

STATEMENT OF THE

NATIONAL INDIAN CHILD WELFARE ASSOCIATION

PRESENTED BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

Regarding

REAUTHORIZATION OF THE INDIAN CHILD PROTECTION AND
FAMILY VIOLENCE PREVENTION ACT

S. 1601

SEPTEMBER 24, 2003

Terry L. Cross
Executive Director

The National Indian Child Welfare Association submits this testimony on the reauthorization of the Indian Child Protection and Family Violence Prevention Act and S. 1601. The focus of our testimony will be a national look at the issues that shape child protection services in Indian Country and strategies for addressing challenges to providing effective protections for Indian children living on tribal lands. A brief description of the National Indian Child Welfare Association is provided below.

National Indian Child Welfare Association – The National Indian Child Welfare Association (NICWA) is a national, private non-profit organization dedicated to the well-being of American Indian children and families. We are the most comprehensive source of information on American Indian child welfare and work on behalf of Indian children and families. NICWA services include: (1) professional training for tribal and urban Indian child welfare and mental health professionals; (2) consultation on child welfare and mental health program development; (3) facilitation of child abuse prevention efforts in tribal communities; (4) analysis and dissemination of public policy information that impacts Indian children and families; (5) development and dissemination of contemporary research specific to Native populations; and (6) assisting state, federal, and private agencies to improve the effectiveness of their services to Indian children and families.

In order to provide the best services possible to Indian children and families, NICWA has established mutually beneficial partnerships with agencies that promote effective child welfare and mental health services for children (e.g. Substance Abuse and Mental Health Services Administration, Indian Health Services, Administration for Children, Youth and Families, National Congress of American Indians, Federation of Families for Children’s Mental Health, and the Child Welfare League of America).

Introduction

Child protection is a very complex, but very important responsibility for any government. To be successful, it requires a commitment to involve people from all areas of the government and community in planning and implementation. This requires community ownership of the problem and support for the solutions. Unfortunately, tribal governments have not always had the opportunity to be involved in protecting their children despite having sovereign authority. The exercising of that authority has been the greatest challenge, with resources and authority being given to other governmental entities, such as states or the Bureau of Indian Affairs. Over time, this created a sense of hopelessness and dependency in many tribal communities that interfered with tribal efforts to nurture the responsibility that they do feel for their children’s well-being. Nonetheless, since the 1970’s there has been a rapidly increasing trend for tribal governments to seek out solutions to child abuse and neglect that embrace their culture and recognize their sovereign rights to be involved in the protection of their children. New approaches are being developed and community support is increasing.

Our testimony will discuss: how we view the implementation of the Indian Child Protection and Family Violence Prevention Act through examination of the effects of child abuse and neglect in Indian Country,

issues related to reporting and investigation, and the need for prevention and treatment programming. We will also offer comments on the S. 1601, the Indian Child Protection and Family Violence Prevention Reauthorization Act of 2003, including recommendations under each of the areas identified above. Our initial view is that S. 1601 is a positive step towards improving child protection on tribal lands. While much work is yet to be done, the Chairman and Vice-Chairman have put forth a proposal that will support some much needed changes.

Summary of Recommendations

- Provide non-discretionary funding that will allow all tribal governments to operate a basic level of child protection services if they choose. The funding should allow tribes to enhance existing child protection services or work to develop capacity to offer services in the future (planning, infrastructure development).
- Provide for the establishment of a national technical assistance and training center designed to support tribal programs and tribal child protection workers in all areas of child protection services.
- Provide support and funding for research into how character and criminal background checks are being implemented in Indian Country and recommendations on how to improve compliance.
- Provide funding to establish non-discretionary funding for tribes to use to support prevention and treatment services for Indian children that have become the victims of child abuse or neglect.
- Amend S. 1601 to reflect that tribal governments who are approving or licensing foster care and adoptive homes only need to meet the federal background checks under P.L. 101-630 in order for their homes to be accepted for use by state or county placing agencies. Currently, states are asking tribal foster care and adoptive homes to undergo state background checks, in addition to tribal background checks required under P.L. 101-630.
- Provide support for an examination of state and federal rules of evidence that make it easier to use child victim testimony in federal court. The study should make recommendations on how to bring current rules into best practice to assist in successful prosecution of child sexual abuse.

