

The National Coordination Committee on the
American Indian/Alaska Native
Sexual Assault Nurse Examiner-Sexual Assault
Response Team Initiative

Report to the U.S. Attorney General on
Improving Federal Agency Response to Sexual
Violence in Tribal Nations: Issues and
Recommendations

June 2014

"When one in three Native American women will be raped in their lifetimes, that is an assault on our national conscience; it is an affront to our shared humanity; it is something that we cannot allow to continue."

—President Barack Obama, July 29, 2010, at the signing of the Tribal Law and Order Act of 2010.

National Coordination Committee Report to Attorney General Holder

June 2014

Dear Mr. Attorney General:

Since 2009, the Federal Government has responded to the long-standing criminal justice crisis in tribal nations¹ in unprecedented ways. The leadership that the Department of Justice (DOJ) has provided to inspire lasting change has truly been exceptional. In addition, your administration has gone to tremendous lengths to support the important legislative changes found in the Tribal Law and Order Act of 2010 and the Violence Against Women Reauthorization Act of 2013. These efforts are already changing lives, enhancing justice, and empowering tribal nations.

There is more to be done.

A problem that took centuries to create will not be resolved quickly. While great strides have been made in terms of policy and legislation, the reality for many individual Native victims of sexual assault is that the criminal justice system is not working. We know that your administration is committed to fixing what is broken and strengthening what is working.

The Office for Victims of Crime (OVC) established the National Coordination Committee on the American Indian/Alaska Native Sexual Assault Nurse Examiner–Sexual Assault Response Team Initiative (Committee) in 2011 to advise you of potential solutions to complex issues that arise when federal, tribal, state, and local providers attempt to coordinate a response to victims of sexual violence, including women, children, and men. The 14 Committee members include representatives from diverse national tribal organizations; experts in forensic nursing, tribal courts, Alaska Native issues, and child sexual abuse; and representatives from five federal agencies with responsibility for law enforcement, prosecution, health care, and victim services. We have worked for 16 months to consider and develop the recommendations in this document. We respectfully present them now and are committed to seeing them swiftly implemented.

As experts in our fields, we have developed a set of concrete recommendations that we believe will serve two purposes. First, implementation of these recommendations will improve the effectiveness and efficiency of the federal system's response to adult and child victims of sexual violence in tribal nations. Second, implementation of these recommendations will ensure that the progress made on this issue will be institutionalized throughout DOJ and will lead to lasting, systemic change that will survive transitions between administrations.

¹ This report emphasizes the importance of the government-to-government relationship between the United States and federally-recognized Indian tribes, referred to in this report as tribal nations. By "tribal nations" we intend to be inclusive of Alaska Native villages as sovereign governments. We also recognize and respect that many Native people belong to inter-tribal urban communities, though most of the recommendations in this Report do not directly relate to sexual violence response in such communities.

Our recommendations focus on problems and issues over which you and the DOJ have jurisdictional authority, responsibility, or influence. They provide suggested actions that will change the way the Federal Government responds to sexual violence in tribal nations. The recommendations address four critical areas:

- Federal agency coordination and collaboration at the local level;
- Department of Justice personnel policy changes;
- Department of Justice grant solicitations and funding; and
- Public safety and public health.

We respectfully request that you review these recommendations and the accompanying suggested steps toward implementation and direct DOJ agencies and offices to begin the implementation process of the recommendations without delay.²

Given the need for collaboration in addressing sexual violence responses, the commitment and participation of federal agencies outside of DOJ will be crucial to the successful implementation of these recommendations. To further promote interagency cooperation and collaboration, we request that you convene a Principal's Meeting with cabinet-level personnel from other federal agencies or use other appropriate forums, such as The White House Council on Native American Affairs, to share these recommendations and encourage their implementation across agencies.

Thank you for the opportunity to participate in this vital initiative and to recommend steps for a more just, effective, and efficient federal response to victims of sexual violence in American Indian and Alaska Native communities. We stand ready to support and assist in any implementation efforts going forward.

We dedicate this report to the many victims and survivors of sexual violence throughout tribal nations.

Respectfully,

The National Coordination Committee on the
AI/AN SANE-SART Initiative

² The Federal Government has trust obligations to all Indian tribes. Certain federal laws such as PL280 delegated criminal justice authority to state governments for some tribes. While the Federal Government does not have authority to investigate and prosecute sexual violence in all tribal nations, we recommend that DOJ welcome state and local officials to participate in relevant meetings or trainings that may enhance their ability to respond to victims of sexual violence in collaboration with tribal governments, emphasizing the sovereignty of tribal nations and the expertise of tribal leaders and victim advocates.

National Coordination Committee Report to Attorney General Holder

cc: President Barack Obama

The Hon. Sally Jewell, Secretary of the Interior

Mr. Kevin K. Washburn, Assistant Secretary of the Interior, Bureau of Indian Affairs

Ms. Sylvia Mathews Burwell, Secretary of Health and Human Services

Dr. Yvette Roubideaux, Acting Director, Indian Health Service

Brian Cladoosby, *Swinomish Indian Tribal Community*, President, National Congress of American Indians

National Coordination Committee Members

Honorable Peggy L. Bird, J.D., *Kewa/Santo Domingo Pueblo*
Tribal Court Judge
National American Indian Court Judges Association

Hallie Bongar White, J.D.
Executive Director
Southwest Center for Law and Policy

Sarah Collins, J.D., *Oglala Sioux Tribe*
Assistant United States Attorney
United States Attorney's Office, District of South Dakota

Darren Cruzan, *Miami Tribe of Oklahoma*
Director, Office of Justice Services
U.S. Department of the Interior, Bureau of Indian Affairs

Kim Day, RN, FNE, SANE-A, SANE-P
SAFE Technical Assistance Project Director
International Association of Forensic Nurses

Sarah Deer, J.D., *Muscogee (Creek) Nation*
Associate Professor, William Mitchell College of Law
National Coordination Committee Chair

Bea Hanson, Ph.D.
Principal Deputy Director
U.S. Department of Justice, Office on Violence Against Women

Susan Karol, M.D., *Tuscarora Indian Nation*
Chief Medical Officer
U.S. Department of Health and Human Services, Indian Health Service

Donna LC Keeler, *Eastern Shoshone Tribe*
Executive Director, South Dakota Urban Indian Health, Inc.
Representing the National Council of Urban Indian Health

Linda Logan, M.S.W., *Oklahoma Choctaw*
President, Native American Pathways
Representing the National Indian Child Welfare Association

Juana Majel Dixon, Ph.D., *Pauma Band of Mission Indians*
Tribal Leadership/Co-Chair, Stop Violence Against Native Women Task Force
National Congress of American Indians

Shirley Moses, M.Ed., *Inupiat Eskimo*
Nonprofit Organization Management Professional

Kathryn Turman
Assistant Director, Office for Victim Assistance
U.S. Department of Justice, Federal Bureau of Investigation

Geri Wisner, J.D., *Muscogee (Creek) Nation*
Tribal Prosecutor
Executive Director, Native American Children's Alliance

**NATIONAL COORDINATION COMMITTEE
RECOMMENDATIONS FOR THE U.S.
ATTORNEY GENERAL**

ISSUE 1: FEDERAL AGENCY COORDINATION AND COLLABORATION AT THE LOCAL LEVEL

The difficulty in developing a seamless and coordinated response from federal, state, local, and tribal agencies to American Indian/Alaska Native (AI/AN) victims of sexual violence is a significant challenge facing the U.S. Department of Justice. The intersection of three jurisdictions—state, tribal, and federal—has been, and continues to be, the origin of many challenges to the administration of criminal justice and the provision of services to crime victims in Indian Country. A patchwork of federal agencies currently administers the funding supporting most services for tribal governments, particularly those necessary to respond to sexual violence.

