

PROTECTING THE CHILDREN OF INDIAN
COUNTRY: A CALL TO EXPAND TRIBAL
COURT JURISDICTION AND DEVOTE MORE
FUNDING TO INDIAN CHILD SAFETY

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I. INTRODUCTION

Violence against Indian¹ women has been an insidious problem for generations. During Columbus's first voyage to the Americas, his crew boasted of raping the indigenous women of the Caribbean.² Exploitation of Indian women continued with Manifest Destiny,³ and violence against Indian women was the catalyst for many of the so-called Indian uprisings.⁴ The Supreme Court gave non-Indian rapists and abusers a free pass to inflict violence upon Indian women in 1978 by declaring non-Indians immune from tribal prosecutions.⁵ As a result, Indian women experience sexual violence at the highest rate in the United States,⁶ and the violence is almost always perpetrated by a non-Indian.⁷

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¹ This article uses the term "Indian" rather than "Native American" because it is the proper legal term as well as the preferred term of most Indians. *See, e.g.*, Mississippi Band of Choctaw Indians, choctaw.org; Southern Ute Indian Tribe, <https://www.southernute-nsn.gov/>; Quinault Indian Nation, <http://www.quinaultindiannation.com/>.

² David Cutler, *Teaching Kids About Thanksgiving or Columbus? They Deserve the Real Story*, PBS NEWS HOUR (Nov. 15, 2017), <https://www.pbs.org/newshour/education/teaching-kids-about-thanksgiving-or-columbus-they-deserve-the-real-story> [<https://perma.cc/FK2S-5EHE>] ("On his second voyage, in 1493, Columbus rewarded his men with native women to rape."); Dylan Matthews, *9 Reasons Christopher Columbus Was a Murderer, Tyrant, and Scoundrel*, VOX (updated Oct. 12, 2015, 10:12 AM), <https://www.vox.com/2014/10/13/6957875/christopher-columbus-murderer-tyrant-scoundrel> [<https://perma.cc/26FD-GP6E>] ("Columbus kidnapped a Carib woman and gave her to a crew member to rape"); Lisa Marie Segarra, *Everything You Need to Know About Indigenous Peoples Day*, TIME (Aug. 31, 2017, 3:44 PM), <http://time.com/4923164/indigenous-peoples-day-columbus-day/> [<https://perma.cc/3438-TKPR>] ("Columbus himself is considered responsible for the rape and murder of those indigenous people.").

³ Gabrielle Mandeville, *Sex Trafficking on Indian Reservations*, 51 TULSA L. REV. 181, 184–85 (2015); Mary Annette Pember, *Native Girls Are Being Exploited and Destroyed at an Alarming Rate*, INDIAN COUNTRY TODAY (May 16, 2012), <https://newsmaven.io/indiancountrytoday/archive/native-girls-are-being-exploited-and-destroyed-at-an-alarming-rate-4r1HLmefEWEoSpGM9DXyA/> [<https://perma.cc/9Z5Z-R77L>] (quoting an 1885 letter from a U.S. Indian Agent, "There is but little said in their favor regarding their moral standing, and for this there is no doubt but that the Government is largely to blame. . . . When I first came here, the soldier had also come to stay. The Indian maiden's favor had a money value and what wonder is that, half clad and half starved, they bartered their honor . . . for something to cover their limbs and for food for themselves and their kin."); AMNESTY INT'L USA, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA, 16 (2007), <https://www.amnestyusa.org/pdfs/mazeofinjustice.pdf> [<https://perma.cc/V55U-VZBP>] ("Gender-based violence against women by settlers was used in many infamous episodes, including during the Trail of Tears and the Long Walk.").

⁴ SARAH DEER, THE BEGINNING AND END OF RAPE 33 (2015) ("Indeed, many tribally initiated conflicts and 'uprisings' were responses to kidnapping and sexual mistreatment of women.").

⁵ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

⁶ André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men*, 277 NAT'L INST. OF JUST. J. 38 (2016), [hereinafter Rosay, *Violence Against American Indian*], <https://www.ncjrs.gov/pdffiles1/nij/249822.pdf> [<https://perma.cc/22C9-569D>]; NCAI POL'Y RES. CTR., NAT'L CONG. OF AM. INDIAN, POLICY INSIGHTS BRIEF: STATISTICS ON VIOLENCE AGAINST NATIVE

After generations of sexual violence,⁸ Indian women's suffering has finally been noticed. In 2010, Congress described the rates of violence experienced by Indian women as reaching "epidemic proportions."⁹ A year later President Obama stated, "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 we cannot allow to continue."¹⁰ National outrage at the perils endured by Indian women inspired the Violence Against Women Act ("VAWA")'s special domestic violence criminal jurisdiction provisions recognizing tribes' inherent sovereign right to prosecute non-Indians who harm Indian women on reservations.¹¹ Similarly, the missing and murdered indigenous women crisis has gained national attention,¹² and the United States is taking steps to address the crisis.¹³ Progress is being made.

Unfortunately, the very same factors that make Indian country¹⁴ a prime place for non-Indians to assault Indian women also make Indian country attractive to non-Indian child abusers, and sexual abuse is a major problem for children in Indian country.¹⁵ Since the 1980s, horror stories

WOMEN 2 (2013), http://www.ncai.org/attachments/PolicyPaper_tWAjznFslelhAffZgNGzHUqIWMRPkCDjpFtxeKEUVKjubxfpGYKPolicyInsightsBriefVAWA020613.pdf [https://perma.cc/G79H-P8UV].

⁷ Rosay, *Violence Against American Indian*, *supra* note 6, at 4.

⁸ DEER, *THE BEGINNING AND END*, *supra* note 4, at 12 ("Imagine living in a world in which almost every woman you know has been raped. Now imagine living in a world in which four generations of women and their ancestors have been raped.")

⁹ Tribal Law and Order Act of 2010, Pub. L. No. 111-211, § 202(a)(5)(A-C), 124 Stat. 2262.

¹⁰ Kimberly Teehee, *Celebrating the One Year Anniversary of the Tribal Law and Order Act*, WHITE HOUSE (July 27, 2011, 3:34 PM ET), <https://obamawhitehouse.archives.gov/blog/2011/07/27/celebrating-one-year-anniversary-tribal-law-and-order-act> [https://perma.cc/C4TZ-2HZG].

¹¹ 25 U.S.C. § 1304 (2018).

¹² Kristin Lam, *Montana Girl Selena Not Afraid, 16, Has Been Missing Since New Year's Day. The FBI Is Asking For Help To Find Her*, USA TODAY (Jan. 8 2020, 11:52 PM ET), <https://www.usatoday.com/story/news/nation/2020/01/08/selena-not-afraid-missing-montana-girl-fbi-native-american/2851337001/> [https://perma.cc/QA8D-J4FX]; Jenni Monet, *A Native American Woman's Brutal Murder Could Lead To A Life-Saving Law*, GUARDIAN (May 2, 2019, 1:00 EDT), <https://www.theguardian.com/us-news/2019/may/01/savanna-act-native-women-missing-murdered> [https://perma.cc/9VU8-4MW5]; Angela Newsom, *MMIW Families Still Need Enforceable Legislation*, HIGH COUNTRY NEWS (Mar. 12, 2020), <https://www.hcn.org/issues/52.4/indigenous-affairs-justice-mmiw-families-still-need-enforceable-legislation> [https://perma.cc/Q8H3-FTKH].

¹³ Exec. Order No. 13898, 84 Fed. Reg. 66059 (Nov. 26, 2019).

¹⁴ 18 U.S.C. § 1151 (2018).

¹⁵ Larry EchoHawk & Tessa Meyer Santiago, *What Indian Tribes Can Do To Combat Child Sexual Abuse*, 4 TRIBAL L.J. 1, ¶ 1 (2003) [hereinafter EchoHawk & Santiago, *What Indian Tribes Can Do*] ("One of the most destructive problems affecting children in "Indian country" today is sexual abuse."); Larry EchoHawk, *Child Sexual Abuse in Indian Country: Is the Guardian Keeping in Mind the Seventh Generation?*, 5 N.Y.U. J. LEGIS. & PUB. POL'Y 83, 85 (2002) [hereinafter EchoHawk, *Seventh*

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have emerged of non-Indians exploiting Indian country's precarious legal landscape to the detriment of children.¹⁶ Congress responded by passing various laws designed to help improve the safety of Indian children.¹⁷ While these laws are steps in the right direction, the underlying factors that make Indian country an ideal venue for predators remain untouched.¹⁸ A recent proposal to amend VAWA would affirm tribal criminal jurisdiction over non-Indians who harm children in Indian country; however, the legislation has stalled.¹⁹ All the while, tribes remain powerless to protect the children within their borders from non-Indian abusers.

Even if the VAWA amendment becomes law, tribes will still struggle to protect children from non-Indian abusers. The amendment would only authorize tribal prosecutions of non-Indian child abusers when the abuser has a familial relationship with the child.²⁰ Similarly, the amendment would only authorize tribes to prosecute non-Indians who have previous connections to the tribe.²¹ The amendment does not allow tribes to prosecute non-Indians who abuse non-Indian children on tribal land, so non-Indian children remain unprotected in Indian country.²² Additionally, tribes often lack sufficient numbers of law enforcement personnel and struggle to access criminal databases. Adding VAWA's proposed child

Generation] ("One of the most destructive problems affecting children in 'Indian country' today is sexual abuse.").

¹⁶ S. REP. NO. 101-216, at 89 (1989) ("While child sexual abuse is a growing menace throughout Indian country and indeed across the nation, the Bureau of Indian Affairs (BIA) has ignored the problem in its own schools"); EchoHawk, *Seventh Generation*, *supra* note 15, at 103 ("However, the problem did not draw the attention of Congress until a string of teachers on the Navajo, Hopi, and Cherokee reservations were charged with the sexual molestation of Indian children in their charge. John W. Boone and J. D. Todd were both BIA teachers."); Carol Ann Alaimo, *5 Franciscans Who Once Served At San Xavier Mission 'Credibly Accused' Of Child Sex Abuse*, TUCSON.COM (Jun. 17, 2019), https://tucson.com/news/local/franciscans-who-once-served-at-san-xavier-mission-credibly-accused/article_a074e317-5bb4-56d9-b703-6be6c81792d4.html [https://perma.cc/GA97-H7DH]; Dan Frosch & Christopher Weaver, *Task Force to Look Into Child Sexual Abuse in Indian Health Service*, FRONTLINE (Mar. 26, 2019), <https://www.pbs.org/wgbh/frontline/article/task-force-to-look-into-child-sexual-abuse-in-indian-health-service/> [https://perma.cc/UNY8-63LV]; Seaborn Larson, *Montana Reservations Reportedly 'Dumping Grounds' For Predatory Priests*, GREAT FALLS TRIBUNE (updated Dec. 20, 2017, 7:52 AM MT), <https://www.greatfallstribune.com/story/news/2017/08/16/montanas-reservations-were-dumping-grounds-predatory-priests-suit-alleges/504576001/> [https://perma.cc/A7VV-32BG].

¹⁷ EchoHawk & Santiago, *What Indian Tribes Can Do*, *supra* note 15, at n.4; see also Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. §§ 20901–20962 (2018).

¹⁸ See *infra* Part III.

¹⁹ Violence Against Women Reauthorization Act of 2019, H.R. 1585, 116th Cong. (2019).

²⁰ *Id.* § 903(9)(3)(B)(i)(ii)(II)–(III).

²¹ 25 U.S.C. § 1304(b)(4)(B) (2018).

²² Violence Against Women Reauthorization Act of 2019, H.R. 1585, 116th Cong. § 903(9)(3)(B)(ii)(V) (2019).

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protection provisions will improve child safety in Indian country, but more needs to be done.

Children are the future of tribes,²³ so VAWA should be further expanded to authorize tribal criminal jurisdiction over all persons who harm children in Indian country. Tribes that have implemented VAWA have proven to be effective administrators of justice, and the rationale for restricting tribal jurisdiction over non-Indians is growing thinner by the day.²⁴ Amending the Adam Walsh Child Protection and Safety Act to recognize tribal court jurisdiction over registered sex offenders who harm children within Indian country is another path toward improving the safety of children in Indian country. In addition to tribal jurisdiction expansions, more federal resources must be devoted to child safety in Indian country. Tribal-state collaborations are also needed to foster child safety in Indian country.

The remainder of this article proceeds as follows. Part II discusses data relating to abuse against Indian children as well as the social costs of the abuse. Part III examines the factors that lead to high rates of Indian child victimization. Part IV sets forth proposals to improve child safety in Indian country.

II. CHILD ABUSE DATA AND ITS EFFECTS

Child maltreatment is defined as any abuse or neglect endured by an individual under age eighteen.²⁵ The available data on Indian child maltreatment is not thought to be very reliable;²⁶ however, the available

²³ EchoHawk & Santiago, *What Indian Tribes Can Do*, *supra* note 15, at ¶ 47 (“The future of the tribe depends on the prevention and aggressive prosecution of child sexual abuse.”).

²⁴ Adam Creppelle, *Tribal Courts, The Violence Against Women Act, and Supplemental Jurisdiction: Expanding Tribal Court Jurisdiction to Improve Public Safety in Indian Country*, 81 MONT. L. REV. 59, 80-86 (2020) [hereinafter Creppelle, *Tribal Courts*] (refuting arguments against tribal courts asserting criminal jurisdiction over non-Indians).

²⁵ *Key Facts, Child Maltreatment*, WORLD HEALTH ORG. (Sept. 30, 2016), <https://www.who.int/news-room/fact-sheets/detail/child-maltreatment> [<https://perma.cc/44WJ-NWHN>] (“Child maltreatment is the abuse and neglect that occurs to children under 18 years of age. It includes all types of physical and/or emotional ill-treatment, sexual abuse, neglect, negligence and commercial or other exploitation, which results in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power. Exposure to intimate partner violence is also sometimes included as a form of child maltreatment.”).

²⁶ ATT’Y GEN.’S ADVISORY COMM. ON AM. INDIAN AND ALASKA NATIVE CHILDREN EXPOSED TO VIOLENCE, U.S. DEP’T OF JUST., ENDING VIOLENCE SO CHILDREN CAN THRIVE 36 (2014), [hereinafter ENDING VIOLENCE SO CHILDREN CAN THRIVE], <https://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2014/11/18/finalaianreort.pdf> [<https://perma.cc/CTC4-R8HL>] (“There is a dearth of data and statistics specific to AI/AN children’s exposure to violence due to poor identification practices, a view that the population is too small to study, and a lack of solid methodological practices.”); Alison Burton, *What About the Children? Extending Tribal Criminal Jurisdiction to Crimes Against Children*, 52 HARV. C.R.-C.L. L. REV. 193,

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data is very troublesome. Violence against Indian children has reached crisis levels.²⁷ In the United States, approximately 678,000 children were victims of abuse and neglect during 2018.²⁸ American Indian children were victims of abuse and neglect at higher rates than children of any other race, at 15.2 per thousand children, compared to approximately nine per thousand for children of other races.²⁹ Indian youth experience violence, as either a victim or witness, at an extremely high frequency.³⁰ Indian youth are more than twice as likely to experience trauma as non-Indian youth.³¹ Violence, including suicide, is the cause of death for three out of four Indian youths who die between the ages of twelve and twenty;³² moreover, Indian children have double the likelihood of dying before age twenty-four than children of other races.³³ Due to the high rates of violence they experience, Indian youth suffer from post-traumatic stress disorder at the same rate as American veterans who endured combat in Iraq and Afghanistan, twenty-two percent.³⁴

The true rate of maltreatment and violence that Indian children endure is likely worse than the statistics reveal.³⁵ According to Congress, thirty-nine percent of Indian women will be victims of domestic violence.³⁶ Studies show that over half of domestic violence perpetrators also abuse

210-11 (2017) [hereinafter Burton, *What About the Children*]; EchoHawk and Santiago, *What Indian Tribes Can Do*, *supra* note 15, at ¶ 6 (“The fact is that reliable data regarding child sexual abuse in Indian Country is scant.”).