Effects of Child Abuse and Neglect in Indian Country

Historical Factors – Historical policies and practices of the United States government and its agents have played a great role in how protections for Indian children operate today. Prior to contact with European immigrants, tribal practices and beliefs in child rearing allowed for a natural system of child protection to flourish. At the heart of this natural system were beliefs, traditions, and customs involving extended family with clearly delineated roles and responsibilities. Child rearing responsibilities were often divided up between extended family and community members. (Cross, Earle, and Simmons, 2000). In this way, the rearing and protection of children in the tribe were the responsibility of all people in the community.

Traditional Indian spiritual beliefs reinforced that all things had a spiritual nature that demanded respect, including children. Not only were children respected, but they were also taught to respect others. Extraordinary patience and tolerance marked the methods that were used to teach Indian children self-discipline. Management of behavior or obedience was obtained from the fear and respect of something greater than the punishment of a parent. Putting together respect for children and the teaching of self-discipline, along with child rearing responsibilities being spread out over many people in the extended

family and community resulted in child abuse and neglect rarely being a problem in traditional tribal settings (Cross, Earle, and Simmons, 2000).

As European migration increased, to what is now the United States and Canada, traditional tribal practices in child rearing became more susceptible to the influences of the dominant society. Efforts to “civilize” the native population were almost always focused on Indian children. The “Civilization Fund Act” was one of the first federal laws targeting Indian children. Passed by Congress in 1819, it authorized grants to private agencies, primarily churches, to establish programs to “civilize the Indian.” Later the federal government and private agencies established large militaristic boarding schools or institutions where Indian children were placed involuntarily and forced to abandon their traditional beliefs, customs, and traditions. Severe punishment in the forms of beatings, being chained and shackled, bound hand and foot, and locked in closets was not uncommon (Johansen, 2000).

Now, by educating the children of these tribes in the English language, these differences would have disappeared, and civilization would have followed at once. Nothing then would have been left but the antipathy of race, and that too is always softened in the beams of a higher civilization (Prucha, 1190, p. 107).

By 1900, after decades of forced removal of Indian children from their families and communities and the stripping of their culture from them, the natural child protection system that once flourished in every tribal community began to break down. During the next half-century, tribal traditional practices continued to be discouraged and banned by federal and private agents, while oppression, alcoholism, disease, and poverty were allowed to take hold in most tribal communities. As these destructive elements took hold in Indian Country, child abuse and neglect became more prevalent too.

While government policies towards Indian people shifted in the 1950’s towards a more humanitarian view, this effort was not without serious deficiencies and consequences. Humanitarian efforts still viewed assimilation as the best answer to the “Indian problem” and viewed tribes as incapable of caring for their children. New projects were begun, such as the Indian Adoption Project, which used public and private agencies to remove and place hundreds of Indian children in non-Indian homes far from their families and communities (Mannes, 1995). Few efforts were made or resources committed to help tribal governments develop services on tribal lands that would strengthen Indian families.

As efforts to out place Indian children continued into the 1960’s and 1970’s, the Association on Indian Affairs conducted a study in the 1970’s that found between 25 percent and 35 percent of all Indian children had been separated from their families (George, 1997). This study also found that in 16 states in 1969, 85 percent of the Indian children were placed in non-Indian homes (Unger, 1977). The long-term effects of these massive out placements of Indian children were only just beginning to be understood in the 1970’s, which included effects not only on individuals, but also the well-being of entire tribal communities. Not until 1978, after the passage of the Indian Child Welfare Act (P.L. 95-608), did the federal government acknowledge the critical role that tribal governments play in protecting their children and maintaining their families.

