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Interpersonal Violence and American Indian and Alaska Native Communities

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Abstract:

This chapter offers a synthesis of research on child maltreatment and violence against women in American Indian and Alaska Native communities. It includes a history of U.S. federal laws and the impact of these laws on women, children and tribal communities. It concludes with recommendations that promote healing, self-determination and an end to these forms of violence and abuse in Indian Country.

Keywords: Native American, violence, abuse, Major Crimes Act, Indian Child Welfare Act

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<A>Introduction

Native Americans, also known as American Indians and Alaska Natives, have endured centuries of hardship since European explorers first arrived in the Americas. Still, this population has persevered despite disease, starvation, forced removal from their homelands, violence and systemic oppression. The 2010 U.S. Census reports that 2.9 million people self-identify as American Indian or Alaska Native and an additional 2.3 million people self-identify as Native along with one or more race (most often white) (U.S. Census Bureau 2012). Many, but not all, Native people are affiliated with a tribe. In the continental United States and Alaska, there are 566 federally recognized tribes in 33 U.S. states and there are 27 state-recognized tribes in 11 states (Bureau of Indian Affairs 2012). Although there are some regional similarities, each tribe is unique with distinct culture, language and governmental structure.

The word "violence" provokes images of physical assaults that result in bruises, broken bones or even death. For the purposes of this chapter, however, we are relying on a broader definition of violence attributed to Martin Luther King Jr., which is "anything that denies human integrity, and leads to hopelessness and helplessness" (Kivel and Creighton 1996). In the following pages, we will synthesize what is known about interpersonal violence against American Indians and Alaska Natives with an emphasis on child abuse and neglect, sexual violence,[1] and intimate partner violence[2] in Indian Country.[3] We will also discuss the criminal legal response to and the impact of these forms of violence on self, community and society. We are unable to include related forms of interpersonal such as homicide, stalking and elder abuse,

[1] Sexual violence is an umbrella term that includes sexual abuse, sexual assault and rape.
[2] Intimate partner violence and domestic abuse are used interchangeably throughout this chapter.
[3] "Indian Country" is defined by 18 U.S.C. 1151 as follows: . . . (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including the rights-of-way through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the titles to which have not been extinguished, including rights-of-way running through the same" (see http://www.law.cornell.edu/uscode/text/18/1151).

as these are complex legal and interpersonal issues that require a chapter in their own right. And, while we recognize that men, too, are victims of violence, our primary focus is children and women. Further, due to the heterogeneity of the Native people in the continental U.S. and Alaska, we will not be able to present an exhaustive picture of the extent and impact of these issues in each Native community. We encourage interested readers to further explore the list of references to deepen their understanding of these issues.

<A>Child Abuse and American Indian Children: A Legacy of History, Politics, and Acculturation

It is well documented that American Indian and Alaska Native children suffer disproportionately from child abuse and the related sequalae of alcohol and substance abuse, gang involvement, and youth suicide (DeBruyn, Lujan and May 1992; Fischler 1995; Kunitz et al. 1998; White and Cornely 1981). Despite decades of searching for solutions and increased understanding, however, we are only now beginning to unravel the complex web of problems that ultimately results in the violent victimization of Native children. It has become increasingly clear that the demands of family life and parenting that challenge any family are compounded for American Indians and Alaska Natives by a painful and traumatic history, the legacy of federal policy, and the tension between tribal custom, tradition, mainstream society, and the demands of acculturation.

Although the demographic and socioeconomic profile of American Indians appears similar to some other minority groups in the U.S., American Indian tribes have a unique relationship with the federal government that impacts every facet of Indian life. Federally recognized tribes are considered sovereign nations with the right to exercise basic governmental powers. Tribes can set up their own governmental systems, establish tribal courts, law

enforcement, and develop an array of culturally appropriate health and social services. Sovereignty establishes a government-to-government relationship between tribes and the federal government and the states in which tribal lands are located. Further, the Federal Indian Trust Relationship[4] holds the United States legally responsible for the protection of tribal lands, assets, resources, and treaty rights.

Most child welfare issues however, are handled at a state level but involve multiple governments and government systems. Six states under Public Law 280 (California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska) have concurrent criminal jurisdiction over tribal lands, the limits of which are still under debate (Canby 2009). State-Tribal relationships are further complicated by differences of opinion regarding jurisdiction (the authority to adjudicate a case in court), service responsibility (which government is responsible for providing services to the child and family), and the rights and entitlements of Tribes (CWIG 2006).