²⁷ Sarah Deer & Mary Kathryn Nagle, *Return to Worcester: Dollar General and the Restoration of Tribal Jurisdiction to Protect Native Women and Children*, 41 HARV. J.L. & GENDER 179, 181 (2018) [hereinafter Deer & Nagle, *Return to Worcester*] (“The rates of violence that persist against Native women and children today constitute nothing less than a crisis.”).

²⁸ CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH AND HUMAN SERVS., CHILD MALTREATMENT 19 (2018) [hereinafter CHILDREN’S BUREAU, CHILD MALTREATMENT], <https://www.acf.hhs.gov/sites/default/files/cb/cm2018.pdf> %5Bhttps://perma.cc/5WMX-EVWA].

²⁹ *Id.* at 20–21.

³⁰ ENDING VIOLENCE SO CHILDREN CAN THRIVE, *supra* note 26, at 94 (“This study, coupled with data that show American Indians and Alaska Natives have a fivefold higher risk of being exposed to four or more adverse childhood events, underscores the overwhelming impact of exposure to violence in AI/AN communities.”).

³¹ *Id.* at 38.

³² *Id.* at 36.

³³ Burton, *What About the Children*, *supra* note 26, at 210.

³⁴ ENDING VIOLENCE SO CHILDREN CAN THRIVE, *supra* note 26, at 38.

³⁵ Brittany Raia, *Protecting Vulnerable Children in Indian Country: Why and How the Violence Against Women Reauthorization Act of 2013 Should Be Extended to Cover Child Abuse Committed on Indian Reservations*, 54 AM. CRIM. L. REV. 303, 305 (2017) [hereinafter Raia, *Protecting Vulnerable Children*] (“The problem is also likely worse than studies show due to underreporting by victims and inadequate collection of data by various agencies.”); EchoHawk, *Seventh Generation*, *supra* note 15, at 91 (“Several factors combine to magnify the impact and occurrence of child sexual abuse in Indian country.”).

³⁶ Tribal Law and Order Act of 2010, Pub. L. No. 111-211, § 202(a)(5)(C) 124 Stat. 2262.

their children,³⁷ and the available data indicate that a similar pattern exists among Indian country domestic abusers.³⁸ Furthermore, Indian country violent crime rates are more than double the national average.³⁹ Crime rates in some parts of Indian country are even worse.⁴⁰ On some reservations, virtually every child will be a victim of violence or exposed to violence.⁴¹ Law enforcement's continuous failure to respond to Indian calls for help have led to the underreporting of Indian country crime.⁴² Indian country child abuse likely suffers from the same underreporting.⁴³

Child abuse has impacts that extend well beyond the moment of the crime. Maltreatment during childhood has been linked to higher risks of several health maladies including diabetes, lung disease, heart attacks, high blood pressure, and brain damage.⁴⁴ Social, emotional, and learning disorders are also consequences of child maltreatment.⁴⁵ The mental and physical issues caused by child abuse have significant economic impacts.⁴⁶ According to one study, society suffers an economic loss of over \$800,000 for each victim of nonfatal child abuse.⁴⁷ Some studies suggest that

³⁷ ENDING VIOLENCE SO CHILDREN CAN THRIVE, *supra* note 26, at 50 (“[N]ational studies show that men who batter their companion also abuse their children in 49 to 70 percent of the cases.”).

³⁸ NAT'L CONG. OF AM. INDIANS, VAWA 2013'S SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION FIVE-YEAR REPORT 24 (2018), http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf [<https://perma.cc/A3MK-84BH>] [hereinafter VAWA SDVCJ FIVE-YEAR REPORT] (noting 58% of special domestic violence criminal jurisdiction prosecutions involved children).

³⁹ ENDING VIOLENCE SO CHILDREN CAN THRIVE, *supra* note 26, at 38.

⁴⁰ *Id.*; Savanna's Act, S. 1942, 115th CONG. § 2(a)(1) (2017); S. REP. NO. 112-153, at 7–8 (2012); Adam Crepelle, *Concealed Carry to Reduce Sexual Violence Against American Indian Women*, 26 KAN. J.L. & PUB. POL'Y 236, 238 (2017) [hereinafter Crepelle, *Concealed Carry*] (“On some reservations, sexual violence is so common that mothers and daughters discuss what to do not if, but when raped.”).

⁴¹ ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, U.S. DEP'T OF JUST., REPORT OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 35 (2012), <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf> [<https://perma.cc/WU2D-M4XP>] (“On the Pine Ridge Indian Reservation in South Dakota, for example, 70 percent of adults are unemployed, and substance abuse, homelessness, rape, violence, and child abuse are everyday occurrences—nearly all of the children on this reservation will experience or witness violence.”).

⁴² Crepelle, *Concealed Carry*, *supra* note 40, at 237–38.

⁴³ 25 U.S.C. § 3201(a)(1)(A) (2018).

⁴⁴ CHILD WELFARE INFO. GATEWAY FACT SHEET, CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH AND HUMAN SERVS., LONG-TERM CONSEQUENCES OF CHILD ABUSE AND NEGLECT 2 (2019), https://www.childwelfare.gov/pubPDFs/long_term_consequences.pdf [<https://perma.cc/N5LV-4AB9>].

⁴⁵ *Id.* at 3.

⁴⁶ Xiangming Fang et al., *The Economic Burden of Child Maltreatment in the United States and the Implications for Prevention*, 36 CHILD ABUSE AND NEGLECT 156 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3776454/> [<https://perma.cc/Q6LE-NEK6>].

⁴⁷ Cora Peterson et al., *The Economic Burden of Child Maltreatment in the United States, 2015*, 86 CHILD ABUSE AND NEGLECT 178 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6289633/> [<https://perma.cc/W4YP-4JPD>].

individuals who experience maltreatment during childhood are more likely to engage in abusive behaviors towards their own children.⁴⁸

III. EXPLAINING THE HIGH RATES OF CHILD MALTREATMENT IN INDIAN COUNTRY

Child maltreatment is prevalent in Indian country for a myriad of reasons. First of all, Indian country's complex jurisdictional maze works to the advantage of criminals and to the detriment of the general public. Indian country also suffers from a dearth of law enforcement resources. In the same vein, Indian country often lacks access to criminal databases. Furthermore, Indian country has a shortage of non-law enforcement personnel involved in child safety. These problems are all directly linked to Indian country's socioeconomic troubles and are further explored below.

A. Jurisdictional Confusion

Perhaps the most obvious explanation for the high rate of violence Indian children endure is Indian country's bizarre jurisdictional configuration.⁴⁹ Law enforcement in the United States is typically a straightforward matter of territoriality; that is, if someone commits a crime in a locality, that locality has the power to prosecute that person.⁵⁰

⁴⁸ Melissa Van Wert et al., *Intergenerational Transmission of Child Abuse and Neglect: A Transdisciplinary Analysis*, SAGE JS. (Feb. 18, 2019), <https://journals.sagepub.com/doi/full/10.1177/2470289719826101> [<https://perma.cc/97SK-EEAY>]. However, some research challenges this conclusion. See CHILD WELFARE INFO. GATEWAY ISSUE BRIEF, CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH AND HUMAN SERVS., INTERGENERATIONAL PATTERNS OF CHILD MALTREATMENT: WHAT THE EVIDENCE SHOWS (2016), <https://www.childwelfare.gov/pubPDFs/intergenerational.pdf> [<https://perma.cc/9XHD-4PZN>]; DEE WILSON, UPBRING, INTERGENERATIONAL TRANSMISSION OF CHILD NEGLECT (2016), https://www.upbring.org/wp-content/uploads/2016/04/White-Paper-VII_Intergenerational-Abuse_FINAL.pdf [<https://perma.cc/ZX6S-J3Z4>] (noting parents who were abused as children are more likely to engage in neglectful parenting than abusive behavior).

⁴⁹ *Tracking Sex Offenders in Indian Country: Trial Implementation of the Adam Walsh Act: Hearing Before the Comm. On Indian Affairs, U.S. S.*, 110th CONG. 16 (2008) (statement of Hon. Byron L. Dorgan,

U.S. Sen.) ("Our law enforcement hearings have shown that this division in the criminal justice system is a major cause of violent crime problems in Indian Country.").

⁵⁰ *Am. Banana Co. v. United Fruit Co.*, 213 U.S. 347, 356 (1909) ("But the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done."); Michael Farbiarz, *Extraterritorial Criminal Jurisdiction*, 114 MICH. L. REV. 507, 508 (2016) ("This is because, for most of the nation's history, criminal prosecutions have been purely local affairs. When New York prosecutes a New York resident for a crime she committed in New York, questions of jurisdiction can be taken for granted; they do not warrant attention."); Julie R. O'Sullivan, *The Extraterritorial Application of Federal Criminal Statutes: Analytical Roadmap, Normative Conclusions, and a Plea to Congress for Direction*, 106 GEO. L.J.

However, criminal justice is not so simple in Indian country.⁵¹ Whether the tribe, state, or federal government is the proper authority to prosecute a crime depends upon a combination of: whether the victim was an Indian, whether the offender was an Indian, what the crime was, and the status of the land where the crime occurred.⁵² This crazy framework makes Indian country an attractive venue for criminals as data reveal that over ninety percent of Indian violent victimizations are committed by non-Indians.⁵³ For other races, violent crime is overwhelmingly intra-racial.⁵⁴

The high rates of interracial violence against Indians can be explained by tribes' extremely limited criminal jurisdiction. Tribes are governments that possess sovereignty over their citizens and their territory;⁵⁵ thus, tribes have the authority to prosecute their citizens as well as other Indians.⁵⁶ A tribe's criminal jurisdiction over its own citizens exists even when its citizens commit crimes outside of the tribe's lands.⁵⁷ Nonetheless, tribes lack criminal jurisdiction over non-Indians as a result of the Supreme Court's 1978 decision in *Oliphant v. Suquamish Indian Tribe*.⁵⁸ The Court acknowledged that non-Indian criminals were a major problem in Indian

1021, 1031 (2018) (noting that subjective territorial jurisdiction "has long enjoyed the Supreme Court's full-throated support.").

⁵¹ TROY A. EID ET AL., INDIAN LAW AND ORDER COMM'N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER 18 (2013) [hereinafter EID ET AL., A ROADMAP] ("The Indian Law and Order Commission has concluded that criminal jurisdiction in Indian country is an indefensible maze of complex, conflicting, and illogical commands, layered in over decades via congressional policies and court decisions, and without the consent of Tribal nations."); Crepelle, *Concealed Carry*, *supra* note 40, at 239 ("Indian country criminal jurisdiction is a bewildering mess."); *Fresh Pursuit from Indian Country: Tribal Authority to Pursue Suspects Onto State Land*, 129 HARV. L. REV. 1685, 1686 (2016) ("Law enforcement in Indian country is infamously a 'jurisdictional maze,' 'complicated by the conflicting claims of three sovereigns to law enforcement authority.'").

⁵² ARVO Q. MIKKANEN, DEP'T OF JUST., INDIAN COUNTRY CRIMINAL JURISDICTION CHART (2010), http://www.justice.gov/sites/default/files/usao-wdok/legacy/2014/03/25/Indian_Country_Criminal_Jurisdiction_ChartColor2010.pdf [<https://perma.cc/8ZUQ-WMCN>]; Angela R. Riley, *Crime and Governance in Indian Country*, 63 UCLA L. REV. 1564, 1575 (2016) [hereinafter Riley, *Crime and Governance*] ("The bizarre result is that criminal jurisdiction over Indian country crimes is governed by shifting and sometimes contradictory variables, including where the crime was committed, whether both the defendant and victim are Indians, and the classification of the alleged crime, among other considerations.").

⁵³ Rosay, *Violence Against American Indian*, *supra* note 6, at 4.

⁵⁴ STEVEN W. PERRY, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., AMERICAN INDIANS AND CRIME 9 (2004) <https://www.bjs.gov/content/pub/pdf/aic02.pdf> [<https://perma.cc/MB2Z-8WQH>].

⁵⁵ *United States v. Mazurie*, 419, U.S. 544, 556 (1975) ("Thus it is an important aspect of this case that Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory").

⁵⁶ *United States v. Lara*, 541 U.S. 193 (2004).

⁵⁷ *Kelsey v. Pope*, 809 F.3d 849, 852 (6th Cir. 2016).

⁵⁸ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

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country⁵⁹ but decided tribes had been implicitly divested of the power to prosecute non-Indians.⁶⁰ The *Oliphant* opinion is laden with factual errors, withdrawn reports, and outright racist jurisprudence.⁶¹ Despite these issues, *Oliphant* remains binding precedent. *Oliphant* makes it unclear whether tribes can arrest non-Indians⁶² or even hold non-Indian child molesters civilly liable.⁶³

However, tribes can prosecute non-Indians for dating violence, domestic violence, and protective order violations under the VAWA special domestic violence criminal jurisdiction.⁶⁴ Although VAWA is a powerful step for public safety in Indian country, convictions under VAWA's special domestic violence criminal jurisdiction are more difficult to obtain than convictions outside of tribal court because the tribe must prove not only the violent act but also the preexisting relationship between the victim and the offender.⁶⁵ VAWA also does not cover crimes against children.⁶⁶ As a result of the jurisdictional gap, tribes often treat non-Indians more leniently than Indians in their criminal codes.⁶⁷ Tribes criminally prosecute Indians for offenses; whereas, tribes merely exclude non-Indians from their reservations due to jurisdictional constraints.⁶⁸ Plus, the maximum sentence

⁵⁹ *Id.* at 212 (“[W]e are not unaware of the prevalence of non-Indian crime on today’s reservations which the tribes forcefully argue requires the ability to try non-Indians.”).

⁶⁰ *Id.* at 204 (“While Congress never expressly forbade Indian tribes to impose criminal penalties on non-Indians, we now make express our implicit conclusion of nearly a century ago that Congress consistently believed this to be the necessary result of its repeated legislative actions.”).

⁶¹ ROBERT A. WILLIAMS JR., *LIKE A LOADED WEAPON: THE REHNQUIST COURT, INDIAN RIGHTS, AND THE LEGAL HISTORY OF RACISM IN AMERICA* (2005) [hereinafter WILLIAMS, *LOADED WEAPON*]; Adam Crepelle, *Lies, Damn Lies, and Federal Indian Law: The Ethics of Citing Racist Precedent in Contemporary Federal Indian Law*, N.Y.U. REV. L. & SOC. CHANGE (forthcoming 2021) [hereinafter Crepelle, *Lies, Damn Lies*]; Adam Crepelle, *Tribal Courts*, *supra* note 24, at 67–68; Deer & Nagle, *Return to Worcester*, *supra* note 27, at 182 (“*Oliphant* not only attempted to re-write *Worcester*, it also re-wrote the historical facts and narrative and that led to the Supreme Court’s 1832 affirmation of tribal jurisdiction.”).

⁶² Alex Treiger, *Thickening the Thin Blue Line in Indian Country: Affirming Tribal Authority to Arrest Non-Indians*, 44 AM. INDIAN L. REV. 163, 167 (2019) (“The result of these mixed messages is that tribal prosecutorial authority is often conflated with tribal law enforcement authority, giving rise to the belief that tribes cannot investigate or arrest non-Indians.”).

⁶³ *DolgenCorp v. Mississippi Band of Choctaw Indians*, 732 F.3d 409 (5th Cir. 2013).