Meaningful collaboration among federal agencies as well as between state, federal, and tribal responders can help ensure that AI/AN victims of sexual violence receive comprehensive, victim-centered, culturally appropriate responses and services. Meaningful collaboration requires recognition of and respect for tribal sovereignty³ and the human rights of Native people, pursuant to the Declaration of the Rights of Indigenous Peoples.⁴ While great strides have been made in recent years, historically federal decision-making has often taken place without consideration of the inherent sovereignty of tribal nations.⁵

I'd like to speak from a personal perspective. I am one of three sisters; I am the statistic that one in three Native women is a victim of sexual assault. I have three daughters; which one of them will be next? Put a face to those numbers. If my face is what you want to see, then see it.

When I was a teenager living on tribal lands, someone broke into my bedroom window. When we called the police, we were told there was nothing they could do because we were on tribal lands. Look at your daughters, at your sisters, and think about that lack of response.

Sheila Harjo, First Lady,
Councilwoman, Seminole
Nation of Oklahoma
OVW 2012 Tribal Consultation

Sexual Assault Response Teams (SARTs) and Multi-Disciplinary Teams (MDTs) that operate with a shared set of written guidelines are one proven way that federal agencies, in collaboration

³ The Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes reaffirms the Justice Department's recognition of the sovereign status of federally recognized Indian tribes as domestic dependent nations and reaffirms adherence to the principles of government-to-government relations. The Policy can be viewed at: <http://www.justice.gov/ag/readingroom/sovereignty.html>.

⁴ On December 16, 2010, at the 2010 White House Tribal Nations Conference, President Obama announced that the United States supports the UN Declaration on the Rights of Indigenous Peoples. The Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples can be viewed at: <http://www.state.gov/documents/organization/153223.pdf>

⁵ On November 5, 2009, President Obama issued a Memorandum for the Heads of Executive Departments and Agencies reaffirming the government-to-government relationship between the United States and Indian tribes which can be viewed at: <http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president>.

with local partners, can facilitate a coordinated response to victims of sexual violence.^{6 7} Written guidelines can establish the general approach each agency will take upon a disclosure of sexual violence and can document local decisions about the law enforcement reporting structure, use of child/adolescent forensic interviews, medical forensic examination locations, the processing of sexual assault forensic exam kits, collection and storage of forensic evidence for anonymous reports, and payment for medical forensic exams.

In many tribal nations, there are no formal agreements among federal law enforcement entities and/or between federal and tribal law enforcement regarding which agency is responsible for investigating which types of sexual violence. While there is a long-standing Memorandum of Understanding (MOU) between the Departments of Justice and Interior codifying a basic agreement about which sexual violence cases will be worked by the Federal Bureau of Investigation (FBI) or by the Bureau of Indian Affairs (BIA),⁸ conditions in the field, the discretion of FBI and BIA Special Agents in Charge, and uneven staffing levels across jurisdictions have necessitated a different approach in many locations. Accordingly, one overarching MOU between the two agencies is no longer sufficient to meet the real challenges of investigating sexual violence in tribal nations. Additionally, it is essential that federal law enforcement agencies work in partnership with tribal law enforcement entities to establish law enforcement reporting structures for the District/tribal community.⁹ When law enforcement reporting structures are not clear, federal and tribal law enforcement entities may not properly respond to the scene, investigate the crime, or appropriately share information with their law enforcement partners or prosecutors.

Similarly, in some tribal nations, there are no clear guidelines concerning the coordination of investigative forensic interviews in cases of child sexual abuse or sexual violence against vulnerable adults. As a result, valuable evidence gathered in a child/adolescent forensic interview may not meet the diverse needs of tribal, state, or federal prosecutors.¹⁰ Further, multiple,

⁶ M. Elaine Nugent-Boracove, et al., *Testing the Efficacy of SANE/SART Programs: Do They Make a Difference in Sexual Assault Arrest & Prosecution Outcomes?* 2006, U.S. Department of Justice, National Institute of Justice. Available at www.ncjrs.gov/pdffiles1/nij/grants/214252.pdf.

⁷ U.S. Department of Justice, Office on Violence Against Women, *A National Protocol for Sexual Assault Forensic Examinations, Adults/Adolescents*, 2013, (2nd edition). Available at www.ncjrs.gov/pdffiles1/ovw/241903.pdf. In addition to forensic exams, the Protocol provides a framework for SART collaboration.

⁸ This MOU can be viewed at: http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00676.htm.

⁹ Per the Tribal Law and Order Act of 2010 (HR 752-2), “the complicated jurisdictional scheme that exists in Indian Country...requires a high degree of commitment and cooperation among tribal, Federal, and State law enforcement officials.” <http://www.justice.gov/usao/az/IndianCountry/Tribal%20Law%20%20Order%20Act%202010.pdf>, SEC. 202. FINDINGS; PURPOSES, pg. 5

¹⁰ For example, a Forensic Interviewer from the tribe may be unaware of the elements needed to prove a federal case.

duplicative interviews and interviews conducted by inexperienced, unqualified individuals can retraumatize victims and jeopardize the successful prosecution of a case.¹¹

The Cherokee Nation and the Oklahoma Bureau of Investigations partnered to enhance evidence-gathering procedures for sexual assault cases, and these protocols are now used by the Indian Health Service as a model protocol for state and tribal collaboration in national trainings for Sexual Assault Examiners and Sexual Assault Response Teams.

Todd Hembree, Attorney General,
Cherokee Nation of Oklahoma
OVW 2012 Tribal Consultation
Report

There are also significant challenges concerning sexual assault forensic examinations. These challenges include a lack of or limited access to exam sites and/or forensic exam kits, identification of a standard forensic exam kit, exam kit processing time, and responsibility for the cost of the medical forensic exam. Despite the strong commitment by the Indian Health Service (IHS) and tribal nations to provide quality healthcare and services to victims of sexual violence, the number of medical facilities with trained examiners to perform the medical forensic examination is limited. Jurisdictional issues and geographic barriers can also impede a victim's ability to access sexual assault forensic exam services. As such, some victims must travel long distances for exams, may have difficulty finding transportation, and may have little or no access to followup services.

Additionally, when trained examiners are available they may only be qualified to provide care for adult and adolescent victims, making it necessary for child victims to be taken to other facilities. This can result in confusion among investigative agencies about locations that victims should access for needed health services in the aftermath of sexual violence. Tribal, federal, state, and local responders need to work cooperatively to facilitate victims' access to forensic medical exams by developing response protocols that address these limitations.

Numerous versions of sexual assault forensic exam kits exist across the United States, and more than one version of the kit may be in use in some communities.¹² Identifying which kit best meets the needs of investigators, prosecutors, forensic examiners, and crime lab personnel in a particular jurisdiction and standardizing its use and availability can lead to a reduction of crime lab processing time and the elimination of confusion among responders.

¹¹ "It still remains that limiting the number of interviews of a child or victim or witness through the investigative process is considered best practice. As stated in the American Prosecution Research Institute's *Investigation and Prosecution of Child Abuse* (3rd edition) manual: 'The number of investigative interviews should be limited to one whenever possible (APRI 2004, New York: Sage Publications)' " from "Law Enforcement's Evolving Mission to Protect Children," by Stephanie Stronks Knapp, from the *Handbook of Childmaltreatment*, Jill E. Korbin, Richard D. Krugman (Editors), Chapter 28, Springer Netherlands, 2014 <http://www.barnesandnoble.com/w/handbook-of-child-maltreatment-jill-e-korbin/1115716546?ean=9789400772076>.

¹² Some versions of the kits even include now-outdated components that crime labs no longer process.

Consistent with forensic compliance provisions within the Violence Against Women Act (VAWA) and subsequent legislation, a victim of sexual violence should never be financially responsible for the cost of a medical forensic sexual assault exam. In addition, the Federal Victims' Rights and Restitution Act provides that if there is a federal agency investigating sexual assault, that Federal agency is responsible for payment for the cost of the medical forensic examination.¹³ In any given jurisdiction it may be federal, state, or local law enforcement;¹⁴ special state funds; victim compensation funding; medical facilities; or, as a last resort, the IHS that pay for medical forensic exams.¹⁵ Jurisdictions need to identify which entities will pay for exams, especially for victims who opt not to participate in a law enforcement investigation, to ensure that victims are never charged for this service.

