.R. 1997 and S. 1019, the "Unborn Victims of Violence Act." In addition, amending federal law so that the term "misdemeanor crime of domestic violence," as defined at 18 U.S.C. § 921 (33) (A), includes a misdemeanor crime of domestic violence under Tribal, as well as Federal or State law, would help protect victims of domestic violence. Victims of domestic violence undoubtedly include pregnant women, and their unborn children, in Indian country.

Unless the tribal conviction of domestic violence can be characterized as one of the disqualifying crimes outlined in the *Indian Child Protection and Family Violence Prevention Act*, an individual convicted of a tribal crime of domestic violence could conceivably be employed as a law enforcement officer, with no disability from possessing a firearm and ammunition under 18 U.S.C. § 992 (g) (9). Making it a federal crime for one convicted of a tribal offense of domestic violence to possess a firearm will preclude such individuals from serving in law enforcement positions. This will assure citizens and residents of Indian country that there is no tolerance for domestic violence. Including tribal convictions of domestic violence as a bar to possessing a firearm or ammunition will ensure that such offenders do not serve in positions of public trust in Indian country law enforcement departments. Such an outcome will complement the goals of the *Indian Child Protection and Family Violence Prevention Act* and will serve to afford Indian children even greater protection.

September 24, 2003

Testimony of the Hopi Tribe Before the Committee on Indian Affairs on S. 1601, the "Indian Child Protection and Family Violence Prevention Act of 2003"

The Hopi Tribe is pleased and honored to be invited to address and testify on S.1601, the "Indian Child Protection and Family Violence Prevention Act of 2003." The Tribe wishes to describe to you our very real experiences as a community and government in implementing the original Act of 1990 and provide important input and advocacy that we believe will improve and strengthen this Act which is so critical to effectively addressing child protection and child abuse prevention. As such, we wish to endorse changes to the Act as proposed by the Honorable Senator Nighthorse-Cambell.

As you may be aware, the Hopi Tribe, which is located in northeastern Arizona, experienced directly the tragedy and immense pain associated with the abuse of over 100 children - apparently beginning sometime in the late 1970's and which continued until 1987 when a Bureau of Indian Affairs (BIA) schoolteacher was exposed as a prolific pedophile. As result of this tragedy, and other similar, horrible circumstances in Indian Country, the original Act was passed into law and it became one of the primary vehicles for child protection and child abuse prevention and treatment in Indian Country. It must be understood that Tribes, in general, lacked services, programs, and funding to effectively address child abuse issues prior to the passage of the Act and we advocate strongly the Senator's proposed changes so that the Hopi Tribe and its people do not have to experience a similar tragedy in the future.

Before the Act's passage, Tribes were at a disadvantage in that they were without vital resources and laws addressing child abuse. Unfortunately, despite the original Act, Hopi is still in developmental stages and in need of greater and more sophisticated systems, laws, and funding necessary to effectively prevent child abuse, treat its victims, and deal with the offenders.

It is the Hopi Tribe's position that the Act is critical to its child abuse prevention efforts. However, the Act does not provide for adequate resources to fulfill its requirements. There is a significant need for more funding for prevention and treatment, and for the development of the proper and necessary infrastructure for Tribal institutions to be more effective program and service providers in their mission of child protection, prevention, and treatment.

As an example, Hopi, in its efforts to address child abuse on its Reservation and in accordance with the standards provided in the Act, developed with its own resources a Children's Code, which created a Tribal Child Protective Services Program. When the code was passed into Tribal law, the Tribe still faced the problem of how it was going to carry out the provisions of its Code, which are derived from the mandates and direction of Congress through the Act. The Hopi Tribe chose to utilize its BIA funded social services program to host and provide infrastructure for the Tribe's Child Protective Services. Since the Tribe received no additional funding for this necessary service, the Tribe assumed the costs at the risk of affecting other important social services.

The Tribe's law enforcement departments lack proper funding to adequately meet all of its law enforcement and investigative needs; and investigation of child abuse, child sexual abuse in particular, is a specialized service. Today, Hopi has two investigators for any and all criminal investigation on our Reservation of approximately 8,000 Hopi people. Resources clearly are still lacking in the realm of personnel and training to ensure that such sensitive investigations are handled properly, successfully, and to ensure that the children will suffer no further.