The long-term effects from these removals and efforts to strip Indian children of their culture produced generations of Indian adults who have weak ties to their families and tribal communities, unresolved grief and trauma, and few supports or resources to help them. Other factors that are attributed to the rise of child abuse and neglect in Indian Country include the inappropriate interpretations of Indian parenting practices; exposure to known risk factors for abuse and neglect, such as alcoholism, poverty, and unemployment; federal policies that have supported family and community disintegration, such as termination and relocation; and learned responses that result from oppression and exploitation.

Incidences and Data Reporting Issues – Reporting of data regarding child abuse and neglect of Indian children is under-reported, with only 61 percent of the incidents ever being reported to a national database. Data regarding incidents of child abuse and neglect for Indian children come from a variety of sources, depending upon who is involved in the investigation process, which can be just one agency or several. Agencies that could potentially be involved in investigations and reporting include state or county agencies, tribal agencies, Bureau of Indian Affairs (BIA), Indian Health Service (IHS), or Federal Bureau of Investigation (FBI). The types of data being reported also vary based upon definitions being used, specific role of the agency reporting, capacity of the agency to collect and report data, and legal or program requirements that the reporting agency is subject to. There can also be overlaps in the data reported by different agencies, especially when more than one agency is involved. This makes developing reliable and accurate estimates of abuse and neglect experienced by Indian children very difficult to make. A thorough analysis of the accuracy of existing figures of child abuse and neglect and a picture of what the data tells us is presented in two research reports, 1) Child Abuse and Neglect Among American Indian/Alaska Native Children: An Analysis of Existing Data (Earle, 2001) and 2) Child Abuse and Neglect: An Examination of the American Indian Data (Earle, 2000).

State or county child protection agencies are involved in approximately 61 percent of child abuse and neglect investigations that originate on tribal lands in the United States (Earle, 2000). Each of the states and presumably counties, report their child abuse and neglect data to a national database called the National Child Abuse and Neglect Data System (NCANDS). However, the data states report regarding incidence of child abuse and neglect involving Indian children is not separated out by whether the child lives on or off tribal lands. This limits the ability to clearly understand how NCANDS data for Indian children on tribal lands compares to that for Indian children not living on tribal lands. Nonetheless, data reported by the NCANDS database reveals that Indian children represent 1.6 percent of substantiated child abuse and neglect cases nationwide, yet are only 1 percent of the child population (Child Welfare League of America, 1999). The victimization rate for Indian children is 20.1 victims per 1,000 children of the same race, compared to a rate of 10.6 for White children (DHHS, 2001).

Tribes are involved in 65 percent of child abuse and neglect reports on tribal lands, 23 percent as the sole investigators. The Bureau of Indian Affairs is involved in approximately 19 percent of these investigations (Earle, 2000). In fiscal year 1997, the Bureau of Indian Affairs reported 9,040 incidents of child abuse and 19,200 incidents of child neglect for Indian children living on tribal lands (U.S. Department of Interior, 1998). The Bureau of Indian Affairs also reported 4,567 incidents of child sexual abuse for tribes in 1997. Data from the Bureau of Indian Affairs that was compared to NCANDS data also shows that in two states with significant Indian populations (Arizona and Utah), the child abuse and/or neglect rates per 1,000 children was significantly higher for Indian children than for all children in that state (Earle, 2001).

Data collected by the tribes and the Bureau of Indian Affairs regarding child abuse and neglect reports is not submitted to NCANDS or any other centralized database. Tribal data is either kept within the tribe or is submitted to the Bureau of Indian Affairs, which does not make data available to the public, tribes, or Congress, as far as we can tell. NICWA also has questions about how the data is compiled and analyzed once it reaches the Bureau of Indian Affairs regional and central offices. What data can be located from the Bureau of Indian Affairs only identifies the total number of child abuse and neglect cases without any further analysis on rates or trends. We also understand that not all tribes are reporting their data, and definitions used by tribes may vary. Other impediments to the Bureau of Indian Affairs data collection and reporting also include limitations of the agencies legal mandate to collect data and tribal attitudes and experiences regarding sharing data (Earle, 2001). The ability to effectively address these barriers is impacted by the very limited capacity of the Bureau of Indian Affairs and tribes to support effective data collection. Funding and technical assistance resources in particular are in short supply.