The powers and responsibilities dictated by federal and state policy both support and constrain the development of services and systems that address issues of child maltreatment. With reservations in 33 states, there is wide variation in the existence and effectiveness of child protective services on reservation lands, the availability and utilization of state child welfare and foster care resources, issues regarding the status of the growing number of urban Indian children at risk, and the resources available to tribal systems.

As with all populations, child abuse among American Indians is first and foremost a social issue. The factors that would cause stress in all families – e.g., poverty, domestic violence, substance abuse, isolation, children with disabilities – also put American Indian and Alaska

[4] The Federal Indian Trust Responsibility legally obligates the United States "with moral obligations of the highest responsibility and trust" toward American Indian tribes *(Seminole Nation v. United States, 1942; Cherokee Nation v. Georgia, 1831).* This trust responsibility is reflected in policy that makes provisions for American Indian and Alaska Native health, education, and housing.

Native families at risk. For many Native families, these risks are often multi-generational, amplified and further complicated by shifting economies, changes in the extended family and increasing demands of acculturation (Chino 1992).

In the past 50 years, these socio-political underpinnings of American Indian child abuse have been explored through anthropological, psychological, criminal, economic, and educational research and policy analysis. But it has only been in the past decade or so that our understanding of risk and protection has advanced to a point where we know how to approach the problem. What has changed recently is the influence of Native researchers, Native anthropologists, Native psychologists, Native economists, and Native educators who have brought native perspectives to the issues. Conversations about child abuse now include the impact of American Indian and Alaska Native history on cultural and acculturation, family dysfunction, policy, and self-determination (Debryun et al. 1992; Kunitz et al. 1998; Fischler 1995; Fleming 1996; White and Cornely 1981). If we are to fully understand the disproportional levels of violence that affect Indian children today, we must first look back to the history that has shaped the lives of Native populations.

<B>A History of Federal Policy to Address "the Indian Problem"

The more than 500 federally recognized tribes in the US are as diverse as any group of nations. With hundreds of languages, vastly different traditions, and modern and historical experiences, each tribe is unique in many ways. But no matter the differences, tribes in the U.S. share important similarities. In particular, the shared history of conquest, decimation from disease, genocide, forced cultural and land-based loss, the insidious evolution of alcohol use, violence, and disease has inexorably linked American Indian and Alaska Native people together on a tenuous path of survival.

The conquest of the indigenous peoples of the Americas began with the death of an estimated 90% of the population due to diseases brought by European explorers (Dobyns 1993). The surviving remnant populations briefly engaged as nations in a period of treaty making (1608-1830) which became the legal and political foundation of all future interactions with the newly forming U.S. government. Westward expansion of the growing U.S. population and competition for land pushed the limits of existing treaties and prompted federal policy focused on removal and relocation (1828-1887), then on allotment and assimilation (1887-1928). It was during this period that more than two-thirds of existing reservation lands were reduced; the federal government took over jurisdiction of felony crimes; and legislation was passed that developed the boarding school system and other efforts to promote assimilation (Lacey 1986).

<B>The Best Interests of the Child

The Civilization Fund Act (1890) funded the coordinated separation of Indian children from their tribes as the only way to deal with the "Indian problem". This history helps us to begin to better understand the unique issues in the maltreatment of Indian children today. The first organized removal efforts focused on children started with Captain Richard Henry Pratt and the establishment of the Carlisle Indian School in 1879. In response to the growing expense of the Indian wars, Indian commissioner Carl Schurz and Secretary of the Interior Henry Teller, demonstrated that cultural genocide was more cost effective than physical genocide (Davis 2001). Pratt's idea of "killing the Indian to save the man" became the foundation for the forced assimilation of generations of Indian children and their descendants. Despite the claims of assimilation being in the "best interests of the child" it was in the boarding schools that Indian people lost their languages, their culture and traditions, their parenting skills, their community support, and all the key components essential for healthy child growth and development.

Requisite, immediate, unrelenting, and disciplined assimilation was the goal. Parents, children, and tribes were not given choice in the matter. Tens of thousands of children as young as five or six, not only dealt with extreme loneliness of separation, but with the loss of everything they knew about who they were. Malnourishment was widespread. Facilities were overcrowded and unsanitary. Child labor was commonplace and even part of the educational plan (Davis 2001).