The Tribe's Prosecutor, too, lacks the necessary resources and is inadequately equipped to manage and prosecute all the cases within the Hopi Tribe's jurisdiction generally, let alone those specifically involving child abuse. The Tribe's Prosecutor is completely Tribally funded and we have yet to persuade the proper federal agencies that funding should be specifically earmarked within the Department of the Interior for child abuse services. Prosecutors will tell you how awesome child abuse cases are, involving several entities, families, as well as the extra attention and resources that are needed to adequately manage and prosecute these cases. In addition, the federal governmental bodies responsible for handling major crimes on the Hopi Reservation are challenged to meet the demands of their workload, which includes serious and criminal child abuse cases. Not only do these entities need increased resources, but both Tribal and federal agencies responsible for addressing major crimes on Reservations need support and training in their mutual and cooperative efforts to effectively address child abuse on Hopi.

The Hopi Tribe, its social services and mental health programs, its schools, law enforcement, Courts, and Prosecutors can tell you that that ability to conduct proper and adequate background checks is hindered because there is no specific funding to carry out this important and necessary mandate. The Hopi Guidance Center, the entity responsible for child protective services and mental health and substance abuse services on the Hopi Reservation, has had to rely on periodic surplus from its BIA funding base, or find alternative funding streams, to fund its background checks. Tribes have had to meet the Act's mandate through other means, struggle to maintain compliance, and have inefficient and ineffective turn around time on the completion of the background checks. The Bureau of Indian Affairs should be provided the manpower and resources necessary to help Tribes carry out this requirement of the Act more expeditiously and efficiently. The Act's proposed amendments expand the requirements for background checks to include volunteers and employees of other federal entities beyond the BIA and HIS. While the Tribe supports this amendment it is critical that while adding to the list of who must have a background check, actual funding must accompany not just the additions, but the current background check requirements under the Act.

Tribes do receive funds to support its contracts, including personnel costs such as background investigations, but that funding has never been 100%, and in fact is now hovering around 80%. We believe at the Hopi Tribe that passage of this amended Act should include specific funding for background investigations for both Tribes and the BIA. We cannot afford to continue to have important mandates to Tribal programs for their administration without an analysis of the additional funding that will be needed for their current and future important duties.

Another significant issue with the Act that continues to arise involves the major entities that regulate and/or provide valuable services in Indian Country, and are major figures in the prevention and treatment of child abuse and the lack of clarity and direction from Congress toward these entities in cooperatively and effectively working together to assist Tribes in implementing the Act. The Indian Health Service and the BIA continue their difficulty in coordinating services and information, as well as in fully supporting the sharing of resources between entities, which negatively affects their ability to successfully coordinate services to children and families affected by child abuse. For instance, the BIA promulgated social services regulations in 2000, which are the primary directive for the provision of child welfare services in Indian County, without consulting the IHS and its own Education Department. Those entities are responsible under the BIA's regulations to assist in the funding for treatment and education costs for Indian children while in residential treatment. The problem however is that the BIA's regulations are not binding on IHS, who will tell you it does not have the funding to support the costs allocated to it. Tribal agencies are unable to provide adequate services to children as a result and have to struggle to find resources to meet children's needs while facing issues of non-compliance as a result of the regulations imposed on Tribes but not on all the responsible regulatory entities named in the regulations.

In addition, traditional healing methods should be recognized as part of treatment for child abuse as it includes and promotes the Tribes' cultural perspectives. The ability of Tribes to include cultural practices as part of the scope of services should be included in all federal programming. As well, the Hopi Tribe advocates that funding be provided to incorporate more specific and specialized treatment for child abuse, including traditional healing. The Hopi Tribe is fortunate to have received funding for the treatment of sexual abuse, but other Tribes do not have this specific funding. Funding for these services need to be provided more broadly, increased, and expanded to include treatment for offenders of child abuse.

The Act's amendments facilitates establishment of safety measures for child protection workers. This proposed addition is an example of the training needs and other costs associated with implementing stronger systems, protocols, and procedures in the provision of child protection and child abuse prevention and other services - needs that must be addressed with proper funding.