Another study that provided data on child abuse and neglect as it affects Indian youth was conducted by the University of Minnesota (University of Minnesota, 1992). This study surveyed 13,923 Indian youth in sixth through twelfth grade. In the sample, 18 percent reported they had been a victim of physical or sexual abuse. While this study relied on self-reporting, it does reveal a perceived rate of abuse that is significant when compared to national averages using NCANDS data.

The Department of Justice collects child abuse and neglect data on Indian children based on several sources including NCANDS and the National Crime Victimization Survey. The department of Justice data revealed that Indian children were found to have shown an 18 percent increase in incidents of maltreatment from 1992 to 1995, while all other races except Asians (6 percent) reported a decrease. They also reported that data from 1995 indicates about 1 substantiated report of child victim of abuse or neglect for every 30 Indian children age 14 or younger. The national average during that period was about one report for every 58 children of any race (Department of Justice, 1999).

Analysis of other existing studies also shows that Indian children experience abuse and neglect in high numbers (Earle, 2001). The findings from this analysis also show increases in overall cases of child abuse and/or neglect involving Indian children, lower rates of sexual and physical abuse when compared to White children, and high rates of child neglect among Indian children.

Indicators of Risk and Linkages to Other Social Problems – Risk factors for child abuse and neglect have been widely researched, although not as much with Indian populations. Nonetheless, current studies have demonstrated correlations between increased risk for child abuse and neglect when families live in poverty, households have only one parent, alcohol and substance abuse are present, families are geographically isolated, and domestic violence occurs. These risk factors are present to a large degree in most tribal communities. Earle (2001) found in her examination of existing data that there was more violence among Indian families, more abuse related to alcohol, and higher rates of public assistance in Indian families compared to White families. We also know from the U.S. Census that 34.2 percent of Indian households in the 25 largest Indian tribes are headed by a single parent, and 27.2 percent of Indian families in these communities are living at or below the poverty level (U.S. Bureau of the Census, 1995).

Reports of neglect are the largest category of abuse that Indian children are exposed to. In a study by Nelson et al. (1994) the findings confirmed that substance abuse and poverty were the two key contributing factors to child neglect in a sample of 77 Indian families. However, family functioning, parenting skills, and educational level were not correlated with neglect, while trouble with the law, having more children, and multiple problems were found to contribute to neglect. These findings seem to suggest that the families in the study knew how to care for their children, but being overwhelmed with multiple problems, particularly substance abuse, were at the greatest risk for neglecting their children. The effects of child neglect in Indian Country can also be seen in statistics related to accidental deaths of children. Indian children die almost three times more often of accidents than other children, and the leading cause of death for Indian children under the age of 14 is accidents (Indian Health Service, 1990).

Research studies have demonstrated a linkage between children who have been abused or neglected and risk for other social problems, in particular mental illness, poor school performance, juvenile delinquency, violence, sexual and relationship dysfunction, and alcohol and substance abuse (National Research Council, 1993). It is also known that children who are abused or neglected are at a higher risk for abusing or neglecting their own children, otherwise referred to as intergenerational abuse. For tribal communities and funders, the cost of addressing child abuse and neglect is more than the immediate services to children and families. It is also the long-term consequences of abuse and neglect that are not immediately known, but will be abundantly clear later as children grow into adolescence and adulthood. This can be viewed as the “do we pay now or pay later” question, which is being asked by communities everywhere.