The boarding schools were also notorious for the levels of harsh and violent punishment and rampant sexual abuse that often resulted in the death of the child (Grant 1996). Brutal punishments were rendered for infractions such as speaking Native languages, running away, or bedwetting. Historic and recent government reports and survivor accounts (CERD Shadow Report 2008; PRRAC 2008; Bear 2008) indicate that as recently as the 1970s Native students were beaten, whipped, shaken, burned, thrown down stairs, placed in stress positions and deprived of food. Their heads were smashed against walls, and they were made to stand naked before their classmates. While the schools flourished, thousands of children died on their way to the schools, at the schools, or trying to escape from the schools. Those that did survive this cruel treatment are the parents, grandparents, and great-grandparents of Indian children today.

In the 1920s and 1930s, when many of the schools were turned over to religious organizations as a government cost saving measure, sexual abuses became as commonplace as brutal corporal punishment. Many well-documented accounts contain accusations of bizarre, violent and humiliating sexual abuse (Hand 2006). It was in this atmosphere of institutionalized abuse where Indian children learned to dress like mainstream Americans, become adept at skills needed to serve mainstream Americans, and learned that the oppressed often become the oppressors.

This historical removal of children from their homes deeply affected the extended family network system (Libby et al. 2008). Children were deprived of their cultural heritage by forces that overlooked or disregarded the importance of maintaining the integrity of Indian tribes, tribal cultures and Native families. Standards for removal and placement of Indian children were predicated on a value system that ignored the value system of Indian people. Actions premised on the "best interests" of the Indian children often inflicted irreparable long-term harm to such interests by depriving Indian children of their unique identities and forcing them to adopt and accept identities imposed by non-Indians.

<B>Self Determination and Child Protection

It was not until the 1960s, after a brief attempt to terminate the sovereign status of all tribes (and 100 tribes were officially "terminated"), that the current era of Self-determination policy reaffirmed the federal trust relationship and paved the way for tribal autonomy (Wilkinson and Biggs 1977). Several key pieces of federal legislation including the Indian Civil Rights Act (25 U.S.C. §§ 1301-03) and the Indian Self-Determination Act (Public Law 93-638) began a new era of Indian policy that created both opportunities and challenges for the protection and support of Indian children and families.

While the self-determination era served as the official end of the boarding school period, it was not the end of the removal of Indian children from their families. The Final Report to the American Indian Policy Review Commission in 1977 stated that approximately 25 to 35 percent of all Indian children were raised in non-Indian homes and institutions during some period of their lives due to non-Indian perceptions that Indian families were incapable of child rearing (Fanshel 1972). Native children have and continue to be systematically and disproportionately removed from their homes and placed into foster care or adopted by non-Indians (Summers,

Wood and Donovan 2013). There is still is a prevailing attitude that Indian children must be protected from life on the reservation. Currently foster care placements of Indian Children are almost five times higher than for other children and are more likely to be in non-Indian homes and away from their home reservation (Bass 2004).

In 1978 Congress passed the Indian Child Welfare Act (ICWA) in response to rising concerns over the consequences of abusive child welfare practices to Indian children, families, and tribes. Such practices resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placements, usually in non-Indian homes (Crofoot and Harris 2012). The Indian Child Welfare Act is a federal law regulating placement proceedings involving Indian children. The law applies to a wide range of actions that are frequently the result of charges of child abuse. It requires cases to be heard in tribal courts where possible and permits the tribe to be involved in state court proceedings and requires testimony on cultural issues before a child can be removed (Guerrero 1979). Further, it creates responsibilities for states and child advocates and sets minimum standards for foster and adoptive care and gives priority to extended family and tribal placements (Guerrero 1979). Despite ICWA, as late as the 1980's 80% of infant adoptions still occurred without notification to the tribe (Hand 2006; Mannes 1995).

Tribes have also struggled with how best to deal with those individuals, both Native and Non-Native, who abuse and neglect children. Due to the Indian Civil Rights Act and recent amendments in the Tribal Law and Order Act, tribes are currently limited in their ability to sentence abusers to a maximum of $15,000 and/or three years in jail per offense. US federal law

currently prohibits tribes from prosecuting Non-Indians[5] and tribes cannot prosecute felony-level child abuse crimes. This lack of jurisdiction offenses committed on Indian land is highly problematic. The Indian Child Protection and Family Violence Prevention Act of 1990 was passed in response to several landmark cases involving the sexual abuse of Indian children by federal employees and the high reported incidence of family violence among American Indian and Alaska Native people. This act mandates reporting of suspected child abuse, the development of a central registry for child abuse case information, background checks for federal employees, training and technical assistance for prevention and treatment programs, and the establishment of multidisciplinary child protection teams to deal with cases of abuse at the local level.