The definition of child abuse provided in the proposed Act includes incidences where the child is subjected to family violence. Mental health, emotional well-being, and self-esteem are important factors in the health of Indian children, and children facing family violence should be able to access child abuse services. The Hopi Tribe agrees with the expanded definition of child abuse provided in the Act and that more children and families be able to access specific and specialized services as a result of serious domestic

family issues. This proposed amendment highlights the need to provide adequate financial resources to investigators, Prosecutors, and Courts who will now see more cases coming though an already overcrowded door. Anytime we expand definitions, the responsible entities will need the resources to effectively handle, process, and prosecute the resulting expanded cases.

The feasibility study from the original Act is replaced with a federal study of impediments to reducing child abuse in the proposed amendments. The feasibility study was conducted in 1994, but the law has not been amended to reflect its findings. Child abuse continues to rise and we must study and understand the impediments to reducing such abuse in order to make effective decisions. The Hopi Tribe agrees with expending resources to better capture how to effectively reduce child abuse. Funding for programs to conduct expanded but innovative programming must also be encouraged and supported, including ideas regarding the meaningful consultation, cooperation, and collaboration between entities such as the BIA, the IHS, and the Tribes in this area.

The Act's amendments emphasize strengthening Tribal infrastructure to develop effective Tribal programs, including databases for accessing current national central registries for child abuse information. The Tribe supports not only this provision, but the general building of administrative infrastructure. Funding should be included to fund child protection workers. Management information systems and other related forms of technology must be funded, as they are necessary to efficiently provide services and administer programs. The demand for increased accountability by federally funded Tribal programs will require greater quality controls and quality management, which current budgets do not fund. In the case of Hopi, there have been no increases from the BIA in funding and the Hopi Tribe struggles to meet the provisions of the current Act.

In conclusion, the Hopi Tribe urges the Committee to move forward with the proposed amendments and also to ensure that its provisions as well as those of the original Act receive full funding to meet their mandates. In the original Act, grants were established for child abuse treatment, which were not funded - they should be funded now. Necessary funding for technical assistance must be provided to help facilitate the infrastructure development being proposed in the Amendments. The Hopi Tribe asks that funds be made available to establish child resource and family resource centers as promised in the original Act. In short, the funds originally proposed must be made available and the proposed amendments should be fully funded from the beginning.

Thank you again for this opportunity to present the issues and concerns of the Hopi Tribe.

Sincerely,

Wayne Taylor, Jr.
Chairman
The Hopi Tribe

October 3, 2003

Mr. Mark Lewis
Director of the Guidance Center
Hopi Tribe of Indians
P.O. Box 123
Kykotsmovi, AZ 86039

Dear Mr. Lewis:

Thank you for your participation in the September 24, 2003 hearing on the Indian Child Protection and Family Violence Prevention Reauthorization Act of 2003. The Committee would appreciate your review of the following questions and the submittal of a written response to the Committee on Indian Affairs no later than October 17, 2003.

1. Your testimony indicated that the Hopi Tribe needed at least two more prosecutors to provide an adequate child protection system.

A. Besides personnel, what specific improvements are needed to build adequate infrastructure?

2. S.1601 requires a study of the impediments to reducing child abuse in native communities. Your testimony supports this idea.

A. In what ways will this study be useful to tribes?

3. You noted some of the difficulties in administering a comprehensive child protective services program on limited funds.

A. Would a consolidated program allow you the flexibility to design a tribal child protection program to meet unique Hopi needs?

4. Indian children are a precious resource and their protection begins while they are still in the womb. Current federal law does not provide additional criminal penalties for an offender who harms a pregnant woman and either injures or kills the Indian child she is carrying.

A. Have there been instances in Indian Country where an offender has harmed or injured a pregnant woman in some way, thereby causing injuring or death to her unborn Indian child?

B. Should there be additional protections for this special class of victims?

Because of hazardous mail contamination which forced the closure of the Hart Senate Office Building, new procedures have been put into effect for all written material addressed to Senate offices. Accordingly, please send an electronic version of your testimony by e-mail in WordPerfect format to: *testimony@indian.senate.gov*. Your written response may also be submitted to the Committee by telefax directed to (202) 224-5429, however an electronic version of your response will still be required.