⁶⁴ 25 U.S.C. § 1304 (2018).

⁶⁵ Crepelle, *Tribal Courts*, *supra* note 24, at 77 (“However, it must be noted that tribal VAWA convictions are more difficult to obtain than convictions in other jurisdictions, because tribes must prove not only the crime but also the prior relationship between the tribe and the defendant.”).

⁶⁶ VAWA SDVCJ FIVE-YEAR REPORT, *supra* note 38, at 24; *see generally* Burton, *What About the Children*, *supra* note 26; Raia, *Protecting Vulnerable Children*, *supra* note 35.

⁶⁷ Kevin Washburn & Virginia Davis, *Sex Offender Registration in Indian Country*, 6 OHIO ST. J. CRIM. L. 3, 9–10 (2008) (“Because of the limitations on tribal criminal jurisdiction over non-Indians, tribal sex offender registration provisions generally provide different penalties for Indian and non-Indian violators.”).

⁶⁸ *Id.* at 10.

tribes can impose is one year in jail,⁶⁹ unless they satisfy certain federal guidelines that allow tribes to stack sentences for up to nine years in jail.⁷⁰ However, most tribes lack the resources to meet the federal requirements of providing a state licensed public defender to defendants as well as a law trained judge.⁷¹ Financial constraints mean only approximately twenty-five of the 574 federally recognized tribes are asserting this authority.⁷²

As a result of these limitations, tribes must rely on state and federal prosecutors, and this makes criminal jurisdiction complicated. The federal government is typically responsible for Indian country crimes involving Indians and non-Indians under the General Crimes Act.⁷³ The federal government also has jurisdiction over “major crimes” involving only Indians.⁷⁴ Felony sexual molestation of a minor in Indian country was not considered a major crime until 1986,⁷⁵ and felony child abuse and neglect were not deemed major crimes until 2006.⁷⁶ Nonetheless, if a non-Indian child is abused by a non-Indian in Indian country, the state has exclusive jurisdiction.⁷⁷ States may also have jurisdiction over Indian country crimes involving Indians through federal legislation.⁷⁸ This fractured jurisdictional framework deserves much of the blame for Indian country’s high violent crime rate.⁷⁹

⁶⁹ 25 U.S.C. § 1302(a)(7)(B) (2018).

⁷⁰ 25 U.S.C. § 1302(b-c) (2018).

⁷¹ MAUREEN L. WHITE EAGLE ET AL., TRIBAL L. & POL’Y INST., TRIBAL LEGAL CODE RESOURCE: TRIBAL LAWS IMPLEMENTING TLOA ENHANCED SENTENCING AND VAWA ENHANCED JURISDICTION 21 (2015); Riley, *Crime & Governance*, *supra* note 52, at 1631; VAWA SDVCJ FIVE-YEAR REPORT, *supra* note 38, at 29.

⁷² *Currently Implementing Tribes, SDVCJ Today*, NAT’L CONG. OF AM. INDIANS, <https://www.ncai.org/tribal-vaawa/get-started/currently-implementing-tribes> [https://perma.cc/7KAD-LLFK] (last visited Jan. 11, 2021); Indian Entities Recognized and Eligible to Receive Services from the U.S. Bureau of Indian Affairs, 83 Fed. Reg. 1200 (Feb. 1, 2019).

⁷³ 18 U.S.C. § 1152 (2018).

⁷⁴ 25 U.S.C. § 1153 (2018).

⁷⁵ An Act to Prevent Sexual Molestation of Children in Indian Country, Pub. L. No. 99–303, 100 Stat 438 (1986) (current version at 18 U.S.C. § 1153(2018)).

⁷⁶ Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109–248, § 215, 120 Stat 587 (2006) (codified at 42 U.S.C. §§ 20901–20962 (2018)).

⁷⁷ *New York ex rel. Ray v. Martin*, 326 U.S. 496, 499 (1946); *Draper v. United States*, 164 U.S. 240, 247 (1896); *United States v. McBratney*, 104 U.S. 621, 624 (1881).

⁷⁸ *E.g.*, 18 U.S.C. § 1162 (2018); Maine Indian Claims Settlement Act of 1980, Pub. L. No. 96–420, § 6(a), 94 Stat. 1785.

⁷⁹ *Tracking Sex Offenders in Indian Country*, *supra* note 49, at 16(statement of Hon. Byron L. Dorgan, U.S. Sen.) (“Our law enforcement hearings have shown that this division in the criminal justice system is a major cause of violent crime problems in Indian Country.”); EchoHawk, *Seventh Generation*, *supra* note 15, at 98 (“With multiple agencies having responsibility for the investigation and prosecution of child abuse, it is easy to see how a case of child sexual abuse might slip through the cracks.”).

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Basing jurisdiction on whether someone is an Indian begs the question—who is an “Indian?” “Indian” has over a dozen definitions in various federal laws;⁸⁰ however, none of the federal laws pertaining to Indian country criminal jurisdiction define the term.⁸¹ Nevertheless, the generally accepted test for criminal purposes is “Indian blood” plus “government” recognition as an Indian.⁸² Determining whether an individual has Indian blood is usually a simple matter, but determining government recognition of an individual is more complicated.⁸³ Since no clear definition exists, different federal circuits use different factors to discern if a government has recognized an individual as an Indian.⁸⁴ Thus, an individual may be an Indian in the Eighth Circuit but not in the Ninth.⁸⁵ This uncertainty causes defendants to argue they are not Indian in an attempt to evade criminal prosecution.⁸⁶ Figuring out whether a government recognizes someone as an Indian can take months.⁸⁷

Though it would seem like determining whether land is under tribal or state control would be a straightforward matter, it is not always. Indian country is often speckled with non-Indian fee simple land resulting in what has been described as a “checkboard” or “crazy quilt” pattern of

⁸⁰ Hallie B. White, Kelly G. Stoner, & James G. White, *Creative Civil Remedies Against Non-Indian Offenders in Indian Country*, 44 TULSA L. REV. 427, n.1 (2013).

⁸¹ Addie C. Rolnick, *Tribal Criminal Jurisdiction Beyond Citizenship and Blood*, 39 AM. INDIAN L. REV. 337, 340 (2015) (“Tribes generally lack jurisdiction over nonIndians, while they retain jurisdiction over ‘all Indians,’ including their own citizens as well as ‘nonmember Indians,’ but neither Congress nor the federal courts have carefully considered who is included in this category.”); Alexander Tallchief Skibine, *Indians, Race, and Criminal Jurisdiction in Indian Country*, 10 ALB. GOV’T L. REV. 49, 49 (2017) (“Criminal jurisdiction in Indian Country is mostly determined by four federal laws, none of which have a specific definition of ‘Indian.’”).

⁸² *United States v. Rogers*, 45 U.S. 567, 573 (1846).

⁸³ Crepelle, *Concealed Carry*, *supra* note 40, at 244 (“[D]etermining whether a government recognizes an individual as an Indian is complex and can take months.”).

⁸⁴ *Compare* *United States v. Stymiest*, 581 F.3d 759, 762 (8th Cir. 2009), *with* *United States v. Cruz*, 554 F.3d 840, 845 (9th Cir. 2009) (using different tests to determine whether the defendant qualifies as an Indian for criminal jurisdiction purposes).

⁸⁵ *See* ANGELIQUE TOWNSEND EAGLEWOMAN & STACY L. LEEDS, *MASTERING AMERICAN INDIAN LAW* 49 (2013) (“[T]he Eighth Circuit test is much broader, allowing the inclusion of a person for federal criminal prosecution as an Indian when the same person may not be eligible as an Indian for tribal citizenship or federal services.”).

⁸⁶ *Stymiest*, 581 F.3d at 762 (“At trial, Stymiest’s defenses were that he is not an Indian and that he acted in self-defense.”); *Cruz*, 554 F.3d at 842 (“At first glance, there appears to be something odd about a court of law in a diverse nation such as ours deciding whether a specific individual is or is not ‘an Indian.’”); *St. Cloud v. United States*, 702 F. Supp. 1456, 1557 (D.S.D. 1988) (“Specifically, St. Cloud contends that because he is enrolled in a terminated Indian tribe, he is not an ‘Indian’ and thus cannot be tried in federal court for a crime against a non-Indian.”).

⁸⁷ EID ET AL., *A ROADMAP*, *supra* note 51, at 9–11 (discussing a case where “literally dozens of people had weighed in, eventually the question of whether the Tribe considered the child victim to be a Tribal member was resolved by the Southern Ute Tribal Council.”).

jurisdiction.⁸⁸ The land status can be so mangled that a single piece of property can have portions subject to state jurisdiction and other parts subject to tribal jurisdiction.⁸⁹ This presents law enforcement difficulties because tribes and the federal government usually have jurisdiction over Indian country; whereas, states often have jurisdiction over fee land.⁹⁰ Hence, law enforcement must consult a GPS prior to making an arrest,⁹¹ but even a GPS cannot always conclusively answer whether land is in fact Indian country. Litigation over this issue is a frequent topic,⁹² and litigating the status of land can take years.⁹³

Indian country jurisdictional problems may seem insignificant in the child abuse context because child abuse is usually perpetrated by members of the child's family.⁹⁴ There is no doubt that numerous Indian children are abused by their own family members.⁹⁵ This may seem to reduce the significance of the jurisdictional gap in child maltreatment cases, but not necessarily. Indians often marry non-Indians,⁹⁶ so Indians commonly have family members who are non-Indians. Additionally, there are well-documented examples of non-Indian men beating their Indian spouse then calling the cops on themselves because they know the jurisdictional gap

⁸⁸ *DeCouteau v. Dist. Ct. Court for 10th Jud. Dist.*, 420 U.S. 425, 466 (1975) (Douglas, J., dissenting).

⁸⁹ Bryan T. Anderson, *South Dakota v. Yankton Sioux Tribe: Sewing a Patchwork Quilt of Jurisdiction*, 3 GREAT PLAINS NAT. RESOURCES J. 99, 113 (1998) (discussing the "patchwork quilt" jurisdiction of Charles Mix County, South Dakota).

⁹⁰ See *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 659 (2001) (holding the Navajo could not tax "nonmembers on non-Indian fee land within the reservation . . ."); *Strate v. A-1 Contractors*, 520 U.S. 438, 446 (1997) (stating, "absent a different congressional direction, Indian tribes lack civil authority over the conduct of nonmembers on non-Indian land within a reservation . . ."); *Montana v. United States*, 450 U.S. 544 (1981) (holding that tribes generally lack civil jurisdiction over non-Indians on fee lands located within a reservation).

⁹¹ Adam Crepelle, *Shooting Down Oliphant: Self-Defense as an Answer to Crime in Indian Country*, 22 LEWIS & CLARK L. REV. 1283, n.274 (2018).

⁹² E.g., *Nebraska v. Parker*, 136 S. Ct. 1072 (2016); *United States v. Jackson*, 853 F.3d 436 (8th Cir. 2017); *Cayuga Indian Nation v. Seneca Cty.*, 260 F. Supp. 3d 290 (W.D.N.Y. 2017).

⁹³ *Murphy v. Royal*, 875 F.3d 896, 903 (10th Cir. 2017), cert. granted, 138 S. Ct. 2026 (2018).

⁹⁴ CHILDREN'S BUREAU, CHILD MALTREATMENT, *supra* note 28, at 88 ("91.7 percent of victims are maltreated by one or both parents."); EchoHawk, *Seventh Generation*, *supra* note 15, at 88 ("The offender is most likely known to the victim and may have had a close trust relationship with the victim at the time the incident took place.").

⁹⁵ EchoHawk & Santiago, *What Indian Tribes Can Do*, *supra* note 15, at ¶ 13 ("Despite popular belief that federal employees in Indian schools do most of the sexual abusing, it is in reality Indian children's relatives, adult authority figures, and community members who by and large perpetuate this crime.").

⁹⁶ Wendy Wang, *Interracial Marriage: Who is 'Marrying Out?'*, PEW RESEARCH CTR. (June 12, 2015), <https://www.pewresearch.org/fact-tank/2015/06/12/interracial-marriage-who-is-marrying-out/> [<https://perma.cc/KN5W-R9CK>] ("Of the 3.6 million adults who got married in 2013, 58% of American Indians, 28% of Asians, 19% of blacks and 7% of whites have a spouse whose race was different from their own.").

places them above the law.⁹⁷ Indian children in these households have an extremely high risk of suffering direct physical abuse.⁹⁸ Although there are no data indicating the prevalence of non-Indian abusers targeting Indian children,⁹⁹ there are several examples of non-Indian criminals targeting reservations due to the jurisdictional gap.¹⁰⁰ The jurisdictional gap makes non-Indian crime a major threat to Indian children.¹⁰¹

B. Lack of Law Enforcement Resources

An inadequate number of police patrol Indian country's 56 million acres.¹⁰² Congress has found that Indian country has less than half of the law enforcement officers compared to similar rural communities.¹⁰³ The National Institute for Justice likened the job of the typical reservation police force to patrolling an area the size of Delaware with one to three officers.¹⁰⁴ Indian country also has significantly fewer dollars to spend on each law enforcement officer than other jurisdictions.¹⁰⁵ The lack of law

⁹⁷ Lorelei Laird, *Indian Tribes are Retaking Jurisdiction Over Domestic Violence on Their Own Land*, ABA J. (Apr. 1, 2015, 6:02 AM), https://www.abajournal.com/magazine/article/indian_tribes_are_retaking_jurisdiction_over_domestic_violence_on_their_own [<https://perma.cc/F3AH-LNSN>] (“‘After one beating, my ex-husband called the tribal police and the sheriff’s department himself, just to show me that no one could stop him,’ she recalled during the signing ceremony for the 2013 reauthorization of the Violence Against Women Act, first passed in 1994.”); Riley, *Crime and Governance*, *supra* note 51, at 1603; Emily Weitz, *Native American Women Have Been Saying a Lot More Than #MeToo for Years*, VICE (Nov. 23, 2017, 9:00 AM), https://www.vice.com/en_us/article/evbeg7/native-american-women-have-been-saying-a-lot-more-than-metoo-for-years [<https://perma.cc/584F-FEU3>] (“‘Even if you called the police, often they didn’t respond. When they did, they would say, ‘Oh it’s not our jurisdiction, sorry.’ And prosecutors wouldn’t show up.’”).

⁹⁸ Burton, *What About the Children*, *supra* note 26, at 211 (providing statistics on the relationship between domestic violence and child abuse).

⁹⁹ ENDING VIOLENCE SO CHILDREN CAN THRIVE, *supra* note 26, at 50 (“There are no statistics concerning the percentage of non-Indian perpetrators who commit crimes against AI/AN children on tribal land . . .”).

¹⁰⁰ Tribal Law and Order Act of 2010, Pub. L. No. 111-211, § 202(a)(4)(B) 124 Stat. 2262; Rebecca Martinez, *Sex Offender Registry Established on Wind River Reservation*, WYO. PUB. MEDIA (Aug. 24, 2012), <https://www.wyomingpublicmedia.org/post/sex-offender-registry-established-wind-river-reservation-stream/0> [<https://perma.cc/5TY9-NTGH>] (“Jacobson said the reservation became a “safe haven” for sex offenders living under the radar.”).

¹⁰¹ Burton, *What About the Children*, *supra* note 26, at 212 (“Native children are indisputably frequent victims of non-Indian crime”); ENDING VIOLENCE SO CHILDREN CAN THRIVE, *supra* note 26, at 49–50 (“[I]t is clear from what we do know that it is a very substantial problem.”).

¹⁰² Tribal Law and Order Act of 2010, Pub. L. No. 111–211, § 202(a)(3) 124 Stat. 2262.