Tribes now must heal wounds from the historic and recent past, effectively deal with current problems, and prevent future abuses. With limited resources and varying levels of capacity, Indian children often remain, unnecessarily at risk. In response, many tribes are working to codify child welfare provisions in tribal constitutions and tribal laws and address cross-jurisdictional conflicts that inhibit a rapid and effective response to an incident of abuse. Most have found it important to clearly define child abuse crimes in their codes. For example, despite the challenges of documenting emotional abuse, many tribes have expanded their definitions to include an array of emotionally abusive acts and the emotional consequences of abuse (Piasecki et al. 1989). As tribes work towards the development and implementation of children's codes and establish victim services, they are also working to educate non-Indians about the complex cultural and historical context of American Indian child abuse. In time, the

[5] The Violence Against Women Act reauthorization of 2013 (discussed below) introduced an exception to this rule. Starting in 2015, some tribes will be able to prosecute non-Native domestic violence offenders who have "sufficient ties to the community" (DOJ 2013).

evolving social and legal response to crimes against children in Indian Country may help to refute decades of denial and misinformation, alleviate some of the pain of the past, and ensure that of Indian families have the support and guidance they need to raise happy and healthy children.

<A>Violence against Native women

Like child abuse and neglect, the existing empirical literature on violence against American Indian and Alaska Native women indicates that violence against women is a critical public health and public safety issue in Native communities (Fairchild, Fairchild and Stoner 1998; Oetzel and Duran 2004; Robin, Chester, and Rasmussen 1998; Yuan, et al. 2006). One study, conducted at an Indian Health Service facility near a reservation in the southwest, found that almost half (41.9%) of the female participants had experienced intimate partner violence in their lifetime (Fairchild, Fairchild and Stoner 1998). Robin, Chester and Rasmussen (1998) found that almost a third (28.6%) of women interviewed from one tribe reported being forced to have sex by an intimate partner. In another study, conducted with American Indian women at five sites in California, 32% of women experienced physical or sexual assault in the past year (Zahnd, et al. 2002). A study conducted with American Indian women in Oklahoma found that 39.1% had experienced severe intimate partner violence in their lifetime (Malcoe, Duran and Montgomery 2004). Recently, a statewide study in Alaska found that nearly half of all women (47.6%) had experienced intimate partner violence and more than a third of all women (37.1%) had experienced sexual assault in their lifetime (Rosay et al. 2011).

Despite these compelling estimates and national studies that have consistently indicated that violence against women is more widespread and severe in American Indian and Alaska Native communities than among other North American people, the extent violence against

Native women throughout the United States is unknown (Bachman et al. 2008) and, according to many advocates, underestimated (Pember 2010). Existing studies utilized distinct data collection methods, sampling strategies and question wording (Bachman et al. 2008; Rosay et al. 2010). For example, some studies were conducted over the phone whereas others were conducted in-person. Most studies utilized a "convenience" sample such as people visiting a clinic or staying in a domestic violence shelter. Some studies asked for respondents to self-identify whether they were American Indian or Alaska Native while other studies ask for respondents to indicate whether they are enrolled in a federally-recognized tribe. Some studies asked about violence since the age of 18, some asked about violence within a respondent's lifetime whereas others asked about the past 12 months. Some studies had non-Native interviewers, some had Native interviewers from another tribe and some had interviewers from the respondent's tribe. These distinctions make comparisons across studies impossible (see Bachman et al. 2008 and Crossland, Palmer, Brooks 2013).

Still, it is clear that more needs to be done to address violence against American Indian and Alaska Native women. According to Agtuca (2008), "safety and justice in the lives of Native women, while related, exist as separate realities. Safety, or the prevention of immediate violence against a Native women, is within our reach… Justice, on the other hand, is more complicated" (4). Many, but not all, scholars contend that violence against women such as domestic abuse or sexual assault was not common prior to colonization (Bubar and Thurman, 2004; Deer 2004; Agtuca 2008).[6] If these crimes did occur prior to colonization and the restriction of tribal legal authority, it is said that offenders were held accountable by the tribe's council or the victim's clan with harsh consequences such as public humiliation, banishment or

[6] For an exception, see Gwynne's (2010) description of warriors from the Comanche tribe.

even execution (Armstrong, Guilfoyle, Pecos Melton 1996; Deer 2004; Agtuca 2008). In at least one tribe, the Lakota, a man who committed domestic violence was considered irrational and would no longer be allowed participate in the hunting or war party activities of the tribe (Bussey and Whipple 2010).

