

Statement of Dr. Paul D. Steele
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Before the Senate Indian Affairs Committee
On S. 1899,
The Indian Child Protection and Family Violence Prevention Act
Amendments of 2005

March 15, 2006

Good morning, Chairman McCain, Vice Chairman Dorgan. My name is Paul Steele, and I am currently the Director of the Center for Justice Studies at Morehead State University in Morehead, Kentucky. Prior to assuming that position in January, I was Associate Professor of Sociology, and Senior Research Associate of the Institute for Social Research at the University of New Mexico, and Director of the New Mexico Criminal Justice Statistical Analysis Center, the Statistical Analysis Center for the State. I was recently involved in research supported by the United States Department of Justice, Bureau of Justice Statistics, and the Justice Research and Statistics Association, which allowed me to study sexual child abuse on Indian lands in New Mexico. My testimony today will draw from that research, an updated version of which I would like to submit for the record. I want to direct my comments today primarily toward three issues addressed by S. 1899: Reporting Procedures, Removal of Impediments to Reducing Child Abuse, and the Use of Telemedicine.

S. 1899 - Section 4 – REPORTING PROCEDURES.

Section 404 (c) (2) (B) FINAL WRITTEN REPORT. This section is amended to require local child protection services and law enforcement to send final conviction information to the FBI. In reality, child protection service agencies, as defined in Section 403, are civil justice agencies that are unlikely to know the outcome of criminal court proceedings. I suggest that law enforcement agencies, particularly federal and tribal courts, be solely responsible for submitting final conviction information to the FBI.

Section 404 (c) (2) (C) MAINTENANCE OF FINAL REPORTS. The proposed language in this amendment to the law suggests that final reports of investigations conducted by law enforcement or local child protective services agencies be maintained by the FBI. A potential area of concern is having the FBI maintain reports in cases where the suspect has been exonerated, for an indefinite period of time. This may not be consistent with state laws concerning the management of reports of child protective service investigations that do not validate the claim of abuse (see New York, for example).

Section 404 (c) (2) (E) COLLECTION OF DATA. This section is also amended to denote specific information concerning child abuse in Indian country that the Secretary of the Interior should collect and report to Congress, in consultation with the Secretary of Health and Human Services, the Attorney General, and any appropriate Indian Tribe. As a general impression, the collection and reporting of this information could be very useful in realizing the intention of informing Congress about the impact of child abuse on Indian lands. However, to improve the

report and address questions from members of Congress and others, I recommend that the information collected and reported be more detailed in nature.

Concerning the number of child abuse allegations and investigations, I note that both law enforcement and child protective service agencies are legally required to conduct investigations. In spite of mandatory cross-reporting laws, the number of criminal and civil allegations and investigations are likely to differ between law enforcement and child protective services agencies. Reasons for this include differences in case and geographic jurisdiction, definitions of allegations and investigations, and imperfect cross-reporting. Typically child protective service agencies are more likely to receive reports from the community concerning suspected child abuse, and engage in more investigations. Since the intent of the legislation is to promote Indian child protection, I recommend that allegations reported to child protective services and the number of civil investigations that these agencies conduct be reported as well. In a general sense, since so few child abuse criminal cases from Indian country result in convictions and thus restriction of offenders, the bulk of protection against re-victimization enjoyed by children and other family members is the result of civil interventions (i.e., restraining orders, victim compensation, supervised visitation, treatment interventions) ordered in Tribal, civil, or family courts. I recommend that the report to Congress also present findings of child protective service activities, as well as criminal justice system interventions. Beyond the number of allegations to and investigations conducted by child protective service agencies, information concerning the number of cases validated through investigation, the results of court and administrative supervision, length of time under civil supervision, and civil court outcomes should be collected and reported.

Further, not all allegations result in criminal investigations, depending on the definition of the latter. For example, a preliminary discussion with the child or a caregiver might result in a law enforcement professional choosing not to initiate a formal investigation of the allegation. In a similar manner, not all investigations are cleared with an arrest, either because there is no suspect identified or no arrest is made, or because the case is cleared exceptionally (i.e., death of the suspect, transfer of the case to another jurisdiction). Also, not all criminal prosecutions result in either convictions or acquittals; cases can be no-billed in Grand Jury, or dismissed by the court. I suggest that the list of criminal justice system activities include the number of: reports to law enforcement agencies; criminal investigations; joint/transfer of investigations between law enforcement agencies; referrals for prosecution; cases accepted for prosecution; indictments; trials; convictions by trial and plea bargain; and sentences (incarceration and community supervision).