¹⁰³ *Id.* § 202(a)(3).

¹⁰⁴ STEWART WAKELING ET AL., NAT’L INST. OF JUST., U.S. DEP’T OF JUST., *POLICING ON AMERICAN INDIAN RESERVATIONS* 9 (2001), <https://www.ncjrs.gov/pdffiles1/nij/188095.pdf> [<https://perma.cc/M4NV-B5UY>] at 9.

¹⁰⁵ *Id.* at 27 (Exhibit 6).

enforcement officers results in slower police response times.¹⁰⁶ Response times are further delayed by Indian country's terrible roads,¹⁰⁷ as well as the fact that many Indian country residences have no address.¹⁰⁸

Due to Indian country's jurisdictional scheme, federal and state law enforcement officers are responsible for reservation prosecutions. However, non-Indian law enforcement offices are often over 100 miles from Indian country.¹⁰⁹ Likewise, state and federal courthouses are often far from Indian country.¹¹⁰ Long distances make reservation crime less attractive to non-Indian law enforcement agencies because by the time they drive to Indian country, they can solve a crime in their neighborhood.¹¹¹ Prosecutors often believe they have better things to do than solve Indian country crimes,¹¹² and federal prosecutors typically do not deal with child

¹⁰⁶ Joel F. Shults, *Do Police Response Times Matter*, POLICEONE.COM (July 1, 2019), <https://www.policeone.com/community-relations/articles/do-police-response-times-matter-8pDUo0L5OxmerFAB/> [<https://perma.cc/AYP5-23FA>] (noting that hiring an additional police officer decreases response times).

¹⁰⁷ *Enhancing Tribal Self-Governance and Safety of Indian Roads: Hearing Before the Comm. on Indian Affairs*, 116th Cong. 21 (2019); CONG. RESEARCH SERV., R44359, HIGHWAYS AND HIGHWAY SAFETY ON INDIAN LANDS, Summary (2016).

¹⁰⁸ Peter Dunphy, *The State of Native American Voting Rights*, BRENNEN CTR. FOR JUST. (Mar. 13, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/state-native-american-voting-rights> [<https://perma.cc/QW72-MLP9>] ("Native Americans, especially those who live on reservations, do not have traditional street addresses."); Matt Vasilogambros, *For Some Native Americans, No Home Address Might Mean No Voting*, SALT LAKE TRIBUNE (updated Oct. 6, 2019), <https://www.sltrib.com/news/2019/10/06/some-native-americans-no/> [<https://perma.cc/4ULD-LS5>].

¹⁰⁹ Matthew L.M. Fletcher, *Addressing The Epidemic Of Domestic Violence In Indian Country By Restoring Tribal Sovereignty*, AM. CONSTITUTION Soc'y FOR L. & POL'Y 6 (2009), <https://www.acslaw.org/wp-content/uploads/2018/05/Fletcher-Issue-Brief.pdf> [<https://perma.cc/TQH4-U2L7>] (noting that distance is a factor in Indian country law enforcement, and that non-Indian law enforcement in PL-280 states are often "hundreds of miles away" from Indian country); *Journey Through Indian Country Part 1: Fighting Crime on Tribal Lands*, FBI (Jun. 1, 2012), <https://www.fbi.gov/news/stories/journey-through-indian-country> [<https://perma.cc/H34U-GYVK>] (noting that non-Indian law enforcement often has to travel over 100 miles on unpaved roads to unmarked streets when responding to Indian country calls).

¹¹⁰ Janet Reno, *A Federal Commitment to Tribal Justice Systems*, 79 JUDICATURE 113, 115 (1995) ("Since federal courts are often located far from Indian reservations, active prosecutions of nonfelony domestic violence, child abuse, weapons offenses, vehicle violations, substance abuse, and theft is limited."); Timothy Williams, *Higher Crime, Fewer Charges on Indian Land*, N.Y. TIMES (Feb. 20, 2012), <https://www.nytimes.com/2012/02/21/us/on-indian-reservations-higher-crime-and-fewer-prosecutions.html> [<https://perma.cc/VKW5-JELX>] ("But Tao Etpison, former chief judge of the Tonto Apaches in Arizona, said federal prosecutors typically live, work and try cases hundreds of miles from Indian Country.").

¹¹¹ Crepelle, *Tribal Courts*, *supra* note 24, at 315.

¹¹² EchoHawk, *Seventh Generation*, *supra* note 15, at 99 ("The physical distance is just one factor that contributes to perhaps the most frustrating difficulty in the prosecution of child sexual abuse in Indian country, which is the apathy of the federal investigators and prosecutors."); Riley, *Crime and Governance* *supra* note 52, at 1568 ("[T]he federal government's limited resources combined with an array of disincentives to investigate and prosecute Indian country crimes means that remarkably few are ever even superficially pursued.").

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crimes.¹¹³ This partially explains why state and federal prosecutors decline Indian country cases at high rates.¹¹⁴ While efforts have been made to improve federal prosecution rates of Indian country crime,¹¹⁵ federal prosecutors continue to decline a large percentage of violent crimes in Indian country, including those committed against children.¹¹⁶

Additionally, states often exhibit animosity towards tribes in law enforcement¹¹⁷ and child care.¹¹⁸ This is true in the realm of sex offender registration according to a 2014 Government Accountability Office (GAO) Report.¹¹⁹ The GAO noted some states prevent tribes from accessing criminal databases.¹²⁰ The GAO also found that states are not consistently notifying tribes when sex offenders declare they will be moving to

¹¹³ Burton, *What about the Children*, *supra* note 26, at 213; Raia, *Protecting Vulnerable Children*, *supra* note 35, at 320 (“[T]he federal government is not well equipped to handle cases like child abuse and sexual assault, which are usually the domain of state governments.”).

¹¹⁴ Press Release, U.S. Dep’t of Justice, Department of Justice Releases Annual Report to Congress on Indian Country Investigations and Prosecutions (Nov. 21, 2018), <https://www.justice.gov/opa/pr/departement-justice-releases-annual-report-congress-indian-country-investigations-and> [<https://perma.cc/MN67-425E>]; Maire Corcoran, *Rhetoric Versus Reality: The Jurisdiction of Rape, the Indian Child Welfare Act, and the Struggle for Tribal Self-Determination*, 15 WM. & MARY J. WOMEN & L. 415, 426 (2009); CAROLE GOLDBERG ET AL., FINAL REPORT: LAW ENFORCEMENT AND CRIMINAL JUSTICE UNDER PUBLIC LAW 280, 329 (May 2008), <https://www.ncjrs.gov/pdffiles1/nij/grants/222585.pdf> [<https://perma.cc/ZCG3-H6Q5>].

¹¹⁵ Tribal Law and Order Act of 2010, Pub. L. No. 111–211, § 212(a)(4), 124 Stat. 2267; Tribal Law and Order Act of 2010 Summary, *Duties Imposed on United States Attorneys by the Tribal Law and Order Act of 2010*, U.S. DEP’T OF JUST. 1–2, [HTTPS://WWW.JUSTICE.GOV/SITES/DEFAULT/FILES/USAOAZ/LEGACY/2010/10/14/TRIBAL_LAW_AND_ORDER_ACT_OF_2010_SUMMARY.PDF](https://www.justice.gov/sites/default/files/USAOAZ/LEGACY/2010/10/14/TRIBAL_LAW_AND_ORDER_ACT_OF_2010_SUMMARY.PDF) [<https://perma.cc/SVE6-K3DF>]; U.S. DEP’T OF JUST., INDIAN COUNTRY INVESTIGATIONS AND PROSECUTIONS 39 (2018) [hereinafter INVESTIGATIONS & PROSECUTIONS], <https://www.justice.gov/otj/page/file/1231431/download> [<https://perma.cc/VK46-BSDJ>] (noting successful prosecutions in *U.S. v. Ira Alan Arias* and *U.S. v. Johnson*).

¹¹⁶ INVESTIGATIONS & PROSECUTIONS, *supra* note 115, at 34.

¹¹⁷ Cabazon Band of Mission Indians v. Smith, 388 F.3d 691, 692–93 (9th Cir. 2004) (“Before the Tribe’s suit, Defendants repeatedly stopped and cited the Tribe’s police officers for violating California’s Vehicle Code whenever the officers traveled on nonreservation roads to respond to emergency calls from different portions of the reservation); Smith v. Parker, 996 F. Supp. 2d 815, 833 (D. Neb.), *aff’d*, 774 F.3d 1166 (8th Cir. 2014), *aff’d sub nom.* Nebraska v. Parker, 136 S. Ct. 1072 (2016) (“Thurston County refused to join any cross-deputization efforts despite the willingness of the Nebraska State Patrol to participate in such an agreement” with the Omaha Indian Tribe.); Internal Law Enforcement Servs. Policies, 69 Fed. Reg. 6321 (Feb. 10, 2004) (“It is common for tribes to have difficulty getting local or State law enforcement to respond to crimes on the reservations.”).

¹¹⁸ Oglala Sioux Tribe v. Van Hunnik, 100 F. Supp. 3d 749, 753 (D.S.D. 2015) (noting child custody hearings involving Indian children “usually last less than five minutes” and the state was granted continued custody of every child in cases before Judge Davis from January 2010 to July 2014).

¹¹⁹ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-15-23, SEX OFFENDER REGISTRATION AND NOTIFICATION ACT: ADDITIONAL OUTREACH AND NOTIFICATION OF TRIBES ABOUT OFFENDERS WHO ARE RELEASED FROM PRISON NEEDED (2014) [hereinafter GAO-15-13, SEX OFFENDER REGISTRATION].

¹²⁰ *Id.* at 20 (“[S]ome states, such as New York, have statutes or policies prohibiting CSAs from granting tribal law enforcement entities access to their state switches and, therefore, to NCIC through such switches.”).

reservations.¹²¹ Likewise, the Supreme Court went so far as to write in 2016, “Even when capable of exercising jurisdiction, however, States have not devoted their limited criminal justice resources to crimes committed in Indian country.”¹²² Due to jurisdictional rules, many tribes rely on state law enforcement,¹²³ so state failures to police Indian country imperil child safety in Indian country.

C. Lack of Access to Criminal Databases

Tribes have difficulty accessing criminal databases.¹²⁴ Prior to 2006, tribes were not able to participate in the nationwide sex offender registration and notification system.¹²⁵ Under the Adam Walsh Child Protection and Safety Act (“AWA”), federally recognized Indian tribes¹²⁶ are now defined as a “jurisdiction” for sex offender registry purposes like each state and the American territories;¹²⁷ moreover, tribes are explicitly authorized to create their own definitions of “sex offender”¹²⁸ and “crime of violence.”¹²⁹ Tribes are also included in the Secretary of Health and Human Services national registry of substantiated cases of child abuse or neglect.¹³⁰ Hence, tribes must require sex offenders who reside in their borders to register as offenders.¹³¹ Federal law mandates the information tribes must

¹²¹ *Id.* at 37–39.

¹²² *U.S. v. Bryant*, 136 S. Ct. 1954, 1960 (2016).

¹²³ Act of August 15, 1953, Pub. L. No. 83-280, ch. 505, 67 Stat. 588 (codified at 18 U.S.C. § 1162, 28 U.S.C. § 1360, and other scattered sections in 18 and 28 U.S.C.); 25 U.S.C. §§ 1321–1326 (2018); *see also* Rhode Island Indian Claims Settlement Act of 1978, Pub. L. No. 95-395, § 9, 92 Stat. 817; Maine Indian Claims Settlement Act of 1980, Pub. L. No. 96-420, § 6(a), 94 Stat. 1785; Florida Indian Land Claims Settlement Act of 1982, Pub. L. No. 97-399, §§ 8(b)(1), (2)(A), 96 Stat. 2015.

¹²⁴ Nat’l Cong. Of Am. Indians, *Tribal Access to Criminal Background Databases for Criminal and VAWA 2013 Purposes*, Resolution #ATL-14-048-B, (October 26–31, 2014), http://www.ncai.org/attachments/Resolution_LECKNnOhEDidvtcLxdAWdSbbEFaPSdQVLivsRqPRNvCTXFrwuLO_ATL-14-048-B.pdf [<https://perma.cc/C3G6-8T2F>].

¹²⁵ *SORNA: Tribal Election, Delegation to the State and Right of Access*, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), U.S. DEP’T OF JUST. (Mar. 25, 2020), https://smart.gov/tribal_election.htm [<https://perma.cc/3AHC-YYAM>] (“Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), created the first opportunity for federally recognized Indian tribes to be included in a nationwide sex offender registration and notification system.”).

¹²⁶ NAT’L CONG. OF AM. INDIANS, TRIBAL NATIONS AND THE UNITED STATES: AN INTRODUCTION 25 (2020) [hereinafter TRIBAL NATIONS AND THE UNITED STATES], http://www.ncai.org/tribalnations/introduction/Indian_Country_101_Updated_February_2019.pdf [<https://perma.cc/RRX5-E5YC>]; *About Native Americans*, U.S. DEP’T OF JUST. (updated June 17, 2014), <https://www.justice.gov/otj/about-native-americans-otj27> [<https://perma.cc/8HRV-JKAL>].

¹²⁷ 34 U.S.C. § 20911(10) (2018).

¹²⁸ 18 U.S.C. § 2250(a)(2)(A) (2018).

¹²⁹ 18 U.S.C. § 2250(d)(1) (2018).

¹³⁰ 34 U.S.C. § 20990(b) (2018).

¹³¹ 34 U.S.C. § 20913(a) (2018).

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collect from sex offenders.¹³² The Department of Justice has developed a Model Tribal Sex Offender Registration Code.¹³³ Currently, 135 of the 574¹³⁴ federally recognized tribes have implemented sex offender registries.¹³⁵

Tribes were not meaningfully consulted while the AWA was being drafted, and the AWA is not particularly good for tribes.¹³⁶ The Act compels tribes to comply with the Act or turn over sex offender registration to the state.¹³⁷ Many tribes cannot afford to implement a sex offender registry; thus, poor tribes are essentially subjugated to state jurisdiction.¹³⁸ In states exercising jurisdiction over Indian country under PL-280, tribes are forced to relinquish sex offender registration to the state,¹³⁹ and this slaps tribal sovereignty in the face.¹⁴⁰ Tribes in PL-280 states have argued the Act expands state authority beyond what is allowed under PL-280.¹⁴¹ Under PL-280, a state's criminal/prohibitory laws apply to all persons on

¹³² 34 U.S.C. § 20914 (2018).

¹³³ OFFICE OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING, U.S. DEP'T OF JUST., TRIBAL SEX OFFENDER REGISTRATION CODE, MODEL CODE (2017), https://smart.gov/pdfs/Model-Tribal-Code_508.pdf [<https://perma.cc/C69U-KAGB>].

¹³⁴ TRIBAL NATIONS AND THE UNITED STATES, *supra* note 126, at 11.

¹³⁵ *SORNA Substantial Implementation*, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), U.S. DEP'T OF JUST. https://www.smart.gov/newsroom_jurisdictions_sorna.htm [<https://perma.cc/EL6E-ARCT>] (last visited May. 9, 2020).

¹³⁶ Washburn & Davis, *supra* note 67, at 15 (“In sum, SORNA has resulted in a massive transfer of tribal authority to states, without consulting tribes in any significant way.”); *Tracking Sex Offenders in Indian Country: Trial Implementation of the Adam Walsh Act: Hearing Before the Comm. On Indian Affairs, U.S. S.*, 110th CONG. 16 (2008) (statement of Hon. Robert Moore, Tribal Councilman, Rosebud Sioux Tribe) (“The Adam Walsh Act, passed without tribal consultation or comment, represents a significant assault on tribal sovereignty.”).

