



Office for Victims of Crime

OVC Bulletin

*Advocating for the Fair
Treatment of Crime Victims*

Message from The Director

This bulletin presents basic information for improving the cooperation between Tribal and Federal agencies in handling child sexual abuse cases. It describes how close cooperation between Tribal and Federal law enforcement agencies will ensure effective investigation and prosecution of child abuse cases.

The investigation and prosecution of child sexual abuse cases often present a jurisdictional maze. This confusion is the result of difficulty in determining jurisdiction combined with provisions for concurrent jurisdiction of certain cases for Tribal and Federal officials. Due to overlapping jurisdictional lines, law enforcement agencies and service providers often feel compelled to interview child victims multiple times thus producing unnecessary victim trauma.

In response to overlapping jurisdictions, many American Indian tribes have developed multi-agency protocols and multidisciplinary teams, children's advocacy centers, and court appointed special advocate (CASA) programs to address jurisdictional concerns and to coordinate the investigation and prosecution of cases and to minimize trauma to child victims. The Federal government has undertaken a number of new initiatives to facilitate Tribal and Federal cooperation: hiring 26 Assistant U.S. Attorneys to work in districts with large Indian populations, establishing a Tribal Justice Office at the U.S. Department of Justice, and creating an American Indian and Alaskan Natives Office at the Justice Department's Office of Justice Programs. These offices are designed to monitor program support and provide technical assistance to the tribes.

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Improving Tribal/Federal Prosecution of Child Sexual Abuse Cases Through Agency Cooperation

The Children's Justice Act of 1986 (CJA) makes money available to State and local governments to improve the handling of child abuse cases through a multidisciplinary, coordinated approach that diminishes the trauma experienced by child victims.

The multijurisdictional responsibilities for investigating incidents of child abuse in Indian Country can produce confusion among service providers and others who work with child sexual abuse victims in Indian Country. A crime committed in Indian Country can be subject to investigation by local law enforcement, consisting of Tribal and/or Bureau of Indian Affairs (BIA) police; State law enforcement, such as the county sheriff, city police, or State troopers; and/or Federal law enforcement personnel from the BIA and the Federal Bureau of Investigation (FBI). Further, once a case has been investigated, it may be subject to prosecution by one or more jurisdictions, including State, Federal, and/or Tribal courts.

For victims and service providers alike, this overlapping of investigative and prosecutorial responsibilities can be frustrating. The lack of clear protocols among

agencies that may have jurisdiction over crimes in Indian Country has also led to confusion among law enforcement and prosecutorial professionals over who is responsible for criminal investigation and prosecution.

Determining Criminal Jurisdiction

The determination of which agency has criminal jurisdiction (which includes investigative and prosecutorial responsibilities) over cases in Indian Country is influenced by several factors: where the crime occurred, the type of crime, the race of both the victim and the perpetrator, and statutes specifying Federal, State, and Tribal jurisdiction over certain cases. The law enforcement agency that receives the initial report of the crime may assume the responsibility for determining criminal investigative jurisdiction.

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Location

One factor that affects the determination of criminal jurisdiction is the physical location where the alleged offense occurred. If an offense occurs within Indian Country (as defined by 18 U.S.C. Section 1151, see the text box below), it is subject to preliminary investigation by the police serving that land. However, in many instances both Tribal and BIA law enforcement agencies provide services to an Indian reservation. Tribal police may be the first to respond to a suspected crime, while BIA criminal investigators may perform the actual criminal investigation. Hence, it is critical that the investigative roles be clarified and understood by each agency as well as by the affected parties, (i.e., offender, victim, and the Tribal community). Some tribes have their own Tribal criminal investigators who perform the same duties as BIA criminal investigators. In addition, investigative responsibility for all serious Federal crimes rests with the FBI, regardless of where the crime occurred.

Indian Country is defined in 18 U.S.C. Section 1151 as:

(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 rights-of-way running 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 Indian titles to which have not been extinguished, including rights-of-way running through the same.