At present, when sexual assault, intimate partner violence or stalking occurs in tribal communities, there are several barriers that inhibit offender accountability and victim access to justice and safety. These barriers include the underreporting of crimes, complicated jurisdictional and policy issues, and the lack of tribe-based or culturally sensitive resources and capacity to assist victims and perpetrators.

<A>Barriers to justice and safety for Native women

<B>The costs and consequences of help-seeking

If women who experience intimate partner violence or sexual assault tell anyone about the trauma they have experienced, they typically turn to friends of family first – and may or may not turn to formal sources of help (Goodman et al. 2003). Some Native survivors, however, are not comfortable talking to family members about abuse because of the effect it would have on family harmony (Thurman et al. 2003). Seeking assistance from medical providers, social services or the criminal legal system may only occur under certain circumstances (such as an escalation in violence or the effects of violence; or, because a friend of family member called the police or was persistent in encouraging them to seek assistance) (Bussey and Whipple 2010). In fact, national victimization studies indicate that about half of violent victimizations are never reported to the police (Rennison, Dragiewicz and DeKeseredy 2012). There is also some evidence that underreporting of violence against women is especially prevalent in rural areas

(Rennison, Dragiewicz and DeKeseredy 2012) and among American Indian and Alaska Native women (NSVRC 2000).

Native women are often reluctant to report crimes of interpersonal violence due to a variety of intersecting issues at the interpersonal, community and systemic levels. Key interpersonal and community level reasons that Native women do not disclose abuse are a need to protecting family honor or a fear of gossip or retaliation (Bussey and Whipple 2010; Deer 2003; Ned-Sunnyboy 2008). For women living in small tribal communities, these obstacles are difficult to overcome. Women are disinclined to report due to stigma and a lack of confidentiality (Hamby 2004). It is not uncommon for service providers, tribal law enforcement and government officials to be family members of the victim and/or the perpetrator through blood or marriage (Hamby 2004). In addition, in a multi-site study, many women reported that they felt they could not safely access assistance in their community because many of the people in tribal council or the tribal court system were abusers (Thurman et al. 2003, 38).

There are additional community-specific barriers for Native women associated with geographic isolation, a lack of accessible culturally-based social services and a lack of needed medical services (Bussey and Whipple 2010; Hamby 2008). Many reservations and Alaska Native villages are located in remote areas; therefore, traveling to access services is challenging (Hamby 2004). Many tribes receive federal and other funding to offer culturally-based domestic violence and/or sexual assault services within the community but often these services are not consistently available due to time-limited grant programs and a lack of other funding sources (Ferron 2012). Women can seek help at a non-Native service provider outside of the community but typically do not due to issues such as a lack of transportation, language barriers and/or a general "conflict between Western approaches to intervention and American Indian values" (Hamby 2008, 97).

Hence there is a double bind for a Native woman that needs help – seeking help within the community may compromise her safety and confidentiality but leaving the community to seek help is not seen as an option either due, in part, to transportation issues and a lack of available culturally-sensitive services.

For survivors of sexual assault living in isolated tribal communities, access to crucial medical services is limited. The Government Accountability Office (GAO) recently published results from a survey that found that only 58% of Indian Health Service (IHS) hospitals have the capacity to conduct a sexual assault medical forensic exam on site (GAO 2011). In Alaska, many villages are so remote that residents must travel by plane or boat to access health services (Ferron 2012; Wood et al. 2011). Lack of access to medical services not only impacts survivors' health outcomes but also affects the availability of forensic evidence. Due to the Tribal Law and Order Act, the Department of Justice (DOJ) has been working in partnership with IHS to increase the availability of Sexual Assault Nurse Examiners (SANE) and Sexual Assault Response and Resource Teams (SARRT) in tribal communities and to expand existing programs. IHS is in the process of providing a variety of trainings for existing SANE and SARRT programs in tribal communities and for tribes that are interested in starting a SANE or SARRT program. In 2010, DOJ's Office for Victims of Crime initiated an American Indian and Alaska Native SANE-SARRT program initiative to increase each site's capacity to provide effective and culturally appropriate sexual assault services to adult and child victims (OVC 2012).