This portion of the bill also mandates (in IV) reporting of "...the number of child victims that report abuse in Indian country...." Depending on one's interpretation of this phrase, this might be difficult to accomplish. One interpretation is that the number of reports to mandated agencies be documented and shared with Congress. This is most likely the intent of the bill, and easiest to accomplish in some scientifically valid manner. Still, it present a logistical challenge at this time, given the limited quality of agency data. A second interpretation is that a child is not documented as a victim until child protective services and/or a law enforcement agency has validated this status as victim. Only a minority of such reports result in civil or criminal validation. A final interpretation is an attempt to estimate the number of children that are

victimized and determine the rates at which they, or some other person, report their victimization to mandated agencies. This figure is extremely difficult to estimate, without independent data collection mechanisms. What little we know about reporting rates have come from reputational (second party) studies, and adult survivor of victimization reports. Off of tribal lands, similar yet more sophisticated research has been done. We have elaborate methods developed for the national Crime Victim Survey, which could be applied to all types of victimization on Tribal Lands, and could be modified to consider collection of child abuse information. However, this would be a significant and costly proposition. At the present time, including these types of estimates as a part of the Congressional report might not be practical (or valid). However, given the increasing prevalence of offenders returning to the community, the Congressional report might also include information concerning sex offender management and sex offender registry information on Indian Lands.

Finally, while not necessarily within the purview of the annual Congressional Report, I recommend that collateral information also be collected concerning child abuse cases from mandated agencies. This information is critically important for strategic planning purposes, policy and program assessment, and budget planning. While knowing the number of cases at various stages of the justice system is a reasonable indicator of agency activities. However, case information must be coupled with information describing the victim, offender family, abuse episode, and community to produce a reasonable understanding of the dynamics of abuse on a particular reservation, and how those vary between Tribes and locations. It would be useful if the proposed legislation would facilitate such research through appropriations for research, developing mechanisms to ensure the validity and comprehensiveness of reporting, and facilitating access to critical data elements for legitimate research purposes, within appropriate confidentiality parameters.

S. 1899 - Section 5 – REMOVAL OF IMPEDIMENTS TO REDUCING CHILD ABUSE.

The report to Congress concerning the Removal of Impediments to Reducing Child Abuse has great potential for improving conditions in Indian country and protecting Indian children. I would encourage a broad consideration of impediments, including but not restricted to risk factors associated with abuse such as poverty, substance abuse and (physical and mental) health problems, and social isolation. Impediments related to reporting child abuse should consider cultural and social network concerns, while impediments and advances in investigation and prosecution of suspected cases should consider these factors as well as structural influences on interagency communication and cooperation, professional skills, and the adequacy of timely and valid information for tactical and strategic responses to child abuse. Finally, impediments and advances in treatment should consider the relevance of culture-based definitions and modalities of healing for the child, the family, and the community.

As noted in the REPORT (draft, page 5) to accompany S. 1899, the “...Committee is also aware that Indian children continue to be traumatized by multiple interviews and physical examinations due to the lack of a coordinated approach by federal, state and tribal investigators, prosecutors and mental health professionals.” My research lends support to the Committee’s perspective that Indian children are unnecessarily subjected to re-interviewing, as the authority for investigating allegations of child abuse are transferred from one law enforcement agency to another.

Specifically, federal agencies such as the FBI are unwilling to accept the results of child interviews conducted under the authority of tribal police. This is the case even when the same forensic interviewers, such as those employed by a Children's Advocacy Center, repeat interviews. We have also experienced uncomfortable situations where interviews conducted by highly skilled Native American forensic interviewers who are employees of tribal child protective service agencies have been re-done by a non-tribal forensic interview specialist at the behest of a federal investigating agency. It seems that each investigative agency requires its own interview of the child, even when they contract the original forensic professional to repeat the interview.

I would note, however, that recent research suggests that system-induced trauma experienced by child victims is more a result of encountering multiple interviewers, not multiple interviews. Some very effective models for eliciting children's disclosures through a series of carefully developed sessions with a forensic interviewer have been developed. For example, the Forensic Evaluation approach developed at the National Children's Advocacy Center is a multiple-interview protocol, with interviews conducted by the same professional interviewer, that has been evaluated as an effective and non-traumatic technique for some suspected child victims.

S. 1899 - Section 12 – USE OF TELEMEDICINE.

This section authorizes the Indian Health Service to enter into contracts of agreements with experienced medical and treatment professionals to use telemedicine in the treatment and diagnosis of Indian children. I agree that this amendment has great potential for improving the welfare of Indian children. I would bring to the attention of the Committee that there is a dearth of physicians and other health professionals with expertise in the diagnosis of child abuse. Research has shown that only a small proportion of sexual abuse cases are confirmed through medical investigation, since the investigation often occurs some weeks or months after the abusive incident, and incident does not leave permanent indications. Further, while some medical indications, such as spiral fractures, are strong indicators of child physical abuse, only a small portion of physically abused children present these indicators. Very skilled and experienced health professionals often conclude that child abuse might have occurred by linking the physical evidence with the comments of the child, their parents and care givers, and other professionals.