Type of Crime

A second factor affecting the determination of criminal jurisdiction is the type of crime. The Major Crimes Act, 18 U.S.C. Section 1153, establishes Federal jurisdiction for 16 major criminal offenses (including child sexual abuse) if the crime was allegedly committed by an Indian defendant. Major Crime Act offenses in Indian Country may be subject to Federal and/or Tribal jurisdiction. The General Crimes Act, 18 U.S.C. 1152, provides for Federal criminal jurisdiction over a broader range of possible criminal actions involving interracial crimes in Indian Country.

Race

A third factor influencing criminal jurisdiction involves the race of the alleged perpetrator and victim.

Pursuant to case law, cases that involve a non-Indian perpetrator and a non-Indian victim are within State jurisdiction; in these cases, Tribal and Federal courts exercise no jurisdiction. However, if the perpetrator is Indian, Tribal agencies have jurisdiction. Depending on the type of crime, Federal agencies may also have jurisdiction, as defined by the Major Crimes Act.

The race of the perpetrator is also a major factor in prosecution. As the U.S. Supreme Court noted in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), Tribal courts do not have criminal jurisdiction over non-Indians (see the text box on page 3). Criminal jurisdiction over non-Indians rests solely with

the Federal government. However, Tribal courts do have civil jurisdiction over non-Indians. There are a number of sanctions such as civil infractions, civil contempt for failure to comply with a court order,

18 U.S.C. Section 1153. Offenses committed within Indian Country

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnaping, maiming, a felony under chapter 109A [aggravated sexual abuse (including with children), sexual abuse, sexual abuse of a minor or ward, and abusive sexual contact], incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title [theft of personal property] within the Indian Country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

18 U.S.C. Section 1152. Laws governing

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except in the District of Columbia, shall extend to the Indian Country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian Country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

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Exhibit 1. Effect of Race and Type of Crime on Criminal Jurisdiction

Race	Type of Crime	
	“Major” Crime (as defined by Major Crimes Act)	All Other Crimes
Indian perpetrator, Indian victim	Federal (under Major Crimes Act) & Tribal jurisdiction	Tribal jurisdiction
Indian perpetrator, Indian victim	Federal (under Major Crimes Act) & Tribal jurisdiction	Federal (under General Crimes Act) & Tribal jurisdiction
Non-Indian perpetrator, Indian victim	Federal (under General Crimes Act) jurisdiction	Federal (under General Crimes Act) jurisdiction
Non-Indian perpetrator, Non-Indian victim	State jurisdiction	State jurisdiction

and exclusion that Tribal courts can apply to non-Indians through civil actions related to child sexual abuse allegations.

If an Indian child is abused but the incident takes place outside of Indian Country, the Tribal court has no jurisdiction. The tribe does have an interest in the disposition of any civil custody actions involving a child who is an enrolled member of the tribe or is eligible for enrollment in the tribe through the Indian Child Welfare Act, 25 U.S.C. Sections 1901–1963.

Statutory Jurisdiction

Federal law can also affect criminal jurisdiction. For example, Public Law 83–280 (P.L. 280) transfers Federal criminal jurisdiction in Indian Country to the State (see the text box on the next page). In P.L. 280 states, the tribe and the State have concurrent jurisdiction in both investigation and prosecution provided the tribe has the governmental resources to perform these duties.

Just as there are multiple jurisdictions involved in the investigation of child sexual abuse cases, similar jurisdictional concerns exist regarding the prosecution of child sexual abuse cases. Tribal courts have concurrent criminal jurisdiction with Federal courts (and with certain

States under P.L. 280) over child sexual abuse cases in Indian Country. Federal jurisdiction over child sexual abuse cases derives from the General Crimes Act or the Major Crimes Act. The Major Crimes Act provides for Federal jurisdiction over specified crimes occurring in Indian Country when the defendant is an Indian and the crime involved is either incest or any felony under Chapter 109 A, 18 U.S.C. Sections 2241–2245.

The U.S. Supreme Court has ruled that charging a defendant in both Federal court and Tribal court does not amount to double jeopardy. In *United States v. Wheeler*, 435 U.S. 313 (1978), the Court held that if a person, subject to the jurisdiction of the tribe, is tried and convicted in Tribal court for an offense, that same person may be tried by the Federal government for a similar offense arising out of the same incident (see the text box on the next page).