¹³⁷ 34 U.S.C. § 20929(a)(2)(B) (2018); Brian P. Dimmer, *How Tribe and State Cooperative Agreements Can Save the Adam Walsh Act from Encroaching Upon Tribal Sovereignty*, 92 MARQ. L. REV. 385, 385-86 (2008) (“[N]on-Public Law 280 tribes’ have argued that the AWA threatens to encroach upon tribal sovereignty because tribes must retrocede sex offender registration and notification responsibilities where they fail to comply with the AWA.”).

¹³⁸ Dimmer, *supra* note 137, at 398 (“Digging deeper, non-Public Law 280 tribes’ challenge to section 127 seems even more persuasive because non-Public Law 280 tribes appear unable to finance independent registration and notification programs.”); GAO-15-13, SEX OFFENDER REGISTRATION, *supra* note 119, at 39 (“[T]ribes faced a number of challenges in implementing the act, such as lack of access to federal criminal justice databases and difficulty covering implementation costs.”).

¹³⁹ 34 U.S.C. § 20929(a)(2)(A) (2018).

¹⁴⁰ Dimmer, *supra* note 137, at 399 (“Public Law 280 tribes challenge that section 127 of the AWA threatens to encroach upon tribal sovereignty because it automatically delegates to states the authority to carry out sex offender registration and notification functions for Public Law 280 tribes.”).

¹⁴¹ Dimmer, *supra* note 137, at 386 (“Public Law 280 tribes’ have argued that the AWA extends beyond the scope of criminal/prohibitory and civil/adjudicatory jurisdiction delegated to states under Public Law 280.”).

reservations, but a state's civil/regulatory laws do not.¹⁴² It is not entirely clear whether sex offender registry laws are civil or criminal; accordingly, state power to enforce sex offender registration laws within Indian country is debatable.¹⁴³ The AWA also imposes a minimum one year jail sentence for sex offenders who fail to register in any jurisdiction—except for Indian country.¹⁴⁴ On its face, this declares that Indian children are less important than non-Indian children.

The 2005 VAWA and the 2010 Tribal Law and Order Act both require the United States Attorney General to ensure that eligible tribal law enforcement agencies have access to national criminal databases.¹⁴⁵ Nevertheless, few tribes had access to national crime information systems until the 2015 Tribal Access Program (“TAP”).¹⁴⁶ TAP provides tribes with training to utilize a kiosk that includes a computer with a fingerprint and palm print scanner, as well as criminal software and access to national criminal information databases.¹⁴⁷ Hence, TAP helps tribes comply with AWA's sex offender registry requirements.¹⁴⁸ The ability to enter and exchange information enhances public safety in Indian country and

¹⁴² *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 209 (1987) (“[I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub.L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub.L. 280 does not authorize its enforcement on an Indian reservation.”).

¹⁴³ Dimmer, *supra* note 137, at 396 (“Although few courts have considered whether sex offender registration and notification laws are criminal/prohibitory or civil/regulatory, the Wisconsin and Minnesota state supreme courts have agreed that sex offender laws are probably criminal/prohibitory laws.”).

¹⁴⁴ 34 U.S.C. § 20913(e) (2018).

¹⁴⁵ 34 U.S.C. § 41107 (2018); 28 U.S.C. § 534(d) (2018); Tribal Law and Order Act of 2010, Pub. L. No. 111–211, § 233(b), 124 Stat. 2279; *How Tribes can “TAP” into Critical Crime Data: COPS Funding in Action*, 10 CMTY. POLICING DISPATCH, no. 6 (Cmty. Oriented Policing Services, U.S. Dep't of Just., Washington D.C.) June 2017, [hereinafter *Critical Crime Data*], https://cops.usdoj.gov/html/dispatch/06-2017/cops_funding_in_action.html [<https://perma.cc/9C5H-P7LV>] (“The Tribal Law and Order Act of 2010 and the Violence Against Women Act of 2005 require the Attorney General to ensure that tribal law enforcement officials who meet applicable federal or state requirements be permitted access to national crime information databases.”).

¹⁴⁶ *Tribal Access Program for Nat'l Crime Info. Ensuring the Exchange of Critical Data*, U.S. DEP'T OF JUST., <https://www.justice.gov/tribal/tribal-access-program-tap> [<https://perma.cc/6VC2-YFZ5>].

¹⁴⁷ *Critical Crime Data*, *supra* note 145.

¹⁴⁸ Press Release, U.S. Dep't of Just., Thirty Tribes Selected for Expansion of Program Enhancing Tribal Access to National Crime Information Databases (Dec. 16, 2019) [hereinafter *Thirty Tribes Selected*], <https://www.justice.gov/opa/pr/thirty-tribes-selected-expansion-program-enhancing-tribal-access-national-crime-information> [<https://perma.cc/U8JR-VVX2>] (“Tap enhances tribal efforts to register sex offenders pursuant to the Sex Offender Registration and Notification Act (SORNA), have orders of protection enforced off-reservation, protect children . . .”).

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beyond.¹⁴⁹ Both tribal criminal and non-criminal justice agencies, including those that work with Indian children, are able to use TAP.¹⁵⁰ Access to TAP has already improved safety for Indian children.¹⁵¹ Approximately seventy-five tribes have implemented TAP,¹⁵² so this means that nearly 500 tribes do not have TAP. TAP requires high-speed internet, and users must pay various fees.¹⁵³ Indian country often lacks internet¹⁵⁴ and is often extremely poor.¹⁵⁵

D. Inadequate Healthcare and Social Services

Indian country also lacks other personnel who protect children. Indian Health Services (“IHS”) is the primary healthcare provider in Indian country,¹⁵⁶ but IHS is grossly underfunded and has an abysmal performance record.¹⁵⁷ Sexual assault nurse examiners work closely with law

¹⁴⁹ *How Tribes can “TAP” into Critical Crime Data: COPS Funding in Action*, 10 CMTY. POLICING DISPATCH, no. 6 (Cmty. Oriented Policing Services, U.S. Dep’t of Just., Washington D.C.) June 2017, https://cops.usdoj.gov/html/dispatch/06-2017/cops_funding_in_action.html [<https://perma.cc/9C5H-P7LV>] (“The TAP program is essential for law enforcement collaboration, and the Attorney General recently highlighted TAP as one of the cornerstones of public safety in Indian country.”); *Overview of Tribal Access Program for National Crime Information (TAP)*, U.S. DEP’T OF JUSTICE 3, <https://www.justice.gov/tribal/page/file/902831/download> [<https://perma.cc/87UQ-LYE4>] (“Inconsistent access impacts both tribal and non-tribal jurisdictions”) (last visited Apr. 9, 2020).

¹⁵⁰ *Overview, Tribal Access Program for National Crime Information, Ensuring the Exchange of Critical Data*, U.S. DEP’T OF JUSTICE 2, <https://www.justice.gov/tribal/file/796691/download> [<https://perma.cc/S6QW-PADL>] (last visited Apr. 9, 2020).

¹⁵¹ Thirty Tribes Selected, *supra* note 148.

¹⁵² Tribal Access Program (TAP), U.S. DEP’T OF JUST., <https://www.justice.gov/tribal/tribal-access-program-tap> [<https://perma.cc/78NL-5ZMU>] (“There are currently over 75 Tribes with agencies participating in TAP”) (last visited Apr. 9, 2020).

¹⁵³ *Overview, Tribal Access Program*, *supra* note 150, at 2.

¹⁵⁴ Hansi Lo Wang, *Native Americans On Tribal Land Are ‘The Least Connected’ To High-Speed Internet*, NPR (Dec. 6, 2018, 6:42 PM ET), <https://www.npr.org/2018/12/06/673364305/native-americans-on-tribal-land-are-the-least-connected-to-high-speed-internet> [<https://perma.cc/3X67-WKW4>].

¹⁵⁵ See Adam Crepelle, *How Federal Indian Law Prevents Reservation Private Sector Development*, U. OF PA. J. BUS. L. (forthcoming 2021) [hereinafter Crepelle, *How Federal Indian Law Prevents*] (“American Indians have the highest poverty rate in the United States, 26% compared to the national average of 14%. Indians who reside within Indian country are even worse off with a poverty rate of 38%. Indians comprise approximately 1 percent of the United States population, yet eight of the 10 poorest counties in the United States are majority American Indian.”); see also Adam Crepelle, *The Tribal Per Capita Payment Conundrum: Governance, Culture, and Incentives*, GONZ. L. REV. (forthcoming 2021) (“Poverty can be so severe that some reservations are often likened to third world countries.”).

¹⁵⁶ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-12-29, INDIAN HEALTH SERVICE: CONTINUED EFFORTS NEEDED TO HELP STRENGTHEN RESPONSE TO SEXUAL ASSAULTS AND DOMESTIC VIOLENCE, 2 (2011), <https://www.gao.gov/new.items/d1229.pdf> [<https://perma.cc/GDL6-WW76>].

¹⁵⁷ 1976: *Government Admits Unauthorized Sterilization of Indian Women*, NATIVE VOICES, <https://www.nlm.nih.gov/nativevoices/timeline/543.html> [<https://perma.cc/8XLH-GFDZ>] (last visited June 7, 2020); Dana Ferguson, *Violated: How the Indian Health Service Betrays Patient Trust and*

enforcement and child protective services;¹⁵⁸ however, most reservation residents do not have access to sexual assault nurse examiners or rape kits.¹⁵⁹ Of the forty-six IHS facilities, the GAO found that only nine were performing forensic sexual assault examinations on children in 2011.¹⁶⁰ Sexual assaults can be successfully prosecuted without forensic evidence, but lack of DNA evidence makes the prosecution much more difficult.¹⁶¹

Treaties in the Great Plains, ARGUS LEADER (updated Feb. 6, 2019, 7:53 AM PST), <https://www.argusleader.com/in-depth/news/2018/12/05/south-dakota-health-care-ihs-hospital-native-american-trust-violated/1728819002/> [<https://perma.cc/22SH-M94E>]; Misha Friedman, *For Native Americans, Health Care is a Long, Hard Road Away*, NPR (Apr. 13, 2016, 7:30 AM ET), <https://www.npr.org/sections/health-shots/2016/04/13/473848341/health-care-s-hard-realities-on-the-reservation-a-photo-essay> [<https://perma.cc/S98D-7BW3>] (“On the reservation, IHS facilities often don’t have services that people elsewhere expect, such as emergency departments or MRI machines.”); Andrew Siddons, *The Never-Ending Crisis at the Indian Health Service*, ROLL CALL (Mar. 5, 2018, 5:04 AM), <https://www.rollcall.com/2018/03/05/the-never-ending-crisis-at-the-indian-health-service/> [<https://perma.cc/J3YS-XEJB>]; Mary Smith, *Native Americans: A Crisis in Health Equity*, AM. BAR ASS’N, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/native-american-crisis-in-health-equity/ [<https://perma.cc/PS5R-HREW>] (“[T]ribal members have a different health care reality than many other U.S. citizens. For example, to match the level of care provided to federal prisoners, funding would have to nearly double, according to an analysis by the National Congress of American Indians.”) (last visited Mar. 12, 2020).

¹⁵⁸ *Programs and Initiatives, Forensic Health Care*, INDIAN HEALTH SERV., <https://www.ihs.gov/forensichealthcare/programs/> [<https://perma.cc/CW8C-2JNK>] (“SAEs are part of a coordinated response to sexual assault and therefore often work closely with law enforcement officers, forensic lab staff, child protective services, prosecutors, and sexual assault advocates and crisis programs.”).

¹⁵⁹ Melodie Edwards, *Native Americans Turn To ‘Safe Stars’ For Help With Sexual Assaults*, NPR (Oct. 13, 2015, 4:30 PM), <https://www.npr.org/2015/10/13/446058978/native-americans-turn-to-safe-stars-for-help-with-sexual-assaults> [<https://perma.cc/24TP-XAST>] (“On the Wind River Indian Reservation in central Wyoming, there’s not a single trained sexual assault nurse examiner.”); Jordan Richard-Craven, *New Legislation on Tribal Rape Cases Highlights the Difficulty of Being a Woman Minority*, STANFORD PROGRESSIVE (Oct. 2010), <http://web.stanford.edu/group/progressive/cgi-bin/?p=945> (discussing the lack of resources Indian Health Services are able to provide to Indian sexual assault victims and that they are often not examined); NANCY RITTER, NAT’L INST. OF JUST., *THE ROAD AHEAD: UNANALYZED EVIDENCE IN SEXUAL ASSAULT CASES 2* (2011), <https://ncjrs.gov/pdffiles1/nij/233279.pdf> [<https://perma.cc/JD3U-PQTH>] (noting that many Indian country residents “do not know how to obtain or use a [sexual assault kit], and they have no access to a sexual assault nurse examiner.”); Timothy Williams, *For Native American Women, Scourge of Rape, Rare Justice*, N.Y. TIMES (May 22, 2012), <https://www.nytimes.com/2012/05/23/us/native-americans-struggle-with-high-rate-of-rape.html> [<https://perma.cc/N5NR-KAUG>] (discussing the lack of sexual assault kits and personnel trained to perform rape examinations at Indian Health Service hospitals); OFFICE FOR VICTIMS OF CRIME, AMERICAN INDIAN AND ALASKA NATIVE SEXUAL ASSAULT NURSE EXAMINER–SEXUAL ASSAULT RESPONSE TEAM INITIATIVE SUMMARY 2 (2012), https://www.ovc.gov/AIANSane-Sart/pdf/AI-AN_SANESARTInitiativeSummary.pdf [<https://perma.cc/Y9ML-AFY>] (“[S]exual violence in tribal communities is widespread and services are inadequate to support victims.”).

¹⁶⁰ GAO-12-29, INDIAN HEALTH SERVICE, *supra* note 158, at 17 (Table 2).

¹⁶¹ Sarah Deer, *Bystander No More? Improving the Federal Response to Sexual Violence in Indian Country*, 2017 UTAH L. REV. 771, 787 (2017) [hereinafter Deer, *Bystander No More*]; *Addressing the Rape Kit Backlog*, RAINN, <https://www.rainn.org/articles/addressing-rape-kit-backlog> (“The

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Indian country also suffers from a severe shortage of mental health professionals and social workers, leaving children vulnerable.¹⁶²

Worse, the federal government has enabled pedophiles to prey upon Indian children.¹⁶³ The Bureau of Indian Affairs (“BIA”) has hired and protected child molesters, resulting in harm to countless Indian children.¹⁶⁴ For years, the BIA hired pedophiles to teach in reservation schools and allowed them to continue teaching even after being reported.¹⁶⁵ Numerous children have been sexually assaulted by teachers at BIA-run schools.¹⁶⁶ The IHS has implemented policies to help prevent child sexual abuse by IHS staff,¹⁶⁷ nevertheless, IHS continues to resist calls from the Senate Indian Affairs Committee to release reports relating to its mishandling of the infamous Stanley Weber case.¹⁶⁸ The IHS had knowledge that Weber molested children, yet it simply transferred the known pedophile to another

overwhelming backlog of DNA evidence is currently one of the biggest obstacles to prosecuting perpetrators of sexual violence.”) (last visited May 29, 2020).

¹⁶² Dolores Subia BigFoot & Susan R. Schmidt, *Honoring Children, Mending the Circle: Cultural Adaptation of Trauma-Focused Cognitive-Behavioral Therapy for American Indian and Alaska Native Children*, 66(8) J. OF CLINICAL PSYCHOL. 847, 847 (2010), <http://www.itcni.org/wp-content/uploads/2013/04/TBCAC-cultural-adaptation-article2010.pdf> [<https://perma.cc/8HVE-XKP5>].

¹⁶³ 25 U.S.C. § 3201(a)(1)(C) (2018).