The Committee's recommendations for federal agency coordination and collaboration at the local level encompass the investigation of sexual violence (including the child/adolescent forensic interview), the medical forensic examination, sexual assault evidence kits, and the coordination of efforts in the multidisciplinary response.

¹³ The term *forensic compliance* refers to two specific provisions within VAWA and subsequent legislation that address a sexual assault victim's access to a medical forensic exam. These provisions generally require, as a condition for certain grant funding, U.S. states and territories to ensure that victims of sexual assault have access to a medical forensic exam that is free of charge and without requiring them to cooperate with law enforcement or participate in the criminal justice system. Adapted from End Violence Against Women International's Training Bulletin: *VAWA [2013] Prohibits Exam Costs for Victims and Requires Public Education*, March 2013. Available at: https://www.evawintl.org/images/uploads/2013-03_VAWA_2012_Prohibits_Exam_Costs_for_Victims.pdf.

¹⁴ 42 U.S.C. 10607(c)(7) states "The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to two anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section."

¹⁵ http://www.aequitasresource.org/Summary_of_Laws_and_Guidelines-Payment_of_Sexual_Assault_Forensic_Examinations_2.6.12.pdf summarizes state laws on payment for forensic exams.

RECOMMENDATIONS FOR COLLABORATION AT THE LOCAL LEVEL

The Committee recommends that the Attorney General:

1-A: Direct United States Attorneys (USAs) in each District with Indian Country jurisdiction to develop District-specific, written guidelines for sexual violence response. The development of the guidelines should prioritize respect for tribal sovereignty, and be a collaborative effort of the United States Attorney Office Tribal Liaison (or an appropriate Assistant United States Attorney)¹⁶; the highest ranking local representative(s) of the FBI, BIA, and IHS; and local tribal justice system personnel. The guidelines should document how federal agencies will respond to sexual violence within the District and be signed by each agency, submitted to the District's USA, and posted on the USAO's District website.¹⁷ The guidelines should include, at a minimum, the following components:

1-A.1: Investigation of Sexual Violence Reports. District-specific guidelines should document which federal agency(ies) will investigate which type of sexual violence cases, and should specify the District's law enforcement reporting structure. This reporting structure should be developed in collaboration with tribal law enforcement.

1-A.2: Use of Child/Adolescent Forensic Interviews for Federal Prosecution. District-specific guidelines should be developed with an understanding that forensic interviews should be conducted in a culturally appropriate manner by qualified, trained interviewers, and document the following:

- Under what circumstances forensic interviews will be conducted;
- Which agency is responsible for setting up a forensic interview;

¹⁶ This recommendation builds on two existing DOJ directives to United States Attorneys: a) the aforementioned 1993 MOU between the DOJ and the DOI provides that each United States Attorney "whose criminal jurisdiction includes Indian Country shall develop local written guidelines outlining responsibilities of the BIA, the FBI, and the Tribal Criminal Investigators, if applicable," and b) a January 11, 2010 *Deputy Attorney General Memorandum for United States Attorneys with Districts Containing Indian Country*, which, as part of the DOJ's 2009 Indian Country Law Enforcement Initiative, directed every USAO with Indian Country in its district to engage annually, in coordination with law enforcement partners and in consultation with the tribes in that district, to develop District-level operational plans to address public safety in Indian Country, <http://www.justice.gov/dag/dag-memo-indian-country.html>.

¹⁷ In recognition of the complexity of sexual violence cases, the fact that there is no one approach that will work for every sexual assault response, and to protect the integrity of the investigation and prosecution of cases, a disclaimer such as this should be added to any written guidelines: "These guidelines are intended to improve the internal management of the Department of Justice [add other agencies/organizations here, as appropriate]. They are not intended to and do not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party in any matter, civil or criminal, against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person, nor do these proposed guidelines place any limitations on otherwise lawful litigative prerogatives of the Department of Justice. A response that deviates from these guidelines does not equate to an improper response, but rather, that special circumstances required a different approach." (Modified from the United States Department of Justice *Proposed* Statement of Principles for Working with Federally Recognized Indian Tribes* [*Subject to Consultation with Tribal Officials], November 2013, <http://www.justice.gov/tribal/docs/statement-of-principles-for-working-with-tribes.pdf>).

- Which legally defensible forensic interviewing model(s) will be accepted for federal court;
- Location(s) where the forensic interviews will be conducted;
- Which agency is responsible for transporting victims to the forensic interview; and
- Who will have access to the forensic interview recordings and reports.

1-A.3: Sexual Assault Medical Forensic Examinations. District-specific guidelines should document the following:

- Available health care resources for victims (beyond just those where exams will be performed) to ensure that all responders can help get victims the health care they need following sexual violence;
- The sites where exams will be performed;
- Ages of patients served at each site; and
- Entity(ies) responsible for the cost of medical forensic exams under particular circumstances (such as in cases where a report is made to law enforcement, in cases involving delayed or anonymous reporting, etc.), to ensure that agencies know when they are responsible for covering the cost of these exams or when they need to arrange for payment through other sources.

1-A.4: Sexual Assault Forensic Exam Kits. District-specific guidelines should document the following items in collaboration with the relevant crime lab(s):

- Type of sexual assault forensic exam kit to be used for federal sexual violence cases;
- Which agency is responsible for supplying the kits to medical sites;
- Which crime lab will process the kits;
- Which agency is responsible for transporting kits from the exam site to the lab; and
- The agency responsible for storing kits when victims decline to make an official report to law enforcement.

1-B: Direct United States Attorneys' Offices and the FBI¹⁸ to assign appropriate employees to actively participate in the local MDT(s) and/or SART(s). If an MDT or SART does not exist, USAOs and the FBI should assign appropriate employees to assist with their development, in collaboration with the local tribal community.

¹⁸ The Committee recognizes that the Bureau of Indian Affairs, the Indian Health Service, and tribes are critical partners in MDTs and SARTs, though the Attorney General does not have authority to require BIA, IHS, or tribes' participation.

ISSUE 2: DEPARTMENT OF JUSTICE PERSONNEL POLICY CHANGES

Department of Justice (DOJ) employees assigned to Indian Country-related positions often work directly with tribes, Native victims of sexual violence, and local responders. They will often encounter criminal justice jurisdictional complexities and the impact of historical trauma and sexual violence on tribal nations. It is crucial for new hires and current employees to have fundamental knowledge of tribal sovereignty, tribal self-governance, and the cultural practices of American Indians and Alaska Natives. Further, employees who are working with sexual violence-related issues or coming into contact with victims of sexual violence should have knowledge of sexual violence and its impact on adult and child victims.

Given the unique status of tribal nations, the jurisdictional complexities related to crime in Indian Country, and the myriad of challenges of sexual violence crimes, it is vital that DOJ employees working in Indian Country-related positions receive training in the areas of tribal sovereignty and governance; the impact of historical trauma on tribal nations; the dynamics of sexual violence; crime victims' rights; and the purpose and functioning of SARTs and MDTs, if they are to work effectively and respectfully with tribal nations.

It is critical that DOJ employees who work with victims of sexual violence in tribal nations receive a local orientation about the specific history and culture of the tribal nations in their area of responsibility, in order to knowledgably serve victims. This cultural awareness and sensitivity will also facilitate relationship building and successful partnerships among the DOJ and tribes.

The Committee's recommendations for federal agency personnel policy changes address hiring, mandatory training, and employee assessments.

Overall, federal justice personnel need additional cultural training about American Indians and Alaska Natives. It is unfair to hold tribes responsible for the ignorance of America. We do not teach anything about American Indians to children in schools. People who are hired for federal law enforcement positions come to the job hardly knowing that American Indians or tribal law exists, but these issues turn out to be the majority of their job. They are woefully unprepared. How can this still be such a problem...?