Oliphant v. Suquamish Indian Tribe

The U.S. Supreme Court ruled that Indian Tribal courts do not have inherent criminal jurisdiction to try and to punish non-Indians, and hence may not assume such jurisdiction unless specifically authorized to do so by Congress.

As the Court noted:

Tribes [that] claim authority to try non-Indians [do so] not on the basis of congressional statute or treaty provision but by reasons of their retained national sovereignty.

Indian tribes do retain elements of “quasi-sovereign” authority after ceding their lands to the United States and announcing their dependence on the Federal Government. But the tribes’ retained powers are not such that they are limited only by specific restrictions in treaties or congressional enactments. As the Court of Appeals recognized, Indian tribes are prohibited from exercising both those powers of autonomous States that are expressly terminated by Congress and those powers “inconsistent with their status.”

The Court did note the increasing sophistication of Indian Tribal court systems, the safeguards for non-Indians included in the Indian Civil Rights Act of 1968, and Tribal concerns about the prevalence of non-Indian crime on reservations. Nevertheless, the Court found that these considerations did not outweigh the longstanding principle that Indian tribes do not have inherent jurisdiction to try and to punish non-Indians for criminal offenses.

Public Law 280: A Federal grant of jurisdiction to the States

In 1953, Congress adopted an approach, commonly known as Public Law 280 (67 Stat. 588) to change the division of jurisdiction among Federal, State, and Tribal governments. Congress initially gave five States, and later a sixth, extensive criminal and civil jurisdiction over Indian Country and permitted all other States to acquire jurisdiction at their option. In the States where P.L. 280 applies (Alaska, California, Minnesota, Nebraska, Oregon, and Washington), it radically shifts the balance of jurisdictional power toward the States and away from the Federal government and the tribes. It does not, however, confer total jurisdiction on the States, nor does it alter the trust status of Indian lands or terminate the trust relationship between the tribes and the Federal government. It also does not end the sovereign immunity of the tribes [see California v. Quechan Tribe of Indians, 595 F.2d 1153 (9th Cir. 1979)].

From its inception P.L. 280 engendered criticism from both the States and the tribes. State governments resented the fact that they were given the duty of law enforcement without the means to pay for it; Congress neither appropriated funds for that purpose nor rendered Indian lands taxable by the States. The tribes, on the other hand, resented the fact that State jurisdiction was thrust on them without their consent, and they particularly objected to the provision that additional States could acquire jurisdiction without consulting the concerned tribes. These criticisms prompted Congress to draft a group of amendments to P.L. 280 that was passed as part of the Indian Civil Rights Act of 1968. These amendments permitted States to retrocede jurisdiction over Indian Country to the Federal government, and also provided that no States in the future could assume this jurisdiction without Tribal consent. As a consequence, there has been almost no expansion of P.L. 280 jurisdiction since 1968. In the number of States where it is still in effect, however, P.L. 280 presents jurisdictional questions of considerable complexity.

The Wheeler decision allows a person to be criminally charged in both Federal and Tribal court for child sexual abuse. This gives both Tribal and Federal courts greater flexibility in handling child sexual abuse cases. Under the decision, a Tribal prosecutor is allowed to proceed with Tribal court action immediately after a case is reported instead of being required to wait until the Federal prosecutor decides whether to accept or decline the case. Since a decision on Federal prosecution frequently takes several months or more, it is often necessary for the Tribal prosecutor to take action more quickly to punish the perpetrator and send a clear message to the community that child sexual abuse will not be tolerated. However, investigation emanates from each court, and the victim is subjected to multiple interviews.

Reaching Agreement

From the initial receipt of a report of alleged child sexual abuse, complex jurisdictional considerations arise. Through formal or informal arrangements, Federal, State, Tribal, and local police may have agreements clarifying agency roles for investigating certain types of cases in Tribal territory. Confusion regarding criminal jurisdiction can be minimized when such arrangements are described in written protocols that clearly confer responsibility for making initial jurisdictional decisions and outline the nature of the working relationships between the various Tribal, State, and Federal agencies.