Mr. Lewis, I appreciate your attention to this matter and look forward to your response. Thank you.

Sincerely,

BEN NIGHTHORSE CAMPBELL
Chairman

10/22/03

Subject: Response to questions from Senator Ben Nighthorse Cambell in letter dated October 3rd, 2003 to Mark D. Lewis, Administrative Director, Hopi Tribe Guidance Center

Response to question 1: Funding should be made available specifically for costs associated with MIS and technological infrastructure including but not limited to computers, laptops for field work, servers, routers, switches, database programs and funds for technical assistance or consulting to implement these platforms and programs. Tribes are responsible for increased data collection, more sophisticated client recording systems, and information exchange. Funds are not available specifically for these needs in current BIA or I.H.S budgets. More funds could be made available for administrative operations including transportation, costs for internet access, and other costs associated with the operations of child protective services.

Response to question 2: Funding will allow tribes to obtain the proper research and evaluation necessary to justify program expansion, modification, or to meet unmet needs. Capturing what is working and what doesn't work, or best practices, is necessary for programs to tailor their services to reduce child abuse or to treat child abuse victims more effectively. Congress and other regulatory agencies are demanding that tribes account for their funding and be responsible for providing adequate services, and research and evaluation are important tools in achieving these objectives.

Response to question 3: A consolidated program should or could be spelled out clearly in appropriations language that allows tribes the flexibility to share resources and be creative and flexible in the usage of all federal funds programmed and designed for services to children and families. Funds need to be specifically earmarked for child protection and IN ADDITION to current social services funding provided to tribes. While certain laws and statute have allowed for similar situations, like "477" and "Self-Governance", Congress could simply begin to allow tribes, and states for that matter, to be more flexible and to allow creativity in sharing and integrating resources and can still do that while ensuring the funds are utilized to meet those specific service needs in which the funds are intended for.

Response to Question 4: I am not aware of any instances on our reservation thought that is not to say that that has not happened. There should be additional protections for this class of victims. As the honorable Senator may be aware, we may often pass ordinances

or develop programs per federal law and statute, but there simply is not enough funding supplied to law enforcement, the Courts, and the Prosecutors to most effectively enforce these laws, or to adequately support such high risk clients and families. These laws impact not just the service provider and law enforcement, but the Courts and Judicial branch and those ancillary services they need to serve victims of crimes against children and other violent offenses.

I continue to volunteer to work further on these issues for the Senator or any other committees or established tribal entities designed to address these issues. Thank you.

Mark D. Lewis, MSW, CISW, Administrative Director
Hopi Guidance Center
Hopi Tribe of Arizona

STATEMENT OF

U.S. DEPARTMENT OF JUSTICE

BEFORE THE

UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

S. 1601, The "Indian Child Protection and Family Violence Prevention Reauthorization Act of 2003"

September 24, 2003

Mr. Chairman, Mr. Vice-Chairman and Members of the Committee, this is the Department of Justice's statement for the record supporting S. 1601, a bill to amend the Indian Child Protection and Family Violence Prevention Act to provide for the reporting and reduction of child abuse and family violence incidences on Indian reservations. The Department of Justice remains committed to addressing child abuse, neglect, and domestic violence in Indian country.

The Department applauds the changes proposed in S.1601. They will encourage more effective recognition of the enormous problems of child abuse and family violence in Indian country as well as more effective prevention and intervention approaches. Reflecting the Department's recognition of the gravity of these problems, the United States Attorneys in Indian country expend significant resources prosecuting violent crimes generally, including child abuse and domestic violence cases. One of the top priorities of the Attorney General's Advisory Committee, Native American Issues

Subcommittee is Indian country law enforcement, particularly violent crime issues such as domestic violence, child abuse, and sexual offenses. One important tool of the U.S. Attorneys' Offices in this area is the multi-disciplinary teams (MDT) or child protection teams (CPT). These teams usually consist of an Assistant U.S. Attorney and representatives from the FBI, BIA law enforcement, Indian Health Services, tribal health services, BIA Social Services and Education Office, tribal law enforcement officials, and sometimes school officials. The broad representation found in these MDTs and CPTs is critical to the discovery, documentation, and reporting of child abuse cases as required by 25 U.S.C. § 3203. Further efforts to improve upon this type of inter-agency cooperation and information sharing can only improve prevention as well as facilitate effective investigations and prosecutions. Background investigations that include fingerprint checks will be an important, additional tool for prevention. The Department also suggests a review of tribal as well as state criminal history data sources.

