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TRIBAL/FEDERAL COORDINATION OF CHILD SEXUAL ABUSE CASES

RESOURCE PACKET

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TRIBAL/FEDERAL COORDINATION OF CHILD SEXUAL ABUSE CASES RESOURCE PACKET

In order to improve the investigation and prosecution of child sexual abuse cases in Indian country, it is imperative that coordination between tribal and federal agencies be improved as much as possible. Tribal and federal agencies need to be informed concerning the roles and procedures of each tribal and federal agency involved in the investigation and prosecution of child sexual abuses cases in Indian country. Moreover, regular methods of communication and coordination between tribal and federal agencies must be established and maintained.

This resource packet is designed to provide an overview of tribal/federal coordination issues and resource materials to assist in improving tribal/federal coordination. Specifically, this resource packet includes information concerning:

I. Federal Jurisdiction Over Child Sexual Abuse Cases in Indian Country

II. Tribal Jurisdiction Over Child Sexual Abuse Cases in Indian Country

III. Federal Prosecution/Declination Procedures

IV. Independent Tribal Prosecution Procedures, and

V. Procedures to Improve Tribal/Federal Coordination

I. FEDERAL JURISDICTION OVER CHILD SEXUAL ABUSE CASES IN INDIAN COUNTRY

Federal jurisdiction over child sexual abuse cases in Indian country is relatively limited in scope and for the most part, relatively recent in origin. In general, the federal courts have jurisdiction over criminal offenses in Indian country only if the offense comes under either 18 U.S.C. §1152 (the "General Crimes Act") or 18 U.S.C. §1153 (the "Major Crimes Act").

The Major Crimes Act provides for federal jurisdiction over certain specified crimes occurring in Indian country when the defendant is an Indian (see Attachment A; pages 10-14). Since

the Major Crimes Act was initially enacted in 1885, it has gradually been expanded from seven major crimes to sixteen major crimes. Child sexual abuse (except for incest) was not specifically included in the Major Crimes Act until 1986, when Congress amended the act to include "felonious sexual molestation of minor". The Major Crimes Act was later amended to refer to specific child sexual abuse provisions in other section of the United States Code.

Currently, the Major Crimes Act (18 U.S.C. §1153) provides for federal jurisdiction over child sexual abuse cases in Indian country when the defendant is an Indian and the crime involved is either incest of any felony under "Chapter 109 A" (18 U.S.C. §2241—2245) as follows:

(1) "Aggravated sexual abuse with children" — 18 U.S.C. §2241(c) — any "sexual act" with child under the age of 12 years. "Sexual act" means intercourse, oral and anal sodomy. Carries a maximum possible sentence of life imprisonment.

(2) "Sexual abuse of minor or ward" — 18 U.S.C. §2243. When victim is at least 12 but less than 16 years old and the suspect is at least four years older. Maximum sentence is five years.

(3) "Abusive sexual contact" — 18 U.S.C. §2244. Fondling and other sexual touchings not rising to the level of a "sexual act" as defined above. If done by force can carry up to ten years in prison. If no force used and victim is age 12-15 the most a defendant can receive is two years in prison.

(see Attachment A; pages 10-14).

The federal courts may also have jurisdiction under the General Crimes Act (18 U.S.C. §1152). The General Crimes Act provides for federal jurisdiction where the crime is interracial, that is, the defendant is non-Indian and the victim is Indian or the defendant is Indian and the victim is non-Indian. The General Crimes Act, by its own terms, does not extend to (1) "offenses committed by one Indian against the person or property of another Indian"; (2) offenses committed by an Indian if the tribe has punished the offender; and (3) "any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes...." (see Attachment A; page 10). Consequently, the General Crimes act broadens federal jurisdiction in child sexual abuse cases to include cases in which the defendant in a non-Indian.

There are at least three important limitations to federal jurisdiction over child sexual abuse cases in Indian country: (1) The federal courts only have jurisdiction over these cases if they fall

under the specific provisions of the Major Crimes Act or the General Crimes Act: (2) The federal courts do not have civil jurisdiction concerning child sexual abuse cases in Indian country; and (3) The federal courts do not have jurisdiction over reservations in which the federal jurisdiction has been transferred to the state under the provision of Public Law 280.

Additionally, the federal courts have jurisdiction to prosecute any mandated reporters who fail to report possible instances of child abuse under the provision of the Indian Child Protection and Family Violence Act of 1990 (18 U.S.C. §1169 and 25 U.S.C. §3200). The entire Indian Child Protection and Family Violence Act is included in this resource packet (see Attachment B; pages 15-29) because, although very minimal funding has yet been provided under the Act's provisions, the Act itself represent Congress' most recent effort to directly address the problem of child sexual abuse in Indian country.

II. TRIBAL JURISDICTION OVER CHILD SEXUAL ABUSE IN INDIAN COUNTRY

It is very important to understand that the existence of federal jurisdiction over child sexual abuse cases in Indian country does not mean that tribal jurisdiction over these cases does not exist. On the contrary, tribal courts have significant jurisdiction—both criminal and civil — with regard to these cases and a substantial role to perform.

Tribal courts have concurrent criminal jurisdiction over child sexual cases in Indian country. The Major Crimes Act granted federal jurisdiction with regard to certain offenses, which now includes child sexual abuse, but it did not eliminate the concurrent jurisdiction of tribal courts (see Attachment C; pages 30-35).

Moreover, the U.S. Supreme Court has ruled that charging a defendant in both federal court and tribal court is not a violation of double jeopardy, In *United States v. Wheeler*, 435 U.S. 313 (1978), the U.S. Supreme 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

on a similar offense arising out of the same incident (see Attachment D; pages 36-55).

The *Wheeler* decision means that a person can be criminally charged in both federal and tribal court for child sexual abuse. This gives both tribal and federal courts greater flexibility to handle child sexual abuse cases. For instance, it allows the tribal prosecutor to proceed with a tribal court action immediately instead of being required to wait until after the federal prosecutor decides whether to accept or decline the case. Since the federal prosecution decision frequently takes six months or more, it is often necessary for the tribal prosecutor to take action more quickly so that the perpetrator and the community are given the clear message that child sexual abuse will not be tolerated.

There are two major limitations upon tribal jurisdiction over child sexual abuse cases in Indian country as follows:

(1) No Criminal Jurisdiction Over Non-Indians

The U.S. Supreme Court has ruled that tribal courts do not have criminal jurisdiction over non-Indians. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). Since Congress has acted to overturn the *Duro* decision, it is clear that tribal courts have criminal jurisdiction over all Indians — members and non-members. It is important to note that the lack of criminal jurisdiction over non-Indians does not mean that tribal courts cannot take any action with regard to non-Indian offenders — there are other options available, including civil proceedings and exclusion from the reservation.

(See Attachment E; pages 56-57)

(2) ICRA Sentencing Limitations

The Indian Civil Rights Act limits tribal courts to impositions of penalties or punishment for any one offense to imprisonment for a term of one year or a fine of $5000 or both.

(See Attachment E; pages 56-57)

Despite these limitations tribal courts do have greater jurisdictional flexibility with regard to child sexual abuse cases in Indian country in two important ways as follows:

(1) **Broader Range of Possible Criminal Charges**

The federal courts are limited to the specific provisions of the Major Crimes Act and the General Crimes Act. Tribal courts, however, have greater potential flexibility to bring a broad range of possible criminal charges against a child sexual abuse defendant. Tribes can adopt criminal codes which include a wide variety of criminal child sexual abuse offenses (Refer to NIJC's CJA Program for Native Americans Tribal Code Revision Packet for more information). Moreover, tribal courts have a wider range of possible lesser included offenses (such as assault and batter) which can be utilized.

(2) **Civil Child Abuse Proceedings**

The federal courts do not have civil jurisdiction over child sexual abuse cases in Indian country. The federal criminal proceeding is by its very nature limited to focusing upon the criminal defendant. The federal criminal court cannot order treatment/service for the victim or the family, make child/victim custody/placement decisions, etc. Tribal courts, however, can and should institute civil proceedings whenever necessary.

III. FEDERAL PROSECUTION/DECLINATION PROCEDURES

Attachment F (see pages 58-63) contains an outline of the factors involved in the U.S. Attorney's decision to prosecute and reasons for declination. The factors involved in the decision to prosecute include the suspect's factual guilt, legal sufficiency of the evidence, likelihood of conviction, and various miscellaneous factors. The reasons for declinations include factual problems, legal problems, and practical or logistical problems.

It is very important to note that improved federal/tribal coordination can greatly assist the U.S. Attorney to address the factors involved in the decision to prosecute and overcome possible reasons for declination. Consultation with tribal agencies can prevent unnecessary declinations.

There are three additional issues concerning federal prosecution/declination procedures which

should be addressed: (1) improved declination notification procedures; (2) tribal access to investigatory casefile; and (3) involvement of U.S. Department of Justice.

As indicated in Attachment F, declination notification procedures should include written notice to case agents and tribal prosecutor, notice from victim-witness advocate, multidisciplinary teams case staffing, and personal notice to victim and/or family from prosecutor by mail, phone or face-to-face meeting. It should be noted that formal written notification should be provided in all cases and be provided as expeditiously as possible. Moreover, it is important that the declination notice to the tribal prosecutor be as comprehensive as possible. A declination notice which simply lists declined cases is not very helpful for the tribal prosecutor or the tribe. The tribal prosecutor needs to be provided with as much declination information as possible in order (1) to determine whether additional information could be provided which could lead to reconsideration of declination decision and/or (2) to assist the tribal prosecutor in making the independent tribal decisions to prosecute (see following section).

It should be noted that the U.S. Justice Department has recently established an expanded Indian child sexual abuse program to provide aggressive prosecution of child sexual abuse cases in Indian country (see Attachment G; page 64). This program can serve an important role in improving tribal/federal coordination.

Congress acknowledged the need to provide tribal agencies with comprehensive declination notification and access to investigatory casefiles when it enacted the Indian Law Enforcement Reform Act in 1990 (see Attachment H; pages 65-71). The Indian Law Enforcement Reform Act (25 U.S.C. §2809) provides as follows:

> **(a) Reports by law enforcement officials of the Bureau or Federal Bureau of Investigation**
>
> In any case in which law enforcement officials of the Bureau or the Federal Bureau of Investigation decline to initiate an investigation of a reported violation of Federal law in Indian country, or terminate such an investigation without referral for prosecution, such officials are authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the investigation was declined or terminated.

(b) Reports by United States Attorney

In any case in which a United States attorney declines to prosecute an alleged violation of Federal criminal law in Indian country referred for prosecution by the Federal Bureau of Investigation or the Bureau, or moves to terminate a prosecution of such an alleged violation, the United States attorney is authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the prosecution was declined or terminated

(c) Case file included within reports

In any case -

(1) in which the alleged offender is an Indian, and

(2) for which a report is submitted under subsection (a) or (b) of this section, the report made to the Indian tribe may include the case file, including evidence and collected statements taken, which might support an investigation or prosecution of a violation of tribal law.

(d) Transfer or disclosure of confidential or privileged communication, information or sources to tribal officials

Nothing in this section shall require any Federal agency or official to transfer or disclose any confidential or privileged communication, information, or sources to the officials of any Indian tribe. Federal agencies authorized to make reports pursuant to this section shall, by regulations, adopt standards for the protection of such communications, information, or sources.

IV. INDEPENDENT TRIBAL PROSECUTION PROCEDURES

Some tribal and federal agencies have taken the general view that the decision whether to prosecute child sexual abuse cases in Indian country is exclusively a federal decision, that is, that there is nothing the tribe can do if the U.S. Attorneys office decides not to prosecute. It is very important that both tribal and federal agencies understand that this general view is not correct, that is, the tribe can and should make an independent tribal prosecutorial decision.

There are many reasons why the tribal prosecutor may decide to prosecute a child sexual abuse case even if the U.S. Attorney has decided to decline prosecution. Some of these possible reasons include the following:

- The specific provisions and elements of the various criminal child sexual abuse statutes in the tribal code may be very different from the federal child sexual abuse statutes.

- The tribal prosecutor may be able to charge the defendant with lesser included offenses (such as assault and batter) which are not available in the federal system.

- The tribal prosecutor may attach a higher priority to child sexual abuse cases and may be more willing to risk losing the case.

- The tribal prosecutor might determine that they have more confidence in the jury/community's willingness to convict than the federal prosecutors' assessment of a federal jury.

- The rules of evidence in tribal court may be different - thereby allowing evidence to be introduced in tribal court which might not be admissible in federal court.

- The statute of limitations may be different.

- The victims and/or witnesses may be more willing to cooperate with tribal prosecution due to more comfortable setting/personnel, less trauma, less travelling distance, lesser available criminal sanctions, etc.

- The defendant may be more willing to plead guilty in tribal court due to lesser available criminal sanctions, greater comfort level with tribal officials, etc.

Moreover, it is very important to note that a civil child abuse proceeding is always an option in tribal court. Even if both the federal prosecutor and the tribal prosecutor decline to prosecute criminally, a civil action may be appropriate. The burden of proof in civil cases is generally much less difficult to meet than the criminal standard of beyond a reasonable doubt. The rules of evidence may also be different. The victims, family, and even the defendant may be much more willing to cooperate in a civil action, especially if the threat of jail time is removed.

V. PROCEDURES TO IMPROVE TRIBAL/FEDERAL COORDINATION

There are numerous procedures which can be utilized to improve tribal/federal coordination. Some of these procedures - such as improved declination notification procedures and tribal access to investigatory files - have already been examined. Six additional procedures are set forth below:

1. Involvement of federal agencies in tribal multi-disciplinary child abuse teams (see Section (g) of Victims of Child Abuse Act - Attachment I; pages 72-81);

2. Involvement of federal agencies in tribal child sexual abuse protocol development (refer to NIJC's Child Sexual Abuse Protocol Development Guide);

3. Increased contact/cooperation between federal victim-witness coordinators and tribal agencies (see listing of federal victim-witness coordinators and description of South Dakota program in Attachment J; pages 82-85);

4. Increased utilization of victim compensation programs for Indian crime victims (see Attachment K; pages 86-88);

5. Involvement of federal agencies in tribally oriented training/resource development (refer to Bitter Earth videotape, Indian Nations Conference, various Office for Victims of Crime programs, etc.);

6. Increased communication between tribal/federal agencies (for example, refer to *Tribal Court Record*).

CHAPTER 53—INDIANS

§ 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, rape, involuntary sodomy, felonious sexual molestation of a minor, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and a felony under section 661 of this title 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.

(As amended May 15, 1986, Pub.L. 99-303, 100 Stat. 438.)

1986 Amendment. Pub.L. 99-303 inserted section designation and heading inadvertently omitted in the amendment by section 1009 of Pub.L. 98-473, designated undesignated first paragraph as subsec. (a), and in subsec. (a) as so designated, inserted "felonious sexual molestation of a minor," after "involuntary sodomy,", struck out undesignated second paragraph, which provided that, as used in this section, the offenses of burglary, involuntary sodomy, and incest be defined and punished in accordance with the laws of the State in with such offense was committed as are in force at the time of such offense, and designated undesignated third paragraph as subsec. (b), and in subsec. (b) as so designated, substituted "Any offense referred to in subsection (a) of this section that is" for "In addition to the offenses of burglary, involuntary sodomy, and incest, any other of the above offenses which are".

Legislative History. For legislative history and purpose of Pub.L. 99-303, see 1986 U.S.Code Cong. and Adm.News, p. 1298.

Definition is based on latest construction of the term by the United States Supreme Court in *U.S. v. McGowan*, 58 S.Ct. 286, 302 U.S. 535, following *U.S. v. Sandoval*, 34 S.Ct. 1, 5, 231 U.S. 28, 46. (See also *Donnelly v. U.S.*, 33 S.Ct. 449, 228 U.S. 243; and *Kills Plenty v. U.S.*, 133 F.2d 292, certiorari denied, 1943, 63 S.Ct. 1172). (See reviser's note under section 1153 of this title.)

Indian allotments were included in the definition on authority of the case of *U.S. v. Pelican*, 1913, 34 S.Ct. 396, 232 U.S. 442, 58 L.Ed. 676.

1949 ACT

This section [section 25], by adding to section 1151 of title 18, U.S.C., the phrase "except as otherwise provided in sections 1154 and 1156 of this title", incorporates in this section the limitations of the term "Indian country" which are added to sections 1154 and 1156 by sections 27 and 28 of this bill.

§ 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 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.

REVISION NOTES

Based on sections 215, 217, 218 of title 25, U.S.C., 1940 ed., Indians (R.S. 2144, 2145, 2146; Feb. 18, 1875, ch. 80, §§ [sic] 1, 18 Stat. 318).

Section consolidates said sections 217 and 218 of title 25, U.S.C., 1940 ed., Indians, and omits section 215 of said title as covered by the consolidation.

See reviser's note under section 1153 of this title as to effect of consolidation of sections 548 and 549 of title 18, U.S.C. 1940 ed.

Minor changes were made in translations and phraseology.

§ 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, incest assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and a felony under section 661 of this title 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.

(As amended May 24, 1949, c. 139, § 26, 63 Stat. 94; Nov. 2, 1966, Pub.L. 89-707, § 1, 80 Stat. 1100; Apr. 11, 1968, Pub.L. 90-284, § 501, 82 Stat. 80; May 29, 1976, Pub.L. 94-297, § 2, 90 Stat. 585; Oct. 12, 1984, Pub.L. 98-473, Title II, § 1009, 98 Stat. 2141; May 15, 1986, Pub.L. 99-303, 100 Stat. 438; Nov. 10, 1986, Pub.L. 99-646, § 87(C)(5), 100 Stat. 3623; Nov. 10, 1986, Pub.L. 99-654, § 3(a)(5), 100 Stat. 3663; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7027, 102 Stat. 4397.)

Amendment of Sexual Abuse Provisions

Pub.L. 99-646, § 87(c)(5), which had directed that this section be amended (A) in the first paragraph, by striking out "rape, involuntary sodomy, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape," and inserting in lieu thereof "a felony under chapter 109A,"; and (B) in each of the second and third paragraphs, by striking out ", involuntary sodomy," was incapable of literal execution in view of the earlier amendment of this section by Pub.L. 99-303, May 15, 1986, 100 Stat. 438.

[An identical amendment is contained was Pub.L. 99-654, § 3(a)(5).]

REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 548, 549 (Mar. 4, 1909, ch. 321, §§ 328, 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 28, 1932, ch. 284, 47 Stat. 337).

Section consolidates said sections 548 and 549 of title 18, U.S.C., 1940 ed. Section 548 of said title covered 10 crimes. Section 549 of said title covered the same except robbery and incest.

The 1932 amendment of section 548 of title 18, U.S.C., 1940 ed., constituting the last paragraph of the section, is omitted and section 549 of said title to which it applied likewise is omitted. The revised section therefore suffices to cover prosecution of the specific offenses committed on all reservations as intended by Congress.

Words "Indian country" were substituted for language relating to jurisdiction extending to reservations and rights-of-way, in view of definitive section 1151 of this title.

REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 631 (June 15, 1917, ch. 30, title XI, § 21, 40 Stat. 230).

Minor changes were made in phraseology.

§ 2235. Search warrant procured maliciously

Whoever maliciously and without probable cause procures a search warrant to be issued and executed, shall be fined not more than $1,000 or imprisoned not more than one year.

REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 630 (June 15, 1917, ch. 30, title XI, § 20, 40 Stat. 230).

Minor changes were made in phraseology.

§ 2236. Searches without warrant

Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined for a first offense not more than $1,000; and, for a subsequent offense, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not apply to any person—

(a) serving a warrant of arrest; or

(b) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has committed or is suspected on reasonable grounds of having committed a felony; or

(c) making a search at the request or invitation or with the consent of the occupant of the premises.

REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 53a (Aug. 27, 1935, ch. 740, § 201, 49 Stat. 877).

Words "or any department or agency thereof" were inserted to avoid ambiguity as to scope of section. (See definitive section 6 of this title.)

The exception in the case of an invitation or the consent of the occupant, was inserted to make the section complete and remove any doubt as to the application of this section to searches which have uniformly been upheld.

Reference to misdemeanor was omitted in view of definitive section 1 of this title. (See reviser's note under section 212 of this title.)

Words "upon conviction thereof shall be" were omitted as surplusage, since punishment cannot be imposed until conviction is secured.