In summary, while there are relatively few pediatric specialists that have forensic expertise in child abuse cases, they should be actively recruited to participate in the assessment of Indian children, using telemedicine technology to link them to practitioners located in medical facilities more accessible to tribal members. As a final thought, attention should be given to the facilities and staff of the medical facilities receiving advice through this technology. Examination rooms should be child-friendly environments, culturally oriented, and well equipped (i.e., with colposcopes as well as the necessary equipment for telemedicine). Staff should be trained to conduct investigations in a manner that is both professionally competent, and sensitive to the child. As the Committee is aware, and has been the experience with the original law, many concerns about child welfare are not with the law as written, but with its implementation (or lack thereof). While this amendment has the potential to be greatly beneficial, its ultimate impact depends on how it is implemented.

Comment Regarding Safe Placements and Disclosures

In earlier information shared with the Committee, I suggested that the placement of the child at the time of the forensic interview is related to the child's willingness to disclose child sexual abuse. Further examination of my research data suggests a more detailed explanation.

A fundamental influence on the child's willingness to disclose their victimization is their perception of the reactions of others. Through experience, even very young children learn that "telling" can result in harm to themselves, certainly in the form of retaliatory victimization, but also in the very real sense of system-induced trauma, such as removal from their home, school, and friends. The latter can be especially troublesome when law enforcement and child protective services professionals have reassured the child that their lives will get better, not worse, by formally disclosing their victimization. In summary, a child's willingness to disclose is related to their perceptions of the benefit or harm resulting from the disclosure, to themselves and others. It is also related to their perceptions about who they believe they can trust to protect their welfare, as they define it.

Taking all of this into account, it is a testament to skilled forensic interviewers, supportive family members, sensitive agency professionals, and courageous children that any disclosures are made at all. Recognize that the child is expected to describe very personal, traumatic and embarrassing acts — in detail and terms that are meaningful and unambiguous to investigators, prosecutors and others — to a stranger, and in an unfamiliar environment. If the child has already concluded that they are at risk as a result of seeking help to stop the abuse, they are especially not likely to formally disclose in a forensic interviewing environment.

A child's estimate of risk from disclosure includes their perceptions of potential physical and emotional retaliation from the original offender and those who side with the offender. It can also include perceptions of the loss of normal relationships, status and esteem, and their daily routine. It might also include perceptions of harming those who have abused them but for which they still feel a strong attachment.

Counter this estimation with that of the civil justice professional. Child protective services and the courts are more likely to limit their definition of the child's risk as that of further sexual victimization and/or acts of retaliation. They make decisions to place children in foster care and group home arrangements to minimize the likelihood that the offender or others can physically and/or emotionally harm the child. Child protection in this sense is of critical importance to agencies that are legally responsible for the child's physical welfare. However, from the child's perspective, placing them in a foster care or group home living arrangement might be perceived as more harmful or threatening than living in their own home, since they are placed with strangers with whom they have not established a trusting relationship. The child might not appreciate that home removal is in their best interest to avoid continued victimization; but they are painfully aware that when they sought help from adults about a situation they wanted stopped that they were taken away from home and sent to live with strangers. The rational child in this situation attempts to their estimates of risk and harm to themselves, which considers other elements besides the possibility of revictimization and retaliation. Conversely, the child's

estimations do not necessarily consider some of the factors important to professionals, such as improving the likelihood of a criminal conviction. From this perspective, it should not be surprising that children often do not disclose, and the formal disclosure rate of children in my research population who are in the legal custody of child protective services is the lowest of all living arrangement options.

So how shall we proceed? The optimal solution is to allow the child to remain at home. This meets all the needs of the child and professional agencies, if the care giver is loving and is able to protect the child from the offender and those who would intimidate the child not to disclose. The next best option is to place the child with other protective adults with whom the child has a prior loving, trusting relationship. An example would be a grandparent who is willing to protect the child from offending family members and those that intend to manipulate the child's disclosure through threats or inducements. However, these options are not as available as we might need them to be.

Justice professionals should at least be aware that placing a child in less optimal living arrangements will impact disclosures and thus impede their investigation and prosecution. From the standpoint of maximizing the likelihood that a child will disclose valid incidents of sexual abuse in a formal forensic interview, the interview should be conducted as soon as possible, i.e., before the child experiences the system-induced trauma of home removal or the risk of retaliatory acts. A second option is to wait until the child has adjusted to an alternative living arrangement and coped with the loss of friends and family. If the child is placed in foster care, they should be given the opportunity to establish a trusting relationship with their foster parents before expecting them to disclose. Unfortunately, high quality foster care options on Indian Lands are not sufficient to meet the need. Additionally, children already exposed to, or threatened with, system-induced trauma should be given the opportunity to develop trust in the forensic interviewer before formal disclosures are sought. This can be accomplished, if necessary, by using multi-session models such as the Forensic Evaluation format discussed above. It is important for investigative professionals to recognize that system demands for a timely investigation can sometimes result in an untimely interview of the child victim, especially if they have been removed from their home or experienced similar forms of system-induced trauma.

I thank the Committee for the opportunity to present these comments and stand ready to respond to any questions that Committee may have for me.