We note that this legislative proposal calls for a study, in consultation with the Secretary of Health and Human Services and the Attorney General, "to identify impediments to the reduction of child abuse on Indian reservations." A prior section of the proposal calls for improved tribal infrastructures "to maintain and coordinate databases." Given the importance of accurate information for any study of this type, and the vital role played by the FBI in Indian country law enforcement, we suggest consultation with the FBI in any law enforcement database management efforts. In

addition, to avoid any conflict with the Recommendations Clause of the Constitution, we recommend that proposed section 405(c)(2)(B) of the bill be amended to direct the Secretary to include in her report only those recommendations that she deems appropriate. In a similar vein, the reporting requirements in § 3203 are quite robust on paper. Unfortunately, the reality of Indian country is that the detailed and important information of this type is not always available. Perhaps additional, parallel steps should be considered to improve the quality of reporting. Certainly, the development of strategies to shield child protection workers from retribution is an essential step in that direction.

The Department also supports the goals of S. 1601 through grants and other programs. The Office of Justice Programs' Office for Victims of Crime administers up to 25 grants annually under the Children's Justice Act (CJA) to improve the investigation, prosecution, and handling of child abuse cases in Indian country. Tribal communities nationwide have used these grants for activities such as training law enforcement and court staff on how to work with child abuse victims, and establishing protocols for handling these cases. CJA funds can also be used for court advocacy of child abuse victims and revising tribal codes to better address this crime. Also important is the work of the Department's Office on Violence Against Women (OVW). The OVW spearheads several initiatives to support American Indian and Alaskan Native efforts to address family violence. OVW's STOP Violence Against Indian Women Discretionary Grant Program supports tribes' efforts to investigate and prosecute violent crimes against

women and to strengthen services for victims of these crimes. Under this program, OVW currently supports over 125 Indian tribal governments, including consortia, which represent a total of 200 tribes nationwide. In addition, OVW's Tribal Domestic Violence and Sexual Assault Coalitions Grant Program helps non-profit tribal coalitions improve systemic and community responses to victims in Indian country. This program helps tribal communities identify gaps in services so that domestic violence and sexual assault victims do not fall through the cracks. OVW also provides training and technical assistance to tribes on a wide range of issues, including training judges, prosecutors, attorneys, and legal advocates about how to improve the tribal justice system's response to domestic violence.

We understand that today's tribal communities face serious challenges in the area of child abuse and family violence. All of us must work together to ensure that predators can no longer abuse Indian children. The Department of Justice will continue to prosecute these cases and to work closely with the Committee and tribal governments to to address the high rates of violence in Indian country. The Department applauds the Committee's attention to this extremely important subject.

Thank you for the opportunity to express our views on S.1601.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 7, 2004

The Honorable Ben Nighthorse Campbell
Chairman
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Dear Mr. Chairman:

Attached are the responses to follow-up questions submitted on October 3, 2003 to Mr. Tracy Toulou, Director, Office of Tribal Justice, U.S. Department of Justice, following the September 24, 2003 hearing on the Indian Child Protection and Family Violence Prevention Reauthorization Act of 2003. Please do not hesitate to contact this office if we may be of further assistance.

Sincerely,

William E. Moschella
Assistant Attorney General

cc: The Honorable Daniel K. Inouye
Vice Chairman

Responses to Senate Indian Affairs Committee
Follow-up Questions from Hearing, September 24, 2003

1. Coordinating all components involved in child protection is a formidable task and to carry that out Indian tribes should be afforded access to all available resources to reduce child abuse. For instance, training and technical assistance are the cornerstones for developing expertise in this very specialized area.