¹⁶⁴ Deer & Nagle, *Return To Worcester*, *supra* note 27, at 223 (“Several child sexual abuse scandals rocked the Bureau of Indian Affairs during the 1980s, when hundreds of children were victimized by non-Indian federal employees.”); Christopher Weaver et al., *A Pedophile Doctor Drew Suspicions for 21 Years. No One Stopped Him*, WALL STREET J. (Feb. 8, 2019, 10:32 AM ET), <https://www.wsj.com/articles/a-pedophile-doctor-drew-suspicions-for-21-years-no-one-stopped-him-11549639961> [<https://perma.cc/5ET4-PP6Y>].

¹⁶⁵ S. REP. NO. 101-216, at 89 (1989) (“BIA has allowed pedophiles to continue teaching even after they were reported to BIA school officials.”).

¹⁶⁶ EchoHawk, *Seventh Generation*, *supra* note 15, at 105 (“Indian children across the country now bear the burden of the BIA’s mistakes and suffer additionally because mental health treatment and counseling are often unavailable.”).

¹⁶⁷ *Chapter 20 – Protecting Children from Sexual Abuse by Health Care Providers*, INDIAN HEALTH MANUAL, INDIAN HEALTH SERV., <https://www.ihs.gov/ihtm/pc/part-3/p3c20/> [<https://perma.cc/ZJ4T-RFJS>] (last visited May 31, 2020); OFFICE OF INSPECTOR GENERAL, U.S. DEP’T OF HEALTH AND HUMAN SERVS., INDIAN HEALTH SERVICE HAS STRENGTHENED PATIENT PROTECTION POLICIES BUT MUST FULLY INTEGRATE THEM INTO PRACTICE AND ORGANIZATIONAL CULTURE 3 (2019), <https://oig.hhs.gov/oei/reports/oei-06-19-00330.pdf> [<https://perma.cc/UY56-28W8>] (noting IHS implemented policies to prevent child sexual abuse in February 2019 in response to news surrounding Stanley Weber).

¹⁶⁸ Letter from Tom Udall, U.S. Sen. et al., to Alex Azar, Secretary, U.S. Dep’t of Health and Human Servs. (Mar. 4, 2020), [https://www.testersenate.gov/files/Letters/2020-03-04 LETTER HHS Integrity Report.pdf](https://www.testersenate.gov/files/Letters/2020-03-04%20LETTER%20HHS%20Integrity%20Report.pdf) [<https://perma.cc/HVV6-Z7ZU>].

IHS location.¹⁶⁹ The IHS's conduct enabled Weber to molest children for another 21 years.¹⁷⁰

E. Socioeconomics

Indian country's material poverty is likely a significant factor in child maltreatment on reservations.¹⁷¹ Indians have the highest poverty rate in the United States,¹⁷² and the poverty rate is significantly higher for Indians who reside within Indian country.¹⁷³ Though Indians compose about one percent of the United States population,¹⁷⁴ eight of the ten poorest counties in the United States are majority American Indian.¹⁷⁵ Poverty exists because there is no private sector in Indian country,¹⁷⁶ thus, reservation unemployment rates chronically float around fifty percent.¹⁷⁷ As a result of

¹⁶⁹ Christopher Weaver et al., *A Pedophile Doctor Drew Suspicions for 21 Years. No One Stopped Him*, FRONTLINE (Feb. 8, 2019), <https://www.pbs.org/wgbh/frontline/article/patrick-stanley-weber-sexual-abuse-pine-ridge-blackfeet-reservation/> [https://perma.cc/7N5J-WRXJ].

¹⁷⁰ *Id.* (“But the Indian Health Service didn’t fire Mr. Weber. Instead, it transferred him to another hospital in Pine Ridge, S.D. He continued treating Native American children there for another 21 years, leaving behind a trail of sexual-assault allegations.”).

¹⁷¹ Adam Crepelle, *Tribal Courts*, *supra* note 24, at 73 (“Though the relationship between crime and poverty is complex, poverty is likely a significant factor in the high rates of violence experienced by Indians.”).

¹⁷² Suzanne Macartney et al., *Poverty Rates for Selected Groups Detailed Race and Hispanic Groups by State and Place: 2007-2011*, U.S. CENSUS BUREAU 3 (2013), <https://www2.census.gov/library/publications/2013/acs/acsbr11-17.pdf> [https://perma.cc/7GKF-NXVR]; *American Indian and Alaska Native Heritage Month: November 2017*, U.S. CENSUS BUREAU (Oct. 6, 2017), <https://www.census.gov/newsroom/facts-for-features/2017/aiian-month.html> [https://perma.cc/J5W7-SVZL].

¹⁷³ *Making Indian Country Count: Native Americans And The 2020 Census: Hearing Before the Comm. On Indian Affairs U.S. S.*, 115th Cong., 26 (2018) (statement of James T. Tucker, Pro Bono Voting Rights Counsel, Native American Rights Fund) (“Native Americans have the highest poverty rate of any population group, at 26.6 percent. On federally recognized Indian reservations in Alaska Native villages, that rate is 38.3 percent.”).

¹⁷⁴ Tina Norris, et al., *The American Indian and Alaska Native Population: 2010*, U.S. CENSUS BUREAU 4 (Jan. 2012), <https://www.census.gov/history/pdf/c2010br-10.pdf> [https://perma.cc/M65C-SBPM].

¹⁷⁵ *Unemployment on Indian Reservations at 50 Percent: The Urgent Need to Create Jobs in Indian Country, Hearing before the S. Comm. on Indian Affairs*, 111th Cong. 2 (2010).

¹⁷⁶ Annie Lowery, *Pain on the Reservation*, N.Y. TIMES (July 12, 2013), <https://www.nytimes.com/2013/07/13/business/economy/us-budget-cuts-fallheavily-on-american-indians.html> [https://perma.cc/XSN4-N7AM] (quoting Amber Ebarb of the Nat’l Cong. of Am. Indians: “There is not as much of a private sector presence in Indian country, which tends to be high-poverty and high-unemployment to begin with.”); Robert J. Miller, *Creating Economic Development on Indian Reservations*, PERC (2012), <https://www.perc.org/2012/09/14/creatingeconomic-development-on-indian-reservations/> [https://perma.cc/5PKW-G638] (“Reservation economies rapidly lose the money that residents receive because of the absence of small businesses where people can spend their cash on needed goods and services.”).

¹⁷⁷ *Unemployment on Indian Reservations at 50 Percent*, *supra* note 175; Ariana Bustos, *Despite Gains, Native American Unemployment Still Lags Behind Nation*, CRONKITE NEWS (May 9, 2018), <https://cronkitenews.azpbs.org/2018/05/09/despite-gains-native-american-employment-still-lags-behind->

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poverty, Indians live in overcrowded homes at significantly higher rates than any other group in the United States,¹⁷⁸ and the overcrowded housing is often grossly substandard.¹⁷⁹ Studies show that child abuse is three times more likely to occur in low-income households.¹⁸⁰ Studies also indicate child abuse is linked to unemployment¹⁸¹ and living in an overcrowded home.¹⁸²

Social problems linked to poverty are common in Indian country, and these social factors are correlated with increased risk of child abuse. Children raised by single parents are at a greater risk of maltreatment than those who live in two-parent homes,¹⁸³ and over half of American Indian

nation/ [https://perma.cc/2VQH-TVTS]; Vincent Schilling, *Terrible Statistics: 15 Native Tribes with Unemployment Rates Over 80 Percent*, INDIAN COUNTRY TODAY (Aug. 29, 2013), https://indiancountrytoday.com/archive/terrible-statistics-15-native-tribes-with-unemployment-rates-over-80-percent-iAV-3u_770-C6fEcC3lfA [https://perma.cc/CY56-QGSF].

¹⁷⁸ DEMOCRATIC STAFF OF THE HOUSE COMM. ON NAT. RES., WATER DELAYED IS WATER DENIED: HOW CONGRESS HAS BLOCKED ACCESS TO WATER FOR NATIVE FAMILIES Exec. Summary (2016) [hereinafter DEMOCRATIC STAFF, WATER DELAYED], http://blackfeetnation.com/wp-content/uploads/2016/10/House-NRC-Water-Report-Minority-10-10-16.pdf [https://perma.cc/V8D9-TCRA] (“Over a half million people—nearly 48% of tribal homes—in Native communities across the United States do not have access to reliable water sources, clean drinking water, or basic sanitation.”); Craig Harris & Dennis Wagner, *HUD: Housing Conditions for Native Americans Much Worse Than Rest of U.S.*, AZCENTRAL (updated Jan. 19, 2017, 2:10 PM), https://www.azcentral.com/story/news/local/arizona-investigations/2017/01/19/new-hud-reports-find-housing-conditions-worse-among-native-americans/96783368/ [https://perma.cc/MKN6-PZ9S] (“Overcrowding and other physical-condition problems were present in 34 percent of households in tribal areas, compared with 7 percent of all U.S. households.”); *Housing & Infrastructure*, NAT’L CONG. AM. INDIANS, http://www.ncai.org/policy-issues/economic-development-commerce/housing-infrastructure [https://perma.cc/LLA9-URG3] (“Forty percent of on-reservation housing is considered substandard (compared to 6 percent outside of Indian Country) and nearly one-third of homes on reservations are overcrowded.”) (last visited Feb. 3, 2019).

¹⁷⁹ DEMOCRATIC STAFF, WATER DELAYED, *supra* note 178, at 1.

¹⁸⁰ Ginger Kadlec, *Poverty’s Influence on Child Abuse*, CHILD’S WORLD AM. (Aug. 30, 2016), https://childsworldamerica.org/povertys-influence-on-child-abuse/ [https://perma.cc/FR9J-WF8V].

¹⁸¹ ETIENNE G. KRUG ET AL. EDS., WORLD HEALTH ORG., WORLD REPORT ON VIOLENCE AND HEALTH, 68 (2002), https://apps.who.int/iris/bitstream/handle/10665/42495/9241545615_eng.pdf;jsessionid=E0CDD564CB7E951AA2A01AB939ED58C3?sequence=1 [https://perma.cc/6H2A-JFME] (“Rates of abuse are higher in communities with high levels of unemployment and concentrated poverty.”).

¹⁸² Rosemary L. Cant et al., *Overcrowded Housing: One Of A Constellation Of Vulnerabilities For Child Sexual Abuse*, 93 CHILD ABUSE & NEGLECT 239 (2019), https://www.sciencedirect.com/science/article/abs/pii/S0145213419301796 [https://perma.cc/EL4L-NZA]; KRUG ET AL., VIOLENCE AND HEALTH, *supra* note 181, at 67 (“Data from a range of countries indicate that household overcrowding increases the risk of child abuse.”).

¹⁸³ CHILD AND FAMILY RESEARCH PARTNERSHIP, U. OF TEX. AT AUSTIN. THE EVIDENCE BASE: CHILD MALTREATMENT RISK FACTORS 1 (2019), https://childandfamilyresearch.utexas.edu/sites/default/files/0419_EB_ChildWelfare.pdf [https://perma.cc/JV7E-45FU] (“Single parenthood more than doubles the risk of Child Protective Services (CPS) involvement, and one study found it to be the second largest predictor of child maltreatment, only after income.”).

children live in single-parent homes, compared to about one-third of children of other races.¹⁸⁴ Parental substance abuse is closely associated with child abuse.¹⁸⁵ American Indians have the highest rate of substance abuse in the United States.¹⁸⁶ Young motherhood and parents with low education levels are factors strongly linked to child abuse.¹⁸⁷ The age of first-time American Indian mothers is the lowest of any racial group in the United States.¹⁸⁸ American Indian college graduation rates also lag behind the national average.¹⁸⁹ Those who were victims of abuse as children are statistically more likely to perpetrate child abuse,¹⁹⁰ so Indian country remains trapped in the cycle of abuse.

However, it must be noted that reservation poverty and child abuse are not part of traditional indigenous culture.¹⁹¹ Tribes traditionally treated children with great love and care.¹⁹² The United States disrupted Indian families by abducting Indian children and sending them to distant boarding

¹⁸⁴ *Children in Single-Parent Families by Race in the U.S.*, KIDS COUNT DATA CTR., ANNIE E. CASEY FOUND., <https://datacenter.kidscount.org/data/tables/107-children-in-single-parent-families-by-race-detailed/1/any/false/37,871,870,573,869,36,868,867,133,38/10,11,9,12,1,185,13/432,431> [https://perma.cc/T3LC-H7RJ] (last visited June 8, 2020).

¹⁸⁵ CHILD MALTREATMENT RISK FACTORS, *supra* note 183, at 2 (“Parental substance abuse more than doubles the risk that a child is exposed to physical or sexual abuse.”).

¹⁸⁶ Rev’d. by Scot Thomas, *Alcohol and Drug Abuse Stat.*, AM. ADDICTION CTRS. (updated June 1, 2020), <https://americanaddictioncenters.org/rehab-guide/addiction-statistics> [https://perma.cc/T34B-2ZJP] (“American Indians and Alaska Natives age 12 and older had the highest rate of substance abuse and dependence in 2017, at 12.8%.”).

¹⁸⁷ CHILD MALTREATMENT RISK FACTORS, *supra* note 183, at 2 (“Young parents are three times as likely to maltreat their children, and parents with low educational achievement are at five times the risk.”).

¹⁸⁸ T.J. MATHEWS & BRADY E. HAMILTON, NAT’L CTR. FOR HEALTH STATS., U.S. DEP’T OF HEALTH & HUMAN SERVS., DATA BRIEF NO. 232, MEAN AGE OF MOTHERS IS ON THE RISE: UNITED STATES, 2000–2014, 3 (2016), <https://www.cdc.gov/nchs/data/databriefs/db232.pdf> [https://perma.cc/CG5Y-SCRJ].

¹⁸⁹ *Indicator 27: Educational Attainment*, NAT’L CTR. FOR EDUC. STATS., INST. OF EDUC. SCIENCES, Fig. 27.4 (updated Feb. 2019), https://nces.ed.gov/programs/raceindicators/indicator_RFA.asp %5Bhttps://perma.cc/9H8V-QLV6].

¹⁹⁰ KRUG ET AL., *supra* note 181, at 67–68.

¹⁹¹ ROBERT J. MILLER, RESERVATION “CAPITALISM:” ECONOMIC DEVELOPMENT IN INDIAN COUNTRY 4 (2013) (“It also bears emphasizing that poverty is not an Indian cultural or historical attribute.”).

¹⁹² EchoHawk & Santiago, *supra* note 15 (“This family breakdown is partially due to the federal government’s long lasting policy of placing Indian children in boarding schools where parental modeling was non-existent and was in fact replaced by newly learned dysfunctional behaviors such as sexual abuse and physical punishment. These were relatively unknown in Native American communities prior to European conquest.”); *Native American Children*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/children/encyclopedias-almanacs-transcripts-and-maps/native-american-children> [https://perma.cc/EU7P-QB5J] (“European observers, hardened to infant mortality, were impressed by the fondness shown toward and good care taken of Indian children by their mothers.”) (last visited May 31, 2020).

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schools from the late 1800s though the mid-1900s.¹⁹³ Boarding schools were a cheap alternative to genocide; accordingly, the education quality was pathetic, but “[s]exual, physical, and emotional abuse was rampant.”¹⁹⁴ Indian children who were not placed in boarding schools were likely to be stolen from their families through the federal Indian Adoption Project¹⁹⁵ and by state agencies.¹⁹⁶ During the 1950s and 1970s, between twenty-five percent and thirty-five percent of Indian children were taken from their families and placed in non-Indian homes.¹⁹⁷ Moreover, the United States government forcibly sterilized a quarter of Indian women during the 1970s.¹⁹⁸ The United States’ long running efforts to destroy Indian families and culture are the cause of much child maltreatment in Indian country.