Obviously, child abuse and neglect has some very serious consequences for individuals, but also for communities too. Steven Cornell in his discussion of “nation building,” as an approach to successful economic development for Indian tribes, describes a community where both businesses and humans can flourish (Cornell and Kalt, 1998). Cornell argues that success in economic development is more than just jobs, but also includes social impacts and making a community a place where investors will want to do business. Chronic social problems that hold back the community and go unaddressed will ultimately interfere with efforts to create deeply rooted economic development. Tribal resources that could be used for economic and infrastructure development will be drained off trying to “manage” chronic and persistent social problems. Child abuse and neglect, because of its correlation to so many other social issues, is a key social problem that needs to be addressed effectively in order for the tribal community to attain prosperity.

Reporting of Child Abuse and Neglect in Indian Country

Issues in Reporting – Effective reporting of child abuse and neglect is the first step in helping address existing incidents and preventing further abuse or neglect. Unfortunately, it is also an area that is not well understood by most people, including professionals, and is fraught with misinformation and challenges.

Prior to the passage of the Indian Child Protection and Family Violence Prevention Act, other than a handful of tribes that had protocols, there were no consistent standards for how suspected incidents of child abuse and neglect should be reported. Many tribes depended upon the Bureau of Indian Affairs or state or county agencies to provide direction, which resulted in a variety of standards and practices, most of which did not fully involve tribal governments. For a tribal community member or professional it was difficult to know who should report, who should be notified, and if an agency would respond to the report. Tribes, while having the sovereign authority and responsibility to protect their children, were left out of the picture in most places leaving the methods and protocol development to others. This led to the view in many tribal communities that reporting of child abuse and neglect was not a community responsibility and confusion about what an individual’s responsibility was, further weakening traditional beliefs and practices that supported extended family and community involvement in protecting children. The agencies in charge of taking reports did little to encourage tribal involvement or pursue systems that reflected community values and practices. The overall result were systems of reporting that were neither clear nor readily supported in Indian Country.

Today, almost 13 years after the passage of the Indian Child Protection and Family Violence Prevention Act, reporting has improved. Requirements to conduct background checks for BIA, IHS, tribal workers, and prospective tribal foster and adoptive parents has increased awareness of individuals to report suspected child abuse and neglect. The availability of more Indian specific information, tribal protocols, and services related to child abuse prevention has also made a difference in Indian people’s awareness of child abuse and neglect in general and the need to report. However, barriers still remain to developing effective reporting systems in Indian Country and the community support they need to succeed.

One barrier that is present may be related to individual interpretations or lack of understanding of the law. For example, if a teacher observes what he/she believes might be abuse, do they report it directly to a local law enforcement or child protection agency or do they report to their school principle first? NICWA’s understanding is that in many instances the person making the observation may want to report to their supervisor first, creating an increased risk for the information to be filtered or the report being submitted late or not being submitted at all.

Another barrier may be related to the dynamics of living in a small tribal community where many people know each other well. While the well-being of children is very important to all tribal communities, situations where an individual tribal member might suspect child abuse, but may not be sure, causes a

dilemma for that individual when they know the child's family well or the child is the relative of a respected leader in the community. This is especially true when individuals do not understand the reporting system or do not trust the agency involved to respond appropriately. Confidentiality for the reporter is also an important consideration, even when the agencies involved have strong measures in place to safeguard the reporter's identity.

A third possible set of barriers includes resistance to reporting based upon an unclear understanding of what child abuse and neglect is. No one wants to make a report that turns out to be false and creates problems for a family or an individual, but any number of people in a community can be exposed to evidence of child abuse and neglect and mandated to report. This includes primarily professionals, but may also include non-professionals. While most professionals that work with children get extensive training in their area of expertise, not enough get good training in how to recognize or respond to suspected incidents of child abuse or neglect. If your next-door neighbor is not working with children chances are he/she has had little or no exposure to helpful information in this regard. Mainstream media, a primary source of information for many people, has not helped much either. Coverage of child abuse and neglect seems primarily geared towards horror stories of child protection agencies that did not respond well or people that were wrongly accused and how their lives were ruined.