United States v. Wheeler

The U.S. Supreme Court ruled that when an Indian tribe criminally punishes a tribe member for violating Tribal law, the tribe acts as an independent sovereign and not as an arm of the Federal government, and since Tribal and Federal prosecutions are brought by separate sovereigns, they are not “for the same offense” and the Double Jeopardy Clause thus does not bar one when the other has occurred. The Court stated that:

[O]ur cases recognize that the Indian tribes have not given up their full sovereignty. We have recently said, “Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory....[They] are a good deal more than ‘private, voluntary organizations....’” In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status. (See Oliphant v. Suquamish Indian Tribe.)

Coordinating Criminal Investigation and Prosecution

Once criminal jurisdiction has been established, Tribal, State, and Federal coordination of criminal investigation and prosecution of child sexual abuse cases is imperative. The possibility for multiple interviews of child victims is obvious, given the number of jurisdictions and agencies that have a legitimate interest in child sexual abuse cases in Indian Country. It is conceivable, for example, that an incest case could be handled as follows:

Tribal police receive an after-hours report of alleged child sexual abuse. A Tribal police officer responds to the crime scene and performs a preliminary investigation. The officer’s ini-

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tial investigation is reviewed by his or her superior and assigned to a BIA criminal investigator for further investigation. The case is also forwarded to the FBI.

The BIA criminal investigator and Tribal child protective services worker jointly interview the child and prepare their reports. The criminal investigator's report goes forward through the criminal justice system, and the child protective service worker's report goes through the civil court system. In processing the criminal case, the FBI agent may feel that further investigation needs to be undertaken, including additional interviews of the victim performed by either the agent or the criminal investigator.

The case is presented to both the Tribal prosecutor and the U.S. Attorney's Office. One or both of these prosecutors may feel that it is necessary to personally interview the child, perhaps to assess the child's ability to testify in court. The Federal prosecutor may request additional information prior to making a prosecutorial decision.

By the end of this scenario, the child could have been interviewed by six separate individuals in six or more separate interviews. Each individual has a legitimate interest in the case and the need to obtain specific information. While tremendous progress has been made in coordinating interviews and reducing the number of persons interviewing child victims, the complexity of multiple jurisdictions in Indian Country poses special challenges to

reducing the number of interviews a child endures. OVC has addressed the challenge of reducing trauma to child victims through the CJA Partnerships for Indian Communities. The goal of the CJA Partnership is to improve the investigation and prosecution of child abuse and child sexual abuse cases in Indian Country in a manner that limits additional trauma to the child victim.

Multidisciplinary Teams

The development of multidisciplinary teams (MDTs) in Indian Country is an important vehicle for coordinating the investigation, prosecution, and disposition of child sexual abuse cases. To be effective, MDTs must have the participation of all law enforcement, social services, medical, child welfare, victim assistance, and judicial agencies with jurisdiction over child sexual abuse cases. Tribal representation is necessary on existing county or regional MDTs, and State and Federal law enforcement officers and prosecutors must participate in Tribally based MDTs. Participation in such MDTs is mandated for Federal agencies under the Victims of Child Abuse Act of 1990 and the Indian Child Protection and Family Violence Prevention Act (Public Law 101-630) (see the text box on the next page).

MDTs offer an ideal opportunity to discuss prosecutorial action. Representatives from U.S. Attorneys' or district attorneys' offices meet with Tribal prosecutors and determine the best venue for initial criminal prosecution. Information on the status of various investigations should be available on a regular basis. Lack of access to

information regarding the status of cases has long been a problem for Tribal police and prosecutors, and the MDT offers an appropriate forum to share information and plan strategies.