There are significant systemic barriers that prevent reporting to the criminal legal system. Many Native women distrust formal systems and fear prejudice or blame due to the history of maltreatment and oppression of Native people (Hamby 2004). Due to the history and current practice of child welfare professionals discussed above, Native women have good reason to fear

that their children will be removed if they report violence in the home (Bussey and Whipple 2010). Also, tribal governments do not have full jurisdiction over all crimes that occur on their land. Often, in order to seek justice in the aftermath of a violent crime, Native women must rely on the non-Native criminal legal system.

Lastly, tribal law enforcement agencies are under-resourced and in some case non-existent. A survey of police departments in Indian Country found that many of these departments lack necessary resources such as personnel, technology, vehicles, and equipment (Wakeling et al. 2001). It is not uncommon for tribal law enforcement to rely on very few officers to patrol an expansive area (Goldberg and Singleton 2005). In Alaska, the first responder to a crime is typically a paraprofessional police officer – such as Village Public Safety Officer (VPSOs), Village Police Officer or Tribal Police Officer – if the village has one. According to 2005 Alaska Department of Public Safety data, 82 percent of the rural areas had a VPSO position in their community – however one-third of these positions were vacant (Roberts 2005). The VPSO program suffers from turnover rates that are ten times greater than what is typical in law enforcement agencies (Wood 2002).

In sum, when violence against women occurs in a tribal community, victims face many interpersonal, community and jurisdictional obstacles that prevent help-seeking, crime reporting, the ability to hold perpetrators accountable, and overall access to justice and safety (Deer 2003; Ferron 2012; Ned-Sunnyboy 2008). In addition, when a crime is reported, there are complex jurisdictional issues that further hinder victim access to justice and safety.

<B>Legal and Jurisdictional issues

Federally recognized tribes in the United States are considered "domestic dependents." That is, the U.S. federal government has a government-to-government relationship with each

tribal government as they are sovereign, or self-governing, entities similar to a U.S. state. Despite their self-governing status, tribes have limited jurisdiction and sentencing powers when crimes are committed on their land due to several federal laws and U.S. Supreme Court cases. Under most circumstances, tribes cannot prosecute a non-Native person per the Indian Country Crimes Act (also known as the General Crimes Act of 1817) (18 U.S.C. § 1152) and *Oliphant v. Suquamish Indian Tribe (1978)* (Canby 2009). Also, due to the Major Crimes Act of 1885 (18 U.S.C. § 1153) and Public Law 280 (PL 280), if the crime is one of fifteen felony-level offenses[7] and it is perpetrated by an American Indian or Alaska Native person, the federal government or the state, not the tribes, has jurisdiction (Canby 2009).

With the passage of the Major Crimes Act, Congress transferred jurisdiction over these offenses from tribes to the federal government. Then, in 1953, Public Law 280 transferred jurisdiction from the federal government to the state government in certain states. Six states were "mandatory" PL 280 states (Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin) while ten additional states were considered "optional" PL 280 states. This law is controversial because it did not require consent of the tribes, did not authorize additional funding for state governments to respond to crimes in Indian Country and because it creates added complexity to jurisdictional confusion in Indian Country (Canby 2009; Goldberg and Singleton 2005). In 2013, Congress reauthorized the Violence Against Women Act, which included a special domestic violence tribal jurisdiction provision that will allow some tribes to prosecute certain non-Native perpetrators of domestic violence (King & Clark 2013).

<B>Federal Indian Law and Violence Against Women

[7] The included offenses associated with violence against women and children are murder, manslaughter, kidnapping, maiming, felony child abuse or neglect, rape, incest, and assault (with intent to commit murder, assault with a dangerous weapon, resulting in serious bodily injury, or against an individual under the age of 16) (Canby, 2009; Oakley, 2011).

To further explain this complexity, consider an incident of domestic violence that occurs on a reservation. If the crime is reported, assuming the tribe has law enforcement, an officer would be dispatched to respond to the address where the incident reportedly occurred. Response times, however, vary depending on volume of calls and geographic isolation of the community. On one reservation, a reporter who rode along with officers found that it was "not unusual … to spend the entire night arriving at calls too late" (Vanguard 2010).