Federal employees who are Native are forced to act as the token Indian, and become responsible for everyone's cultural education. This is not fair. When you provide cultural education to federal staff, you need to hire trainers who are members of tribes, who live and work in Indian Country, and understand the ways of life there.

Juana Majel-Dixon, Traditional Councilwoman, and Co-chair of the NCAI VAWA Task Force, Pauma Band of Luiseno Indians
OVW 2012 Tribal Consultation Report

RECOMMENDATIONS FOR DOJ PERSONNEL POLICY CHANGES

The Committee recommends that the Attorney General direct DOJ agencies working in Indian Country to:

2-A: Develop specific interviewing and hiring criteria for internal and external candidates assigned to work in Indian Country-related positions to ensure that candidates demonstrate the requisite skills and competence for these positions.

2-B: Require employees assigned to work in Indian Country-related positions to complete DOJ-approved training on tribal sovereignty, working with tribal governments, and the impact of historical trauma and colonization on tribal nations within the first 60 days of their job assignment.

2-C: Require employees who work for agencies with investigative, prosecutorial, or victim services responsibilities in Indian Country to complete DOJ-approved training on sexual violence, crime victims' rights, the impact of trauma, the personal and public health implications of sexual violence, and coordinated community responses to sexual violence within 60 days of their job assignment.

2-D: Require employees who perform investigative, prosecutorial, or victim assistance functions for USAO Districts or FBI Field Offices/Resident Agencies to complete DOJ-approved training on sexual violence that is relevant to the employee's position and work responsibilities (e.g., law enforcement personnel should receive training on conducting sexual violence investigations, prosecutors should receive training on the effective prosecution of sexual violence cases, etc.) within one year of their job assignment.

2-E: Ensure that employees who perform investigative, prosecutorial, or victim assistance functions for USAO Districts or FBI Field Offices/Resident Agencies are provided with a local, community-specific orientation on tribal leadership and customs, and the unique strengths of and challenges facing those particular tribal nations. This orientation should be conducted in partnership with local tribes.

2-F: Establish or strengthen personnel policies to ensure that every employee who performs investigative, prosecutorial, or victim assistance functions for USAO Districts or FBI Field Offices/Resident Agencies is annually assessed to determine the extent to which his/her performance is responsive to the needs of victims of sexual violence in the tribal nations served.

The Department of Justice will continue taking steps to institutionalize its commitment to tribal justice, so that progress in areas important to tribes continues regardless of changes in Department personnel.

DOJ Proposed Statement of Principles for Working with Federally Recognized Indian Tribes

ISSUE 3: DEPARTMENT OF JUSTICE GRANT SOLICITATIONS AND FUNDING

In Tribal Consultations and through other communications, representatives from tribes and tribal organizations routinely express the limitations of DOJ's grant-based approach for funding victim services in tribal nations. Tribal leaders have suggested various changes to federal grant solicitations and alternatives for a sustained source of funding for tribal criminal justice programs, such as a Victims of Crime Act (VOCA) tribal set-aside.¹⁹ To ensure that every victim of sexual violence in an AI/AN community receives seamless, victim-centered, and culturally appropriate responses from federal, state, and tribal responders, the Committee recommends that the Attorney General pursue every means possible to secure dedicated, sustainable funding streams for tribal victim assistance programs.

It is also critical that DOJ grantmaking agencies work together to develop strategic, collective program plans that reflect what DOJ wants to accomplish through its tribal grant programs. Further, no matter what approaches DOJ ultimately takes in regard to tribal program funding, it is crucial that tribes and tribal organizations be consulted in the planning process to ensure that programs are realistic and appropriate, any new approaches do not place unnecessary limitations on prospective grantees, and essential victim services are sustained.

In addition to changes in how DOJ develops and manages its grant programs, the Committee has identified changes to current grant solicitations that would allow tribes and tribal organizations to use funding to best meet the needs of their communities, provided specific recommendations related to VOCA funding, and noted three special funding areas for DOJ to consider in future funding and solicitation cycles.

... DOJ's grant-based funding approach creates uncertainties in system planning; Tribal governments legitimately ask why—unlike their State and local counterparts—should they rely on such inconsistent sources to pay for governmental functions. Grant funding also requires Tribal governments to compete for and “win” grant funds, which means other Tribes did not. Further, small Tribes and Tribes with thinly stretched human capital lack the capacity to write a “winning” application, yet these Tribes often have disproportionate criminal justice needs. Finally, many grants awarded to Tribes contain so much bureaucratic red tape that the balance of the Federal funds awarded goes unused.

The Indian Law and Order
Commission, Executive
Summary, pg. xvii

¹⁹ The National Congress of American Indians has had a standing resolution since 2010 calling for a VOCA tribal set-aside. As part of its 2012 Office on Violence Against Women Tribal Consultation comments, NCAI recommended “either a 10% tribal set-aside within the Victims of Crime Act (VOCA) or, alternatively, a \$100 million ‘above the cap’ reserve in VOCA.” http://tloa.ncai.org/documentlibrary/2012/10/2012%20%20TJJSW_OVW%20Consultation%20Comments.pdf.

We need culturally sensitive services available for our women who have been victimized and for their families. We also need the ability to provide sustainable services, because nothing is more disturbing for a community than the withdrawal of services upon which the community members have come to rely.

Todd Hembree, Attorney General, Cherokee Nation of Oklahoma
OVW 2012 Tribal Consultation Report

RECOMMENDATIONS FOR DOJ GRANT SOLICITATIONS AND FUNDING

The Committee recommends that the Attorney General direct DOJ grantmaking agencies that provide victim assistance grants to tribes and tribal organizations to:

3-A: Align their grant-making efforts by—

- Ensuring that there are dedicated grantmaking and policy staff in each agency and tasking these staff to develop a DOJ strategic plan for tribal funding;²⁰
- Building on the logistical structure of the Coordinated Tribal Assistance Solicitation (CTAS) to engage in strategic, collective program planning to govern the focus and dissemination of DOJ tribal victim assistance funds;²¹ and
- Consulting with tribal representatives in the planning stages of all solicitations.

3-B: Continue to make tribal solicitations more responsive to the needs of tribes and tribal organizations by—

- Allowing and encouraging tribal applicants to propose realistic project startup times without penalty;²²
- Allowing and encouraging tribal applicants to propose realistic, achievable project benchmarks without penalty so that if awarded a grant, the applicant is able to demonstrate success;
- Allowing funding to be used for cultural practices related to sexual violence response that include, but are not limited to, gifts/offerings, meals/food, and transportation and lodging for traditional ceremonies;^{23*}

²⁰ Some DOJ agencies have dedicated grant management and dedicated program/policy staff, while in other agencies, staff performs both roles. If every DOJ grantmaking agency had staff focused what DOJ wants to accomplish with its tribal grant funding, those individuals could collaborate with their DOJ grantmaking agencies counterparts to develop a strategic plan for tribal funding.

²¹ CTAS has proved to be successful from a logistical and structural perspective. However, it has not solved the larger issues of sustainable funding and strategic approaches to providing funding. Given the success of CTAS to coordinate the available funding from DOJ agencies, the CTAS structure should be built upon to expand beyond logistics and focus on strategic approach to funding by all DOJ grant-making agencies. That approach should include a recognition that the CTAS solicitation must be reflective of realistic program plans and that allow tribal organizations to honestly assess and express how long it will take to achieve key milestones. Agencies should be more intentional when planning solicitations in order to engender success by grant recipients.

²² Sexual violence initiatives in tribal nations often require significant startup time due to resource limitations, yet federal solicitations generally require applicants to propose quick startups in order to remain competitive. This sets up a scenario where right from the start, the proposed activities may not be successful when implemented.