U.S. Department of Justice Initiatives

In addition to OVC initiatives, the U.S. Department of Justice (DOJ) has undertaken new projects to improve Federal/Tribal coordination. President Clinton's April 29, 1994, memorandum, "Government-to-Government Relations with Native American Tribal Governments," led to the implementation of several DOJ programs: the Tribal Courts Project to assist tribes in developing and strengthening their courts; the Tribal Court-DOJ Partnership Project to strengthen Tribal courts and their abilities to respond to family violence and juvenile issues; the addition of 26 assistant U.S. Attorneys to districts with high Indian populations; the redesign of training programs to ensure that Federal prosecutors understand the jurisdictional framework of Tribal lands; the addition of 7 criminal lawyers, who have expertise in child sexual abuse in Indian Country — to the Child Exploitation and Obscenity Section of DOJ's Criminal Division; the awarding of 68 grants to Tribal domestic violence programs under the Violence Against Women Act grant program; a Tribal CAC demonstration project to serve as a model to establish Tribal Children's Advocacy Centers across Indian Country; and the establishment of an Office of Justice Programs (OJP) American Indian and Alaskan Natives Office to monitor program

Mandates for Multidisciplinary Teams

Victims of Child Abuse Act of 1990

Subtitle D—Federal Victims’ Protections and Rights

Section 225. Child Victims’ Rights

(g) Use of Multidisciplinary Child Abuse Teams.

(1) In General. A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with State and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the court and the attorney for the government shall consult with the multidisciplinary child abuse team as appropriate.

Indian Child Protection and Family Violence Prevention Act (Public Law 101-630)

Section 3210 (d). Funds provided pursuant to this section may be used for...

(3) the development and implementation of a multidisciplinary child abuse investigation and prosecution program which may—

(A) coordinate child abuse prevention, investigation, prosecution, treatment, and counseling services,

(B) develop protocols among related agencies to ensure that investigations of child abuse cases, to the extent practicable, minimize the trauma to the child victim, and

(C) provide for the coordination and cooperation of law enforcement agencies, courts of competent jurisdiction, and other Tribal, Federal, and State agencies through intergovernmental or interagency agreements that define and specify each party’s responsibilities.

Notes

1. William C. Canby, Jr., “American Indian Law in a Nutshell” (U.S. Court of Appeals for the Ninth Circuit).

support and technical assistance to tribes and to assist in planning and developing new OJP initiatives.

Other Activities

There are other actions that State and Federal agencies can undertake to facilitate cooperative relationships with Tribal agencies. These activities include the development of protocols; provision of training to all agencies involved in cases of child sexual abuse (e.g., law enforcement, prosecution, child protection, and medical and mental health); participation in workshops and Tribally sponsored training;

inclusion of Tribal representatives on State and Federal committees, planning panels, and review committees; and informal interaction with Tribal service providers. In addition, State and Federal representatives must be willing to travel to reservations for joint meetings, rather than holding all meetings at government locations to ensure the participation of all interested parties. Similarly, Tribal representatives must be willing to cooperate with Federal and State agencies in investigating and prosecuting cases.

Conclusion

Tribal, State, and Federal coordination of criminal investigation and prosecution is critical to ensuring the best treatment of child victims of sexual abuse and the successful resolution of child sexual abuse cases. OVC and the Department of Justice have undertaken projects to improve coordination among Tribal, State, and Federal agencies and will continue to take an active role in fostering cooperation. The information presented here is a starting point for determining criminal jurisdiction in such cases and coordinating investigative and prosecutorial efforts.

For More Information

The CJA Partnerships for Indian Communities (formally the CJA Discretionary Grant Program for Native Americans) funds programs for child abuse victims on Indian reservations and other locations where Federally recognized Indian tribes exist. This program is the only source of Federal funding for Native American tribes that exclusively focuses on lessening the trauma to Tribal child victims by improving the criminal justice process. The program provides funds for enhanced investigation and prosecution of such cases, more efficient case coordination, and improved services to victims.

The Office for Victims of Crime (OVC) was statutorily created as part of the Victims of Crime Act of 1984 (VOCA), as amended in 1988, to support programs that benefit crime victims. As the Federal government's chief advocate for crime victims, OVC collaborates with other Federal agencies and public and private organizations to improve services to victims of crime on the Federal, State, Tribal, and local levels.

OVC administers VOCA funds for State crime victim compensation and victim assistance programs, support services to victims of crime, training and technical assistance to criminal justice and allied professionals, demonstration initiatives, and dissemination of information on victim-related issues.

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