If the officer drives to the home and all appears to be quiet or no one answers the door, he or she may move on to the next call and not investigate further. However if the officer arrives on scene and determines that an incident of domestic violence, or an assault by a current or former intimate partner, has taken place, the officer must determine under which jurisdiction the case falls. This can be a complicated undertaking depending on the circumstances of the crime. As displayed in Table 1, jurisdiction in Indian Country is generally determined by the following: (a) the location of the crime (in Indian Country or not); (b) the type of crime committed (felony or misdemeanor); (c) the status of the perpetrator (Indian or Non-Indian)? (d) the status of the victim (Indian or Non-Indian); and after 2015 (e) whether the tribe qualifies for special domestic violence criminal jurisdiction.

Table 1. Establishing Jurisdiction in Indian Country

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State
Non-Indian	Indian	Federal
Indian	Non-Indian	Depends on the crime and where crime occurred (see §1153 and §1152; PL 280)
Indian	Indian	Depends on the crime and where crime occurred (see §1153 and §1152; PL280)

Adapted from DOJ's Criminal Jurisdiction Manual (see http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00689.htm)

Making these determinations can be particularly challenging. On some reservations, due to patchwork tribal land, it is not always clear if an incident occurred in Indian Country. As for the determination of whether a misdemeanor or felony occurred, it may not be immediately apparent, especially in the case of domestic violence. Yet this determination is crucial because if the incident is deemed to be a misdemeanor, it falls under tribal jurisdiction – but if it is a felony level[8] crime – the state or federal government has jurisdiction. In addition, the determination about whether an individual is Indian or not can be problematic (Oakley 2011). Under the Major Crimes Act, "the Indian status of the defendant is an element of the crime that must be alleged in the indictment and proved by the prosecution beyond a reasonable doubt" (Canby 2009, 183), yet there is not a consistent definition within federal statutes on how to determine "Indian status"

[8] Felony level domestic abuse statutes include 18 U.S.C. § 113(a)(1) (assault with intent to commit murder), 18 U.S.C. § 113(a)(2) (assault with intent to commit any felony, except murder or a felony under chapter 109A), 18 U.S.C. § 113(a)(3) assault with a dangerous weapon, with intent to do bodily harm, 18 U.S.C. § 113(a)(4) assault by striking beating or wounding, 18 U.S.C. § 113(a)(5) simple assault, and 18 U.S.C. § 113(a)(6) assault resulting in serious bodily injury. Other relevant statutes include 18 U.S.C. § 117 Domestic assault by an habitual offender or statutes related to unlawful use or possession of a firearm (such as 18 U.S.C. 924(c)). VAWA 2013 Section 906 amended the federal assault statute by adding 18 U.S.C. § 113(a)(7) assault resulting in substantial bodily injury and 18 U.S.C. § 113(a)(8) assault by strangling or suffocating. See http://www.law.cornell.edu/uscode/text/18/113

(Oakley 2011). The major question is who decides who is Indian? Does blood quantum matter, and if so, how much? Should courts be concerned with a *significant, substantial or some* amount of Indian blood (Oakley 2011)? Does it matter whether the individual is enrolled in a federally recognized tribe or does it matter how the individual self-identifies? The determination of who is, and who is not, Indian can be a subjective matter – and without a uniform definition, there will not be consistency in the application of legislation affecting Indian people (Oakley 2011).

Due the to the Violence Against Women Act of 2013, starting in 2015, tribes[9] may voluntarily opt to utilize "special domestic violence criminal jurisdiction." That is, if tribes met certain requirements (e.g., providing a tribal by an impartial jury with a fair cross-section of the community), they will be able to investigate, prosecute, convict and sentence a non-Native individual if the defendant is found to have "sufficient ties to the tribal community" (DOJ 2013). In early 2014, three tribes (Pascua Yaqui Tribe of Arizona, the Tulalip Tribes of Washington, and the Umatilla Tribes of Oregon) were selected to participate in a voluntary pilot project that allows the tribes to implement the provisions of the special jurisdiction component of VAWA 2013 (DOJ 2014).