²³ Many federal grants come with strict restrictions as to how funding can be used, especially in regard to food. These restrictions are culturally insensitive to tribal nations and Native survivors of sexual assault because in some tribal nations, providing meals and

- Recognizing and rewarding mentoring and peer support activities between and among tribes by ensuring noncompetitive continuation funding for critical victim services;²⁴
- Recognizing and rewarding tribal applicants for proposed grant activities that will address the needs of vulnerable and marginalized populations within tribal nations; and
- Revisiting the requirement for “evidence-based practices” in federal solicitations and creating a new framework by which tribal applicants can document a project’s impact without the inherent limitations that the term “evidence-based” connotes.²⁵

3-C: Consider whether a realistic approach to sustainable victim services-related funding for tribal nations would be a tribal set aside in all DOJ grant programs.

Victims of Crime Act (VOCA) Funding

*The Committee acknowledges and strongly supports the Administration’s FY15 Crime Victims Fund budget that expands resources by raising the Fund cap to \$810 million and directing \$20 million to tribal victim assistance through Vision 21. **Building on this positive step, the Committee recommends that the Attorney General:***

3-D: Support a DOJ budget request for FY16 and future years that acknowledges the need to substantially raise the Crime Victims Fund cap so that more discretionary funding can be directed to tribal victim assistance programs.*

3-E: Support an amendment to VOCA to establish a dedicated set-aside for Indian tribes.*

3-F: Support an amendment to VOCA to make state VOCA victim assistance funding contingent on the administering state agency’s ongoing outreach to all tribes in the state to facilitate tribes’

Over the past 5 years, our tribe has been successful at building a continuum of services for domestic violence, with significant assistance from the DOJ. . . . We have a range of services, but the stability of funding to maintain those services is very, very tenuous. . . . As a tribe, we are 5 years into this process, and people are just starting to come forward to receive services—people in the community we never would have suspected to have these problems—and they are just starting to believe help is available for them. When our programs aren’t consistent because of funding gaps, any effort at continuity is gone, and people lose the belief that help is truly available. They don’t return for critical services again. Promoting continuity of funding and services in Indian Country is critical.

Leonard Harjo, Principal Chief, Seminole Nation of Oklahoma
OVW 2012 Tribal Consultation Report

certain gifts are absolutely essential in ceremonies designed to support survivors of sexual violence. Restrictions that may otherwise apply to applicants should not be applied to culturally-necessary purchases for giveaways and feasts.

²⁴ The Committee recognizes that the mentor tribal applicant may jeopardize its ability to be competitive for future grant funding if it builds the capacity of another tribal applicant who may be competing for the same future grant funding. As such, the Committee recommends offering non-competitive additional funding to applicants who provide mentoring and/or peer support as part of their grant activities.

²⁵ Sexual assault advocacy programs in tribal nations have not always had the opportunity to establish scientific proof of success due to limited funding and lack of access to qualified researchers. As a result, there are few, if any, “evidence-based practices” that have relevance to tribal nations. Additionally, in many tribal nations there exists a historic mistrust of academic researchers because some research has taken place without the permission of the tribal community and has not accurately taken into account the complexities of tribal nations. As such, requiring tribal applicants to implement “evidence-based practices” is inappropriate. A better approach would be to provide funding to tribally-based, local researchers.

access to victim assistance and victim compensation funds until such a time as dedicated, direct funding is available to tribes through federal grant programs.*

3-G: Support an amendment to VOCA to require states with a significant number of tribal nations to implement a tribal liaison program similar to the one that OVC currently supports in Oklahoma²⁶ until such a time as dedicated, direct funding is available to tribes through federal grant programs. This new mandate should also include funding directed specifically to the development of such programs.*

The Department of Justice believes that stable funding at sufficient levels for essential tribal justice functions is critical to the long-term growth of tribal institutions.

DOJ Proposed Statement of Principles for Working with Federally Recognized Indian Tribes

Special Funding

The Committee recommends that the Attorney General allocate special funding for the following:

3-H: Training and technical assistance to tribal justice system personnel who require access to confidential federal case information (medical records, investigative records, forensic interview reports, lab reports, etc.). Special funding also should be provided to obtain the necessary equipment and software to store and secure confidential files in compliance with federal standards.²⁷

3-I: Training for internal and external grant peer reviewers so that grant proposals submitted by tribal applicants will be properly assessed.²⁸

3-J: Training and technical assistance to tribal child/adolescent forensic interviewers, including opportunities to engage in peer reviews and receive training on testifying in court to build their capacity to provide forensic interviews for and testify in federal cases.

²⁶ OVC funds an Oklahoma District Attorneys Council State-Tribal Liaison who works with 38 tribes to improve communication between crime victims and the State of Oklahoma to enhance VOCA victim assistance and compensation services. *OVC Fact Sheet*, July 2013, <http://www.ovc.gov/pubs/TribalVictimsofCrime/intro.html>.

²⁷ Many tribes lack sufficient infrastructure for the collection, storage and transportation of federal law enforcement investigation reports, interviews, photos and forensic interviews. Funding and training is essential for tribes to meet the high standards set by federal law enforcement agencies to share their investigative work product. Without such efforts, certain cases, especially those which are solely investigated by federal law enforcement but are ultimately declined for federal prosecution will not be prosecuted tribally if the tribal law enforcement and prosecutors do not have access to the federal law enforcement material. Information sharing of federal law enforcement investigative material is also vital for joint prosecutions of cases in which both the Federal Government and the tribes have an interest.

²⁸ DOJ peer reviewers for grant programs involving tribal applicants should be provided with appropriate training to enable them to effectively evaluate grant proposals submitted by tribes and tribal organizations. This training could include tribal sovereignty and the Federal Government's trust responsibility with tribes, as well as key terminology and definitions used by tribal nations.

ISSUE 4: PUBLIC SAFETY AND PUBLIC HEALTH

Sexual violence is pervasive, in part because of the serial nature of offenders. Most perpetrators have multiple victims.²⁹ Responders to sexual violence crimes must respect a victim's autonomy while also acknowledging that there is a public health and public safety component to the crime. The entire community is affected by sexual violence. All aspects of sexual violence response must focus on the victim and her/his needs, as well as address the broader issues of public safety and public health.

One of the most basic needs throughout Indian Country is additional officers on the street. Less than 3000 federal and tribal officers patrol 56 million acres of Indian land. On many reservations, there is no 24-hour police coverage. Police officers often patrol and respond alone to both misdemeanor and felony calls. As a result, tribal and BIA police officers are placed in great danger because back up can be miles or hours away, if available at all.

Myra Pearson
Chairwoman, Spirit Lake Tribe
Testimony before the Senate
Committee on Indian Affairs
[http://www.indian.senate.gov/sites/default/files/upload/files/MyraPearson
testimony.pdf](http://www.indian.senate.gov/sites/default/files/upload/files/MyraPearson%20testimony.pdf)

If Native victims of sexual violence are to receive the response and justice to which they are entitled, sexual violence must be prioritized by federal and tribal agencies. This prioritization requires appropriate levels of staffing for law enforcement, prosecutors, and victim services personnel. At present, federal staffing levels for these positions in Indian Country are insufficient to address the high incidence of sexual violence against Native women, children, and men.

A critical aspect of an adequate response to victims of sexual violence is reducing the time it takes for crime labs to process sexual assault evidence. Long delays in processing forensic evidence can jeopardize both federal and tribal cases. At times, the tribal statute of limitations expires before federal prosecutors receive forensic evidence results and are able to determine if the case will be prosecuted federally.³⁰

To further increase public safety across Indian Country, tribes need appropriate access to the National Crime Information Center (NCIC) where information about arrests, convictions, and orders of protection can be entered and viewed by a wide range of law enforcement personnel.³¹ Some tribes already have partial or full access to NCIC data through the Bureau of Indian Affairs or via partnerships with certified agencies. Other tribes could benefit from direct access if complexities related to eligibility and infrastructure requirements could be resolved and if a single entry point could be identified within DOJ to help determine eligibility and provide information and support to apply for access.