A. The 1990 Act requires that training and technical assistance be made available to tribes. What role has the DOJ played in providing such services under the Act?

The Office for Victims of Crime (OVC) administers a Training and Technical Assistance (T/TA) component to its Children's Justice Act Partnerships for Indian Communities (CJA) program. The program provides culturally relevant skills-building training and technical assistance to American Indian and Alaskan Native grantees who have received funding through the CJA grant program. The program assists CJA grantees in meeting the objectives of their grants and in improving the handling of child abuse cases.

In addition, OVC's Training and Technical Assistance Center (TTAC) offers myriad multi-disciplinary training opportunities for which tribes are eligible participants. TTAC provides a variety of coordinated training and technical assistance activities that support the development of the victim assistance field's capacity to provide crime victims with assistance. All OVC training and technical assistance emphasizes intergovernmental collaboration and cooperation.

OVC also participates in the National Indian Nations Conference, which provides training to help multi-disciplinary professionals better respond to the rights and needs of American Indian and Alaskan Native crime victims, and to handle cases of family violence and child abuse. In planning this conference, OVC collaborates with all components of the Office of Justice Programs to create training opportunities for individuals and agencies that allows them to develop a strong network for exchange of innovative ideas and model program information. The conference encourages ongoing cooperation and collaboration among tribes, states, and federal victim services, criminal justice services, and law enforcement, and provides support and guidance for those involved in the day-to-day work with Indian victims of crime.

OVC also supports Court Appointed Special Advocate (CASA) programs in Indian country. Court Appointed Special Advocates are appointed by the court to represent a child victim's best interests in child abuse and neglect cases. OVC funds training and technical assistance and development of guidelines for all 14 tribal CASA programs.

In addition, Indian tribes may receive training and technical assistance regarding the intersection of domestic violence and child abuse as grantees of the Rural Domestic Violence and Child Victimization Enforcement Grant program which is administered by the Office on Violence Against Women. The training workshops include topics such as raising public awareness about children of battered women,

advocacy and child protection collaborations, strengthening tribal responsibility to end violence against Indian women, working with native men who batter; advocacy for children of native women who have been battered, and the batterer as a parent.

The Office of Juvenile Justice and Delinquency Prevention also supports four Child Advocacy Centers in Indian country. This program is described in full in the response to Question 3 (A).

B. What other resources within the DOJ are available to tribes to gain expertise in investigating and prosecuting child abuse?

The FBI's Indian Country Unit provides integrated training classes for FBI, Bureau of Indian Affairs (BIA), tribal, and local law enforcement personnel. This training focuses on child physical and sexual abuse as one of its core issues. The Executive Office for U.S. Attorneys and local U.S. Attorneys Offices also provide training to Indian tribes on investigating and prosecuting child abuse cases.

Additionally, the Bureau of Justice Assistance (BJA) administers the Tribal Courts Assistance Program, which supports Native American tribes as they develop, enhance, or operate tribal courts, which are forums in the Native American community designed to help resolve disputes involving such matters as substance abuse and crime, juvenile delinquency, and domestic violence.

Tribal Courts Development grants help tribal governments without existing tribal judicial systems to develop a tribal judicial system strategy and implementation plan. Tribal Court Implementation, Enhancement, and Continuing Operation grants assist existing tribal court programs in various ways, including, but not limited to, establishing a core structure for a tribal court, improving case management, training court personnel, acquiring additional equipment, enhancing prosecution and indigent defense, supporting probation diversion and alternative sentencing programs, accessing services, focusing on juvenile services and multi-disciplinary protocols for child physical and sexual abuse, and structuring intertribal and appellate systems.

Training and technical assistance are also available to tribal governments to strengthen the capacity of their court systems. The National Tribal Justice Resource Center (Resource Center), a first-ever funded tribal justice clearinghouse located in Boulder, Colorado, provides a toll-free help line (1-877-97NTJRC), a calendar of seminars and conferences, a free searchable national database of tribal court opinions, a mentoring program partnering a developing tribal court with an established tribal court, and other information. More information on the Resource Center can be found at www.tribalresourcecenter.org.