Tribal and state relationships are important to effective reporting. Many tribes still depend upon a local state or county agency for child protection services and if that relationship is not productive, reporting can be impeded. In this case, reporting problems may stem from conflict not even related to child protection, which has spilled over into other service areas. Sometimes state agencies may not be prepared to address reporting issues on tribal lands for a variety of reasons, including questions about who has jurisdiction and resources available to respond effectively. Tribal members may not want to report to a state or county agency if they perceive that the agency is biased towards Indian people or the response will be heavy handed.

What can be done to improve reporting? Common to all of these barriers are themes regarding a lack of understanding, mistrust, and sense of ownership and responsibility for what happens to children. Lack of understanding often results from information not being available, accurate, or presented appropriately. For many years Indian people have not been in control of the information that was being broadcast in their communities, including information related to child abuse and neglect. A reporting system that works is dependent upon people in the community understanding the effects of child abuse and neglect, what can be done about it, and why reporting is important to the solution. This information must be relevant to the tribal community and dissemination should occur through tribally sanctioned pathways. Tribal community leadership should be in control of these processes to effect the change necessary to improve reporting.

Mistrust often develops when relationships with child protection agencies are characterized by conflict and misunderstanding. Child protection agencies are often viewed with skepticism, but even more so when the community has been left out of key decision making processes. State and county agencies, because of the long history of removing Indian children with bias and preferring non-Indian homes to tribal homes, have a very difficult task to operate effectively in Indian Country, one that at the very least requires significant tribal involvement to succeed.

A preferred situation is to have tribes operating their own child protection services, which is happening with more frequency in all parts of the country. As resources become available, more and more tribes have made a conscience effort to operate their own child protection services. The result is often a reporting system that tribal members feel more comfortable with and respond to. Community ownership of the problem of child abuse is much easier to promote and so is implementing workable solutions. When this is not possible, state, county, and other agencies involved in reporting and investigation need to be held more accountable for developing and implementing practices and policies that are responsive

to the needs of Indian children and their communities. This can be accomplished through tougher requirements for joint planning between these entities, resources to support collaboration, and evaluation of those efforts.

Investigation

Who are the Key Players – Unlike most child abuse and neglect investigations involving non-Indian children, knowing who is involved and what their role is can be complicated in an investigation involving an Indian child. An investigation on tribal lands may involve tribal, state, and federal authorities from law enforcement and child protection. The roles may not be clear and it is not uncommon for an investigation to get sidetracked because of this. For example, in a Public Law 280 state, the state has concurrent jurisdiction with the tribe for the investigation of child abuse and neglect, unless the tribe decides to retrocede and assume exclusive jurisdiction on tribal lands. Under concurrent jurisdiction, the state and tribe shall share authority and responsibility for the investigation of child abuse and neglect. However, Public Law 280 does not spell out how that jurisdiction or responsibility shall be shared. In some cases, the state may perform almost all of the investigative functions using only state agents, in other situations the tribe may participate as an equal partner providing child protection and law enforcement agents for the investigation. In order to keep investigations running smoothly, tribes and states must define their authority and the roles. This is most successfully done through intergovernmental agreement, but in the absence of an agreement problems can arise very quickly and often do.

In a non-Public Law 280 state, where tribes have exclusive jurisdiction on tribal lands, it is still not uncommon to see a variety of governmental agencies involved in investigations. If the child abuse being investigated is determined to be sexual abuse this falls under the Major Crimes Act (18 USC §1153), which makes the crime a federal offense and prosecutable under federal law. In many cases this pulls in the FBI in an investigative role and the U.S. Attorney General's office if prosecution of the offender is sought. The tribe may have their own child protection investigative team or one that includes the Bureau of Indian Affairs representatives from law enforcement and/or social services. It is also possible that state child protection officials may be involved in a non-Public Law 280 state depending upon the role that has been established for them with the tribe. Agreements or Memorandum of Understanding that clarify authority and responsibilities are important here too, but are not always present.