²⁹ Lisak, D. (2002) *The Undetected Rapist*.

³⁰ Anecdotally, responders in tribal nations report regularly waiting for extended periods — sometimes over a year — for evidence processing from the FBI Laboratory.

³¹ The ability for tribal law enforcement personnel to view and input data will enhance the overall purpose of NCIC to serve as a clearinghouse of information on arrests, warrants, convictions, restraining orders, protective orders, and sex offender registry.

Sexual violence is also a significant public and personal health issue. Victims of sexual violence experience harm to body, mind, and spirit, and sexual violence responses should include holistic support for the victim. Federal responders, along with their tribal partners, can and should facilitate victims' access to health care, whether or not a victim chooses to participate in the criminal justice system. Many Native victims desire to participate in cultural practices for cleansing or healing following a sexual assault. In some cases, participation in certain practices, such as sweat lodges, may disrupt the standard way that law enforcement collects evidence (such as by asking victims of sexual assault not to shower or clean up in order to preserve evidence). While a potential loss of evidence may be a concern for federal responders, participation in cultural practices is the right of a victim and must be respected. Federal responders should take this into consideration as they discuss options with a victim of sexual violence and explain the process of evidence collection, the use of evidence in a criminal case, and the potential loss of evidence when a person participates in a cultural practice prior to evidence collection.

In addition to ensuring a victim's right to participate in cultural practices, it is imperative that sexual violence be addressed as a health care issue, not just a criminal justice issue.³² The costs associated with providing treatment to Native victims of sexual violence — such as costs for the medical forensic exam and followup sexual violence services — are typically covered by IHS or tribal health care facilities. However, these costs often are not covered for victims who are referred to or report to other health care facilities. The health care industry, local health care providers, and federal agencies with health care and related missions must prioritize sexual violence services and treat medical forensic sexual assault exams and followup services as medically necessary components of health care if every Native victim of sexual violence is to receive comprehensive services in the aftermath of an assault. Prioritizing sexual violence and recognizing it as a health care issue is even more critical in tribal communities where access to health care, victim advocacy, and law enforcement response may be especially limited.

The Committee's recommendations for public safety and public health address the importance of prioritizing the federal response to sexual violence in tribal nations, including appropriate federal staffing levels and expediting forensic evidence processing, as well as access to NCIC and the health care of victims.

³² The Department of Justice's *A National Protocol for Sexual Assault Forensic Examinations* was developed as a guide for all practitioners who respond to victims of sexual assault and lays the foundation for comprehensive victim-centered health care following sexual violence. This Protocol is a critical piece of an overall effort to encourage the healthcare and public health communities to recognize that sexual assault has much broader implications than just criminal justice issues. The dual purpose of the examination — addressing the patient's healthcare needs and the collection of forensic evidence — by its nature brings together health care and criminal justice personal. www.ncjrs.gov/pdffiles1/ovw/241903.pdf.

RECOMMENDATIONS FOR PUBLIC SAFETY AND PUBLIC HEALTH

Consistent with a higher priority being given to issues related to sexual violence in tribal nations, the Committee recommends that the Attorney General:

4-A: Ensure sufficient staffing in USAO Districts and FBI Field Offices/Resident Agencies in Indian Country, as well as within Headquarters entities that support field personnel, in order to—

- Properly investigate and prosecute sexual violence crimes in Indian Country;
- Maintain critical investigative, prosecutorial, and victim services functions without gaps during times of attrition;
- Encourage and reward longevity, as building relationships with tribes is a key component of culturally appropriate, victim-centered sexual violence response in tribal nations; and
- Provide appropriate training, equipment, and support to Special Agents working in Indian Country.

4-B: Recognize that federal prosecutors' "win/loss" record is not necessarily indicative of a prosecutor's efficacy in and commitment to working in Indian Country. Rather, create a performance standard that is based on factors beyond wins and losses, including outreach to tribal leaders and victims, training received or delivered, successful and innovative collaboration with federal and tribal partners, and specific efforts to enhance a victim-centered prosecution process.

4-C: Ensure the expeditious processing of sexual assault kits from Indian Country. In 2010, the FBI established agreements with the Arizona Department of Public Safety and the South Dakota Division of Criminal Investigation Forensic Laboratories to expedite the processing of kits from tribal nations in these states. FBI personnel in these locations cite faster turnaround times, closer proximity of laboratories for larger pieces of evidence, and facilitation of working relationships between the FBI and local law enforcement personnel.³³ Assistant United States Attorneys in these locations also report a significant reduction in the time it takes to process evidence. Contracting with additional state crime labs, especially in locations with numerous federal sexual violence cases, may provide faster processing of evidence across Indian Country.

³³*Audit of the Federal Bureau of Investigation Laboratory's Forensic DNA Case Backlog*, U.S. Department of Justice, Office of the Inspector General, Audit Division, Audit Report 12-39, Sept 2012 (p 14-15), <http://www.justice.gov/oig/reports/2012/a1239.pdf>.

Perpetrators of domestic violence, sexual assault, and stalkers often move to other reservations, states, or counties, and law enforcement are unaware of their presence, or their past, which makes tracking systems like NCIC especially important.

Leo Steward, Vice Chairman, Confederated Tribes of the Umatilla Indian Reservation
OVW 2012 Tribal Consultation Report

4-D: Develop a formal, clear and transparent process to provide support to tribal law enforcement entities and their designated personnel in gaining access to NCIC.³⁴

Public Health

*While adult victims of sexual assault may not always choose to participate in the criminal justice system, the Committee recognizes that sexual violence is a public safety, public health, and personal health care issue. **Therefore, the Committee recommends that the Attorney General:***

4-E: Require that DOJ agencies direct all federal responders to sexual violence to—

- Facilitate victims' access to health care providers and exam sites;
- Inform victims about local health care resources; and
- Facilitate victim's access to cultural, spiritual, and ceremonial practices, while ensuring that the victim has complete information about potential consequences for evidence collection.

4-F: Support measures taken by federal agencies or the health care industry that recognize sexual violence as a health care issue, recognize medical forensic sexual assault exams and followup services as medically necessary components of health care, and/or promote coverage of medical forensic exams and followup services as health care expenses. Such measures may include the following:

- Standardization of care for treatment of sexual violence victims;
- Coverage for exams regardless of where the assault occurred;
- Provision of mental health care for survivors;
- Availability of health care provider training to conduct the exams;
- Accessibility of followup services such as advocacy, medical treatment, and counseling; and
- Provision of direct reimbursement for hospitals and facilities using health care dollars, rather than limiting access to funding provided for criminal justice issues only.

³⁴ Under TLOA, the Bureau of Indian Affairs, Office for Justice Services is responsible for “providing technical assistance and training to tribal law enforcement officials to gain access and input authority to utilize the National Criminal Information Center and other national crime information databases pursuant to section 534 of title 28, United States Code.” <http://www.justice.gov/usao/az/IndianCountry/Tribal%20Law%20%20Order%20Act%202010.pdf>, SEC. 211. Office for Justice Services Responsibilities, pg. 7. The Committee believes that tribal law enforcement entities would also benefit if DOJ developed a formal process to assist tribal law enforcement entities with NCIC access.

A NOTE ABOUT DATA COLLECTION AND RESEARCH

In the past several years, statistics about the high rate of sexual violence in tribal nations have circulated in the national media and dominated local and national discussions about violent crime in Indian Country. One thing is clear: Native women³⁵ suffer the highest rates of sexual assault in the United States.³⁶ While no single set of facts explains this statistical disparity, most experts believe that a combination of factors, including the long history of marginalization and oppression of Native people, have combined to create a "perfect storm" of circumstances that allow violence against women to thrive.

There is much we still do not know about the underlying causes for this proliferation of crime in Indian Country. Many tribal advocates report that sexual assault rates are much higher than official national statistics indicate — as high as 80 to 90 percent — in some communities.