Minor changes were made in phraseology.

CHAPTER 109A—SEXUAL ABUSE

Sec.
2241. Aggravated sexual abuse.
2242. Sexual abuse.
2243. Sexual abuse of a minor or ward.
2244. Abusive sexual contact.
2245. Definitions for chapter.

§ 2241. Aggravated sexual abuse

(a) **By force or threat.**—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly causes another person to engage in a sexual act—

(1) by using force against that other person, or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnaping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) **By other means.**—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly—

(1) renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—

(A) substantially impairs the ability of that other person to appraise or control conduct and

(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(c) **With children.**—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(d) **State of mind proof requirement.**—In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

(Added Pub.L. 99-646, § 87(b), Nov. 10, 1986, 100 Stat. 3620.)

EDITORIAL NOTES

Codification. Identical provision was enacted by Pub.L. 99-654, § 2, Nov. 14, 1986, 100 Stat. 3660.

Effective Date. Pub.L. 99-646, § 87(e), Nov. 10, 1986, provided that:

"This section and the amendments made by this section [enacting this chapter; amending sections 113(a), (b), 1111(a), 1153, and 3185(12) of this title, sections 300w-3(a)(1)(G), 300w-4(c)(6), and 9511 of Title 42, The Public Health and Welfare, and section 1472(k)(1) of Title 49, Transportation, and repealing chapter 99 (sections 2081 and 2082) of this title shall take effect 30 days after the date of the enactment of this Act [Nov. 10, 1986]."

[Effective Date provision similar to Pub.L. 99-646, § 87(e), was enacted by Pub.L. 99-654, § 4, Nov. 14, 1986, 100 Stat. 3664, which was effective 30 days after date of enactment of Pub.L. 99-654, Nov. 14, 1986.]

§ 2242. Sexual abuse

Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly—

(1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnaping); or

(2) engages in a sexual act with another person if that other person is—

(A) incapable of appraising the nature of the conduct; or

(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;

or attempts to do so, shall be fined under this title, imprisoned not more than 20 years, or both.

(Added Pub.L. 99-646, § 87(b), Nov. 10, 1986, 100 Stat. 3621.)

Editorial Notes

Codification. Identical provision was enacted by Pub.L. 99-654, § 2, Nov. 14, 1986, 100 Stat. 3661.

Effective Date. Section effective 30 days after Nov. 10, 1986, see section 87(e) of Pub.L. 99-646, set out as a note under section 2241 of this title. See, also, Pub.L. 99-654, § 4, for effective date of 30 days after Nov. 14, 1986.

§ 2243. Sexual abuse of a minor or ward

(a) Of a minor.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who—

(1) has attained the age of 12 years but has not attained the age of 16 years; and

(2) is at least four years younger than the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than five years, or both.

(b) Of a ward.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who is—

(1) in official detention; and

(2) under the custodial, supervisory, or disciplinary authority of the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than one year, or both.

(c) Defenses.—(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.

(2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

(d) State of mind proof requirement.—In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew—

(1) the age of the other person engaging in the sexual act; or

(2) that the requisite age difference existed between the persons so engaging.

(Added Pub.L. 99-646, § 87(b), Nov. 10, 1986, 100 Stat. 3621.)

Editorial Notes

Codification. Identical provision was enacted by Pub.L. 99-654, § 2, Nov. 14, 1986, 100 Stat. 3661.

Effective Date. Section effective 30 days after Nov. 10, 1986, see section 87(e) of Pub.L. 99-646, set out as a note under section 2241 of this title. See, also, Pub.L. 99-654, § 4, for effective date of 30 days after Nov. 14, 1986.

§ 2244. Abusive sexual contact

(a) Sexual conduct in circumstances where sexual acts are punished by this chapter.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in or causes sexual contact with or by another person, if so to do would violate—

(1) section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than ten years, or both;

(2) section 2242 of this title had the sexual contact been a sexual act, shall be fined under

this title, imprisoned not more than three years, or both;

(3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both; or

(4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined not more than $5,000, imprisoned not more than six months, or both.

(b) In other circumstances.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in sexual contact with another person without that other person's permission shall be fined not more than $5,000, imprisoned not more than six months, or both.

(Added Pub.L. 99–646, § 87(b), Nov. 10, 1986, 100 Stat. 3622 and amended Pub.L. 100–690, Title VII, § 7058(a), Nov. 18, 1988, 102 Stat. 4403.)

EDITORIAL NOTES

Codification. Identical provision was enacted by Pub.L. 99–654, § 2, Nov. 14, 1986, 100 Stat. 3661.

Effective Date. Section effective 30 days after Nov. 10, 1986, see section 87(e) of Pub.L. 99–646, set out as a note under section 2241 of this title. See, also, Pub.L. 99–654, § 4, for effective date of 30 days after Nov. 14, 1986.

§ 2245. Definitions for chapter

As used in this chapter—

(1) the term "prison" means a correctional, detention, or penal facility;

(2) the term "sexual act" means—

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; and

(3) the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(4) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(5) the term "official detention" means—

(A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or

(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation;

but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency.

(Added Pub.L. 99–646, § 87(b), Nov. 10, 1986, 100 Stat. 3622.)

EDITORIAL NOTES

Codification. Identical provision was enacted by Pub.L. 99–654, § 2, Nov. 14, 1986, 100 Stat. 3662.

Effective Date. Section effective 30 days after Nov. 10, 1986, see section 87(e) of Pub.L. 99–646, set out as a note under section 2241 of this title. See, also, Pub.L. 99–654, § 4, for effective date of 30 days after Nov. 14, 1986.

CHAPTER 110—SEXUAL EXPLOITATION OF CHILDREN

EDITORIAL NOTES

Savings Provisions of Pub.L. 98–473, Title II, c. II. See section 235 of Pub.L. 98–473, Title II, c. II, Oct. 12, 1984, 98 Stat. 2031, as amended, set out as a note under section 3551 of this title.

CHAPTER 34—INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION

§ 3201. Findings and purpose

(a) Findings

The Congress, after careful review of the problem of child abuse on Indian reservations and the historical and special relationship of the Federal Government with Indian people,

(1) finds that—

(A) incidents of abuse of children on Indian reservations are grossly underreported;

(B) such underreporting is often a result of the lack of a mandatory Federal reporting law;

(C) multiple incidents of sexual abuse of children on Indian reservations have been perpetrated by persons employed or funded by the Federal Government;

(D) Federal Government investigations of the background of Federal employees who care for, or teach, Indian children are often deficient;

(E) funds spent by the United States on Indian reservations or otherwise spent for the benefit of Indians who are victims of child abuse or family violence are inadequate to meet the growing needs for mental health treatment and counseling for victims of child abuse or family violence and their families; and

(F) there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe; and

(2) declares that two major goals of the United States are to—

(A) identify the scope of incidents of abuse of children and family violence in Indian country and to reduce such incidents; and

(B) provide funds for mental health treatment for Indian victims of child abuse and family violence on Indian reservations.

(b) Purpose

The purposes of this chapter are to—

(1) require that reports of abused Indian children are made to the appropriate authorities in an effort to prevent further abuse;

(2) establish a reliable data base for statistical purposes and to authorize a study to determine the need for a central registry for reported incidents of abuse;

(3) authorize such other actions as are necessary to ensure effective child protection in Indian country;

(4) establish the Indian Child Abuse Prevention and Treatment Grant Program to provide funds for the establishment on Indian reservations of treatment programs for victims of child sexual abuse;

(5) provide for technical assistance and training related to the investigation and treatment of cases of child abuse and neglect;

(6) establish Indian Child Resource and Family Services Centers in each Bureau of Indian Affairs Area Office which will consist of multi-disciplinary teams of personnel with experience and training in the prevention, identification, investigation, and treatment of child abuse and neglect;

(7) provide for the treatment and prevention of incidents of family violence;

(8) establish tribally operated programs to protect Indian children and reduce the incidents of family violence in Indian country; and

(9) authorize other actions necessary to ensure effective child protection on Indian reservations.

(Pub.L. 101-630, Title IV, § 4544, Nov. 28, 1990, 104 Stat. 4544.)

Historical and Statutory Notes

References in Text. This chapter, referred to in subsec. (b), was in the original "this title", meaning Title IV of Pub.L. 101-630, Nov. 28, 1990, 104 Stat. 4544, which enacted this chapter and section 1169 of Title 18, Crimes and Criminal Procedure. For complete classification of Title IV to the Code, see Short Title note set out under this section and Tables.

Short Title. Section 401 of Pub.L. 101-630 provided that: "This title [enacting this chapter and section 1169 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Indian Child Protection and Family Violence Prevention Act'."

Legislative History. For legislative history and purpose of Pub.L. 101-630, see 1990 U.S.Code Cong. and Adm. News, p. 6336.

§ 3202. Definitions

For the purposes of this chapter, the term—

(1) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior;

(2) "child" means an individual who—

(A) is not married, and

(B) has not attained 18 years of age;

(3) "child abuse" includes but is not limited to—

(A) any case in which—

(i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and

(ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and

(B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

(4) "child neglect" includes but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

(5) "family violence" means any act, or threatened act, of violence, including any forceful detention of an individual, which—

(A) results, or threatens to result, in physical or mental injury, and

(B) is committed by an individual against another individual—

(i) to whom such person is, or was, related by blood or marriage or otherwise legally related, or

(ii) with whom such person is, or was, residing;

(6) "Indian" means any individual who is a member of an Indian tribe;

(7) "Indian child" has the meaning given to such term by section 1903(4) of this title;

(8) "Indian country" has the meaning given to such term by section 1151 of Title 18;

(9) "Indian reservation" means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or lands held by incorporated Native groups, regional corporations, or village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(10) "Indian tribe" and "tribal organization" have the respective meanings given to each of such terms under section 450b of this title;

(11) "inter-tribal consortium" means a partnership between—

(A) an Indian tribe or tribal organization of an Indian tribe, and

(B) one or more Indian tribes or tribal organizations of one or more other Indian tribes;

(12) "local child protective services agency" means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country;

(13) "local law enforcement agency" means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved;

(14) "persons responsible for a child's welfare" means any person who has legal or other recognized duty for the care and safety of a child, including—

(A) any employee or volunteer of a children's residential facility, and

(B) any person providing out-of-home care, education, or services to children;

(15) "related assistance"—

(A) includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate health-care services (including alcohol and drug abuse treatment), and

(B) may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents;

(16) "Secretary" means the Secretary of the Interior;

(17) "shelter" means the provision of temporary refuge and related assistance in compliance with applicable Federal and tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents; and

(18) "Service" means the Indian Health Service of the Department of Health and Human Services.

(Pub.L. 101-630, Title IV, § 402, Nov. 28, 1990, 104 Stat. 4545.)

Historical and Statutory Notes

References in Text. This chapter, referred to in text, was in the original "this title", meaning Title IV of Pub.L. 101-630, Nov. 28, 1990, 104 Stat. 4544, which enacted this chapter and section 1169 of Title 18, Crimes and Criminal Procedure. For complete classification of Title IV to the Code, see Short Title note set out under section 3201 of this title and Tables.

The Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), referred to in par. (9), is Pub.L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (section 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Legislative History. For legislative history and purpose of Pub.L. 101–630, see 1990 U.S.Code Cong. and Adm. News, p. 6336.

§ 3203. Reporting procedures

(a) [Omitted]

(b) Notification of child abuse reports

(1) When a local law enforcement agency or local child protective services agency receives an initial report from any person of—

(A) the abuse of a child in Indian country, or

(B) actions which would reasonably be expected to result in abuse of a child in Indian country, the receiving agency shall immediately notify appropriate officials of the other agency of such report and shall also submit, when prepared, a copy of the written report required under subsection (c) of this section to such agency.

(2) Where a report of abuse involves an Indian child or where the alleged abuser is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the Federal Bureau of Investigation, shall immediately report such occurrence to the Federal Bureau of Investigation.

(c) Written report of child abuse

(1) Within 36 hours after receiving an initial report described in subsection (b) of this section, the receiving agency shall prepare a written report which shall include, if available—

(A) the name, address, age, and sex of the child that is the subject of the report;

(B) the grade and the school in which the child is currently enrolled;

(C) the name and address of the child's parents or other person responsible for the child's care;

(D) the name and address of the alleged offender;

(E) the name and address of the person who made the report to the agency;

(F) a brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse; and

(G) any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse.

(2)(A) Any local law enforcement agency or local child protective services agency that receives a report alleging abuse described in section 3202(3) of this title shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved.

(B) Upon completion of the investigation of any report of alleged abuse that is made to a local law enforcement agency or local child protective services agency, such agency shall prepare a final written report on such allegation.

(d) Confidentiality of informant

The identity of any person making a report described in subsection (b)(1) of this section shall not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of an Indian tribe, a State or the Federal Government who needs to know the information in the performance of such employee's duties.

(Pub.L. 101–630, Title IV, § 404, Nov. 28, 1990, 104 Stat. 4547.)

Historical and Statutory Notes

Codification. Subsec. (a) of this section has been codified as "Omitted" because subsec. (a) of section 404 of Pub.L. 101–630, which enacted this section, enacted section 1169 of Title 18, Crimes and Criminal Procedure.

Legislative History. For legislative history and purpose of Pub.L. 101-630, see 1990 U.S.Code Cong. and Adm. News, p. 6336.

§ 3204. Central registry

(a) Preparation of study

The Secretary, in consultation with the Secretary of Health and Human Services and the Attorney General of the United States, is hereby authorized and directed to prepare a written study on the feasibility of, and need for, the establishment of a Central Register for reports or information on the abuse of children in Indian country.

(b) Content of study

The study conducted pursuant to subsection (a) of this section shall include, but shall not be limited to—

(1) the need for, and purpose of, a Central Register;

(2) the examination of due process implication of the maintenance of such a register;

(3) the extension of access to information contained in the register;

(4) the need and process for expunging information from the register;

(5) the types, and duration of maintenance, of information in the register; and

(6) the classes of persons who should be covered by such register.

(c) Submission to Congress

The Secretary shall complete the study conducted pursuant to this section and shall submit such study, together with recommendations and draft legislation to implement such recommendations, to the Congress within 180 days after November 28, 1990.

(Pub.L. 101-630, Title IV, § 406, Nov. 28, 1990, 104 Stat. 4549.)

Historical and Statutory Notes

Legislative History. For legislative history and purpose of Pub.L. 101-630, see 1990 U.S.Code Cong. and Adm. News, p. 6336.

§ 3205. Confidentiality

Pursuant to section 552a of Title 5, section 1232g of Title 20, or any other provision of law, agencies of any Indian tribe, of any State, or of the Federal Government that investigate and treat incidents of abuse of children may provide information and records to those agencies of any Indian tribe, any State, or the Federal Government that need to know the information in performance of their duties. For purposes of this section, Indian tribal governments shall be treated the same as other Federal Government entities.

(Pub.L. 101-630, Title IV, § 406, Nov. 28, 1990, 104 Stat. 4550.)

Historical and Statutory Notes

Legislative History. For legislative history and purpose of Pub.L. 101-630, see 1990 U.S.Code Cong. and Adm. News, p. 6336.

§ 3206. Waiver of parental consent

(a) Examinations and interviews

Photographs, x-rays, medical examinations, psychological examinations, and interviews of an Indian child alleged to have been subject to abuse in Indian country shall be allowed without parental consent if local child protective services or local law enforcement officials have reason to believe the child has been subject to abuse.

(b) Interviews by law enforcement and child protective services officials

In any case in which officials of the local law enforcement agency or local child protective services agency have reason to believe that an Indian child has been

subject to abuse in Indian country, the officials of those agencies shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian.

(c) Protection of child

Examinations and interviews of a child who may have been the subject of abuse shall be conducted under such circumstances and with such safeguards as are designed to minimize additional trauma to the child and, where time permits shall be conducted with the advice, or under the guidance, of a local multidisciplinary team established pursuant to section 3210 of this title or, in the absence of a local team, a multidisciplinary team established pursuant to section 3209 of this title.

(d) Court orders

Upon a finding of reasonable suspicion that an Indian child has been the subject of abuse in Indian country, a Federal magistrate or United States District Court may issue an order enforcing any provision of this section.

(Pub.L. 101-630, Title IV, § 407, Nov. 28, 1990, 104 Stat. 4560.)

Historical and Statutory Notes

Legislative History. For legislative history and purpose of Pub.L. 101-630, see 1990 U.S.Code Cong. and Adm. News, p. 6336.

§ 3207. Character investigations

(a) By Secretary of the Interior and the Secretary of Health and Human Services

The Secretary and the Secretary of Health and Human Services shall—

(1) compile a list of all authorized positions within their respective departments the duties and responsibilities of which involve regular contact with, or control over, Indian children,

(2) conduct an investigation of the character of each individual who is employed, or is being considered for employment, by the respective Secretary in a position listed pursuant to paragraph (1), and

(3) prescribe by regulations minimum standards of character that each of such individuals must meet to be appointed to such positions.

(b) Criminal records

The minimum standards of character that are to be prescribed under this section shall ensure that none of the individuals appointed to positions described in subsection (a) of this section have been found guilty of, or entered a plea of nolo contendere or guilty to, any offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; or crimes against persons.

(c) Investigations by Indian tribes and tribal organizations

Each Indian tribe or tribal organization that receives funds under the Indian Self-Determination and Education Assistance Act [25 U.S.C.A. § 450 et seq.] or the Tribally Controlled Schools Act of 1988 [25 U.S.C.A. § 2501 et seq.] shall—

(1) conduct an investigation of the character of each individual who is employed, or is being considered for employment, by such tribe or tribal organization in a position that involves regular contact with, or control over, Indian children, and

(2) employ individuals in those positions only if the individuals meet standards of character, no less stringent than those prescribed under subsection (a) of this section, as the Indian tribe or tribal organization shall establish.

(Pub.L. 101-630, Title IV, § 408, Nov. 28, 1990, 104 Stat. 4551.)

Historical and Statutory Notes

References in Text. The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c), is Pub.L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (section 450 et seq.) of chapter 14 of this title. For complete classifica-

tion of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Tribally Controlled Schools Act of 1988, referred to in subsec. (c), is part B (sections 5201 to 5212) of Title V of Pub.L. 100-297, Apr. 28, 1988, 102 Stat. 385, which is classified generally to chapter 27 (section 2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

Legislative History. For legislative history and purpose of Pub.L. 101-630, see 1990 U.S.Code Cong. and Adm. News, p. 6336.

§ 3208. Indian Child Abuse Treatment Grant Program

(a) Establishment of Grant Program

The Secretary of Health and Human Services, acting through the Service and in cooperation with the Bureau, shall establish an Indian Child Abuse Treatment Grant Program that provides grants to any Indian tribe or inter-tribal consortium for the establishment on Indian reservations of treatment programs for Indians who have been victims of child sexual abuse.

(b) Grant applications

(1) Any Indian tribe or inter-tribal consortium may submit to the Secretary of Health and Human Services an application for a grant under subsection (a) of this section.

(2) Any application submitted under paragraph (1)—

(A) shall be in such form as the Secretary of Health and Human Services may prescribe;

(B) shall be submitted to such Secretary on or before the date designated by such Secretary; and

(C) shall specify—

(i) the nature of the program proposed by the applicant,

(ii) the data and information on which the program is based,

(iii) the extent to which the program plans to use or incorporate existing services available on the reservation, and

(iv) the specific treatment concepts to be used under the program.

(c) Maximum grant amount

The maximum amount of any grant awarded under subsection (a) of this section shall not exceed $500,000.

(d) Grant administration and final report

Each recipient of a grant awarded under subsection (a) of this section shall—

(1) furnish the Secretary of Health and Human Services with such information as such Secretary may require to—

(A) evaluate the program for which the grant is made, and

(B) ensure that the grant funds are expended for the purposes for which the grant was made, and

(2) submit to such Secretary at the close of the term of the grant a final report which shall include such information as the Secretary may require.

(e) Authorization of appropriations

there[1] is hereby authorized to be appropriated to carry out the provisions of this section $10,000,000 for each of the fiscal years 1992, 1993, 1994, and 1995.

(Pub.L. 101-630, Title IV, § 409, 104 Stat. 4561.)

[1] So in original.