2. Consolidating administrative requirements in accessing federal resources has proven to be successful for tribes. For example, under Pub.L. 102-477, instead of submitting several grant applications, audits and compliance reports, tribes only have to file one of each, and save administrative costs and can provide more services.

A. With all the DOJ resources available to tribes for child abuse programs, do you think it would be beneficial for Indian tribes to consolidate these programs along the lines of the "477" program? Who would serve as the lead agency in that eventuality?

The Justice Department has always supported consolidated efforts by Indian tribes to combat crime. A strong example of this commitment is the Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Project, which recognizes that the most effective solutions to the problems experienced by tribal communities come from the tribes themselves. The three tribes (Northern Cheyenne, Oglala Sioux, and Zuni Pueblo) that participate in the CIRCLE Project have each undertaken comprehensive, coordinated, multi-disciplinary efforts to combat crime and violence. These tribes designed their own strategies with OJP providing support through direct funding, training, and technical assistance.

Another consolidated program is the aforementioned Children's Justice Act Partnerships for Indian Communities (CJA) program, administered by OVC. CJA helps Indian tribes and tribal communities improve the investigation, prosecution, and overall handling of child sexual abuse and serious physical abuse cases, in a manner that increases support for and lessens additional trauma to child victims. The CJA program is designed exclusively for American Indian tribes and Alaskan Natives, and is the only source of federal funding that focuses on improving the tribes' criminal justice system for child abuse victims.

The Bush Administration has consistently favored streamlining the federal grants process, where appropriate. OJP continues working to reduce the bureaucracy involved in its grant application system. To that end, OJP participates in "Grants.gov," a multi-agency initiative to provide a single point of entry for all grant applications. However, any proposal to reconfigure existing programs would need to be reviewed in its entirety before comments could be provided.

3. The Office for Victims of Crime for the Department of Justice has noted that the jurisdictional maze for investigating and prosecuting child abuse can produce confusion among all entities within the child protection system, leaving the child victimized again.

A. What efforts has DOJ taken to avoid such confusion and improve intergovernmental cooperation?

The Office of Juvenile Justice and Delinquency Prevention supports four Child Advocacy Centers (CACs) in Indian country. CACs coordinate key services that handle child abuse by bringing together professionals and agencies in a multi-disciplinary team. The team coordinates prosecution, law enforcement, medical, child protective, and mental health services to create a child-focused approach to these cases. The goal of CACs is to ensure that children are not re-victimized by the very system designed to protect them.

In addition, as noted in the response to Question 2, OVC's CJA program helps support integrated

efforts to investigate and prosecute child abuse cases to minimize trauma for the victims. The workshops and training that OVC provides as a part of the CJA program welcome participation by federal and state agencies such as the FBI, the Bureau of Indian Affairs (BIA), the Indian Health Service (IHS), U.S. Attorneys Offices, and HHS, as well as state and local law enforcement, social services, state child and family services, and health and medical allied professionals.

OVC also collaborates with and supports IHS training. The training seminars provide comprehensive and practical information on coordination efforts between tribes and tribal programs, and federal agencies. The focus is on the development of child protection protocols, data collection, referral resources, maintaining and enforcing confidentiality policies, assuring continuity of care for victims, providing for adequate physical and psychological assessments, and conducting effective forensic examinations and interviews.

OVC also supports a Mental Health Forensic Specialist at a regional IHS service unit to provide forensic interviewing, case tracking, case management, protocol development, and facilitation of the local tribal child protection team. The Forensic Specialist works in close collaboration with the U.S. Attorney's Office, the IHS clinic staff, the Tribal Prosecutor's Office, the FBI, tribal police, and BIA law enforcement during the investigation and prosecution process.

Finally, OVC supports collaboration through informational publications. One example is *Improving Tribal/Federal Prosecution of Child Sexual Abuse Cases Through Agency Cooperation*, a bulletin that presents basic information on improving cooperation between tribal and federal agencies in handling child sexual abuse cases, including jurisdictional issues. It describes how close cooperation between tribal and federal law enforcement agencies will ensure effective investigation and prosecution of child abuse cases.