When Tribes have accurate data, they can plan and assess their law enforcement and other justice activities. Without data and access to such data, community assessment, targeted action, and norming against standards are impossible. The Commission found that systems for generating crime and law enforcement data about Indian country either are nascent or undeveloped.

From The Indian Law and Order Commission Report, Executive Summary, pg. xv

As the Committee discussed solutions to the challenges of sexual violence response in tribal nations, one common theme was the need to know more about who is victimized, what types of sexual violence are most prevalent, and why some victims seek help and others do not disclose. The lack of good data, both nationally and locally, makes it difficult for tribes, tribal organizations, allied organizations, state and local governments, and the Federal Government to efficiently and proactively address the problem. Additionally, the lack of accurate data leads to a lack of sound, collective, strategic federal policy aimed at leveraging federal resources and personnel to address sexual violence in tribal nations. Although the Attorney General and DOJ agencies can begin the process of implementing the recommendations proposed in this Report without delay, the Committee recognizes that data collection and culturally appropriate research would equip DOJ to capitalize on its implementation efforts to meet specific needs. Any effort that the Attorney General and DOJ agencies can take to make tribal leaders more aware of the

³⁵ The Committee recognizes that Native men and children also experience an elevated rate of sexual violence and the recommendations in this document are intended to apply to the response to any and all Native victims of sexual violence.

³⁶ Steven W. Perry, Bureau of Justice Statistics, *American Indians and Crime: A BJS Statistical Profile, 1992-2002* (2004), <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=386>. Additionally, see Ronet Bachman et al., *Estimating the Magnitude of Rape and Sexual Assault Against American Indian and Alaska Native Women*, 43 *Austl. & N.Z. J. CRIMINOLOGY* 199 (2010).

importance of data collection and culturally appropriate research — and to provide training and technical assistance to help tribes collect data and conduct research — would be important steps toward the solid policy and sound response that tribal nations deserve from the Federal Government.³⁷

³⁷ The Reauthorization of the Violence Against Women Act of 2005, Title IX, Section 904(a)(1)(2), authorizes the National Institute of Justice (NIJ), in consultation with the U.S. Department of Justice's Office on Violence Against Women, to conduct research on violence against American Indian and Alaska Native women in Indian Country. The purpose of the research program is to: 1) examine violence against American Indian and Alaska Native women (including domestic violence, dating violence, sexual assault, stalking and murder) and identify factors that place American Indian and Alaska Native women at risk for victimization; 2) evaluate the effectiveness of federal, state, tribal, and local responses to violence against American Indian and Alaska Native women; and 3) propose recommendations to improve effectiveness of these responses. See <http://www.ovw.usdoj.gov/section904-taskforce.html>. The Committee believes that research projects such as this can provide significant information regarding sexual violence against AI/AN children and adults and encourages DOJ to prioritize additional data collection and analysis.

**SUGGESTED STEPS TOWARD
IMPLEMENTATION OF THE NATIONAL
COORDINATION COMMITTEE'S
RECOMMENDATIONS**

The Committee offers the following suggestions as possible steps that the Attorney General and/or Department of Justice agencies can take to implement the recommendations.

ISSUE 1: FEDERAL AGENCY COLLABORATION AND COORDINATION AT THE LOCAL LEVEL

Development of District-specific, Written Guidelines

- To verify and ensure compliance with this recommendation, as well as other recommendations, the Attorney General could task a senior level staff member within DOJ to oversee implementation (such as the Associate Attorney General or a senior level staff member within the DOJ's Office for Tribal Justice).
- A template for District-based, written guidelines, including sample disclaimer language, could be developed in coordination with federal and local partners, and provided to USAOs for use in documenting Districts' response to sexual violence and law enforcement reporting structures.
- In addition to District-specific, written guidelines, responders could develop a Resource Manual that would include relevant tribal and federal stakeholders' contact information and local resources for survivors of sexual violence.

Coordination of Child/Adolescent Forensic Interviews

- Federal personnel in each District could be tasked with identifying all trained and qualified forensic interviewers in the local area.
- Federal personnel in each District could be tasked with taking steps to build the capacity of local and tribal forensic interviewers so that local/tribal interviewers are able to provide forensic interviews for federal cases. This would include the provision of training, support of peer review opportunities, and related activities.

ISSUE 2: DEPARTMENT OF JUSTICE PERSONNEL POLICY CHANGES

Mandatory Training

- Federal agencies could identify existing, respected training programs on working with tribal governments—including tribal sovereignty and the long-standing impact that historical trauma and colonization have had on tribal nations — such as those below, and/or develop agency-specific training on these topics.
 - Working Effectively with Tribal Governments <http://www.tribal.golearnportal.org>
 - DOJ's National Indian Country Training Initiative Courses at the National Advocacy Center. For example:
 - Criminal Jurisdiction in Indian Country

- Federal agencies could identify existing, respected training programs on sexual violence — including aspects of sexual violence specific to various job roles — and/or develop agency-specific trainings. The resources below address many aspects of sexual violence response and could be used to support agencies in meeting the training requirements.
 - Office for Victims of Crime (OVC) *SART Toolkit: Resources for Sexual Assault Response Teams* <http://ovc.ncjrs.gov/sartkit/>
 - Office for Victims of Crime (OVC) video: *SARTs: Partnering for Success* <http://ojp.gov/ovc/library/videoclips.html#sart>.
 - DOJ's National Indian Country Training Initiative Courses at the National Advocacy Center. For example:
 - Tribal Liaison, Tribal SAUSA, and Indian Country AUSA Training
 - Investigation and Prosecution of Child Fatalities, Neglect, and Abuse
 - Child/Adolescent Forensic Interviewing Course
 - Sexual Assault Nurse Examiners' Expert Witness Training
 - Investigating and Prosecuting Indian Country Domestic Violence and Sexual Assault Crimes
 - End Violence Against Women International's Online Training Institute (web-based, law enforcement-specific online training, training bulletins, and resources) <http://olti.evawintl.org/Courses.aspx>
 - National Indian Country Clearinghouse on Sexual Assault <http://niccsa.org/>
 - Indian Health Service Sexual Assault Examiner training: <http://www.tribalforensichealthcare.org/>
 - OVC online curriculum, *Sexual Assault Advocate/Counselor Training* (all training materials, including an Instructor Manual and Participant Manual that can be downloaded) <https://www.ovcttac.gov/saact/index.cfm>
 - OVC online curriculum, Victim Assistance Training (VAT) *Online* (self-paced training on a broad range of victim services topics) https://www.ovcttac.gov/views/TrainingMaterials/dspOnline_VATOnline.cfm
- Federal agencies could be tasked to assign a senior level staff member in each USAO District or FBI Field Office/Resident Agency to ensure that soon after a new employee reports to a work assignment, he/she is personally introduced to tribal leaders, first responders, and victim services personnel with whom the employee will work.

Employee Assessments

- Performance reviews and evaluations for federal employees working with tribal nations could be revised to include factors of cultural competency, knowledge of the Federal Government's trust responsibility with tribes to ensure safety and justice in tribal nations,

knowledge of sexual violence dynamics and impact, and an employee's specific efforts to advance victim-centered responses to sexual violence.

- Supervisors could be required to include a discussion during performance reviews specific to each employee's strengths and weaknesses relative to building relationships and working respectfully with tribal victims, tribal contacts, and allied professionals. Supervisors could also provide ongoing training, as needed, to build employees' capacity in areas of cultural competency and sexual violence response.
- Supervisors could be required to document any positive or negative feedback provided by a victim about a federal employee working with tribal nations, take this feedback into consideration while assessing an employee's performance, and address the feedback with the employee as part of the employee's annual review.