Historical and Statutory Notes

Legislative History. For legislative history and purpose of Pub.L. 101-630, see 1990 U.S. Code Cong. and Adm. News, p. 6336.

§ 3209. Indian Child Resource and Family Services Centers

(a) Establishment

The Secretary shall establish within each area office of the Bureau an Indian Child Resource and Family Services Center.

(b) Memorandum of Agreement

The Secretary and the Secretary of Health and Human Services shall enter into a Memorandum of Agreement which provides for the staffing of the Centers established under this section.

(c) Center staffing

Each Center established under subsection (a) of this section shall be staffed by a multidisciplinary team of personnel with experience and training in prevention, identification, investigation, and treatment of incidents of family violence, child abuse, and child neglect.

(d) Center responsibilities and functions

Each Center established under subsection (a) of this section shall—

(1) provide advice, technical assistance, and consultation to Indian tribes, tribal organizations, and inter-tribal consortia upon request;

(2) provide training to appropriate personnel of Indian tribes, tribal organizations, the Bureau and the Service on the identification and investigation of cases of family violence, child abuse, and child neglect and, to the extent practicable, coordinate with institutions of higher education, including tribally controlled community colleges, to offer college-level credit to interested trainees;

(3) develop training materials on the prevention, identification, investigation, and treatment of incidents of family violence, child abuse, and child neglect for distribution to Indian tribes and to tribal organizations;

(4) develop recommendations to assist Federal and tribal personnel to respond to cases of family violence, child abuse, and child neglect; and

(5) develop policies and procedures for each agency office of the Bureau and service unit of the Service within the area which, to the extent feasible, comply with tribal laws pertaining to cases of family violence, child abuse, and child neglect, including any criminal laws, and which provide for maximum cooperation with the enforcement of such laws.

(e) Multidisciplinary team personnel

Each multidisciplinary team established under this section shall include, but is not limited to, personnel with a background in—

(1) law enforcement,

(2) child protective services,

(3) juvenile counseling and adolescent mental health, and

(4) domestic violence.

(f) Center advisory board

The Secretary, in consultation with the Secretary of Health and Human Services, shall establish, for each Indian Child Resource and Family Services Center, an advisory board to advise and assist such Center in carrying out its activities under this Chapter. Each advisory board shall consist of 7 members appointed by the Secretary from Indian tribes and human service providers served by an area office of the Bureau. Members shall serve without compensation, but may be reimbursed for travel and other expenses while carrying out the duties of the board. The advisory board shall assist the Center in coordinating programs, identifying training materials, and developing policies and procedures relating to family violence, child abuse, and child neglect.

(g) Application of the Indian Self-Determination Act to Centers

Indian Child Resource and Family Services Centers established under subsection (a) of this section shall be subject to the provisions of the Indian Self-Determination

Act [25 U.S.C.A. § 450f et seq.]. If a Center is located in an area office of the Bureau which serves more than one Indian tribe, any application to enter into a contract to operate the Center pursuant to such Act must have the consent of each of the other tribes to be served under the contract, except that, in the Juneau Area, only the consent of such tribes or tribal consortia that are engaged in contracting of Indian Child Protection and Family Violence Prevention programs pursuant to such Act shall be required. This section shall not preclude the designation of an existing child resource and family services center operated by a tribe or tribal organization as a Center if all of the tribes to be served by the Center agree to such designation.

(h) Appropriations

There are authorized to be appropriated to carry out the provisions of this section $3,000,000 for each of the fiscal years 1992, 1993, 1994, and 1995.

(Pub.L. 101–630, Title IV, § 410, Nov. 28, 1990, 104 Stat. 4552.)

Historical and Statutory Notes

References in Text. This chapter, referred to in subsec. (f), was in the original "this Act", meaning Pub.L. 101–630, Nov. 28, 1990, 104 Stat. 4531, which, in addition to enacting this chapter, enacted chapter 33 (section 3101 et seq.) of this title, sections 1621h, 1637, 1659, and 1660 of this title, and section 1169 of Title 18, Crimes and Criminal Procedure, amended sections 415, 1653, 1657, and 2474 of this title, and enacted provisions set out as notes under sections 1601, 1621h, 1653, and 2415 of this title. For purposes of codification "Act" was translated as "chapter" to reflect the probable intent of Congress. For complete classification of this Act to the Code, see Tables.

The Indian Self-Determination Act and such Act, referred to in subsec. (g), is Pub.L. 93–638, Title I, § 101 et seq., Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to sections 450f to 450n of this title. For complete classification of this Act to the Code, see section 101 of Pub.L. 93–638, set out as a Short Title note under section 450 of this title and Tables.

Legislative History. For legislative history and purpose of Pub.L. 101–630, see 1990 U.S. Code Cong. and Adm. News, p. 6336.

§ 3210. Indian Child Protection and Family Violence Prevention Program

(a) Establishment

The Secretary shall establish within the Bureau an Indian Child Protection and Family Violence Prevention Program to provide financial assistance to any Indian tribe, tribal organization, or inter-tribal consortium for the development of an Indian Child Protection and Family Violence Prevention Program.

(b) Indian Self-Determination Act agreements

The Secretary is authorized to enter into agreements with Indian tribes, tribal organizations, or inter-tribal consortia pursuant to the Indian Self-Determination Act [25 U.S.C.A. § 450f et seq.] for the establishment of Indian Child Protection and Family Violence Prevention programs on Indian reservations.

(c) Investigation and treatment and prevention of child abuse and family violence

An Indian tribe operating an Indian Child Protection and Family Violence Prevention Program established under this section shall designate the agency or officials which shall be responsible—

(1) for the investigation of reported cases of child abuse and child neglect; and

(2) for the treatment and prevention of incidents of family violence; and

(3) for the provision of immediate shelter and related assistance for victims of family violence and their dependents.

(d) Program responsibilities and functions

Funds provided pursuant to this section may be used for—

(1) the establishment of a child protective services program which may include—

(A) the employment of child protective services staff to investigate cases of child abuse and child neglect,

(B) training programs for child protective services personnel, law enforcement personnel, and judicial personnel in the investigation, prevention, and treatment of cases of child abuse and child neglect, and

(C) purchase of equipment to assist in the investigation of cases of child abuse and child neglect;

(2) the establishment of a family violence prevention and treatment program which may include—

(A) the employment of family violence prevention and treatment staff to respond to incidents of family violence,

(B) the provision of immediate shelter and related assistance for victims of family violence and their dependents,

(C) training programs for family violence prevention and treatment personnel, law enforcement personnel, and judicial personnel in the investigation, prevention, and treatment of cases of family violence; and

(D) construction or renovation of facilities for the establishment of family violence shelters;

(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;

(4) the development of tribal child protection codes and regulations;

(5) the establishment of training programs for—

(A) professional and paraprofessional personnel in the fields of medicine, law, education, social work, and other relevant fields who are engaged in, or intend to work in, the field of prevention, identification, investigation, and treatment of family violence, child abuse, and child neglect,

(B) instruction in methods of protecting children from abuse and neglect for persons responsible for the welfare of Indian children, including parents of, and persons who work with, Indian children, or

(C) educational, identification, prevention and treatment services for child abuse and child neglect in cooperation with preschool, elementary and secondary schools, or tribally controlled community colleges (within the meaning of section 1801 of this title);

(6) other community education efforts for tribal members (including school children) regarding issues of family violence, child abuse, and child neglect; and

(7) such other innovative and culturally relevant programs and projects as the Secretary may approve, including programs and projects for—

(A) parental awareness and self-help,

(B) prevention and treatment of alcohol and drug-related family violence, child abuse, and child neglect, or

(C) home health visitor programs,

that show promise of successfully preventing and treating cases of family violence, child abuse, and child neglect.

(f) Secretarial regulations; base support funding

(1) The Secretary, with the participation of Indian tribes, shall establish, and promulgate by regulations, a formula which establishes base support funding for Indian Child Protection and Family Violence Prevention Programs.

(2) In the development of regulations for base support funding for such programs, the Secretary shall develop, in consultation with Indian tribes, appropriate caseload standards and staffing requirements which are comparable to standards developed by the National Association of Social Work, the Child Welfare League of America and other professional associations in the field of social work and child welfare. Each level of funding assistance shall correspond to the staffing requirements established by the Secretary pursuant to this section.

(3) Factors to be considered in the development of the base support funding formula shall include, but are not limited to—

(A) projected service population of the program;

(B) projected service area of the program;

(C) projected number of cases per month; and

(D) special circumstances warranting additional program resources, such as high incidence of child sexual abuse, high incidence of violent crimes against women, or the existence of a significant victim population within the community.

(4) The formula established pursuant to this subsection shall provide funding necessary to support—

(A) one child protective services or family violence caseworker, including fringe benefits and support costs, for each tribe; and

(B) an additional child protective services and family violence caseworker, including fringe benefits and support costs, for each level of assistance for which an Indian tribe qualifies.

(5) In any fiscal year that appropriations are not sufficient to fully fund Indian Child Protection and Family Violence Prevention Programs at each level of assistance under the formula required to be established in this subsection, available funds for each level of assistance shall be evenly divided among the tribes qualifying for that level of assistance.

(g) Maintenance of effort

Services provided under contracts made under this section shall supplement, not supplant, services from any other funds available for the same general purposes, including, but not limited to—

(1) treatment, including, but not limited to—

(A) individual counseling,

(B) group counseling, and

(C) family counseling;

(2) social services and case management;

(3) training available to Indian tribes, tribal agencies, and Indian organizations regarding the identification, investigation, prevention, and treatment of family violence, child abuse, and child neglect; and

(4) law enforcement services, including investigations and prosecutions.

(h) Contract evaluation and annual report

Each recipient of funds awarded pursuant to subsection (a) of this section shall—

(1) furnish the Secretary with such information as the Secretary may require to—

(A) evaluate the program for which the award is made, and

(B) ensure that funds are expended for the purposes for which the award was made; and

(2) submit to the Secretary at the end of each fiscal year an annual report which shall include such information as the Secretary may require.

(i) Appropriations

There are authorized to be appropriated to carry out the provisions of this section $30,000,000 for each of the fiscal years 1992, 1993, 1994, and 1995.

(Pub.L. 101–630, Title IV, § 411, Nov. 28, 1990, 104 Stat. 4553.)

Historical and Statutory Notes

References in Text. The Indian Self-Determination Act, referred to in subsec. (b), is Pub.L. 93–638, Title I, § 101 et seq., Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to sections 450f to 450n of this title. For complete classification of this Act to the Code, see section 101 of Pub.L. 93–638, set out as a Short Title note under section 450 of this title and Tables.

Legislative History. For legislative history and purpose of Pub.L. 101–630, see 1990 U.S. Code Cong. and Adm. News, p. 6336.

(C) purchase of equipment to assist in the investigation of cases of child abuse and child neglect;

(2) the establishment of a family violence prevention and treatment program which may include—

(A) the employment of family violence prevention and treatment staff to respond to incidents of family violence,

(B) the provision of immediate shelter and related assistance for victims of family violence and their dependents,

(C) training programs for family violence prevention and treatment personnel, law enforcement personnel, and judicial personnel in the investigation, prevention, and treatment of cases of family violence; and

(D) construction or renovation of facilities for the establishment of family violence shelters;

(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;

(4) the development of tribal child protection codes and regulations;

(5) the establishment of training programs for—

(A) professional and paraprofessional personnel in the fields of medicine, law, education, social work, and other relevant fields who are engaged in, or intend to work in, the field of prevention, identification, investigation, and treatment of family violence, child abuse, and child neglect,

(B) instruction in methods of protecting children from abuse and neglect for persons responsible for the welfare of Indian children, including parents of, and persons who work with, Indian children, or

(C) educational, identification, prevention and treatment services for child abuse and child neglect in cooperation with preschool, elementary and secondary schools, or tribally controlled community colleges (within the meaning of section 1801 of this title);

(6) other community education efforts for tribal members (including school children) regarding issues of family violence, child abuse, and child neglect; and

(7) such other innovative and culturally relevant programs and projects as the Secretary may approve, including programs and projects for—

(A) parental awareness and self-help,

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§ 3211. Report

On or before March 1, 1991, and March 1 of each calendar year thereafter, the Secretary shall submit to the Congress a report involving the administration of this chapter during the calendar year preceding the calendar year in which such report is submitted.

(Pub.L. 101–630, Title IV, § 412, Nov. 28, 1990, 104 Stat. 4556.)

Historical and Statutory Notes

References in Text. This chapter, referred to in text, was in the original "this title", meaning Title IV of Pub.L. 101–630, Nov. 28, 1990, 104 Stat. 4544, which enacted this chapter and section 1169 of Title 18, Crimes and Criminal Procedure.

For complete classification of Title IV to the Code, see Short Title note set out under section 3201 of this title and Tables.

Legislative History. For legislative history and purpose of Pub.L. 101–630, see 1990 U.S. Code Cong. and Adm. News, p. 6336.

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CONSULT GENERAL INDEX

steal, any money, funds, or other property of a value of $1,000 or less belonging to an establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined not more than $100,000 or be imprisoned for not more than one year, or both.

(b) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value in excess of $1,000 belonging to a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined not more than $250,000, or imprisoned not more than ten years, or both.

(Added Oct. 17, 1988, P. L. 100-497, § 23, 102 Stat. 2487.)

§ 1168. Theft by officers or employees of gaming establishments on Indian lands

(a) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value of $1,000 or less shall be fined not more than $250,000 or imprisoned not more than five years, or both;

(b) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value in excess of $1,000 shall be fined not more than $1,000,000 or imprisoned for not more than twenty years, or both.

(Added Oct. 17, 1988, P. L. 100-497, § 23, 102 Stat. 2487; Nov. 29, 1990, P. L. 101-647, Title XXXV, § 3537, 104 Stat. 4925.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1990. Act Nov. 29, 1990, in subsec. (a), substituted "or imprisoned" for "and be imprisoned for".

§ 1169. Reporting of child abuse

(a) Any person who—

(1) is a—

(A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

(B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,

(C) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,

(D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

(E) psychiatrist, psychologist, or psychological assistant,

(F) licensed or unlicensed marriage, family, or child counselor,

(G) person employed in the mental health profession, or

(H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;

(2) knows, or has reasonable suspicion, that—

(A) a child was abused in Indian country, or

(B) actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and

(3) fails to immediately report such abuse or actions described in paragraph (2) to the local child protective services agency or local law enforcement agency,

shall be fined not more than $5,000 or imprisoned for not more than 6 months or both.

(b) Any person who—

(1) supervises, or has authority over, a person described in subsection (a)(1), and

(2) inhibits or prevents that person from making the report described in subsection (a),

shall be fined not more than $5,000 or imprisoned for not more than 6 months or both.

(c) For purposes of this section, the term—

(1) "abuse" includes—

(A) any case in which—

(i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and

(ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and

(B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

(2) "child" means an individual who—

(A) is not married, and

(B) has not attained 18 years of age;

(3) "local child protective services agency" means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; and

(4) "local law enforcement agency" means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

(d) Any person making a report described in subsection (a) which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.

(Added Nov. 28, 1990, P. L. 101-630, Title IV, § 404(a)(1), 104 Stat. 4547.)

§ 1170. Illegal trafficking in Native American human remains and cultural items

(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.

(Added Nov. 16, 1990, P. L. 101-601, § 4(a), 104 Stat. 3052.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The Native American Graves Protection and Repatriation Act", referred to in this section, is Act Nov. 16, 1990, P. L. 101-601, 104 Stat. 3048, which appears generally as 25 USCS §§ 3001 et seq. For full classification of such Act, consult USCS Tables volumes.

CHAPTER 55. KIDNAPING

Section

1203. Hostage taking

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1984. Act Oct. 12, 1984, P. L. 98-473, Title II, Ch XX, Part A, § 2001(b), 98 Stat. 2186, effective as provided by § 2003 of such Act, which appears as 18 USCS § 1203 note, amended the analysis of this chapter by adding the item relating 1203.

---

§ 1201. Kidnaping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

(1), (2) [Unchanged]

(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 101(38) of the Federal Aviation Act of 1958;

(4) the person is a foreign official, an internationally protected person, or an official guest

UNITED STATES GOVERNMENT

memorandum

DATE: APR 3 1987

REPLY TO ATTN OF: Phoenix ACTING Area Director
Tribal Operations (FTS 261-2314)

SUBJECT: Decision of the Assistant Secretary - Indian Affairs Regarding the Major Crimes Act, 18 U.S.C. §1153

TO: All Agency Superintendents and Officers In Charge, Phoenix

Attached for your information and use is a copy of the Assistant Secretary - Indian Affairs' April 8, 1987, letter rendering a decision on the March 21, 1984, administrative appeal filed by Peter J. Sferrazza on behalf of the Washoe Tribe.

The Assistant Secretary - Indian Affairs overturned the Acting Assistant Area Director's February 22, 1984, decision to affirm the Western Nevada Agency Superintendent's October 26, 1983, refusal to approve Washoe Tribal Council Resolution No. 83-W-32 enacted on October 14, 1983, which approved Title 5 of the Washoe Law and Order Code. The refusal to approve said resolution was based on the fact that Law and Order Code, Title 5, Criminal Offenses, contained several offenses listed in the Major Crimes in which it was determined the tribe lacks jurisdiction.

Because of the inadequacy of prosecutions of major crimes in the federal courts and the support of various important policy considerations, the Washington Office has made a decision to permit the approval of tribal ordinances asserting concurrent jurisdiction over offenses listed in the Major Crimes Act.

Please make this information available to all tribes under your jurisdiction.

Walter Mills

Attachments

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

GPO : 1984 O - 446-111

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 6 1987

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Peter J. Sferrazza
1547 South Virginia
Suite 5
Reno, Nevada 89509

Dear Mr. Sferrazza:

This letter is the decision of the Assistant Secretary - Indian Affairs on your appeal from the decision of the Acting Area Director, Phoenix, dated February 22, 1984, to disapprove Washoe Tribal Council Resolution No. 83-W-32, enacted on October 14, 1983. For the reasons explained below, the decision of the Acting Assistant Area Director is reversed.

Resolution No. 83-W-32 approved the adoption of various titles of the Washoe Tribal Law and Order Code. The Acting Assistant Area Director affirmed the Western Nevada Superintendent's October 26, 1983, refusal to approve Resolution No. 83-W-32 because he determined that some of the offenses listed under Title 5 of the proposed code, namely criminal homicide, assault, kidnapping, statutory rape, arson, burglary, and robbery were outside tribal jurisdiction and exclusively under federal jurisdiction pursuant to the Major Crimes Act, 18 U.S.C. § 1153, which reads as follows:

> § 1153. Offenses committed within Indian country
>
> Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.
>
> As used in this section, the offenses of burglary and incest 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.

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BRANCH OF TRIBAL

BUREAU OF INDIAN AFFAIRS
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PHOENIX AREA DIRECTOR

> In addition to the offenses of burglary and incest, any other of the above offenses which are 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.

Although the lower federal courts have addressed the issue of tribal jurisdiction over offenses listed in § 1153 in dictum on several occasions, Felicia v. United States, 495 F.2d 353, 354 (8th Cir. 1974); Glover v. United States, 219 F. Supp. 19 (D. Mont. 1963); In Re Carmen's Petition, 165 F. Supp. 942 (N.D. Cal. 1958), aff'd sub nom., Dickson v. Carmen, 270 F.2d 609 (9th Cir. 1959), cert. denied, 361 U.S. 934 (1960); United States v. Cardish, 145 F. 242, 246 (E.D. Wisc. 1906), we are aware of no federal court decision explicitly based on a holding that Indian tribes lack jurisdiction to punish offenses made punishable by 18 U.S.C. § 1153. In 1978 the United States Supreme Court twice took note of this issue and explicitly reserved judgment on it. United States v. Wheeler, 435 U.S. 313, 325 (1978); Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 203 n.14 (1978)

The Solicitor of the Interior Department addressed the question of tribal jurisdiction over the major crimes briefly in his 1934 Opinion, "Powers of Indian Tribes," 55 I.D. 14, 59-60, 1 Op. Sol. on Indian Affairs, 445, 473, (U.S.D.I. 1979):

> Although the statute [18 U.S.C. § 1153] does not expressly terminate tribal jurisdiction over the enumerated crimes, and might, if the question were an original one, be interpreted as conferring only a concurrent jurisdiction upon the federal courts, it has been construed for many years as removing all jurisdiction over the enumerated crimes from the Indian tribal authorities.
>
> Thus, in the case of United States v. Whaley (37 Fed. 145), which arose soon after the passage of the statute in question, it had appeared fitting to the tribal council of the Tule River Reservation that a medicine man who was believed to have poisoned some twenty-one deceased patients should be executed and he was so executed. The four tribal executioners were found guilty of manslaughter, in the Federal court, on the theory that the act of March 3, 1885, had terminated tribal jurisdiction over murder cases.