Meanwhile, despite state and federal criminal jurisdiction on reservations and other tribal communities such as Alaska Native villages, tribes in the contiguous 48 states and Alaska can still prosecute Indian offenders within their own tribal justice systems in addition to any prosecution undertaken by the federal or state systems (also called concurrent jurisdiction). However, tribal court powers are limited. In 1968, the Indian Civil Rights Act (ICRA) (25 U.S.C.§1302) limited tribes' sentencing authority to a maximum of one year in jail and up to a

[9] In Alaska, this portion of VAWA 2013 only applies to the Metlaktla Indian Reservation and excludes the more than 200 federally-recognized Alaska Native villages (Wang 2014). In August 2013, Senator Begich (AK-D) introduced the Alaska Safe Families and Villages Act to amend VAWA 2013 "to repeal the limitation, within Alaska, of that Act's extension of tribal jurisdiction over domestic violence" (US Senate, 2013).

$5,000 fine. ICRA was amended in 2010 with passage of the Tribal Law and Order Act. As long as certain requirements are met and depending on the number of offenses committed, tribes may now sentence an offender to up to three years imprisonment per offense (with a maximum of nine years) and up to a $15,000 fine (TLOA 2010). Despite this increase in authority, many believe that even nine years imprisonment is not sufficient punishment for violent crimes like rape or child sexual abuse (Deer 2003).

In addition, the shortage of jail space in Indian Country further limits tribes' ability to incarcerate offenders. A study of 80 facilities in Indian Country found that, 11 could hold fewer than 10 inmates, 24 could hold 10 – 24 inmates, 30 could hold 25 – 49 inmates and 15 could hold 50 or more inmates (Minton 2011). The expected average length of stay at these facilities ranged from 2.1 days for the smallest jails to 9.1 days for the largest (Minton 2011). The average expected length of stay for all facilities was 5.6 days (Minton 2011).

The complexities outlined in this section impact the number of crimes that are reported, investigated and prosecuted in Indian Country. Factors such as stigma associated with reporting, delayed law enforcement response and jurisdictional confusion affect the quality of evidence and the availability of witnesses, and effectively communicates to community members that no one will be available when help is most needed. For many years, grassroots advocates, national tribal organizations and others worked tirelessly to lobby Congress to do something about these concerns. In 2010, President Obama signed the Tribal Law and Order Act (TLOA) and many have lauded the passage of this legislation as an important step towards reducing some of these barriers to justice (Beeler 2010; Yee 2010). The TLOA includes several provisions that aim to (1) increase collaboration and communication among law enforcement agencies that investigate and prosecute crimes in Indian Country; (2) increase sentencing authority for tribal courts; (3)

increase access to criminal history of suspects by law enforcement agencies; (4) increase recruitment, retention and training efforts for federal and tribal police officers and (5) improve evidence collection and sharing policies and procedures. In 2013, more progress was made in the response to violence against Native women with the passage of the Violence Against Women Act reauthorization.

Legal changes such as TLOA or VAWA 2013 may help reduce some of the barriers to justice and safety that American Indian and Alaska Native women face. To truly address these issues, however, it is also important to provide culturally informed prevention, education in Native communities, and culturally informed advocacy and paths for healing for Native survivors and offender treatment. It is also necessary that Native people be the ones to identify what is necessary to holistically confront this epidemic. In addition, more research on victimization in Native communities is essential to truly understand the magnitude of the problem, the needs of victims, and how to improve the response to these crimes. Additional studies must be designed in partnership with tribal communities and Native researchers, and must account for differences among tribal communities and the diversity of American Indian and Alaska Native people.

<A>Ways Forward – Protecting the Next Seven Generations

Although the current generation of American Indian and Alaska Native people cannot change the past, they certainly has the power to change the future. Violence against women and children in Indian Country can be prevented. It is true that agencies and professionals addressing child maltreatment and violence against women on Indian reservations are often confronted by many complex issues: the complicated relationships between tribes, states, and the federal agencies, the vast distances between communities and services, limited human and financial

resources, overlapping and often conflicting jurisdictional authorities and socio-culture of a community that can both help and hinder responses to these issues. Tribes and tribal communities, however, are now better positioned to move forward in developing culturally and community appropriate responses to abuse and violence that mitigate the poverty, social isolation, and alcohol use that often create a lethal environment for vulnerable children. Indian people have always known that it "takes a village to raise a child" and that each generation is responsible for the wellbeing of the next seven generations. The promise of a healthier future for our children and our communities comes in part from our understanding of the value of knowing our history and our culture, recognizing that all must contribute knowledge and skills to the process of raising healthy children, and that best solutions lie in understanding our strengths.

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