4. Monitoring child abusers that move around to avoid being caught is difficult and constitutionally suspect.

A. What type of protocols and resources are available to share information among the various child protection entities?

Many tribes have in place Child Protection Teams and Committees that are usually made up of local providers, such as law enforcement officers and social service workers. When a report of abuse is received by any of these workers, it is also reported to the appropriate organization, e.g. the tribal authority. For those tribes that have federal programs, the incident is likely to be entered into a national data base.

The process may be different for tribes that are served by contracted law enforcement services through the Indian Self-Determination Act. Reports in this system may stop at the tribal authority level so that the respective tribe may exercise its sovereignty in determining whether or not a case is entered into a data base. Some tribes receive law enforcement services through BIA, and those reports are

processed in accordance with BIA policy. Other tribes are provided law enforcement services through P. L. 83-280, which may be under the jurisdiction of a county or state which, for the most part, will ensure that reporting will be done.

Sharing information may be restricted by the type of law enforcement and social services available, as well as the policy of a particular tribe. In addition, accessing data bases may be limited because of the lack of technology resources and equipment for implementing a reporting system. Technology may not be available because of a lack of phone systems accessible to the Internet, which may be because of remoteness and individual tribal priorities for access. Lack of training of personnel also may hinder a tribe in accessing the national data base. Many rural villages of Alaska do not have law enforcement officers, but rely on Safety Officers, who have limited authority, and many cases are handled internally.

In short, the ability of an individual tribe to report and share information relative to abuse cases is closely tied to law enforcement's reporting capabilities and to tribal practice.

B. What recommendations would you offer to enable tribes to access national databases for tracking child abusers?

One recommendation would be to provide basic training for tribal law enforcement personnel to help them understand the overall system and the importance of collecting/reporting, which can include basic training on computer skills. Another recommendation would be to provide the necessary technology resources, such as equipment, software, and access which is currently not available to many tribes.

In 2001, the Bureau of Justice Statistics (BJS) established the Tribal Justice Statistics Assistance Center. The center provides technical assistance and training to Native American and Alaska Native jurisdictions to improve their criminal justice statistical systems. Technical assistance includes oversight for the conversion of crime-related data to National Incident Based Reporting System (NIBRS)-compliant data and the development of other types of crime data to ensure participation in BJS' statistical reporting programs.

5. Indian children are a precious resource and their protection begins while they are still in the womb. Current federal law does not provide additional criminal penalties for an offender who harms a pregnant woman and either injures or kills the Indian child she is carrying.

A. Have there been instances in Indian Country where an offender has harmed or injured a pregnant woman in some way, thereby causing injury or death to her unborn Indian child?

B. Should there be additional protections for this special class of victims.

The Department of Justice does not keep statistics as to whether an assault that injured or harmed a pregnant woman also caused injury to her fetus. We are aware of at least one instance in

which there was a successful prosecution resulting from such an assault. In United States v. Spencer, 839 F2d 1341, (9th Cir.), cert. denied, 487 U.S. 1238 (1988), Spencer assaulted another Native American causing serious injury to her fetus. An emergency caesarian section was performed but the baby died just minutes after being born. The Court of Appeals held, "In view of Congress's intent to reflect the state and common-law definition of murder when it passed the statute, and the state and common-law acceptance of infants who died subsequent to birth due to fetal injuries as human beings, it seems clear that Congress intended fetal infanticide to be included within the statutory definition of "murder" under 18 U.S.C. § 1111." Id. at 1343.

More recently, the Ninth Circuit affirmed a two level increase in the offense level where the victim of a bank robbery was obviously pregnant. The defendant threatened the pregnant bank teller during the robbery, indicating that he would come back and kill the teller and her baby if she gave him "track money." The Court of Appeals upheld the lower court's finding that this conduct warranted a two-level increase in the offense level under Sentencing Guidelines' "unusually vulnerable victim" provision § 3A1.1. United States v. James, 139 F.3d 709 (9th Cir. 1998), denial of post-conviction relief aff'd, 2 Fed.Appx. 814, 2001 WL 68717 (2001). While the James case did not involve Native Americans nor did it occur in Indian Country, the enhancement would apply to similar prosecutions.

With reference to Part B of the question, the President has called upon Congress to pass the Unborn Victims of Violence Act presently pending before the Senate as S.1019.

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