ISSUE 3: DEPARTMENT OF JUSTICE GRANT SOLICITATIONS AND FUNDING

Strategic, Collective Program Planning and Changes to Grant Solicitations

- DOJ grantmaking agencies could be tasked with building on the logistical structure of the Coordinated Tribal Assistance Solicitation (CTAS) to engage in strategic, collective program planning.
- The CTAS structure could be built upon to expand beyond logistics and focus on strategic approach to funding by all DOJ grantmaking agencies. Such an approach could include a recognition that the CTAS solicitation must be reflective of realistic program plans that allow tribal organizations to honestly assess and express how long it will take to achieve key milestones. DOJ agencies could be encouraged to be more intentional when planning solicitations in order to ensure grant recipients' success.
- CTAS solicitation language could be revised to reflect the fact that programs in tribal nations often require an extended startup period and that reaching milestones may take significant time. Within the solicitation, tribal applicants could be encouraged to submit proposals that accurately express the timeframes realistically needed to achieve milestones.
- DOJ personnel could be required to consult with tribal representatives in the planning stages to understand the real needs in tribal nations that CTAS and program plans are aimed at addressing, such as funding for the development of community-based advocacy for sexual violence responses.

- DOJ personnel could be required to consult with tribal representatives in solicitation planning and development stages to ensure that performance measures are responsive and appropriate for tribal nations.
- DOJ agencies could be encouraged to consider using cooperative agreements (as opposed to grants) to allow the agencies and tribal applicants/grantees to work together to identify key benchmarks, set realistic deadlines based on the unique situation of the tribe or tribal organization, and allow portions of funding to be accessed for each milestone (or set of milestones) so the entire project does not need to be completed in a traditional 2- or 3-year grant cycle.
- DOJ agencies could be tasked with ensuring that federal funding is available to tribal sexual assault programs that propose culturally-specific promising and/or innovative practices, not just evidence-based practices.
- Federal funding could be allocated to allow DOJ agencies to provide technical assistance to tribes and tribal organizations applying for federal grants to build the capacity of tribal nations to appropriately define what will constitute success in their programs and measure that success.
- DOJ agencies could be encouraged to recognize and reward grantee benchmark achievements by facilitating noncompetitive continuation funding for critical victim services unless prohibited by statute.

Victims of Crime Act Funding

- The Attorney General could support a DOJ budget request for FY16 and future years that acknowledges the need to substantially raise the Crime Victims Fund cap so that more discretionary funding can be directed to tribal victim assistance programs without compromising or competing with the current services and programs that are funded through VOCA. The Office of Management and Budget projects there will be \$11.431 billion in the Fund in 2014,³⁸ yet for FY14 Congress capped VOCA spending at \$745 million.³⁹ Given the need for comprehensive services and programs in tribal nations, an increase to the VOCA cap is critical.

³⁸ National Association of VOCA Assistance Administrators, <http://navaa.org/budget/index.html#>.

³⁹ The FY 2014 Omnibus Appropriations Act enacted by Congress and signed by the President sets the VOCA cap at \$745 million, an increase of \$15 million over the FY 2013 VOCA cap. Together with an expected decline in state crime victim compensation grants, FY 2014 state VOCA assistance grants are anticipated to increase by about 6 percent. Despite this increase, support for direct victim assistance remains 13 percent behind, in real, inflation-adjusted dollars, than funding in 2000. This means that providers are unable to even keep pace with increased costs. National Association of VOCA Assistance Administrators, <http://navaa.org/budget/index.html#>.

- In recognition of the critical importance of a dedicated, sustained source of funding for tribal victim assistance programs, the Attorney General could support an amendment to VOCA to establish a dedicated set-aside for Indian tribes.
- State VOCA administrators are in a unique position to develop relationships with tribes and make tribes aware of VOCA-related funding sources. As such, the Attorney General could support an amendment to VOCA to make funding contingent on VOCA administrators' successful efforts to build relationships with the tribes in their state and inform tribes about the availability of VOCA victim assistance and victim compensation funding until such a time as dedicated, direct funding is available to tribes through federal grant programs.
- The Attorney General could support an amendment to VOCA to require VOCA-administering agencies in states with six or more federally recognized tribes to implement a tribal liaison program to ensure ongoing and direct communication between the administering agency and the state's tribes until such a time as dedicated, direct funding is available to tribes through federal grant programs. The tribal liaison program could be modeled after OVC's program in Oklahoma, where the Oklahoma District Attorneys Council State-Tribal Liaison works with 38 tribes to improve communication between crime victims and the State of Oklahoma to enhance VOCA victim assistance and compensation services.
- FBI Victim Specialists, USAO Victim/Witness Coordinators, and other federal responders could be tasked with providing information to tribes and victims about the availability of VOCA assistance and compensation funds and how to access those funds.

ISSUE 4: PUBLIC SAFETY AND PUBLIC HEALTH

Sufficient Staffing

- The Attorney General could direct the Director of the FBI to ensure that staffing levels are sufficient to appropriately respond to Indian Country crimes, especially violent crimes against AI/AN victims. Sufficient staffing is needed in Field Offices/Resident Agencies that investigate sexual violence in tribal nations and the Indian Country Crimes Unit at FBI Headquarters that supports personnel in the field.
- As part of the request for raising the Crime Victims Fund cap, the Attorney General could ask for set-aside funding specifically for the Office for Victims of Crime to establish a permanent program and staff positions dedicated to sexual violence response in tribal nations that would complement and coordinate with the Office on Violence Against Women's Tribal Sexual Assault Services Program.

- As part of the request for raising the Crime Victims Fund cap, the Attorney General could request increased funding for Indian Country-designated FBI Victim Specialists and USAO Victim/Witness Coordinators.
- Given the limited funding available to the Bureau of Indian Affairs (BIA) to adequately respond to and address the needs of survivors of sexual violence, the Attorney General could support an amendment to VOCA that establishes a set-aside for BIA Victim Specialist positions, similar to the set-aside for FBI Victim Specialist and USAO Victim/Witness Coordinator positions. BIA currently operates 43 tribal law enforcement programs and staffs 10 Victim Specialists across nine law enforcement Districts. BIA Victim Specialists possess the unique ability to respond to crime victims both in tribal and federal jurisdictions. The BIA Victim Specialists are accustomed to working within indigenous justice systems where customary laws and traditions continue to exist.

Expedited Evidence Processing

- The Attorney General could task the FBI Director to direct the FBI's Indian Country Crimes Unit to form agreements with additional state crime labs to facilitate local processing of kits, using the model of the Arizona and South Dakota agreements.
- Alternatively, the Attorney General could task the FBI Director to take all necessary steps, procedurally and from a staffing perspective, to ensure the efficient, prioritized processing of sexual assault kits from tribal nations at the FBI Laboratory.

Development of a Formal Process to Assist Tribal Law Enforcement Entities with NCIC Access

- To complement the technical assistance and support that the BIA, Office of Justice Services (OJS) provides to tribal law enforcement, the Attorney General could create a Work Group of relevant DOJ stakeholders to develop a formal, clear, and transparent process to assist tribal law enforcement entities that want access to (NCIC) either to query or input data.
- In developing this process, the Work Group could address which DOJ component(s) will assist interested tribal law enforcement entities with:
 - 1) assessing whether or not they are eligible for full or partial NCIC access;
 - 2) identifying a certified partner, in collaboration with OJS, that can perform query and/or data input functions, if the entity is not eligible for direct NCIC access;
 - 3) determining if DOJ pilot funding is available to help support the infrastructure and maintenance costs of NCIC; and
 - 4) securing the needed equipment and training to begin using NCIC.

- The Work Group could also develop a flow chart to illustrate the process and the steps involved in tribal law enforcement entities gaining access to NCIC.
- The Office for Tribal Justice (OTJ) could continue to serve as an information and referral source for tribal law enforcement entities that are interested in NCIC access.

** The National Coordination Committee is composed of members who represent federal agencies and members who represent national tribal organizations and non-profit organizations. Federal Government employees face unique limitations in regard to advocating for certain legislative or budgetary actions. As such, while the full Committee supports the general tenor and spirit of this Recommendations Report, certain federal agency staff is not able to endorse the recommendations that advocate for specific legislative or budgetary actions.*