Just two years later, however, the Solicitor concluded that the simple fact that a particular offense is punishable under federal law does not preclude tribal prosecution. He noted that theft, which is punishable as larceny under the Major Crimes Act, is also punishable under the Department's regulations for courts of Indian offenses. He observed, "The regulations provide that the reservation court shall defer to Federal authorities in cases where the latter are willing to exercise jurisdiction. Where such jurisdiction is declined the bare fact of concurrent Federal jurisdiction does not exclude tribal action." Solicitor's Opinion, November 17, 1936, 1 Sol. Op. on Indian Affairs 699 (U.S.D.I. 1979).

The 1942 edition of the Handbook of Federal Indian Law expressed uncertainty on this issue:

> Although the statute covering the "10 major crimes" does not expressly terminate tribal jurisdiction over the enumerated crimes, and may be

> interpreted as conferring only a concurrent jurisdiction upon the federal courts, it is arguable that the statute removed all jurisdiction over the enumerated crimes from the tribal authorities.
>
> Some support is given this argument by the decision in United States v. Whaley . . .
>
> In opposition to the argument that the 1885 act limits tribal jurisdiction over crimes, it may be said that concurrent jurisdiction of federal and tribal authorities is clearly recognized by section 218 of title 25 of the United States Code, above set forth, which exempts from federal punishment otherwise merited persons who have "been punished by the local law of the tribe," and that the current Indian Law and Order Regulations recognize concurrent federal-tribal jurisdiction over crime.

Cohen, Handbook of Federal Indian Law, 147 (1942 ed.)(Footnotes omitted.)

The 1958 edition of the Handbook, however, flatly asserts at page 449:

> Although the statute covering the "10 major crimes" does not expressly terminate tribal jurisdiction over the enumerated crimes, it obviously preempts all jurisdiction over such crimes.

Dictum in United States v. Cardish, 145 F. 242, 246 (E.D. Wisc. 1906), as well as United States v. Whaley are cited in support of that proposition.

Despite that statement, however, the Department did not change its regulations governing courts of Indian offenses, which continue to this day to include theft as an offense even though it is also listed as one of the "major crimes." 25 C.F.R. § 11.42 (1983).

The 1982 edition of the Handbook, which, unlike the earlier editions, does not necessarily represent the views of the Department, analyzed the issue at some length and concluded, "Major Crimes Act preemption of concurrent tribal jurisdiction seems doubtful." Cohen, Handbook of Federal Indian Law, 341 (1982 ed.).

There is certainly no clear indication that Congress implicitly deprived Indian tribes of their power to punish those offenses listed in § 1153. Ambiguities of this sort in federal law are construed generously in order to comport with traditional notions of sovereignty and the federal policy of encouraging tribal independence. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 152 (1982), quoting White Mountain Apache v. Bracker, 448 U.S. 136, 143-144 (1980).

Our decision to permit the approval of tribal ordinances asserting concurrent jurisdiction over offenses listed in the Major Crimes Act is supported by a number of important policy considerations. Indian tribes, the Interior Department, the Justice Department and the U.S. Civil Rights Commission have all commented on the inadequacy of prosecutions of major crimes in the federal courts.

The BIA, at page 80 of a report entitled Indian Reservation Criminal Justice Task Force Analysis (1974-1975), noted that the cumbersome federal criminal justice machinery often causes undue delays in the prosecution of offenses committed by

Indians on Indian reservations and cases are often declined without taking into account the legitimate concerns of the Indian community.

The National American Indian Court Judges Association (NAICJA) reported at pages 42 and 43 of its study, "Federal Prosecution of Crimes Committed on Indian Reservations," Justice and the American Indian, vol. 5, that of 250 major crimes investigated by the BIA in 1973, federal prosecution was declined in 177 cases. That study concluded, "Declination carries with it many side effects which are harmful to Indian communities . . . . It fosters . . . a communal anger when residents see an individual set free without having been punished for his crime . . . . This anger and frustration often leads to dissatisfaction with the entire law and order system. Many Indians now feel that the authorities in the criminal justice system do not care about crimes committed on the reservation."

The NAICJA has repeated this criticism at page 33 of its 1978 study, Indian Courts and the Future:

> On almost all reservations there is great dissatisfaction with the current situation regarding prosecution of major crimes violations. The federal government has explicit jurisdiction over fourteen major crimes, but, as with state enforcement in Public Law 280 jurisdictions, federal enforcement of major crimes violations on the reservation has been inadequate. The rate of declinations to prosecute by U.S. Attorneys is very high. Investigation of crimes by the FBI is slow, and many Indians believe that prosecution and investigation are more vigorous when non-Indians are involved. The crimes investigated under the Major Crimes Act tend to be those in which the offense had 'high visibility.'

The problem was examined in detail the Justice Department's 1975 Report of the Task Force on Indian Matters. That report analyzed the problem from the prosecutor's point of view at pages 46 and 47:

> Communication is difficult due to language and cultural differences. Indians usually regard federal court as a distant institution and may seek to avoid having anything to do with it. U.S. Attorneys are committed to bringing cases they can win. Regardless of the seriousness of the offense, Indian cases present a range of problems any one of which often defeats successful prosecution. Against these odds, it is difficult for a U.S. Attorney to justify great expenditures of time given the competing demands on his resources.

The United States Commission on Civil Rights also studied the problem and recommended increased reliance on the tribal criminal justice system. Indian Tribes - A Continuing Quest for Survival at pages 154-164 (1981). Given the admitted inadequacy of prosecutions under the Major Crimes Act, a rule that permits tribes to prosecute those individuals who have violated that Act but are not going to be prosecuted under it can contribute significantly to the maintenance of law and order on Indian reservations.

We are unfortunately aware that tribal courts cannot impose punishment exceeding one year in jail and $5,000.00 for any single offense pursuant to the Indian Civil Rights Act, 25 U.S.C. § 1302(7), as amended by Section 4217, the Anti-Drug Abuse Act of 1986 (Public Law 99-570). It has been suggested that because such punishment is inappropriate for conviction of certain major offenses, concurrent tribal court

jurisdiction in such cases is also inappropriate. Although we agree that the imprisonment and fine limitations under the Indian Civil Rights Act are inappropriate in such cases, we nevertheless believe that the solution to this problem does not lie in barring tribal court prosecution in instances where a crime might otherwise go unpunished, but in effectively amending the Indian Civil Rights Act to strengthen tribal court systems by enabling them to assess appropriate fines and terms of imprisonment in all cases over which such courts have jurisdiction. Additionally, the problems caused by the limitations of the Indian Civil Rights Act with respect to fines and imprisonment are mitigated by the U.S. Supreme Court's decision in Wheeler, supra, which permits federal prosecution following tribal prosecution for the same crime.

For the foregoing reasons, the decision of the Acting Assistant Area Director is reversed with direction to reconsider Resolution No. 83-W-32 in a manner consistent with this decision.

Sincerely,

/s/ Ross O. Swimmer

Assistant Secretary - Indian Affairs

cc: Chairman, Washoe Tribe of Nevada and California
Phoenix Area Director
Superintendent, Western Nevada Agency
Field Solicitor, Phoenix

(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* WHEELER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 76–1629. Argued January 11, 1978—Decided March 22, 1978

Respondent, a member of the Navajo Tribe, pleaded guilty in Tribal Court to a charge of contributing to the delinquency of a minor and was sentenced. Subsequently, he was indicted by a federal grand jury for statutory rape arising out of the same incident. He moved to dismiss the indictment on the ground that since the tribal offense of contributing to the delinquency of a minor was a lesser included offense of statutory rape, the Tribal Court proceeding barred the subsequent federal prosecution. The District Court granted the motion, and the Court of Appeals affirmed, holding that since tribal courts and federal district courts are not "arms of separate sovereigns," the Double Jeopardy Clause of the Fifth Amendment barred respondent's federal trial. *Held:* The Double Jeopardy Clause does not bar the federal prosecution. Pp. 3–18.

(a) The controlling question is the source of an Indian tribe's power to punish tribal offenders, *i. e.*, whether it is a part of inherent tribal sovereignty or an aspect of the sovereignty of the Federal Government that has been delegated to the tribes by Congress. Pp. 3–8.

(b) 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. Pp. 9–10.

(c) Here, it is evident from the treaties between the Navajo Tribe and the United States and from the various statutes establishing federal criminal jurisdiction over crimes involving Indians, that the Navajo Tribe has never given up its sovereign power to punish tribal offenders, nor has that power implicitly been lost by virtue of the Indians' dependent status; thus, tribal exercise of that power is presently the continued exercise of retained tribal sovereignty. Pp. 10–13.

(d) Moreover, such power is not attributable to any delegation of federal authority. Pp. 13–15.

I

Syllabus

(e) 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, *Talton* v. *Mayes*, 163 U. S. 376, 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. Pp. 15–16.

(f) To limit the "dual sovereignty" concept to successive state and federal prosecutions, as respondent urges, would result, in a case such as this, in the "undesirable consequences" of having a tribal prosecution for a relatively minor offense bar a federal prosecution for a much graver one, thus depriving the Federal Government of the right to enforce its own laws; while Congress could solve this problem by depriving Indian tribes of criminal jurisdiction altogether, this abridgment of the tribes' sovereign powers might be equally undesirable. See *Abbate* v. *United States*, 359 U. S. 187. Pp. 16–18.

545 F. 2d 1255, reversed and remanded.

STEWART, J., delivered the opinion of the Court, in which all Members joined except BRENNAN, J., who took no part in the consideration or decision of the case.

SUPREME COURT OF THE UNITED STATES

No. 76–1629

United States, Petitioner, *v.* Anthony Robert Wheeler.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[March 22, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

The question presented in this case is whether the Double Jeopardy Clause of the Fifth Amendment bars the prosecution of an Indian in a federal district court under the Major Crimes Act, 18 U. S. C. § 1153, when he has previously been convicted in a tribal court of a lesser included offense arising out of the same incident.

I

On October 16, 1974, the respondent, a member of the Navajo Tribe, was arrested by a tribal police officer at the Bureau of Indian Affairs High School in Many Farms, Ariz., on the Navajo Indian Reservation.[1] He was taken to the tribal jail in Chinle, Ariz., and charged with disorderly conduct, in violation of § 17–351 of the Navajo Tribal Code. On October 18, two days after his arrest, the respondent pleaded guilty to disorderly conduct and a further charge of contribut-

[1] The record does not make clear the details of the incident that led to the respondent's arrest. After the bringing of the federal indictment an evidentiary hearing was held on the respondent's motion to suppress statements he had made to police officers. This hearing revealed only that the respondent had been intoxicated at the time of his arrest; that his clothing had been dishevelled and he had had a blood stain on his face; that the incident had involved a Navajo girl; and that the respondent claimed that he had been trying to help the girl, who had been attacked by several other boys.

ing to the delinquency of a minor, in violation of § 17–321 of the Navajo Tribal Code. He was sentenced to 15 days in jail or a fine of $30 on the first charge and to 60 days in jail (to be served concurrently with the other jail term) or a fine of $120 on the second.[2]

Over a year later, on November 19, 1975, an indictment charging the respondent with statutory rape was returned by a grand jury in the United States District Court for the District of Arizona.[3] The respondent moved to dismiss this indictment, claiming that since the tribal offense of contributing to the delinquency of a minor was a lesser included offense of statutory rape,[4] the proceedings that had taken place in

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[2] The record does not reveal how the sentence of the Navajo Tribal Court was carried out.

[3] The indictment charged that "[o]n or about the 16th day of October, 1974, in the District of Arizona, on and within the Navajo Indian Reservation, Indian Country, ANTHONY ROBERT WHEELER, an Indian male, did carnally know a female Indian . . . not his wife, who had not then attained the age of sixteen years but was fifteen years of age. In violation of Title 18, United States Code, Sections 1153 and 2032."

At the time of the indictment, 18 U. S. C. § 1153 provided in relevant part:

"Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, . . . carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, . . . within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States." 18 U. S. C. § 1153 (1970).

The Major Crimes Act has since been amended in respects not relevant here. Indian Crimes Act of 1976, § 2, 90 Stat. 585.

18 U. S. C. § 2032, applicable within areas of exclusive federal jurisdiction, punishes carnal knowledge of any female under 16 years of age who is not the defendant's wife by imprisonment for up to 15 years.

[4] The holding of the District Court and the Court of Appeals that the tribal offense of contributing to the delinquency of a minor was included within the federal offense of statutory rape is not challenged here by the Government.

the Tribal Court barred a subsequent federal prosecution. See *Brown* v. *Ohio*, 432 U. S. 161. The District Court, rejecting the prosecutor's argument that "there is not an identity of sovereignties between the Navajo Tribal Courts and the courts of the United States," dismissed the indictment.[5] The Court of Appeals for the Ninth Circuit affirmed the judgment of dismissal, concluding that since "Indian tribal courts and United States district courts are not arms of separate sovereigns," the Double Jeopardy Clause barred the respondent's trial. 545 F. 2d 1255, 1258 (CA9). We granted certiorari to resolve an intercircuit conflict. — U. S. —.[6]

II

In *Bartkus* v. *Illinois*, 359 U. S. 121, and *Abbate* v. *United States*, 359 U. S. 187, this Court reaffirmed the well-established principle that a federal prosecution does not bar a subsequent state prosecution of the same person for the same acts, and a state prosecution does not bar a federal one.[7] The basis for

[5] The decision of the District Court is unreported.

[6] In a later case, the Court of Appeals for the Eighth Circuit held that the Double Jeopardy Clause does not bar successive tribal and federal prosecutions for the same offense, expressly rejecting the view of the Ninth Circuit in the present case. *United States* v. *Walking Crow*, 560 F. 2d 386. See also *United States* v. *Elk*, 561 F. 2d 133 (CA8); *United States* v. *Kills Plenty*, 466 F. 2d 240, 243 n. 3 (CA8).

[7] Although the problems arising from concurrent federal and state criminal jurisdiction had been noted earlier, see *Houston* v. *Moore*, 5 Wheat. 1, the Court did not clearly address the issue until *Fox* v. *Ohio*, 5 How. 410, *United States* v. *Marigold*, 9 How. 560, and *Moore* v. *Illinois*, 14 How. 13, in the mid-19th century. Those cases upheld the power of States and the Federal Government to make the same act criminal; in each case the possibility of consecutive state and federal prosecutions was raised as an objection to concurrent jurisdiction, and was rejected by the Court on the ground that such multiple prosecutions, if they occurred, would not constitute double jeopardy. The first case in which actual multiple prosecutions were upheld was *United States* v. *Lanza*, 260 U. S. 377, involving a prosecution for violation of the Volstead Act, ch. 85, 41 Stat. 305 (1919), after a conviction for criminal violation of liquor laws of the State of Washington.

this doctrine is that prosecutions under the laws of separate sovereigns do not, in the language of the Fifth Amendment, "subject [the defendant] for the same offence to be twice put in jeopardy":

> "An offence, in its legal signification, means the transgression of a law. . . . Every citizen of the United States is also a citizen of a State or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offense or transgression of the laws of both. . . . That either or both may (if they see fit) punish such an offender, cannot be doubted. Yet it cannot be truly averred that the offender has been twice punished for the same offence; but only that by one act he has committed two offences, for each of which he is justly punishable." *Moore* v. *Illinois*, 14 How. 13, 19–20.

It was noted in *Abbate, supra,* at 195, that the "undesirable consequences" that would result from the imposition of a double jeopardy bar in such circumstances further support the "dual sovereignty" concept. Prosecution by one sovereign for a relatively minor offense might bar prosecution by the other for a much graver one, thus effectively depriving the latter of the right to enforce its own laws.[8] While, the Court said, conflict might be eliminated by making federal jurisdiction exclu-

[8] In *Abbate* itself the petitioners had received prison terms of three months on their state convictions, but faced up to five years' imprisonment on the federal charge. *Abbate* v. *United States*, 359 U. S. 187, 195. And in *Bartkus* the Court referred to *Screws* v. *United States*, 325 U. S. 91, in which the same facts could give rise to a federal prosecution under what are now 18 U. S. C. §§ 241 and 371 (which then carried maximum penalties of one and two years imprisonment) and a state prosecution for murder, a capital offense. "Where the federal prosecution of a comparatively minor offense to prevent state prosecution of so grave an infraction of state law, the result would be a shocking and untoward deprivation of the historic right and obligation of the States to maintain peace and order within their confines." *Bartkus* v. *Illinois*, 359 U. S. 121, 137.

sive where it exists, such a "marked change in the distribution of powers to administer criminal justice" would not be desirable. *Ibid.*

The "dual sovereignty" concept does not apply, however, in every instance where successive cases are brought by nominally different prosecuting entities. *Grafton* v. *United States*, 206 U. S. 333, held that a soldier who had been acquitted of murder by a federal court-martial could not be retried for the same offense by a territorial court in the Philippines.[9] And *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 264–266, reiterated that successive prosecutions by federal and territorial courts are impermissible because such courts are "creations emanating from the same sovereignty." Similarly, in *Waller* v. *Florida*, 397 U. S. 387, we held that a city and the State of which it is a political subdivision could not bring successive prosecutions for unlawful conduct growing out of the same episode, despite the fact that state law treated the two as separate sovereignties.

The respondent contends, and the Court of Appeals held, that the "dual sovereignty" concept should not apply to successive prosecutions by an Indian tribe and the United States because the Indian tribes are not themselves sovereigns, but derive their power to punish crimes from the Federal Government. This argument relies on the undisputed fact that Congress has plenary authority to legislate for the Indian tribes in all matters, including their form of government. *Winton* v. *Amos*, 255 U. S. 373, 391–392; *In re Heff*, 197 U. S. 488, 498–499; *Lone Wolf* v. *Hitchcock*, 187 U. S. 553; *Talton* v. *Mayes*, 163 U. S. 376, 384. Because of this all-encompassing federal power, the respondent argues that the tribes are merely "arms

[9] The prohibition against double jeopardy had been made applicable to the Philippines by Act of Congress. Act of July 1, 1902, § 5, 32 Stat. 692. In a previous case, the Court had held it unnecessary to decide whether the Double Jeopardy Clause would have applied within the Philippines of its own force in the absence of this statute. *Kepner* v. *United States*, 195 U. S. 100, 124–125.

of the federal government" [10] which, in the words of his brief, "owe their existence and vitality solely to the political department of the federal government."

We think that the respondent and the Court of Appeals, in relying on federal control over Indian tribes, have misconceived the distinction betwen those cases in which the "dual sovereignty" concept is applicable and those in which it is not. It is true that territories are subject to the ultimate control of Congress,[11] and cities to the control of the State which created them.[12] But that fact was not relied upon as the basis for the decisions in *Grafton*, *Shell Co.*,[13] and *Waller*. What differentiated those cases from *Bartkus* and *Abbate* was not the extent of control exercised by one prosecuting authority over the other, but rather the ultimate source of the power under which the respective prosecutions were undertaken.

Bartkus and *Abbate* rest on the basic structure of our federal system, in which States and the National Government are separate political communities. State and Federal Governments "deriv[e] power from different sources," each from the organic law that established it. *United States* v. *Lanza*, 260 U. S. 377, 382. Each has the power, inherent in any sovereign, independently to determine what shall be an offense against its authority and to punish such offenses, and in doing so each "is exercising its own sovereignty, not that of the other." *Ibid.* And while the States, as well as the Federal Government, are subject to the overriding requirements of

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[10] *Colliflower* v. *Garland*, 342 F. 2d 369, 379 (CA9).

[11] *Binns* v. *United States*, 194 U. S. 486, 491; *De Lima* v. *Bidwell*, 182 U. S. 1, 196–197; *Mormon Church* v. *United States*, 136 U. S. 1, 42; *Murphy* v. *Ramsey*, 114 U. S. 15, 44–45.