Tribes also had strong economies for centuries before European arrival.¹⁹⁹ Tribes developed laws and institutions that facilitated transcontinental trade.²⁰⁰ Indians produced surpluses and were healthy; in fact, European explorers admitted the Indians were better nourished than

¹⁹³ 1879: *First Off-Reservation Boarding School For Native Children Opens*, NATIVE VOICES, <https://www.nlm.nih.gov/nativevoices/timeline/357.html> [<https://perma.cc/97Q4-94VP>]; Mary Annette Pember, *Death by Civilization*, ATLANTIC (Mar. 8, 2019), <https://www.theatlantic.com/education/archive/2019/03/traumatic-legacy-indian-boarding-schools/584293/> [<https://perma.cc/JKH3-SZLN>] (“Two hundred years ago, on March 3, 1819, the Civilization Fund Act ushered in an era of assimilationist policies, leading to the Indian boarding-school era, which lasted from 1860 to 1978.”).

¹⁹⁴ PREPARED BY ANDREA SMITH, U.N. PERMANENT FORUM ON INDIGENOUS ISSUES, INDIGENOUS PEOPLES AND BOARDING SCHOOLS: A COMPARATIVE STUDY, 6–7 (2009), https://www.un.org/esa/socdev/unpfii/documents/E_C_19_2009_crpl.pdf [<https://perma.cc/G8R5-KB2C>].

¹⁹⁵ JASON R. WILLIAMS ET AL., CASEY FAMILY PROGRAMS, A RESEARCH AND PRACTICE BRIEF: MEASURING COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT 4 (2015), <https://www.casey.org/media/measuring-compliance-icwa.pdf> [<https://perma.cc/7F2G-K6UD>] (“The BIA hired social workers to place Indian children in non-Indian homes, and in 1957, it contracted with the Child Welfare League of America to establish the Indian Adoption Project, which advanced the mission of interstate placement of Indian children into non-Indian homes.”).

¹⁹⁶ *About ICWA*, NAT’L INDIAN CHILD WELFARE ASS’N (2020), <https://www.nicwa.org/about-icwa/> [<https://perma.cc/2K9E-3CEV>] (“Studies revealed that large numbers of Native children were being separated from their parents, extended families, and communities by state child welfare and private adoption agencies. In fact, research found that 25%–35% of all Native children were being removed; of these, 85% were placed outside of their families and communities—even when fit and willing relatives were available.”) (last visited June 8, 2020).

¹⁹⁷ WILLIAMS ET AL., *supra* note 195, at 5; *About ICWA*, *supra* note 196.

¹⁹⁸ Brianna Theobald, *A 1970 Law Led to the Mass Sterilization of Native American Women. That History Still Matters*, TIME (updated Nov. 28, 2019, 11:47 AM), <https://time.com/5737080/native-american-sterilization-history/> [<https://perma.cc/2BLM-SMVP>] (“Over the six-year period that had followed the passage of the Family Planning Services and Population Research Act of 1970, physicians sterilized perhaps 25% of Native American women of childbearing age, and there is evidence suggesting that the numbers were actually even higher.”).

¹⁹⁹ Adam Crepelle, *Decolonizing Reservation Economies: Returning to Private Enterprise and Trade*, 12 J. BUS. ENTREPRENEURSHIP & L. 129, 131 (2019) [hereinafter Crepelle, *Decolonizing*].

²⁰⁰ *Id.* at 134–38.

their Old World counterparts.²⁰¹ Tribes had no difficulty incorporating Europeans into their business networks.²⁰² Things went south for tribes when the United States began restricting Indian liberty.²⁰³ Once on reservations, the United States withheld food as a means to control the Indians.²⁰⁴ Indians began turning to alcohol to ease their hopelessness.²⁰⁵ Since tribes remain trapped in the colonial “guardian-ward relationship,”²⁰⁶ reservations remain ensnared in copious amounts of federal regulations that render it virtually impossible to open a business.²⁰⁷ This imperial regime is the source of most of Indian country’s troubles.²⁰⁸

IV. WAYS TO IMPROVE INDIAN COUNTRY CHILD SAFETY

Child safety on reservations can be improved by simply affirming tribal sovereignty. Greater tribal sovereignty means a full reversal of *Oliphant*,²⁰⁹ so tribes can punish criminals without first having to assemble a jurisdictional puzzle. Greater tribal sovereignty also means affirming tribal economic rights because tribes need resources to exercise their sovereignty.²¹⁰ Moreover, increased tribal sovereignty is correlated with

²⁰¹ Adam Crepelle & Walter E. Block, *Property Rights and Freedom: The Keys to Improving Life in Indian Country*, 23 WASH. & LEE J. CIV. RTS. & SOC. JUST. 315, 316 (2017).

²⁰² Crepelle, *Decolonizing*, *supra* note 199, at 137, n.42.

²⁰³ *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Johnson v. McIntosh*, 21 U.S. 543 (1823); An Act to Regulate Trade and Intercourse with the Indian Tribes, Pub. L. No. 1-33, chap. 33, 1 Stat. 137 (1790) (codified as amended at 25 U.S.C. §§ 177–202 (2018), 25 U.S.C. §§ 261–266 (2018), & 25 C.F.R. §§ 140.1–140.26 (2018)).

²⁰⁴ *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 346–47 (1998) (quoting Commissioner John Cole’s threat to withhold treaty annuities to the Yankton Sioux unless it agreed with the federal government’s terms); JOE RIGERT, *THE DEPENDENCY CURSE: HOW RELIANCE ON GOVERNMENT & CASINOS DAMAGES NATIVE AMERICAN LIVES* 35 (2016) (“Government agents even used food rations at times as a weapon in an effort to keep the Klamaths on the reservation.”); Crepelle, *Decolonizing*, *supra* note 199, at 148–49 (noting reservation agents had to obey the reservation superintendent in order to receive ration tickets).

²⁰⁵ Crepelle, *Decolonizing*, *supra* note 199, at 150.

²⁰⁶ The guardian-ward relationship has its roots in the Marshall Trilogy. See *Worcester v. Georgia*, 31 U.S. 515 (1832); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); Janice Aitken, *The Trust Doctrine in Federal Indian Law: A Look at Its Development and at How Its Analysis Under Social Contract Theory Might Expand Its Scope*, 18 N. ILL. U. L. REV. 115, 115–16 (1997); Heather Whitney-Williams & Hillary M. Hoffmann, *Fracking in Indian Country: The Federal Trust Relationship, Tribal Sovereignty, and the Beneficial Use of Produced Water*, 32 YALE J. ON REG. 451, 474 (2015); Mary C. Wood, *Indian Trust Responsibility: Protecting Tribal Lands and Resources through Claims of Injunctive Relief against Federal Agencies*, 39 TULSA L. REV. 355, 358 (2013).

²⁰⁷ Adam Crepelle, *White Tape and Indian Wards: Removing the Federal Bureaucracy to Empower Tribal Economies and Self-Government*, U. MICH. J.L. REFORM (forthcoming 2021).

²⁰⁸ *Id.*; see also Crepelle, *How Federal Indian Law Prevents*, *supra* note 155.

²⁰⁹ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

²¹⁰ *Kerr-McGee Corp. v. Navajo Tribe*, 471 U.S. 195, 201 (1985) (“The power to tax members and non-Indians alike is surely an essential attribute of such self-government; the Navajos can gain independence from the Federal Government only by financing their own police force, schools, and

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enhanced tribal economic development.²¹¹ Economic development will enable tribes to generate the funds necessary to hire law enforcement officers, healthcare workers, and child protective services personnel.²¹² The federal government can also improve child safety in Indian country by honoring its treaty funding obligations.²¹³

Despite having an official policy of tribal self-determination²¹⁴ and endorsing the United Nations Declaration on the Rights of Indigenous Peoples,²¹⁵ the United States does not seem ready to fully embrace tribal sovereignty.²¹⁶ Accordingly, a piecemeal approach to child safety will likely be needed. This section discusses measures that can be taken to improve child safety in Indian country.

social programs.”); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, n.5 (1982) (quoting Judge McKay’s lower court opinion that “[i]t simply does not make sense to expect the tribes to carry out municipal functions approved and mandated by Congress without being able to exercise at least minimal taxing powers . . .”).

²¹¹ STEPHEN CORNELL & JOSEPH P. KALT, MALCOM WIENER CTR. FOR SOC. POL’Y, HARV. PROJECT ON AM. INDIAN ECON. DEV., PRS 98-25, SOVEREIGNTY AND NATION-BUILDING: THE DEVELOPMENT CHALLENGE IN INDIAN COUNTRY TODAY (1998), <https://hpaied.org/sites/default/files/publications/PRS98-25.pdf> [<https://perma.cc/SXL2-K6ND>].

²¹² Adam Crepelle, *Taxes, Theft, And Indian Tribes: Seeking An Equitable Solution To State Taxation Of Indian Country Commerce*, 122 W. VA. L. REV. 999 (2020).

²¹³ Rory Taylor, *6 Native Leaders On What It Would Look Like If The US Kept Its Promises*, VOX (Sep. 23, 2019, 8:30am EDT), <https://www.vox.com/first-person/2019/9/23/20872713/native-american-indian-treaties> [<https://perma.cc/K2UH-X8X7>]; see generally U.S. COMM’N ON CIVIL RIGHTS, BROKEN PROMISES: CONTINUING FEDERAL FUNDING SHORTFALL FOR NATIVE AMERICANS (2018) [hereinafter BROKEN PROMISES], <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf> [<https://perma.cc/ZZ74-AR9Z>].

²¹⁴ See, e.g., Alysa Landry, *Jimmy Carter: Signed ICWA into Law*, INDIAN COUNTRY TODAY (Sep. 12, 2017), <https://newsmaven.io/indiancountrytoday/archive/jimmy-carter-signed-icwainto-law-GtsQUN5tRkG1iNzMVHJP8g/> [<https://perma.cc/X4HS-9FDQ>] (“During his presidential campaign in 1976, Carter’s staff reached out to the National Congress of American Indians and the National Tribal Chairmen’s Association. Carter met briefly with some leaders and his staff drafted a position paper that endorsed Indian self-determination policy, already in force.”); Presidential Statement on Signing the Indian Self-Determination Assistance Act Amendments of 1988, 2 PUB. PAPERS 1284–85 (Oct. 5 1988); Presidential Statement Reaffirming the Government-to-Government Relationship Between the Federal Government and Indian Tribal Governments, 1 PUB. PAPERS 662-63 (June 14, 1991); Exec. Order No. 13175, 65 Fed. Reg. 67249 (Nov. 6, 2000); Memorandum on Government-to-Government Relationship With Tribal Governments, 2 PUB. PAPERS 2177 (Sep. 23, 2004); 2016 WHITE HOUSE TRIBAL NATIONS CONFERENCE PROGRESS REPORT, EXEC. OFFICE OF THE PRESIDENT, A RENEWED ERA OF FEDERAL-TRIBAL RELATIONS (2017), Document7 [<https://perma.cc/439W-2QWH>].

²¹⁵ See U. N. Declaration on the Rights of Indigenous Peoples, DEP’T OF ECON. AND SOC. AFFAIRS INDIGENOUS PEOPLES, U. N., <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> [<https://perma.cc/L8VR-27PB>] (“Since adoption of the Declaration, Australia, New Zealand, United States and Canada have all reversed their positions and expressed support for the Declaration.”) (last visited Feb. 25, 2019).

²¹⁶ Crepelle, *Lies, Damn Lies*, *supra* note 61.

A. Expand Tribal Court Jurisdiction

An easy way to improve child safety in Indian country is for Congress to reaffirm tribes' inherent criminal jurisdiction over non-Indians who abuse children in Indian country. Congress has attempted to recognize tribal criminal jurisdiction over non-Indians for crimes against Indian children during the latest attempt to reauthorize VAWA.²¹⁷ This is a major improvement; however, the expansion should go further. The VAWA amendment would only permit tribes to prosecute non-Indians who reside with or have a familial relationship with the child whom he abuses.²¹⁸ The VAWA amendment also fails to authorize jurisdiction over non-Indians who lack preexisting ties to the tribe and does not authorize tribal prosecutions of non-Indians who abuse non-Indian children in Indian country.²¹⁹ VAWA should allow tribes to protect *all children* within their borders from *all abusers*.

The only reason tribes lack criminal jurisdiction over non-Indians is *Oliphant*, a decision that relies on sketchy legal, historical, and moral reasoning.²²⁰ Even the Court in *Oliphant* saw no problem with tribes prosecuting non-Indians “in a manner acceptable to Congress.”²²¹ The procedural safeguards in VAWA were established by Congress;²²² thus, tribes that are in compliance with VAWA should be able prosecute non-Indians who commit crimes against children on tribal lands.²²³ Indeed, the Senate opponents of tribal criminal jurisdiction over non-Indians conceded that it makes no sense to prevent VAWA implementing tribes from prosecuting child abusers.²²⁴

Tribal courts have also repeatedly proven themselves to be fair administrators of justice.²²⁵ Tribes have prosecuted nearly 150 non-Indians under VAWA since 2013, and no non-Indian has alleged that a tribal court

²¹⁷ Violence Against Women Reauthorization Act of 2019, H.R. 1585, 116th CONG. (2019).

²¹⁸ *Id.* § 903(9)(3)(B)(i)(ii)(I-III).

²¹⁹ *Id.* § 903(9)(3)(B)(i)(ii)(V).

²²⁰ WILLIAMS, LOADED WEAPON, *supra* note 61, at 100–01 (“According to the racially recidivist paradigm of Indian rights laid out in *Oliphant*, the beliefs and attitudes of the past, no matter how hostile or racist, must always be given controlling force in interpreting Indian rights in the present day.”); DEER & NAGLE, *Return to Worcester*, *supra* note 27, at 238 (“For Native women and children—and the Tribal Nations that seek to exercise their inherent right to protect them—*Oliphant* and its racist reasoning is our *Plessy v. Ferguson*.”); M. Brent Leonhard, *Closing a Gap in Indian Country Justice: Oliphant, Lara, and DOJ’s Proposed Fix*, 28 HARV. J. RACIAL & ETHNIC JUST. 117, 122–46 (2012).

²²¹ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 210 (1978).

²²² 25 U.S.C. § 1304(b)(4)(2019) (2018).

²²³ Crepelle, *Tribal Courts*, *supra* note 24 at 91.

²²⁴ S. Rep. No. 112-153, at 48 (2012) (“While the present bill’s jurisdiction is limited to domestic-violence offenses, once such an extension of jurisdiction were established, there would be no principled reason not to extend it to other offenses as well.”).

²²⁵ Crepelle, *Tribal Courts*, *supra* note 24, at 91.

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has treated him unfairly.²²⁶ VAWA-implementing tribes have reported that children were involved in many of these domestic violence cases.²²⁷ Tribal courts should be able to prosecute non-Indians for crimes committed against children, especially given child abuse's nexus to domestic violence.²²⁸ Congress has already recognized the importance of tribal jurisdiction in child safety,²²⁹ and the ability to protect children is integral to tribal sovereignty.²³⁰ Accordingly, Congress should amend VAWA to reaffirm tribes' inherent right to protect all children within their borders from all criminals.