[12] *Trenton* v. *New Jersey*, 262 U. S. 182, 187; *Hunter* v. *Pittsburgh*, 207 U. S. 161, 178–179; *Williams* v. *Eggleston*, 170 U. S. 304, 310; *Mount Pleasant* v. *Beckwith*, 100 U. S. 514, 529; see 2 E. McQuillin, The Law of Municipal Corporations, § 4.03 (3d ed. 1966).

[13] Indeed, in the *Shell Co.* case the Court noted that Congress had given Puerto Rico "an autonomy similar to that of the states . . . ." *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 262.

the Federal Constitution, and the Supremacy Clause gives Congress within its sphere the power to enact laws superseding conflicting laws of the States, this degree of federal control over the exercise of state governmental power does not detract from the fact that it is a State's own sovereignty which is the origin of its power.[14]

By contrast, cities are not sovereign entities. "Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions." *Reynolds* v. *Sims*, 377 U. S. 533. 575.[15] A city is nothing more than "an agency of the State." *Williams* v. *Eggleston*, 170 U. S. 304, 310. Any power it has to define and punish crimes exists only because such power has been granted by the State; the power "derive[s] . . . from the source of [its] creation." *Mount Pleasant* v. *Beckwith*, 100 U. S. 514, 524. As we said in *Waller* v. *Florida*, 397 U. S., at 393, "the judicial power to try petitioner . . . in municipal court springs from the same organic law that created the state court of general jurisdiction."

Similarly, a territorial government is entirely the creation of Congress, "and its judicial tribunals exert all their powers by authority of the United States." *Grafton* v. *United States*, 206 U. S., at 354; see *Cincinnati Soap Co.* v. *United States*, 301 U. S. 308, 317; *United States* v. *Kagama*, 118 U. S. 375, 380; *American Ins. Co.* v. *Canter*, 1 Pet. 511, 542.[16] When a terri-

[14] Cf. *United States* v. *Lanza*, 260 U. S. 377, 379–382, holding that a State's power to enact prohibition laws did not derive from the Eighteenth Amendment's provision that Congress and the States should have concurrent jurisdiction in that area, but rather from the State's inherent sovereignty.

[15] See also *Trenton* v. *New Jersey*, *supra*, at 185–186; *Hunter* v. *Pittsburgh*, *supra*, at 178; *Worcester* v. *Street R. Co.*, 196 U. S. 539, 548; *Barnes* v. *District of Columbia*, 91 U. S. 540, 544.

[16] Indeed, the relationship of a territory to the Federal Government has been accurately compared to the relationship between a city and a State. *Dorr* v. *United States*, 195 U. S. 138, 147–148, quoting T. Cooley, General Principles of Constitutional Law 164–165 (1880); see *National Bank* v. *County of Yankton*, 101 U. S. 129, 133.

torial government enacts and enforces criminal laws to govern its inhabitants, it is not acting as an independent political community like a State, but as "an agency of the federal government." *Domenech v. National City Bank*, 294 U. S. 199, 204–205.

Thus, in a federal territory and the Nation, as in a city and a State, "[t]here is but one system of government, or of laws operating within [its] limits." *Benner* v. *Porter*, 9 How. 235, 242. City and State, or territory and Nation, are not two separate sovereigns to whom the citizen owes separate allegiance in any meaningful sense, but one alone.[17] And the "dual sovereignty" concept of *Bartkus* and *Abbate* does not permit a single sovereign to impose multiple punishment for a single offense merely by the expedient of establishing multiple political subdivisions with the power to punish crimes.

III

It is undisputed that Indian tribes have power to enforce their criminal laws against tribe members. Although physically within the territory of the United States and subject to ultimate federal control, they nonetheless remain "a separate people, with the power of regulating their internal and social relations." *United States v. Kagama, supra,* at 381–382; *Cherokee Nation* v. *Georgia*, 5 Pet. 1, 16.[18] Their right of internal self-government includes the right to prescribe laws applicable to tribe members and to enforce those laws by criminal sanctions. *United States* v. *Antelope*, 430 U. S. 641,

[17] Cf. *Gonzales* v. *Williams*, 192 U. S. 1, 13; *American Ins. Co.* v. *Canter*, 1 Pet. 511, 542.

[18] Thus, unless limited by treaty or statute, a tribe has the power to determine tribe membership, *Cherokee Intermarriage Cases*, 203 U. S. 76; *Roff* v. *Burney*, 168 U. S. 218, 222–223; to regulate domestic relations among tribe members, *Fisher* v. *District Court*, 424 U. S. 382; cf. *United States* v. *Quiver*, 241 U. S. 602; and to prescribe rules for the inheritance of property. *Jones* v. *Meehan*, 175 U. S. 1, 29; *Mackey* v. *Coxe*, 18 How. 100.

643 n. 2; *Talton* v. *Mayes*, 163 U. S., at 380; *Ex parte Crow Dog*, 109 U. S. 556, 571–572; see 18 U. S. C. § 1152, *infra*, n. 21. As discussed above in Part II, the controlling question in this case is the source of this power to punish tribal offenders: Is it a part of inherent tribal sovereignty, or an aspect of the sovereignty of the Federal Government which has been delegated to the tribes by Congress?

A

The powers of Indian tribes are, in general, "*inherent powers of a limited sovereignty which has never been extinguished.*" F. Cohen, Handbook of Federal Indian Law 122 (1941) (emphasis in original). Before the coming of the Europeans, the tribes were self-governing sovereign political communities. See *McClanahan* v. *Arizona State Tax Comm'n*, 412 U. S. 164, 172. Like all sovereign bodies, they then had the inherent power to prescribe laws for their members and to punish infractions of those laws.

Indian tribes are, of course, no longer "possessed of the full attributes of sovereignty." *United States* v. *Kagama*, *supra*, at 381. Their incorporation within the territory of the United States, and their acceptance of its protection, necessarily divested them of some aspects of the sovereignty which they had previously exercised.[19] By specific treaty provision they yielded up other sovereign powers; by statute, in the exercise of its plenary control, Congress has removed still others.

But our cases recognize that the Indian tribes have not given up their full sovereignty. We have recently said that "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.'" *United States* v. *Mazurie*, 410 U. S. 544, 557; see also *Turner* v. *United States*, 248 U. S. 354, 354–355; *Chero-*

[19] See *infra*, at 12–13.

kee Nation v. *Georgia*, *supra*, at 16–17. The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers. 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*, *ante*, at ——.

B

It is evident that the sovereign power to punish tribal offenders has never been given up by the Navajo Tribe and that tribal exercise of that power today is therefore the continued exercise of retained tribal sovereignty. Although both of the treaties executed by the Tribe with the United States [20] provided for punishment by the United States of Navajos who commit crimes against non-Indians, nothing in either of them deprived the Tribe of its *own* jurisdiction to charge, try and punish members of the Tribe for violations of tribal law. On the contrary, we have said that "[i]mplicit in these treaty terms . . . was the understanding that the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed." *Williams* v. *Lee*, 358 U. S. 217, 221–222; see also *Warren Trading Post* v. *Tax Comm'n*, 380 U. S. 685.

Similarly, statutes establishing federal criminal jurisdiction over crimes involving Indians have recognized an Indian tribe's jurisdiction over its members. The first Indian Trade and Intercourse Act, Act of July 22, 1790, § 5, 1 Stat. 138, provided only that the Federal Government would punish offenses committed *against* Indians by "any citizen or inhabitant of the United States"; it did not mention crimes committed

[20] The first treaty was signed at Canyon de Chelly in 1849, and ratified by Congress in 1850. 9 Stat. 974. The second treaty was signed and ratified in 1868. 15 Stat. 667.

by Indians. In 1817 federal criminal jurisdiction was extended to crimes committed within the Indian country by "any Indian, or other person or persons," but "any offense committed by one Indian against another, within any Indian boundary" was excluded. Act of March 3, 1817, ch. 92, 3 Stat. 383. In the Indian Trade and Intercourse Act of 1834, § 25, 4 Stat. 733, Congress enacted the direct progenitor of the General Crimes Act, now 18 U. S. C. § 1152, which makes federal enclave criminal law generally applicable to crimes in "Indian country." [21] In this statute Congress carried forward the intra-Indian offense exception because "the tribes have exclusive jurisdiction" of such offenses and "we can [not] with any justice or propriety extend our laws to" them. H. R. Rep. No. 474, 23d Cong., 1st Sess., 13 (1834). And in 1854 Congress expressly recognized the jurisdiction of tribal courts when it added another exception to the General Crimes Act, providing that federal courts would not try an Indian "who has been punished by the local law of the Tribe." Act of March 27, 1854, § 3, 10 Stat. 270.[22] Thus, far from depriving Indian

[21] 18 U. S. C. § 1152 now provides:

"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 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 stipulation, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively."

Despite the statute's broad language, it does not apply to crimes committed by non-Indians against non-Indians, which are subject to state jurisdiction. *United States* v. *McBratney*, 104 U. S. 621.

[22] This statute is not applicable to the present case. The Major Crimes Act, under which the instant prosecution was brought, was enacted in 1885. Act of March 3, 1885, § 9, 23 Stat. 385. It does not contain any exception for Indians punished under tribal law. We need not decide whether this "carefully limited intrusion of federal power into the other-

tribes of their sovereign power to punish offenses against tribal law by members of a tribe, Congress has repeatedly recognized that power and declined to disturb it.[23]

Moreover, the sovereign power of a tribe to prosecute its members for tribal offenses clearly does not fall within that part of sovereignty which the Indians implicitly lost by virtue of their dependent status. The areas in which such implicit divestiture of sovereignty has been held to have occurred are those involving the relations between an Indian tribe and nonmembers of the tribe. Thus, Indian tribes can no longer freely alienate to non-Indians the land they occupy. *Oneida Indian Nation* v. *County of Oneida*, 414 U. S. 661, 667–668; *Johnson* v. *M'Intosh*, 8 Wheat. 543, 574. They cannot enter into direct commercial or governmental relations with foreign nations. *Worcester* v. *Georgia*, 6 Pet. 515, 559; *Cherokee Nation* v. *Georgia*, 5 Pet., at 17–18; *Fletcher* v. *Peck*, 6 Cranch 87, 147 (concurring opinion of Mr. Justice Johnson). And, as we have recently held, they cannot try nonmembers in tribal courts. *Oliphant* v. *Suquamish Indian Tribe, ante*, at ——.

These limitations rest on the fact that the dependent status of Indian tribes within our territorial jurisdiction is necessarily inconsistent with their freedom independently to determine their external relations. But the powers of self-govern-

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wise exclusive jurisdiction of the Indian tribes to punish Indians for crimes committed on Indian land," *United States* v. *Antelope*, 430 U. S. 641, 643 n. 1, deprives a tribal court of jurisdiction over the enumerated offenses, since the crimes to which the respondent pleaded guilty in the Navajo Tribal Court are not among those enumerated in the Major Crimes Act. Cf. *Oliphant* v. *Suquamish Indian Tribe, ante*, at —— n. 14.

[23] See S. Rep. No. 268, 41st Cong., 3d Sess., 10 (1870):

"Their' right of self government, and to administer justice among themselves, after their rude fashion, even to the extent of inflicting the death penalty, has never been questioned; and . . . the Government has carefully abstained from attempting to regulate their domestic affairs, and from punishing crimes committed by one Indian against another in the Indian country."

ment, including the power to prescribe and enforce internal criminal laws, are of a different type. They involve only the relations among members of a tribe. Thus, they are not such powers as would necessarily be lost by virtue of a tribe's dependent status. "[T]he settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self government, by associating with a stronger, and taking its protection." *Worcester* v. *Georgia*, *supra*, at 560–561.

C

That the Navajo Tribe's power to punish offenses against tribal law committed by its members is an aspect of its retained sovereignty is further supported by the absence of any federal grant of such power. If Navajo self-government were merely the exercise of delegated federal sovereignty, such a delegation should logically appear somewhere. But no provision in the relevant treaties or statutes confers the right of self-government in general, or the power to punish crimes in particular, upon the Tribe.[24]

It is true that in the exercise of the powers of self-government, as in all other matters, the Navajo Tribe, like all Indian tribes, remains subject to ultimate federal control. Thus, before the Navajo Tribal Council created the present Tribal Code and Tribal Courts,[25] the Bureau of Indian Affairs established a Code of Indian Tribal Offenses and a Court of Indian Offenses for the reservation. See 25 CFR Part 11 (1977); cf. 25 U. S. C. § 1311.[26] Pursuant to federal regulations, the

[24] This Court has referred to treaties made with the Indians as "not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted." *United States* v. *Winans*, 198 U. S. 371, 381.

[25] The Tribal Courts were established in 1958, and the law and order provisions of the Tribal Code in 1959, by resolution of the Navajo Tribal Council. See Titles 7 and 17 of the Navajo Tribal Code; *Oliver* v. *Udall*, 113 U. S. App. D. C. 212, 306 F. 2d 819.

[26] Such Courts of Indian Offenses, or "CFR Courts," still exist on approximately 30 reservations "in which traditional agencies for the

present Tribal Code was approved by the Secretary of the Interior before becoming effective. See 25 CFR § 11.1 (e) (1977). Moreover, the Indian Reorganization Act of 1934, § 16, 48 Stat. 987, 25 U. S. C. § 476, and the Act of April 19, 1950, § 6, 64 Stat. 46, 25 U. S. C. § 636, each authorized the Tribe to adopt a constitution for self-government. And the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U. S. C. § 1302, made most of the provisions of the Bill of Rights applicable to the Indian tribes and limited the punishment tribal courts could impose to imprisonment for six months, or a fine of $500, or both.

But none of these laws *created* the Indians' power to govern themselves and their right to punish crimes committed by tribal offenders. Indeed, the Wheeler-Howard Act and the Navajo-Hopi Rehabilitation Act both recognized that Indian tribes already had such power under "existing law." See Powers of Indian Tribes, 55 I. D. 14 (1934). That Congress has in certain ways regulated the manner and extent of the tribal power of self-government does not mean that Congress is the source of that power.

In sum, the power to punish offenses against tribal law committed by Tribe members, which was part of the Navajos' primeval sovereignty, has never been taken away from them, either explicitly or implicitly, and is attributable in no way to any delegation to them of federal authority.[27] It follows

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enforcement of tribal law and custom have broken down [and] no adequate substitute has been provided." 25 CFR § 11.1 (b) (1977). We need not decide today whether such a court is an arm of the Federal Government or, like the Navajo Tribal Court, derives its powers from the inherent sovereignty of the tribe.

[27] The Department of Interior, charged by statute with the responsibility for "the management of all Indian affairs and of all matters arising out of Indian relations," 25 U. S. C. § 2, clearly is of the view that tribal self-government is a matter of retained sovereignty rather than congressional grant. Department of the Interior, Federal Indian Law 398 (1958); Powers of Indian Tribes, 55 I. D. 14, 56 (1934). See also 1

that when the Navajo Tribe exercises this power, it does so as part of its retained sovereignty and not as an arm of the Federal Government.[25]

D

The conclusion that an Indian tribe's power to punish tribal offenders is part of its own retained sovereignty is clearly reflected in a case decided by this Court more than 80 years ago, *Talton* v. *Mayes*, 163 U. S. 376. There a Cherokee Indian charged with murdering another Cherokee in the Indian Territory claimed that his indictment by the Tribe was defective under the Grand Jury Clause of the Fifth Amendment. In holding that the Fifth Amendment did not apply to tribal prosecutions, the Court stated:

> "The case . . . depends upon whether the powers of local government exercised by the Cherokee nation are Federal powers created by and springing from the Constitution of the United States, and hence controlled by the Fifth Amendment to that Constitution, or whether they are local powers not created by the Constitution, although subject to its general provisions and the paramount authority of Congress. The repeated adjudications of this Court have long since answered the former question in the negative. . . .
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> "True it is that in many adjudications of this court the fact has been fully recognized, that although possessed of these attributes of local self government, when exercising their tribal functions, all such rights are subject to the

Final Report of the American Indian Policy Review Commission 99–100, 126 (1977).

[25] By emphasizing that the Navajo Tribe never lost its sovereign power to try tribal criminals, we do not mean to imply that a tribe which was deprived of that right by statute or treaty and then regained it by Act of Congress would necessarily be an arm of the Federal Government. That interesting question is not before us, and we express no opinion thereon.

> supreme legislative authority of the United States. . . . But the existence of the right in Congress to regulate the manner in which the local powers of the Cherokee nation shall be exercised does not render such local powers Federal powers arising from and created by the Constitution of the United States." *Id.*, at 382–384.

The relevance of *Talton* v. *Mayes* to the present case is clear. The Court there held 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.[29] Since tribal and federal prosecutions are brought by separate sovereigns, they are not "for the same offence," and the Double Jeopardy Clause thus does not bar one when the other has occurred.

IV

The respondent contends that, despite the fact that successive tribal and federal prosecutions are not "for the same offence," the "dual sovereignty" concept should be limited to successive state and federal prosecutions. But we cannot accept so restrictive a view of that concept, a view which, as has been noted, would require disregard of the very words of the Double Jeopardy Clause. Moreover, the same sort of "undesirable consequences" identified in *Abbate* could occur if successive tribal and federal prosecutions were barred despite the fact that tribal and federal courts are arms of separate sovereigns. Tribal courts can impose no punishment in excess of six months' imprisonment or a $500 fine. 25 U. S. C. § 1302 (7). On the other hand, federal jurisdiction over crimes committed by Indians includes many major offenses. 18 U. S. C. § 1153.[30] Thus, when both a federal prosecution

[29] Cf. *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145, holding that a business enterprise operated off the reservation by a tribe was not a "federal instrumentality" free from state taxation.

[30] Federal jurisdiction also extends to crimes committed by an Indian against a non-Indian which have not been punished in tribal court, 18

for a major crime and a tribal prosecution for a lesser included offense are possible, the defendant will often face the potential of a mild tribal punishment and a federal punishment of substantial severity. Indeed, the respondent in the present case faced the possibility of a federal sentence of 15 years in prison, but received a tribal sentence of no more than 75 days and a small fine. In such a case, the prospect of avoiding more severe federal punishment would surely motivate a member of a tribe charged with the commission of an offense to seek to stand trial first in a tribal court. Were the tribal prosecution held to bar the federal one, important federal interests in the prosecution of major offenses on Indian reservations [31] would be frustrated.[32]

This problem would, of course, be solved if Congress, in the exercise of its plenary power over the tribes, chose to deprive them of criminal jurisdiction altogether. But such a fundamental abridgement of the powers of Indian tribes might be thought as undesirable as the federal pre-emption of state criminal jurisdiction that would have avoided conflict in *Bartkus* and *Abbate*. The Indian tribes are "distinct political communities" with their own mores and laws, *Worcester* v. *Georgia*, 6 Pet., at 557; *The Kansas Indians*, 5 Wall. 737, 756,[33] which can be enforced by formal criminal proceedings in tribal

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U. S. C. § 1152; see n. 21, *supra*, and to crimes over which there is federal jurisdiction regardless of whether an Indian is involved, such as assaulting a federal officer, 18 U. S. C. § 111. *Stone* v. *United States*, 506 F. 2d 563 (CA8).

[31] See *Keeble* v. *United States*, 412 U. S. 205, 209–212, describing the reasons for enactment of the Major Crimes Act, 18 U. S. C. § 1153.

[32] Moreover, since federal criminal jurisdiction over Indians extends as well to offenses as to which there is an independent federal interest to be protected, see n. 30, *supra*, the Federal Government could be deprived of the power to protect those interests as well.

[33] " 'Navaho' is not their own word for themselves. In their own language, they are *diné*, 'The People.' . . . This term is a constant reminder that the Navahos still constitute a society in which each individual has a strong sense of belonging with the others who speak the same language

courts as well as by less formal means. They have a significant interest in maintaining orderly relations among their members and in preserving tribal customs and traditions, apart from the federal interest in law and order on the reservation. Tribal laws and procedures are often influenced by tribal custom and can differ greatly from our own. See *Ex parte Crow Dog*, 109 U. S., at 571.[34]

Thus, tribal courts are important mechanisms for protecting significant tribal interests.[35] Federal pre-emption of a tribe's jurisdiction to punish its members for infractions of tribal law would detract substantially from tribal self-government, just as federal pre-emption of state criminal jurisdiction would trench upon important state interests. Thus, just as in *Bartkus* and *Abbate*, there are persuasive reasons to reject the respondent's argument that we should arbitrarily ignore the settled "dual sovereignty" concept as it applies to successive tribal and federal prosecutions.

Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE BRENNAN took no part in the consideration or decision of this case.

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and, by the same token, a strong sense of difference and isolation from the rest of humanity." C. Kluckhohn & D. Leighton, The Navaho 23 (Rev. ed. 1974).

[34] Traditional tribal justice tends to be informal and consensual rather than adjudicative, and often emphasizes restitution rather than punishment. See 1 Final Report of the American Indian Policy Review Commission 160–166 (1977); W. Hagan, Indian Police and Judges 11–17 (1966); Van Valkenburgh, Navajo Common Law, 9 Museum of Northern Arizona Museum Notes 17, 51; 10 *id.*, 37 (1936–1938). See generally materials in M. Price, Law and the American Indian 133–150, 712–716 (1973).

[35] Tribal courts of all kinds, including Courts of Indian Offenses, see n. 26, *supra*, handled an estimated 70,000 cases in 1973. 1 Final Report of the American Indian Policy Review Commission 163–164 (1977).

INDIAN CIVIL RIGHTS ACT OF 1968 -- 25 USC §1301 - §1303

§1301. Definitions For purposes of this subchapter, the term:

1. "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government.

2. "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and **means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;**

3. "Indian court" means any Indian tribal court or court of Indian offense, and;

4. **"Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, United States Code, if that person were to commit an offense listed in that section in Indian country to which that section applies."**

§1302. Constitutional Rights No Indian tribe in exercising powers of self-government shall:

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

2. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

3. subject any person for the same offense to be twice put in jeopardy;

4. compel any person in any criminal case to be a witness against himself;

5. take any property for a public use without just compensation;

6. deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

7. require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of $5,000 or both;

8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

9. pass any bill of attainder or ex post facto law; or

10. deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

§1303. Habeas corpus

The privilege of the writ of *habeas corpus* shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

CONGRESSIONAL DURO-FIX MADE PERMANENT

On October 28, President Bush signed P.L. 102-137 which permanently overturned the U.S. Supreme Court's decision in *Duro v. Reina*, 110 S.Ct. 2953 (May 29, 1990). The *Duro* decision had stripped tribal courts of criminal jurisdiction over non-member Indians (see Tribal Court Record, Spring/Summer 1990).

P.L. 102-137 permanently restored tribal court criminal jurisdiction over non-member Indians by amending the definition of "powers of self-government" in the Indian Civil Rights Act (25 U.S.C. 1301-3) to include the following additional phrase at the end of the definition:

"means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians"

Congress also added a definition of "Indian" to the Indian Civil Rights Act (ICRA) which is the same as the definition of Indian in the Major Crimes Act (18 U.S.C. 1153).

The Congressional *Duro* fix was initially passed on a temporary basis in September 1990 with an expiration date of September 30, 1991 (see Tribal Court Record, Fall 1991).

The process of enacting a permanent *Duro*-Fix was literally a roller-coaster of events, including passage of a permanent *Duro*-fix in the House on May 14, 1991; agreements in the Senate which resulted in an amended bill providing for a two-year extension; a committee which reached a deadlocked vote; and finally a reconvened conference committee which agreed to the permanent language called for by the House. Senator Slade Gorton (R-WA) led the opposition to the permanent legislation and the deadlock was not overcome until Senator Daniel Inouye (D-HI) reached an agreement with Senator Gorton to hold a series of hearings exploring various tribal court and sovereignty issues in exchange for allowing the passage of the permanent *Duro* fix.

Tribes Required to Obtain BIA Permission to Apply

BIA PROCEEDS WITH CONTROVERSIAL TRIBAL COURT TRAINING POLICY

Despite substantial opposition throughout Indian country, the BIA Branch of Judicial Services will continue with a controversial tribal court training policy in fiscal year 1992 (see Tribal Court Record, Fall 1991, pp. 1-6). Prior to 1991, the BIA Special Tribal Court Program provided funding for both national training/technical assistance, and a series of local tribal court development and tribal court training and technical assistance initiatives. National training and technical assistance since 1983 was provided by the National Indian Justice Center. When the BIA policy was implemented in FY 1991, only 32 tribes were awarded training grants under a competitive process deemed seriously flawed by most observers and the BIA failed to fund any national training or technical assistance program. Consequently, the BIA policy denied 84% of tribal courts access to training and technical assistance. It is expected that the BIA policy will have a similar impact on tribal courts in FY 1992.

In protesting this policy, tribes point out that while the BIA contends that this policy fosters self-determination, it requires tribes to obtain BIA permission to apply and excludes non-BIA personnel from the review process.

The BIA published a request for proposals for FY 1992 Special Tribal Court Funds on November 15, 1991 in the Federal Register. The grant announcement was similar to that of FY 1991, but with two substantial changes. First, the amount of funding available had been reduced from nearly $2 million distributed in FY 1991 to $1 million in the FY 1992 announcement. Second, the BIA role in the selection process was significantly enhanced.

Although the BIA has attempted to justify this new policy under the banner of "tribal self-determination," the FY 1992 application process essentially required that tribes must receive permission from both the local BIA Agencies and the BIA Area Offices in order to simply apply for funding. The FY 1992 Special Tribal Court funds notice states, "all applications must include letters of recommendation/support from the local BIA agency and area offices." The notice indicates that failure to obtain BIA permission from the agency or area office will result in a BIA refusal to consider a proposal as follows:

"Incomplete and/or unresponsive applications will not be reviewed or rated and there shall be no appeal rights for non-funding of such applications. An incomplete and/or unresponsive application may be an application without a current tribal governing body or council resolution; **an agency or area office recommendation;** or an application seeking ordinary, routine operational costs for a court system."

In addition, the notice states, "all applications will be received and rated at the BIA central office by review panels composed of **BIA field and central office personnel.**" In protesting this policy, tribes point out that while the BIA contends that this policy fosters self-determination, it requires tribes to obtain BIA permission to apply and excludes non-BIA personnel from the review process. Pat Ragsdale, executive director of the Cherokee Nation Special Services stated, "The requirement of agency and area office support of a tribe's special court fund grant applications is simply inappropriate."

A BASIC GUIDE TO FEDERAL PROSECUTION OF CHILD SEXUAL ABUSE IN INDIAN COUNTRY

prepared by Tom Hannis
Assistant U.S. Attorney, District of Arizona

I. FEDERAL JURISDICTION OVER CHILD SEXUAL ABUSE CASES

A. "Major Crimes Act" - 18 U.S.C. §1153 - provides for federal jurisdiction over certain specified crimes occurring in Indian country when the suspect is an Indian.

1. Crimes covered include incest and any felony under "Chapter 109A" which is found in 18 U.S.C. §§2241 - 2245. Those offenses include:

a. "Aggravated sexual abuse with children" - 18 U.S.C. §2241(c) - any "sexual act" with child under the age of 12 years. "Sexual act" means intercourse, oral and anal sodomy. Carries a maximum possible sentence of life imprisonment.

b. "Sexual abuse of minor or ward" - 18 U.S.C. §2243. When victim is at least 12 but less than 16 years old and the suspect is at least four years older. Maximum sentence is five years.

c. "Abusive sexual contact" - 18 U.S.C. §2244. Fondling and other sexual touchings not rising to the level of a "sexual act" as defined above. If done by force can carry up to ten years in prison. If no force used and victim is age 12-15 the most a defendant can receive is two years in prison.

2. Tribes have concurrent jurisdiction for these offenses if the suspect is an Indian.

B. "Enclaves Act" or "General Crimes Act" - 18 U.S.C. §1152. Provides for federal jurisdiction in Indian country over the above crimes when defendant is a non-Indian.

II. FACTORS INVOLVED IN U.S. ATTORNEY'S DECISION TO PROSECUTE

A. Suspect's Factual Guilt
Did he do it?

B. Legal Sufficiency of the Evidence
What evidence can I get in at trial?

C. Likelihood of Conviction
Will a jury find him guilty?

D. Miscellaneous Factors
1. Victim's/family's wishes.
2. Suspect's history.
3. Therapist's opinion.
4. Intrafamilial or stranger?
5. Likelihood of future harm.

6. Staleness/statute of limitations.
7. Availability of alternatives.
   -tribal prosecution
   -counseling/treatment for offender
8. Circumstances of initial report.
9. Availability of resources.
10. "Greatest good."

III. REASONS FOR DECLINATIONS

A. Factual Problems
   1. No time frame.
   2. No corroborating evidence.
      a. no medical findings.
      b. no witnesses other than victim.
   3. Recanting victim.

B. Legal Problems
   1. Statute of limitations.
   2. Lack of jurisdiction.
   3. Inadmissible evidence.
      a. hearsay
      b. suppressed due to improper police conduct

C. Practical or Logistical Problems
   1. Victim or family refuse to cooperate.
   2. Trauma from prosecution in close case outweighs any potential benefit.
   3. Lost evidence.
   4. Juvenile offenders.

IV. NOTIFICATION PROCEDURES FOR DECLINATIONS

A. Written Notice to case agent and tribal prosecutor.

B. Notice from Victim-Witness Advocate.

C. Multidisciplinary Teams case staffings.

D. Personal notice to victim and/or family from prosecutor by mail, phone or face-to-face meeting.

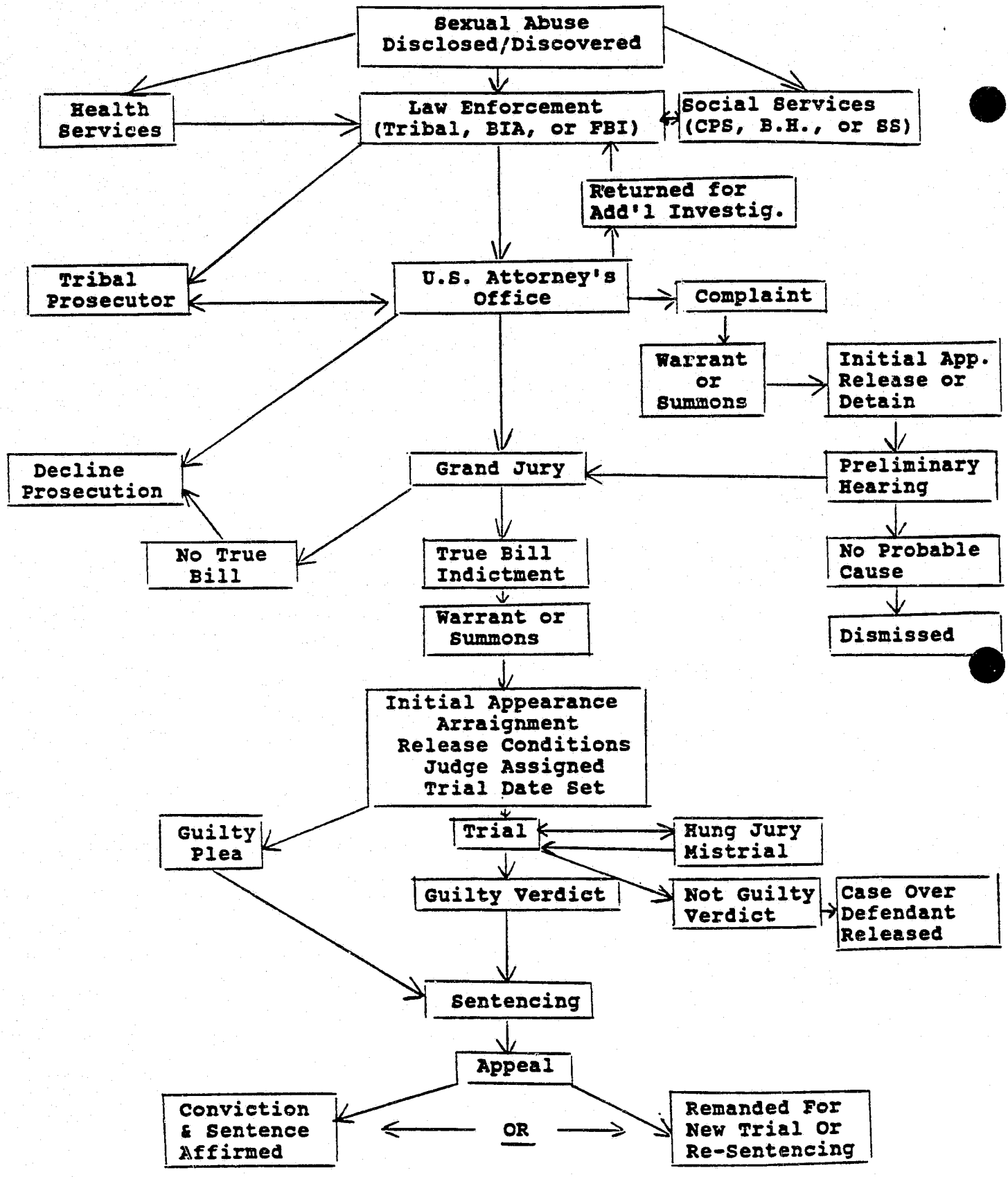
V. FEDERAL TRIAL PROCEDURES & VICTIMS OF CHILD ABUSE ACT OF 1990

A. Flow chart of how a case is processed (see attached)

B. Victims of Child Abuse Act of 1990
   -reporting requirements in 42 USC §13031 et seq.
   -punishment for failure to report or for violations of confidentiality are in 18:403 and 18:2258.

-Child victims' and child witnesses' rights are provided in 18:3509 and include the following:

1. alternatives to live in-court testimony
2. presumption of competencey
3. confidentiality
4. closure of courtroom
5. victim impact statement
6. multidisciplinary teams (MDTs)
7. guardians ad litem
8. adult attendant at trial
9. speedy trial
10. extended statute of limitations
11. testimonial aids


Sexual Abuse Disclosed/Discovered
Health Services
Law Enforcement (Tribal, BIA, or FBI)
Social Services (CPS, B.H., or SS)
Returned for Add'l Investig.
Tribal Prosecutor
U.S. Attorney's Office
Complaint
Warrant or Summons
Initial App. Release or Detain
Decline Prosecution
Grand Jury
Preliminary Hearing
No True Bill
True Bill Indictment
No Probable Cause
Warrant or Summons
Dismissed
Initial Appearance
Arraignment
Release Conditions
Judge Assigned
Trial Date Set
Guilty Plea
Trial
Hung Jury Mistrial
Guilty Verdict
Not Guilty Verdict
Case Over Defendant Released
Sentencing
Appeal
Conviction & Sentence Affirmed
OR
Remanded For New Trial Or Re-Sentencing

DECLINATION MEMO

USAO NO _____

SUSPECTS _____

_____

VIOLATION _____ USC _____ TRIBE _____

PROJECT (OPERATION ALLIANCE) ____ REFERRED TO: YUMA ____ SANTA CRUZ ____
PIMA ____ COCHISE ____
MEXICO ____

PROGRAM CATEGORY _____ (SEE BACK OF FORM FOR CODE)

AGENCY_____ AGENT_____ TELEPHONE_____

NOTE _____

_____

REASONS FOR DECLINING - SELECT UP TO THREE

NO FEDERAL OFFENSE EVIDENT	NFOE	____
LACK OF EVIDENCE OF CRIMINAL INTENT	LECI	____
SUSPECT BEING PROSECUTED ON OTHER CHARGES	SPOC	____
SUSPECT TO BE PROSECUTED BY OTHER AUTHORITIES	SPOA	____
SUSPECT SERVING SENTENCE	SSSE	____
SUSPECT UNKNOWN	SUNK	____
SUSPECT WHEREABOUTS UNKNOWN	SUFU	____
SUSPECT DECEASED	SUDC	____
SUSPECT DEPORTED	SUDP	____
RESTITUTION MADE OR BEING MADE	REST	____
CIVIL, ADMIN, OR OTHER DISCIPLINARY ALTERNATIVES	CADA	____
MINIMUM FEDERAL INTEREST OR NO DETERRENT VALUE	MFIN	____
OFFENDER'S AGE, HEALTH, PRIOR RECORD, OR PERSONAL MATTER	AHPR	____
SUSPECT'S COOPERATION	SUCO	____
JUVENILE SUSPECT	JUVN	____
STALENESS	STAL	____
JURISDICTION OR VENUE PROBLEMS	JUVP	____
WEAK OR INSUFFICIENT ADMISSABLE EVIDENCE	WKEV	____
WITNESS PROBLEMS	WTPR	____
PETITE POLICY	PEPO	____
LACK OF INVESTIGATIVE OR PROSECUTIVE RESOURCES	LIPR	____
FINANCIAL PRIVACY ACT	FPRA	____
TAX REFORM ACT	TXRA	____
COURT POLICY	CTPO	____
DEPARTMENTAL POLICY	DEPO	____
OFFICE POLICY	OFPO	____
STATUTE OF LIMITATIONS	STLM	____
SPEEDY TRIAL ACT	STPA	____
AGENCY REQUEST	AGRE	____
MOTION HEARING	MOHR	____

AUSA DECLINING _____ DATE _____

Justice Department Establishes Indian Child Sexual Abuse Program, Hires Indian Attorney

In 1992, the U.S. Department of Justice Criminal Division expanded the mission of the Child Exploitation and Obscenity Section (CEOS) to provide aggressive prosecution of child sexual abuse on Indian and federal lands. CEOS has also hired Ms. Elizabeth Homer, an Indian attorney, as a special attorney to assist with these prosecutions.

CEOS is the section within the Justice Department's Criminal Division devoted to the federal prosecution of sex crimes against children, including sexual abuse and exploitation, and obscenity. The section provides specialized expertise and supervises the enforcement of numerous federal criminal statutes related to these areas.

CEOS is charged with supervising the enforcement of federal law in the area of child sexual abuse on federal and Indian lands. An important part of CEOS's mission is to support, directly and indirectly, the efforts of United Stated Attorneys in the prosecution of offenders who commit sex crimes against American Indian children. It is also authorized to directly undertake the prosecution of this type of case where warranted.

CEOS provides both direct and indirect legal services. While CEOS may undertake the prosecution of a particular case, it ordinarily works closely with the various United States Attorneys on cases. CEOS attorneys may participate on trial teams directly or simply serve in an advisory capacity, depending on the circumstances of a given case. The section also provides a myriad of litigation support services, including the maintenance of a brief and case bank, training for federal and other prosecutors and law enforcement officials, and an emergency research capability.

CEOS recognizes a gap in information about the incidents of crimes against children occurring on federal and Indian lands. It plans to collect and compile information about the investigation, prosecution, and disposition of these cases. CEOS will work closely with other agencies to ensure coordination and cooperation in efforts to reduce and prevent the victimization of American Indian children. All future CEOS training efforts will provide for the inclusion of tribal prosecutors and other officials working in child abuse areas and will address issues specific to the protection of American Indian children.

Elizabeth Lohah Homer, a member of the Osage Nation of Oklahoma, is a special attorney with the Criminal Division of the United States Department of Justice in the Child Exploitation and Obscenity Section. Ms. Homer received her bachelor of arts degree in political science from the University of Colorado in 1979 and her Juris Doctorate from the University of New Mexico in 1989. Ms. Homer's professional background includes serving as federal programs analyst for the Osage Nation and Deputy Director of Americans for Indian Opportunity. Prior to her position with the Justice Department, Ms. Homer was an assistant district attorney for the Second Judicial District of New Mexico in Albuquerque, New Mexico.

For further information concerning CEOS and the prosecution of child sexual abuse cases in Indian Country, contact Ms. Homer at (202) 514-5780.

TRIBAL LEADERS GIVEN OPPORTUNITY TO LEARN ABOUT DOMESTIC VIOLENCE AND CHILD ABUSE

A grant awarded to the National Indian Justice Center by the Indian Health Service (IHS) will allow several Tribal leaders to attend a series of three day NIJC trainings on domestic violence and child abuse. The goals of the tribal leaders sessions are: 1) to provide tribal leaders with information on the problems of domestic violence and child abuse; 2) to develop deeper understanding of the roles that tribal leaders can play in preventing domestic violence and child abuse and responding to violence which has already occurred; and 3) to identify ways in which each participant can improve the quality of services available in their community to deal with domestic violence and child abuse.