If Congress does not amend VAWA, Congress should amend the AWA to allow tribes to prosecute sex offenders registered in any United States jurisdiction who harm children in Indian country. Congress has already authorized tribes' use of convictions in state and federal courts as a basis for enhanced jurisdictional power.²³¹ Using prior sex crime convictions is particularly compelling because the Supreme Court has declared, "The risk of recidivism posed by sex offenders is 'frightening and high.'"²³² While this statistic is debated by researchers,²³³ a 2015 U.S. Department of Justice Report found that "child molesters were more likely than any other type of offender—sexual or nonsexual—to be arrested for a sex a [*sic*] *crime against a child* following release from prison."²³⁴ There is

²²⁶ VAWA SDVCJ FIVE-YEAR REPORT, *supra* note 38, at 10.

²²⁷ *Id.* at 24 ("Many of the tribes report that children are usually involved as victims or witnesses in SDVCJ cases."); *see also* Violence Against Women Reauthorization Act of 2019, H.R. 1585, 116th Cong., § 901(a)(6) (2019).

²²⁸ Crepelle, *Tribal Courts*, *supra* note 24, at 91 ("[L]ogic demands that tribal court jurisdiction includes offenses that stem from a common nucleus of operative facts as VAWA offenses.").

²²⁹ EchoHawk, *Seventh Generation*, *supra* note 15, at 107 ("The Indian Child Welfare Act does not specifically mention child sexual abuse. However, it is one of the first official acts which recognizes the federal government's tremendous responsibility for Indian children. It also clarifies the importance of tribal jurisdiction in making decisions concerning the welfare of Indian children.").

²³⁰ ENDING VIOLENCE SO CHILDREN CAN THRIVE, *supra* note 26, at 7 ("There is a vital connection between tribal sovereignty and protecting AI/AN children.").

²³¹ 25 U.S.C. § 1302(b)(1) (2018).

²³² *Smith v. Doe*, 538 U.S. 84, 103 (2003).

²³³ Compare Steven Yoder, *What's The Real Rate Of Sex-Crime Recidivism?*, PAC. STANDARD (updated June 14, 2017), <https://psmag.com/news/whats-the-real-rate-of-sex-crime-recidivism> [<https://perma.cc/SGE3-PPPH>] (quoting researchers who believe sex offenders present a low likelihood of reoffending) with *Recidivism: How Often Do Child Molesters Go On to Reoffend?*, LEADERSHIP COUNCIL (2005) [hereinafter LEADERSHIP COUNCIL, *Recidivism*], <http://www.leadershipcouncil.org/1/res/rcd.html> [<https://perma.cc/ZM98-DWBQ>].

²³⁴ ROGER PRZYBYLSKI, SEX OFFENDER MGMT. ASSESSMENT AND PLAN. INITIATIVE RESEARCH BRIEF, OFFICE OF SEX OFFENDER (SMART), DEP'T OF JUST., RECIDIVISM OF ADULT SEXUAL OFFENDERS, 3 (2015), <https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/recidivismofadultsexualoffenders.pdf> [<https://perma.cc/FLT7-TAA9%5D>](emphasis in original).

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also a general consensus that sex crimes often go unreported,²³⁵ accordingly, the true rate of recidivism is unknown. As discussed above, the socioeconomics and legal framework in Indian country likely make Indian country an attractive venue for recidivists. Additionally, consent has long been regarded as a basis for tribal court jurisdiction over non-Indians.²³⁶ Registration as a sex offender can be construed as consent to tribal court jurisdiction. Congress should amend the AWA in order to protect all children in Indian country from being harmed by registered sex offenders. Congress should also enhance tribal sentencing authority to match other jurisdictions, thereby enabling tribes to impose sentences greater than one year on individuals who fail to register as sex offenders in Indian country.

Reaffirming tribal jurisdiction over all persons is fundamentally about fairness. As the Ninth Circuit Court of Appeals wrote in 2009, “there appears to be something odd about a court of law in a diverse nation such as ours deciding whether a specific individual is or is not ‘an Indian.’”²³⁷ Tribes, like all other governments, should be able to punish all people who harm their children. Percentage of Indian blood should play no role in any governments’ ability to prosecute those who harm their children.²³⁸ In the words of Coushatta Tribe of Louisiana Chairman David Sickey, “Violence does not discriminate, and neither should our laws.”²³⁹

²³⁵ Roger Przybylski, *Chapter 5: Adult Sex Offender Recidivism*, OFFICE OF SEX OFFENDERS SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING (SMART), DEP’T OF JUST., <https://smart.ojp.gov/somapi/chapter-5-adult-sex-offender-recidivism> [<https://perma.cc/YB9B-ZCMJ>] (“The surreptitious nature of sex crimes, the fact that few sexual offenses are reported to authorities...”) (last visited June 9, 2020); LEADERSHIP COUNCIL, *Recidivism*, *supra* note 233 (quoting Anna Salter stating, “there are a lot of sexual offenses out there and the people who commit them don’t get caught very often.”).

²³⁶ *Montana v. United States*, 450 U.S. 544, 565 (1981) (“A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.”).

²³⁷ *United States v. Cruz*, 554 F.3d 840, 842 (9th Cir. 2009).

²³⁸ Burton, *What About the Children*, *supra* note 26, at 198 (“As one federal prosecutor describes it, figuring out who has jurisdiction over a crime that occurs in Indian country is only slightly less confusing than ‘solving a Rubik’s cube while blindfolded and underwater.’”).

²³⁹ Ari Amehae, “*Somebody’s Daughter*” *MMIW Documentary Premiere Highlights Native American 2020 Presidential Forum*, NATIVE NEWS ONLINE (Jan. 16, 2020), <https://nativenewsonline.net/currents/somebodys-daughter-mmiw-documentary-premiere-highlights-native-american-2020-presidential-forum/> [<https://perma.cc/Q3QF-T3JE>].

B. Making Indian Country Child Abuse a Federal Priority

By imposing restrictions on tribal criminal jurisdiction, the United States acquired responsibility for the safety of all persons in Indian country.²⁴⁰ The United States is treaty bound to provide law and order to reservations;²⁴¹ hence, the United States must provide more funding for Indian country police forces. In fact, studies show that increased police presence in Indian country lowers reservation crime rates even without altering the jurisdictional rules.²⁴² More police officers within Indian country will help protect Indian children from abusers. The federal government simply needs to prioritize funding reservation police forces.

Furthermore, U.S. Attorneys need to prioritize prosecutions of Indian country child abusers. U.S. Attorneys have authority to prosecute child abuse in Indian country,²⁴³ but often fail to pursue child abuse and other Indian country crimes.²⁴⁴ While U.S. Attorneys decline the vast majority of cases they receive,²⁴⁵ the high declination rate in Indian country is uniquely troublesome because tribes have limited criminal authority.²⁴⁶ A one-year prison sentence simply is not sufficient for many violent crimes, yet that is all tribes can usually impose.²⁴⁷ Nevertheless, convicted child rapists have been sentenced to a single year in prison because of the constraints on tribal courts and the federal government's refusal to prosecute the cases.²⁴⁸ The federal government "has a direct interest . . . in protecting Indian

²⁴⁰ EchoHawk, *Seventh Generation*, *supra* note 15, at 102–03 ("Taking responsibility for prosecuting major felonies under the Major Crimes Act and limiting the punishment Indian tribes can impose for criminal offenses requires the federal government to be accountable for providing effective law enforcement of serious criminal offenses committed on Indian reservations, including child sexual abuse.").

²⁴¹ Tribal Law and Order Act of 2010, Pub. L. No. 111-211, § 202(a)(1), 124 Stat. 2262.

²⁴² EID, ET AL., *A ROADMAP*, *supra* note 51, at 64–65.

²⁴³ 18 U.S.C. § 1153(a) (2018).

²⁴⁴ Deer, *Bystander No More*, *supra* note 161, at 776 ("Unfortunately, granting federal officials the authority to prosecute major crimes does not mandate that they do so.").

²⁴⁵ WAYNE R. LAFAYE, ET AL., *CRIMINAL PROCEDURE* 680–686 (4th ed. 2004) ("On the federal level, 'less than one-fourth of the complaints received by . . . U.S. Attorneys appear to result in the filing of formal charges.'").

²⁴⁶ See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978); Tribal Law and Order Act of 2010, Pub. L. No. 111-211, § 234(b), 124 Stat. 2280 (noting that under TLOA, a tribal court may impose a sentence "greater than one year but not to exceed 3 years.").

²⁴⁷ *BROKEN PROMISES*, *supra* note 213, at 42 ("This increased sentencing authority for tribal courts arose out of concerns that the one-year limit on prison sentences did not serve as an effective deterrent against criminal activity, and forced tribes to rely on the federal government to prosecute more serious crimes.").

²⁴⁸ Raia, *Protecting Vulnerable Children*, *supra* note 35, at 317–18 (discussing a case wherein a 31-year-old man surreptitiously got a 13-year-old girl drunk then raped her).

children,²⁴⁹ and punishing those who harm Indian children furthers this interest.

Greater federal funding for tribal courts can help alleviate the need for federal prosecution of child crimes in Indian country. Since 2010, tribes have been able to sentence offenders to a three-year prison term per offense and stack offenses for a maximum prison stay of nine years.²⁵⁰ Tribes have been able to prosecute non-Indians for domestic violence since 2013.²⁵¹ Of the 574 federally recognized tribes, only about twenty have implemented VAWA and TLOA.²⁵² Lack of funding is the major reason why most tribes cannot afford to hire the licensed public defenders and the law-trained judges mandated by VAWA and TLOA.²⁵³ Increased funding for tribal courts will allow tribes to implement VAWA and TLOA. This will enable tribes to better protect their citizens and reduce tribal dependence upon federal law enforcement.

C. Tribal-State Child Safety Collaboration

Tribes and states need to find ways to collaborate for the protection of children within Indian country. While states often have contentious histories with tribes²⁵⁴ and Indian children,²⁵⁵ child safety should be a nonpolitical issue. The GAO recently found states currently prevent tribes from accessing criminal databases²⁵⁶ and often fail to notify tribes when sex offenders declare they will be moving to reservations.²⁵⁷ States and tribes

²⁴⁹ 25 U.S.C. §1901(3) (2018).

²⁵⁰ Tribal Law and Order Act of 2010, Pub. L. No. 111-211, § 234(b), 124 Stat. 2280.

²⁵¹ *Violence Against Women Act (VAWA) Reauthorization 2013*, U.S. DEP'T OF JUST., <https://www.justice.gov/tribal/violence-against-women-act-vaawa-reauthorization-2013-0> [<https://perma.cc/PH2H-NF5D%5D>].

²⁵² *United States v. Bryant*, 136 S. Ct. 1954, 1960 (2016) (“To date, however, few tribes have employed this enhanced sentencing authority.”); VAWA SDVCJ FIVE-YEAR REPORT, *supra* note 38, at 42–60 (profiling “18 tribes exercising SDVCJ”); Joshua B. Gurney, *An “SDVCJ Fix”—Paths Forward in Tribal Domestic Violence Jurisdiction*, 70 HASTINGS L.J. 887, 902, n.105 (2019) (“To date, eighteen of the 573 federally recognized tribes are known to have implemented SDVCJ. . .”).

²⁵³ Crepelle, *Tribal Courts*, *supra* note 24; BROKEN PROMISES, *supra* note 213, at 4 (“[U]nder the Tribal Law and Order Act of 2010, tribal courts now have enhanced sentencing authority. Yet, the lack of funding for tribal courts remains a significant barrier for tribes wishing to implement the Act.”).

²⁵⁴ *United States v. Kagama*, 118 U.S. 375, 384 (1886) (“Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies.”).

²⁵⁵ 25 U.S.C. § 1901(4-5) (2018); *Adoptive Couple v. Baby Girl*, 570 U.S. 637, 642, (2013) (“This ‘wholesale removal of Indian children from their homes’ prompted Congress to enact the ICWA, which establishes federal standards that govern state-court child custody proceedings involving Indian children.”).

²⁵⁶ GAO-15-23, *SEX OFFENDER REGISTRATION*, *supra* note 119, at 20 (“some states, such as New York, have statutes or policies prohibiting CSAs from granting tribal law enforcement entities access to their state switches and, therefore, to NCIC through such switches.”).

²⁵⁷ *Id.* at 37–39.

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need to find ways to overcome impediments to cooperation in the realm of child protection. For example, state laws may need to be amended to grant tribal law enforcement access to criminal databases.²⁵⁸ If distance presents a barrier to sex offender registration, states can allow sex offenders residing in Indian country to register by mail, fax, or email rather than in person.²⁵⁹ If qualifications of tribal personnel present an issue, tribes need to find a way to ensure tribal employees are adequately trained.²⁶⁰ State-tribal court forums can also improve collaboration between jurisdictions.²⁶¹ Fortunately, tribal-state collaboration is achievable. All it takes is goodwill and dialogue.²⁶² Protecting children is certainly worth this effort.

V. CONCLUSION

While accurate data on Indian child maltreatment do not exist, the available information is grim. Even with underreporting, Indian children suffer from child maltreatment at the highest rate in the United States. Poverty, inadequate law enforcement resources, and a jurisdictional maze combine to leave children within Indian country immensely vulnerable to predators. Though many of these factors are deeply entrenched, these problems can be easily overcome. Congress simply needs to acknowledge that Indian children are worth protecting. Congress did so in 1978,²⁶³ and acted again less than a decade ago to address the jurisdictional gap that has

²⁵⁸ E.g., *New York Consolidated Laws, Criminal Procedure Law - CPL § 1.20 Definitions of Terms of General Use in This Chapter*, FINDLAW, [HTTPS://CODES.FINDLAW.COM/NY/CRIMINAL-PROCEDURE-LAW/CPL-SECT-1-20.HTML](https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-1-20.html) [<https://perma.cc/UP7F-2YHL>] (does not include tribal law enforcement) (last visited June 2, 2020).

²⁵⁹ GAO-15-13, *SEX OFFENDER REGISTRATION*, *supra* note 119, at 36.

²⁶⁰ OFFICE OF COMMUNITY ORIENTED POLICING SERVS. & NAT'L SHERIFFS' ASS'N, *CROSS-DEPUTIZATION IN INDIAN COUNTRY* 7 (2018), [https://www.sheriffs.org/sites/default/files/Cross-Deputization in Indian Country.pdf](https://www.sheriffs.org/sites/default/files/Cross-Deputization%20in%20Indian%20Country.pdf) [<https://perma.cc/9AJR-G3YW>] ("Additional training considerations should be given to use of force, search and seizure laws, and criminal justice processes.")

²⁶¹ TRIBAL LAW AND POL'Y INST., *TRIBAL STATE COURT FORUMS: AN ANNOTATED DIRECTORY*, 6 (2015), <https://www.courts.oregon.gov/programs/jcip/EducationMaterials/Documents/Tribal-Statecourtforumdocument.pdf> [<https://perma.cc/A65P-6ZEG>] ("As more tribal and state judges and court personnel come together, we hope that these relationships inspire others to use collaboration as a strategy to bridge jurisdictional gaps to improve safety in Indian country."); *Walking On Common Ground: Resources for Promoting and Facilitating Tribal-State-Federal Collaborations*, BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUST. <http://www.walkingoncommonground.org/state.cfm?topic=6&state=&fullstate=> [<https://perma.cc/XX4T-WEHF>] (listing tribal-state judicial forums) (last visited June 4, 2020).

²⁶² Adam Crepelle, *Tribal Recognition, Consultation, and Lessons from the First Climate Relocation*, AM. BAR ASS'N (Jan. 1, 2020), https://www.americanbar.org/groups/environment_energy_resources/publications/natural_resources_environment/2019-20/winter/tribal-recognition-consultation-and-lessons-the-first-climate-relocation/ [<https://perma.cc/DQ4G-TG4L>].

²⁶³ 25 U.S.C. §§ 1901–1963 (2018).

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caused so many Indian women to suffer. Congress must act to close the jurisdictional gap that leaves Indian children vulnerable to predators.