During the first year, the IHS grant will make it possible for leaders from Tribes in eastern states, Oklahoma, and California to attend these sessions without any tuition or hotel charges. In future years, these sessions will be provided for tribal leaders in other regions. This is a unique opportunity for policy makers to gain a deep understanding of two issues which are destroying families and creating havoc in Indian communities. While financial considerations often prohibit interested tribal officials from attending such trainings, the IHS grant overcomes this barrier. All eligible tribal leaders are strongly urged to attend these important sessions. For further information, contact Jerry Gardner at (707) 762-8113.

(c) Authority of Secretary not affected

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of Internal Revenue Code of 1986

(1) The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such Code) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal–State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

(Pub.L. 100–497, § 20, Oct. 17, 1988, 102 Stat. 2485.)

Historical and Statutory Notes

References in Text. The Internal Revenue Code of 1986, referred to in subsec. (d), is classified generally to Title 26.

Legislative History. For legislative history and purpose of Pub.L. 100–497, see 1988 U.S.Code and Cong. and Adm.News, p. 3071.

Library References

Indians ⇐9 to 22.
WESTLAW Topic No. 209.
C.J.S. Indians §§ 10 to 65, 90.

§ 2720. Dissemination of information

Consistent with the requirements of this chapter, sections 1301, 1302, 1303 and 1304 of Title 18 shall not apply to any gaming conducted by an Indian tribe pursuant to this chapter.

(Pub.L. 100–497, § 21, Oct. 17, 1988, 102 Stat. 2486.)

Historical and Statutory Notes

Legislative History. For legislative history and purpose of Pub.L. 100–497, see 1988 U.S.Code Cong. and Adm.News, p. 3071.

Library References

Indians ⇐32.5, 32.10.
WESTLAW Topic No. 209.
C.J.S. Indians §§ 11, 20 to 25, 72 to 75.

§ 2721. Severability

In the event that any section or provision of this chapter, or amendment, made by this chapter, is held invalid, it is the intent of Congress that the remaining sections or provisions of this chapter, and amendments made by this chapter, shall continue in full force and effect.

(Pub.L. 100–497, § 22, Oct. 17, 1988, 102 Stat. 2486.)

Historical and Statutory Notes

Legislative History. For legislative history and purpose of Pub.L. 100–497, see 1988 U.S.Code Cong. and Adm.News, p. 3071.

Library References

Statutes ⇐64(2).
WESTLAW Topic No. 361.
C.J.S. Statutes § 96 et seq.

CHAPTER 30—INDIAN LAW ENFORCEMENT REFORM

§ 2801. Definitions

For purposes of this chapter—

(1) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(2) The term "employee of the Bureau" includes an officer of the Bureau.

(3) The term "enforcement of a law" includes the prevention, detection, and investigation of an offense and the detention or confinement of an offender.

(4) The term "Indian country" has the meaning given that term in section 1151 of Title 18.

(5) The term "Indian tribe" has the meaning given that term in section 1301 of this title.

(6) The term "offense" means an offense against the United States and includes a violation of a Federal regulation relating to part or all of Indian country.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "Division of Law Enforcement Services" means the entity established within the Bureau under section 2802(b) of this title.

(9) The term "Branch of Criminal Investigations" means the entity the Secretary is required to establish within the Division of Law Enforcement Services under section 2802(d)(1) of this title.

(Pub.L. 101-379, § 2, Aug. 18, 1990, 104 Stat. 473.)

Historical and Statutory Notes

Codification. "This chapter" was, in the original, "this Act", meaning the Indian Law Enforcement Reform Act, Pub.L. 101-379, Aug. 18, 1990, 104 Stat. 473, which in addition to enacting this chapter, enacted provisions set out as a note under section 2991a of Title 42, The Public Health and Welfare.

Short Title. Section 1 of Pub.L. 101-379 provided that: This Act [enacting this chapter and provisions set out as a note under section 2991a of Title 42, The Public Health and Welfare] may be cited as 'Indian Law Enforcement Reform Act'."

Legislative History. For legislative history and purpose of Pub.L. 101-379, see 1990 U.S.Code Cong. and Adm.News, p. 712.

§ 2802. Indian law enforcement responsibilities

(a) Responsibility of Secretary

The Secretary, acting through the Bureau, shall be responsible for providing, or for assisting in the provision of, law enforcement services in Indian country as provided in this chapter.

(b) Division of Law Enforcement Services; establishment and responsibilities

There is hereby established within the Bureau a Division of Law Enforcement Services which, under the supervision of the Secretary, or an individual designated by the Secretary, shall be responsible for—

(1) carrying out the law enforcement functions of the Secretary in Indian country, and

(2) implementing the provisions of this section.

(c) Additional responsibilities of Division

Subject to the provisions of this chapter and other applicable Federal or tribal laws, the responsibilities of the Division of Law Enforcement Services in Indian country shall include—

(1) the enforcement of Federal law and, with the consent of the Indian tribe, tribal law;

(2) in cooperation with appropriate Federal and tribal law enforcement agencies, the investigation of offenses against criminal laws of the United States;

(3) the protection of life and property;

(4) the development of methods and expertise to resolve conflicts and solve crimes;

(5) the provision of criminal justice remedial actions, correctional and detention services, and rehabilitation;

(6) the reduction of recidivism and adverse social effects;

(7) the development of preventive and outreach programs which will enhance the public conception of law enforcement responsibilities through training and development of needed public service skills;

(8) the assessment and evaluation of program accomplishments in reducing crime; and

(9) the development and provision of law enforcement training and technical assistance.

(d) Branch of Criminal Investigations; establishment, responsibilities, regulations, personnel, etc.

(1) The Secretary shall establish within the Division of Law Enforcement Services a separate Branch of Criminal Investigations which, under such inter-agency agreement as may be reached between the Secretary and appropriate agencies or officials of the Department of Justice and subject to such guidelines as may be adopted by relevant United States attorneys, shall be responsible for the investigation, and presentation for prosecution, of cases involving violations of sections 1152 and 1153 of Title 18, within Indian country.

(2) The Branch of Criminal Investigations shall not be primarily responsible for the routine law enforcement and police operations of the Bureau in Indian country.

(3) The Secretary shall prescribe regulations which shall establish a procedure for active cooperation and consultation of the criminal investigative employees of the Bureau assigned to an Indian reservation with the governmental and law enforcement officials of the Indian tribe located on such reservation.

(4)(i) Criminal investigative personnel of the Branch shall be subject only to the supervision and direction of law enforcement personnel of the Branch or of the Division. Such personnel shall not be subject to the supervision of the Bureau of Indian Affairs Agency Superintendent or Bureau of Indian Affairs Area Office Director. Nothing in this paragraph is intended to prohibit cooperation, coordination, or consultation, as appropriate, with nonlaw enforcement Bureau of Indian Affairs personnel at the agency or area levels, or prohibit or restrict the right of a tribe to contract the investigative program under the authority of Public Law 93–638 or to maintain its own criminal investigative operations.

(ii) At the end of one year following the date of establishment of the separate Branch of Criminal Investigations, any tribe may, by resolution of the governing body of the tribe, request the Secretary to reestablish line authority through the Agency Superintendent or Bureau of Indian Affairs Area Office Director. In the absence of good cause to the contrary, the Secretary, upon receipt of such resolution, shall reestablish the line authority as requested by the tribe.

(e) Division of Law Enforcement Services personnel; education, experience, etc.

(1) The Secretary shall establish appropriate standards of education, experience, training, and other relevant qualifications for law enforcement personnel of the

Division of Law Enforcement Services who are charged with law enforcement responsibilities pursuant to section 2803 of this title.

(2) The Secretary shall also provide for the classification of such positions within the Division of Law Enforcement Services at GS grades, as provided in section 5104 of Title 5, consistent with the responsibilities and duties assigned to such positions and with the qualifications established for such positions.

(3) In classifying positions in the Division of Law Enforcement Services under paragraph (2), the Secretary shall ensure that such positions are classified at GS grades comparable to those for other Federal law enforcement personnel in other Federal Agencies in light of the responsibilities, duties, and qualifications required of such positions.

(Pub.L. 101–379, § 3, Aug. 18, 1990, 104 Stat. 473.)

Historical and Statutory Notes

References in Text. Pub.L. 93–638, referred to in subsec. (d)(4)(i), is the Indian Self-Determination and Education Assistance Act, Pub.L. 93–638, Jan. 4, 1975, 88 Stat. 2205. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Codification. "This chapter" was, in the original, "this Act", meaning the Indian Law Enforcement Reform Act, Pub.L. 101–379, Aug. 18, 1990, 104 Stat. 473, which in addition to enacting this chapter, enacted provisions set out as a note under section 2291a of Title 42, The Public Health and Welfare.

Legislative History. For legislative history and purpose of Pub.L. 101–379, see 1990 U.S.Code Cong. and Adm.News, p. 712.

§ 2803. Law enforcement authority

The Secretary may charge employees of the Bureau with law enforcement responsibilities and may authorize those employees to—

(1) carry firearms;

(2) execute or serve warrants, summonses, or other orders relating to a crime committed in Indian country and issued under the laws of—

(A) the United States (including those issued by a Court of Indian Offenses under regulations prescribed by the Secretary), or

(B) an Indian tribe if authorized by the Indian tribe;

(3) make an arrest without a warrant for an offense committed in Indian country if—

(A) the offense is committed in the presence of the employee, or

(B) the offense is a felony and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing, the felony;

(4) offer and pay a reward for services or information, or purchase evidence, assisting in the detection or investigation of the commission of an offense committed in Indian country or in the arrest of an offender against the United States;

(5) make inquiries of any person, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter relevant to the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the employee to enforce or carry out tribal laws;

(6) wear a prescribed uniform and badge or carry prescribed credentials;

(7) perform any other law enforcement related duty; and

(8) when requested, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement or carrying out of the laws or regulations the agency enforces or administers.

(Pub.L. 101–379, § 4, Aug. 18, 1990, 104 Stat. 475.)

Historical and Statutory Notes

Legislative History. For legislative history and purpose of Pub.L. 101–379, see 1990 U.S.Code Cong. and Adm.News, p. 712.

§ 2804. Assistance by other agencies

(a) Agreements for use of personnel or facilities of Federal, tribal, State, or other government agency

The Secretary may enter into an agreement for the use (with or without reimbursement) of the personnel or facilities of a Federal, tribal, State, or other government agency to aid in the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the Secretary to enforce tribal laws. The Secretary may authorize a law enforcement officer of such an agency to perform any activity the Secretary may authorize under section 2803 of this title.

(b) Agreements as in accord with agreements between Secretary and Attorney General

Any agreement entered into under this section relating to the enforcement of the criminal laws of the United States shall be in accord with any agreement between the Secretary and the Attorney General of the United States.

(c) Limitations on use of personnel of non-Federal agency

The Secretary may not use the personnel of a non-Federal agency under this section in an area of Indian country if the Indian tribe having jurisdiction over such area of Indian country has adopted a resolution objecting to the use of the personnel of such agency. The Secretary shall consult with Indian tribes before entering into any agreement under subsection (a) of this section with a non-Federal agency that will provide personnel for use in any area under the jurisdiction of such Indian tribes.

(d) Authority of Federal agency head to enter into agreement with Secretary

Notwithstanding the provisions of section 1535 of Title 31, the head of a Federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with the Secretary under subsection (a) of this section.

(e) Authority of Federal agency head to enter into agreement with Indian tribe

The head of a Federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with an Indian tribe relating to—

(1) the law enforcement authority of the Indian tribe, or

(2) the carrying out of a law of either the United States or the Indian tribe.

(f) Status of person not otherwise a Federal employee

While acting under authority granted by the Secretary under subsection (a) of this section, a person who is not otherwise a Federal employee shall be considered to be—

(1) an employee of the Department of the Interior only for purposes of—

(A) the provisions of law described in section 3374(c)(2) of Title 5, and

(B) sections 111 and 1114 of Title 18, and

(2) an eligible officer under subchapter III of chapter 81 of Title 5.

(Pub.L. 101-379, § 5, Aug. 18, 1990, 104 Stat. 476.)

Historical and Statutory Notes

Legislative History. For legislative history and purpose of Pub.L. 101-379, see 1990 U.S.Code Cong. and Adm.News, p. 712.

§ 2805. Regulations

After consultation with the Attorney General of the United States, the Secretary may prescribe under this chapter regulations relating to the enforcement of criminal laws of the United States and regulations relating to the consideration of applications for contracts awarded under the Indian Self-Determination Act to perform the functions of the Branch of Criminal Investigations.

(Pub.L. 101-379, § 6, Aug. 18, 1990, 104 Stat. 476.)

Historical and Statutory Notes

References in Text. The Indian Self-Determination Act, referred to in text, is Title I of Pub.L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which enacted sections 450f to 450n of this title and section 2004b of Title 42, The Public Health and Welfare, and amended section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 456 of the Appendix to Title 50, War and National Defense. For complete classification of Title I to the Code, see Short Title note set out under section 450 of this title and Tables.

Codification. "This chapter" was, in the original, "this Act", meaning the Indian Law Enforcement Reform Act, Pub.L. 101-379, Aug. 18, 1990, 104 Stat. 473, which in addition to enacting this chapter, enacted provisions set out as a note under section 2991a of Title 42, The Public Health and Welfare.

Legislative History. For legislative history and purpose of Pub.L. 101-379, see 1990 U.S.Code Cong. and Adm.News, p. 712.

§ 2806. Jurisdiction

(a) Investigative jurisdiction over offenses against criminal laws

The Secretary shall have investigative jurisdiction over offenses against criminal laws of the United States in Indian country subject to an agreement between the Secretary and the Attorney General of the United States.

(b) Exercise of investigative authority

In exercising the investigative authority conferred by this section, the employees of the Bureau shall cooperate with the law enforcement agency having primary investigative jurisdiction over the offense committed.

(c) Law enforcement commission or other delegation of prior authority not invalidated or diminished

This chapter does not invalidate or diminish any law enforcement commission or other delegation of authority issued under the authority of the Secretary before August 18, 1990.

(d) Authorities in addition to prior authority; civil or criminal jurisdiction, law enforcement, investigative, or judicial authority, of United States, etc., unaffected

The authority provided by this chapter is in addition to, and not in derogation of, any authority that existed before August 18, 1990. The provisions of this chapter alter neither the civil or criminal jurisdiction of the United States, Indian tribes, States, or other political subdivisions or agencies, nor the law enforcement, investigative, or judicial authority of any Indian tribe, State, or political subdivision or agency thereof, or of any department, agency, court, or official of the United States other than the Secretary.

(Pub.L. 101-379, § 7, Aug. 18, 1990, 104 Stat. 476.)

Historical and Statutory Notes

Codification. "This chapter" was, in the original, "this Act", meaning the Indian Law Enforcement Reform Act, Pub.L. 101-379, Aug. 18, 1990, 104 Stat. 473, which in addition to enacting this chapter, enacted provisions set out as a note under section 2991a of Title 42, The Public Health and Welfare.

Legislative History. For legislative history and purpose of Pub.L. 101-379, see 1990 U.S.Code Cong. and Adm.News, p. 712.

§ 2807. Uniform allowance

Notwithstanding the limitation in section 5901(a) of Title 5, the Secretary may provide a uniform allowance for uniformed law enforcement officers under section 2803 of this title of not more than $400 a year.

(Pub.L. 101-379, § 8, Aug. 18, 1990, 104 Stat. 477.)

Historical and Statutory Notes

Legislative History. For legislative history and purpose of Pub.L. 101-379, see 1990 U.S.Code Cong. and Adm.News, p. 712.

§ 2808. Source of funds

Any expenses incurred by the Secretary under this chapter shall be paid from funds appropriated under section 13 of this title.

(Pub.L. 101-379, § 9, Aug. 18, 1990, 104 Stat. 477.)

Historical and Statutory Notes

Codification. "This chapter" was, in the original, "this Act", meaning the Indian Law Enforcement Reform Act, Pub.L. 101–379, Aug. 18, 1990, 104 Stat. 473, which in addition to enacting this chapter, enacted provisions set out as a note under section 2991a of Title 42, The Public Health and Welfare.

Legislative History. For legislative history and purpose of Pub.L. 101–379, see 1990 U.S.Code Cong. and Adm.News, p. 712.

§ 2809. Reports to tribes

(a) Reports by law enforcement officials of the Bureau or Federal Bureau of Investigation

In any case in which law enforcement officials of the Bureau or the Federal Bureau of Investigation decline to initiate an investigation of a reported violation of Federal law in Indian country, or terminate such an investigation without referral for prosecution, such officials are authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the investigation was declined or terminated.

(b) Reports by United States attorney

In any case in which a United States attorney declines to prosecute an alleged violation of Federal criminal law in Indian country referred for prosecution by the Federal Bureau of Investigation or the Bureau, or moves to terminate a prosecution of such an alleged violation, the United States attorney is authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the prosecution was declined or terminated.

(c) Case file included within reports

In any case—

(1) in which the alleged offender is an Indian, and

(2) for which a report is submitted under subsection (a) or (b) of this section,

the report made to the Indian tribe may include the case file, including evidence collected and statements taken, which might support an investigation or prosecution of a violation of tribal law.

(d) Transfer or disclosure of confidential or privileged communication, information or sources to tribal officials

Nothing in this section shall require any Federal agency or official to transfer or disclose any confidential or privileged communication, information, or sources to the officials of any Indian tribe. Federal agencies authorized to make reports pursuant to this section shall, by regulations, adopt standards for the protection of such communications, information, or sources.

(Pub.L. 101–379, § 10, Aug. 18, 1990, 104 Stat. 477.)

Historical and Statutory Notes

Legislative History. For legislative history and purpose of Pub.L. 101–379, see 1990 U.S.Code Cong. and Adm.News, p. 712.

CHAPTER 31—NATIVE AMERICAN LANGUAGES ACT

§ 2901. Findings

The Congress finds that—

(1) the status of the cultures and languages of Native Americans is unique and the United States has the responsibility to act together with Native Americans to ensure the survival of these unique cultures and languages;

(2) special status is accorded Native Americans in the United States, a status that recognizes distinct cultural and political rights, including the right to continue separate identities;

VICTIMS OF CHILD ABUSE ACT

18 U.S.C.A. s 3509

UNITED STATES CODE ANNOTATED
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART II--CRIMINAL PROCEDURE
CHAPTER 223--WITNESSES AND EVIDENCE
Current through P.L. 102-255, approved 3-12-92

s 3509. Child victims' and child witnesses' rights

(a) Definitions.--For purposes of this section--

(1) the term "adult attendant" means an adult described in subsection (i) who accompanies a child throughout the judicial process for the purpose of providing emotional support;

(2) the term "child" means a person who is under the age of 18, who is or is alleged to be--

(A) a victim of a crime of physical abuse, sexual abuse, or exploitation; or

(B) a witness to a crime committed against another person;

(3) the term "child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(4) the term "physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(5) the term "mental injury" means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;

(6) the term "exploitation" means child pornography or child prostitution;

(7) the term "multidisciplinary child abuse team" means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse;

(8) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(9) the term "sexually explicit conduct" means actual or simulated--

(A) sexual intercourse, including sexual contact in the manner of genital- genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;
(D) lascivious exhibition of the genitals or pubic area of a person or animal; or
(E) sadistic or masochistic abuse;

(10) the term "sex crime" means an act of sexual abuse that is a criminal act;

(11) the term "exploitation" means child pornography or child prostitution;

(12) the term "negligent treatment" means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(13) the term "child abuse" does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(b) **Alternatives to live in-court testimony.**—
(1) Child's live testimony by 2-way closed circuit television.—
(A) In a proceeding involving an alleged offense against a child, the attorney for the government, the child's attorney, or a guardian ad litem appointed under subdivision (h) may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised by 2-way closed circuit television. The person seeking such an order shall apply for such an order at least 5 days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(B) The court may order that the testimony of the child be taken by closed- circuit television as provided in subparagraph (A) if the court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:
(i) The child is unable to testify because of fear.
(ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.
(iii) The child suffers a mental or other infirmity.
(iv) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(C) The court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child of one or more of the factors described in subparagraph (B) is so substantial as to justify an order under subparagraph (A), the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

(D) If the court orders the taking of testimony by television, the attorney for the government and the attorney for the defendant not including an attorney pro se for a party shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross- examination. The only other persons who may be permitted in the room with the child during the child's testimony are—
(i) the child's attorney or guardian ad litem appointed under subdivision (h);

(ii) Persons necessary to operate the closed-circuit television equipment;
(iii) A judicial officer, appointed by the court; and
(iv) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant.

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image, and the voice of the judge.

(2) Videotaped deposition of child.
(A) In a proceeding involving an alleged offense against a child, the attorney for the government, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed under subdivision (h) may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.
(B)(i) Upon timely receipt of an application described in subparagraph (A), the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:
(I) The child will be unable to testify because of fear.
(II) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.
(III) The child suffers a mental or other infirmity.
(IV) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(ii) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in clause (i), the court shall order that the child's deposition be taken and preserved by videotape.

(iii) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are—
(I) the attorney for the Government;
(II) the attorney for the defendant;
(III) the child's attorney or guardian ad litem appointed under subdivision (h);
(IV) persons necessary to operate the videotape equipment;
(V) subject to clause (iv), the defendant; and
(VI) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

(iv) If the preliminary finding of inability under clause (i) is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may

order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

(v) Handling of videotape.--The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(B) If at the time of trial the court finds that the child is unable to testify as for a reason described in subparagraph

(C)(i), the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The court shall support a ruling under this subparagraph with findings on the record.

(D) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(E) In connection with the taking of a videotaped deposition under this paragraph, the court may enter a protective order for the purpose of protecting the privacy of the child.

(F) The videotape of a deposition taken under this paragraph shall be destroyed 5 years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

(c) Competency examinations.

(1) Effect on federal rules of evidence.--Nothing in this subdivision shall be construed to abrogate rule 601 of the Federal Rules of Evidence.

(2) Presumption.--A child is presumed to be competent.

(3) Requirement of written motion.--A competency examination regarding a child witness may be conducted by the court only upon written motion and offer of proof of incompetency by a party.

(4) Requirement of compelling reasons.--A competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons exist. A child's age alone is not a compelling reason.

(5) Persons permitted to be present.--The only persons who may be permitted to be present at a competency examination are--

(A) the judge;

(B) the attorney for the government;

(C) the attorney for the defendant;

(D) a court reporter; and

(E) persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.

(6) Not before jury.--A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury.

(7) Direct examination of child.--Examination of a child related to competency shall normally be conducted by the court on the basis of questions submitted by the attorney for the Government and the attorney for the defendant including a party acting as an attorney pro se. The court may permit an attorney but not a party acting as an attorney pro se to examine a child directly on competency if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

(8) Appropriate questions.--The questions asked at the competency examination of a child shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer imple questions.

(9) Psychological and psychiatric examinations.--Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need.

(d) **Privacy protection.**

(1) Confidentiality of information.

(A) A person acting in a capacity described in subparagraph (B) in connection with a criminal proceeding shall--

(i) keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does not have reason to know their contents has access; and

(ii) disclose documents described in clause (i) or the information in them that concerns a child only to persons who, by reason of their participation in the proceeding, have reason to know such information.

(B) Subparagraph (A) applies to--

(i) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person hired by the government to provide assistance in the proceeding;

(ii) employees of the court;

(iii) the defendant and employees of the defendant, including the attorney for the defendant and persons hired by the defendant or the attorney for the defendant to provide assistance in the proceeding; and

(iv) members of the jury.

(2) Filing under seal.--All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court--

(A) the complete paper to be kept under seal; and

(B) the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.

(3) Protective orders.--

(A) On motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

(B) A protective order issued under subparagraph (A) may--

(i) provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and

(ii) provide for any other measures that may be necessary to protect the privacy of the child.

(4) Disclosure of information.--This subdivision does not prohibit disclosure of the name of or other information concerning a child to the defendant, the attorney for the defendant, a multidisciplinary child abuse team, a guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

(e) Closing the courtroom.--When a child testifies the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate. Such an order shall be narrowly tailored to serve the government's specific compelling interest.

(f) Victim impact statement.--In preparing the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, the probation officer shall request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. A guardian ad litem appointed under subdivision (h) shall make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. A guardian ad litem shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

(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.

(2) Role of multidisciplinary child abuse teams.--The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including--

(A) medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;
(B) telephone consultation services in emergencies and in other situations;
(C) medical evaluations related to abuse or neglect;
(D) psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;
(E) expert medical, psychological, and related professional testimony;
(F) case service coordination and assistance, including the location of services available from public and private agencies in the community; and
(G) training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

(h) Guardian ad litem.

(1) In general.—The court may appoint a guardian ad litem for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child. In making the appointment, the court shall consider a prospective guardian's background in, and familiarity with, the judicial process, social service programs, and child abuse issues. The guardian ad litem shall not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

(2) Duties of guardian ad litem.--A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. The guardian ad litem may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. (The extent of access to grand jury materials is limited to the access routinely provided to victims and their representatives.) A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem.

(3) Immunities.--A guardian ad litem shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with the guardian's lawful duties described in subpart (2).

dult attendant.-- A child testifying at or attending a judicial proceeding shall have the right .o be accompanied by an adult attendant to provide emotional support to the child. The court,

at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.

(j) Speedy trial.—In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government or a guardian ad litem, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child.

(k) Extension of child statute of limitations.—No statute of limitation that would otherwise preclude prosecution for an offense involving the sexual or physical abuse of a child under the age of 18 years shall preclude such prosecution before the child reaches the age of 25 years. If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

(l) Testimonial aids.—The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.

(Added Pub.L. 101-647, Title II, s 225(a), Nov. 29, 1990, 104 Stat. 4798.)

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

References in Text

The Federal Rules of Evidence, referred to in subsec. (c)(1), are set out in Title 28.

The Federal Rules of Criminal Procedure, referred to in subsec. (f), are set out in this title.

Legislative History

For legislative history and purpose of Pub.L. 101-647, see 1990 U.S.Code Cong. and Adm.News, p. 6472.

REFERENCES

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1. Constitutionality

Provision of Federal Victims' Protection and Rights Act requiring documents that disclose name of or other information concerning child to be filed under seal without court order nandated narrow redaction of identifying information, did not require "closure" of pretrial proceeding or trial, was narrowly tailored to serve compelling interest of protecting identity of children, and, therefore, complied with defendants' right to public trial and press' right of access to public documents; information concerning specific allegations, identity of defendants, and nature of crime are made fully available to public. U.S. v. Broussard, D.Or.1991, 767 F.Supp. 1545.

Victims' Rights Act subsection which provides that all documents that disclose name or any other information concerning child shall not be disclosed except to persons who, by reason of their participation in proceeding, have reason to know such information, does not restrict criminal defendant's rights of discovery but only requires that information concerning child which would lead to identification of particular child be kept confidential and, thus, does not inhibit defendant's Fifth and Sixth Amendment rights to adequately prepare defense. U.S. v. Broussard, D.Or.1991, 767 F.Supp. 1536.

2. ----- Speedy trial

Victims' Rights Act subsection permitting court to designate proceeding in which child is called to give testimony as being of special public importance and providing that court shall expedite such proceedings and ensure that they take precedence over any other proceeding does not infringe upon defendant's Sixth Amendment right to adequately prepare for trial; impact of statute is limited in providing that court must consider presence of child victim or witness when considering motion for continuance or any other action that might affect Speedy Trial Act and requires that court give child abuse cases priority over other criminal cases. U.S. v. Broussard, D.Or.1991, 767 F.Supp. 1536.

3. Judges within section

The term "judge," as used in confidentiality provision of Victims' Protection and Rights Act listing those who may be present during "closed" proceedings includes any member of judge's staff that, in his discretion, he considers necessary to assist him or to ensure efficient management and disposition of proceedings. U.S. v. Broussard, D.Or.1991, 767 F.Supp. 1536.

4. Athletic exhibition exploitation

Victims' Rights Act, which is directed solely to special procedural problems that arise in cases in which children are victims of child abuse or are witnesses to crime committed against another person, was broad enough to encompass case involving alleged conspiracy to market children in organization as superior athletic "exhibition team" and forcing children to engage in rigorous exercise, and threatening physical punishment for failure to perform. U.S. v. Broussard, D.Or.1991, 767 F.Supp. 1536.

5. Standing to sue

Defendants who had not been charged with violation of confidentiality provision of Victims' Rights Act lacked standing to make challenge that statute infringed upon First Amendment rights of freedom of association and freedom of religion because it impermissibly interfered with their ability to communicate with other members of their church. U.S. v. Broussard, D.Or.1991, 767 F.Supp. 1536.

18 U.S.C.A. s 3509
18 USCA s 3509
END OF DOCUMENT

VICTIM-WITNESS COORDINATORS

State	District	VW Coordinator	Mailing Address	Telephone Number
ALASKA		Chuck Farmer	Room C-252 Federal Building & Courthouse 701 C Street Mail Box 9 Anchorage, AK 99513	(907) 271-5071
ARIZONA		Ms. Jan Emmerich	4000 US Courthouse 230 North First Avenue Phoenix, AZ 85025	(602) 379-3913
IDAHO		Ms. Linda Hopfenbeck	Room 328 Federal Building Box 037 550 W. Fort Street Boise, ID 83724	(208) 334-1211
MICHIGAN	Western	Ms. Andrea Morse	399 Federal Building Grand Rapids, MI 49503	(616) 456-2404
MINNESOTA		Ms. Karen Jambor	234 U.S. Courthouse 110 South 4th Street Minneapolis, MN 55401	(612) 348-1500
MISSISSIPPI	Southern	Mr. Derryle Smith	245 East Capitol Street Room 324 Jackson, MS 39201	(601) 965-4480
MONTANA		Ms. Beth Binstock	Post Office Box 1478 Billings, MT 59103	(406) 657-6101
NEVADA		Ms. Robin Skone-Palmer	Box 16030 Las Vegas, NV 89101	(702) 388-6336
NEW MEXICO		Mr. Kenneth Berry	Post Office Box 607 Albuquerque, NM 87103	(505) 766-3341
NORTH DAKOTA		Ms. Carol Fricke	452 Federal Building and Post Office Third and Rosser Avenue Bismark, ND 58501	(701) 239-5671

State	District	VW Coordinator	Mailing Address	Telephone Number
OKLAHOMA	Eastern	Mr. Carl Kelley	333 Federal Courthouse Fifth and Okmulgee Muskogee, OK 74401	(918) 687-2543
	Northern	Mr. Randy Edgmon	3600 U.S. Courthouse 333 West Fourth Street Tulsa, OK 74103	(918) 581-7463
SOUTH DAKOTA		Ms. Nancy Stoner Lampy	326 Federal Building & U.S. Courthouse 225 S. Pierre St., Room 326 Pierre, SD 57501	(605) 224-5402
UTAH		Mr. Robert A. Mucci	U.S. Courthouse Room 476 350 South Main Street Salt Lake City, UT 84101	(801) 524-5682
WASHINGTON	Western	Mr. Stephen Carlisle	3600 Seafirst 5th Avenue Plaza 800 Fifth Avenue Seattle, WA 98104	(206) 442-7970
WISCONSIN	Eastern	Ms. Francie Wendleborn	330 Federal Building 517 East Wisconsin Avenue Milwaukee, WI 53202	(414) 297-1700

1/16/91

U.S. Department of Justice
United States Attorney's Office
District of South Dakota

Federal Victim/Witness Program

The goal of the Federal Victim/Witness Program is to ensure that victims of federal crime are treated with fairness and respect for the victim's dignity and privacy. This program carries out the mandates of the *Federal Victim and Witness Protection Act of 1982*, the *Victims' Rights and Restitution Act of 1990*, and the *Victims of Child Abuse Act of 1990*. These victim/witness assistance and protection laws apply to all victims and witnesses of federal crime who have suffered physical, financial, or emotional trauma. A variety of notification and assistance services are provided to victims and witnesses of federal crime by Assistant United States Attorneys and other U.S. Attorney's Office staff, with the assistance of federal and tribal law enforcement agencies.

NOTIFICATION SERVICES

When a federal criminal case reaches the prosecution stage of the criminal justice process, notification services are provided concerning the status of the case involving the victim or witness. If requested by the victim or witness, the following notifications may be made.

— The release or detention status of an offender pending judicial proceedings; or the placement of the offender in a pretrial diversion program; and the conditions thereof;

— The filing of charges against a suspected offender, or the proposed dismissal of any or all charges, including dismissal in favor of state prosecution;

— The scheduling, including scheduling changes and/or continuances, of each court proceeding that the victim or witness is either required to attend or entitled to attend;

— The terms of any negotiated plea, including the acceptance of a plea of guilty or *nolo contendere* or the rendering of a verdict after trial;

— The opportunity to present to the court in the presentence report a victim impact statement; and

— The date set for sentencing if the offender is found guilty; and the sentence imposed;

— Entry of the victim or witness, if appropriate, into the Bureau of Prisons' Victim and Witness Notification Program.

OTHER ASSISTANCE SERVICES

— To the extent possible, provide victims and witnesses with a waiting area removed from the offender and defense witnesses during court proceedings.

— Provide support and assistance to victims and witnesses during court appearances or arrange for same.

— Upon request by a victim or witness, provide assistance in notifying the employer if cooperation in the investigation or prosecution of the crime causes his/her absence from work; and the creditors, where appropriate, if the crime or cooperation in its investigation or prosecution affects his/her ability to make timely payments.

— Routinely provide information or assistance concerning transportation, parking, lodging, translator and related services.

— Provide referrals to existing agencies for shelter, counseling, compensation, and other types of assistance services when needed.

For more information, please contact:

Nancy Stoner Lampy
Victim/Witness Coordinator
United States Attorney's Office
225 South Pierre Street, Room 326
Pierre, South Dakota 57501-2489
605-224-5402 (Fax 605-224-8305)

National Association of Crime Victim Compensation Boards

CRIME VICTIM COMPENSATION AVAILABLE TO NATIVE AMERICANS

Innocent victims of violent crime suffer not only physical and emotional pain. They also face a financial burden resulting from medical and hospital bills, lost wages, and even funeral expenses if they do not survive.

Nearly every state now has a program to ease this burden by reimbursing victims for many of these costs, if they are not paid from insurance or other sources. Usually the programs cover medical expenses, mental health counseling, lost wages and support, and funeral expenses. Most of the programs do not cover property losses, such as those resulting from theft.

Native Americans are eligible to apply for crime victim compensation, whether or not the crimes fall under tribal, state or federal jurisdiction. To qualify, victims are required to report crimes promptly, cooperate fully with police and prosecutors, and submit appropriate applications. Victims should contact their state or local compensation program or law enforcement agency for assistance or information. A listing of the phone numbers for each state compensation program is attached.

The geographical remoteness of some Indian lands, as well as cultural and language differences, pose special problems to compensation programs in reaching Native American victims and meeting their needs. The programs can use the help of Native American authorities, institutions, and social and medical service providers in making victim compensation opportunities available. The National Association of Crime Victim Compensation Boards has established a committee to assist in this effort. For further information, please call the co-chairs of the Association's Native American Affairs Committee, Sylvia Bagdonas (307/777-7841) or Barbara Kendall (303/441-3730), or Executive Director Dan Eddy (202/293-5420).

To: Barb Kendall

NATIONAL ASSOCIATION OF
CRIME VICTIM COMPENSATION BOARDS
P.O. Box 16003, Alexandria, VA 22302
(703) 370-2996

FINANCIAL ASSISTANCE FOR INDIAN CRIME VICTIMS

Native American victims of violent crime who have suffered personal injuries are eligible to apply for financial assistance to cover their out-of-pocket expenses.

Compensation is available to pay victims for medical services, including mental health counseling, when the victim is charged for those costs, and for lost wages and support. Services provided free of charge or for which other insurance is available are not covered. Families of homicide victims also are eligible for funeral expenses. Property damage, theft or loss is generally not covered.

Crimes that are covered include physical assault; rape and sexual assault; child sexual abuse; homicide; and other crimes resulting in injuries. Property crimes, like theft and burglary, are not covered, unless physical injury results. Indians are eligible to apply for crime victim compensation whether or not the crimes fall under tribal, state or federal jurisdiction.

To qualify, victims are required to report crimes promptly, cooperate fully with police and prosecutors, and submit appropriate applications. Victims must be innocent of any criminal activity or misconduct that contributed to their injury. Apprehension or conviction of a suspect is not required.

Victims should contact their state or local compensation program for assistance or information. A contact list of the programs is attached. Information about the programs also should be readily available in state and local police and prosecutors' offices.

The geographical remoteness of some Indian lands, as well as cultural and language differences, pose special problems to compensation programs in reaching Native American victims and meeting their needs. The compensation programs can use the help of Native American tribal authorities, law enforcement officers, social workers, medical providers, print and broadcast media, and other concerned groups and individuals in making victim compensation opportunities available.

The National Association of Crime Victim Compensation Boards has established a committee to assist in this effort. For further information, please call Executive Director Dan Eddy at (703) 370-2996.

September 1, 1992

CRIME VICTIM COMPENSATION PROGRAM CONTACT LIST

ALABAMA
Anita A. Drummond (205) 242-4007
ALASKA
Nola K. Capp (907) 465-3040
ARIZONA
Rita Yerke (602) 542-1928
ARKANSAS
Ginger Bailey (501) 682-1323
CALIFORNIA
Ted Boughton (916) 323-6251
COLORADO
Bob Bush (303) 239-4442
CONNECTICUT
John Ford (203) 529-3089
DELAWARE
Ed Stansky (302) 995-8383
DISTRICT OF COLUMBIA
Delores Hollingsworth (202) 576-7090
FLORIDA
Meg Bates (904) 488-0848
GEORGIA
Trixie Stinson (404) 656-1721
HAWAII
Estra Quilausing (808) 587-1143
IDAHO
Kit Furey (208) 334-6000
ILLINOIS
Ross Harano/Dave Ubell (312) 814-2581
INDIANA
Ray Johnson (317) 232-3809
IOWA
Kelly Brodie (515) 281-5044
KANSAS
Betty Bomar (913) 296-2359
KENTUCKY
Jackie Howell (502) 564-2290
LOUISIANA
Rosanna Marino (504) 925-4437
MAINE
Joe Wannamaker (207) 626-8510
MARYLAND
Esther Scaljon (410) 764-4214
MASSACHUSETTS
Pamela Nolan Young (617) 727-2200, ext. 2875
MICHIGAN
Michael J. Fullwood (517) 373-7373
MINNESOTA
Donna Anderson (612) 642-0395
MISSISSIPPI
Sandra Morrison (800) 829-6766
MISSOURI
Connie Souden (314) 526-6006
MONTANA
Cheryl Bryant (406) 444-3653
NEBRASKA
Nancy Steeves (402) 471-2828
NEVADA
Bryan Nix (702) 486-6492
Gina Crown (702) 688-2500
NEW HAMPSHIRE
Mark Thompson (603) 271-6371
Tara Bickford Bailey (603) 271-1284
NEW JERSEY
Jacob Toporek (201) 648-2107
NEW MEXICO
Larry Tackman (505) 841-9432
NEW YORK
Barbara Leak (212) 417-5133
Lorraine Felegy (518) 457-8001
NORTH CAROLINA
Art Zeidman (919) 733-7974
NORTH DAKOTA
Paul Coughlin (701) 224-3770
OHIO
John Annarino (614) 466-7190
Sally Cooper (614) 466-5610
OKLAHOMA
Suzanne Breedlove (405) 521-2330
OREGON
Gerri L. Fitzgerald (503) 378-5348
PENNSYLVANIA
Marianne F. McManus (717) 783-5153
RHODE ISLAND
Robert J. Melucci (401) 277-2500
Samuel A. Lazieh (401) 277-2287
SOUTH CAROLINA
Richard Walker (803) 737-9465
SOUTH DAKOTA
Mimi Olson (605) 773-3478
TENNESSEE
Susan Clayton (615) 741-2734
TEXAS
Mine Epps/Steve Quick (512) 462-6400
UTAH
Dan R. Davis (801) 533-4000
VERMONT
Patricia Hayes (802) 828-3374
VIRGIN ISLANDS
Ruth Smith (809) 774-1166
VIRGINIA
Robert Armstrong (804) 367-8686
WASHINGTON
Richard Ervin (206) 586-4089
WEST VIRGINIA
Cheryle M. Hall (304) 348-3471
WISCONSIN
Carol Latham (608) 266-6470
WYOMING
Sylvia Bagdonas (307) 635-4050

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