The role of tribal courts is also important here and the ability to honor tribal law and court orders must be recognized if investigations and court proceedings are going to serve the best interests of Indian children. In Public Law 280 states a tribe may retrocede and assume exclusive jurisdiction under federal law. Usually, this means that the tribe will also have an operational tribal court that addresses child abuse and neglect complaints. Unfortunately, sometimes states do not recognize tribal jurisdiction in this situation or enforce tribal court orders, even though federal law requires them to. This situation leads to confusion, duplicative efforts, and a weakening of tribal authority to effectively address child abuse and neglect.

Barriers to Investigation – Coordination and resources are the primary barriers that tribes face in pursuing effective investigations. As described above, investigations in Indian Country can involve a variety of agencies, some of which are from different governmental entities (tribal, state, or federal). Each has a different experience, role, and authority. If efforts are not carefully coordinated, the opportunity for things to go wrong can happen very quickly with children becoming victims once again.

Resources are the most prominent item missing from this equation. Many tribes are ready to take a more active role in the investigation of child abuse and neglect and have the critical knowledge and experience needed to do it well. This includes not only the doing part of investigations, but also the development of capacity through tribal code development, cross-agency protocols, and agreements. However, federal

funding for tribal child protection services is very limited and what funding is available comes primarily from the Bureau of Indian Affairs and is only available to those tribes in non-Public Law 280 states.

While tribal children are the focus of these investigations, are members of sometimes have the least amount of control over how investigations occur. This is especially true in Public Law 280 states. When other governmental entities are in the lead on the development of protocols and techniques, methods for investigation are at a higher risk for not being responsive to the needs of the children, families, and the tribal community. Tribal governments have unique knowledge and qualifications needed in doing effective investigations, however in many cases they are not fully consulted. Child protection or multi-disciplinary teams that are not under the authority of the tribe or whose membership is biased towards other governmental agencies is an example of this problem.

Varying definitions of child abuse and neglect can also be a problem. Federal law requires that states establish definitions for a variety of different types of abuse and neglect without specifying exactly what these should contain. The Indian Child Protection and Family Violence Prevention Act also provides definitions for those involved in investigating child abuse and neglect in Indian Country, and tribes may also have developed their own as defined in their codes. When a state agency is involved in investigating child abuse and neglect of an Indian child on tribal lands, they are most likely going to be operating from definitions they use even if the tribe and federal law have different definitions. Inappropriate judgments of what is child abuse can easily occur when state or county officials do not understand tribal child rearing or family practices. Although many of these definitions will have similar elements it can create unnecessary confusion, which can lead to differing standards being applied on Indian lands, some of which may not be valid.

In several states, and to some extent in federal rules, rules of evidence have been changed to make it easier to use the testimony of child victims in prosecution of their perpetrators. Because prosecutions of perpetrators who sexually abuse Indian children on tribal lands may occur in federal court, it would be beneficial to examine the federal rules of evidence carefully and see if changes are needed to improve the chances of successful prosecution. New practices and policies in this area may be needed to prevent further abuse of Indian children.

Training and technical assistance for tribal child protection personnel is another potential barrier. The proper investigation of child abuse and neglect is very sensitive and requires critical skills in interviewing, observation/interpretation, and evidence collection. These issues are only magnified in Indian Country where years of inappropriate investigation by non-Indian public and private agencies have created a strong skepticism of child protection services in general. For example, law enforcement personnel are often chosen as the first responders to complaints of child abuse and neglect; their primary training is in law enforcement techniques, which may not include how to carefully interview an Indian child that has been the victim of child abuse. Inappropriate techniques can lead to further trauma for the child and their family and possibly taint the evidence needed to prosecute offenders. Tribes also need help in developing or enhancing their capacity to investigate, including protocol and cross-agency agreement development.

What is Working in Investigations – Numerous tribes, in both Public Law 280 and non-Public Law 280 states have developed agreements to cross-deputize with local county law enforcement and clarify roles through agreements or Memorandum of Understanding with tribal, Bureau of Indian Affairs, and state agencies. These collaboration efforts pay big dividends for Indian children and the tribes, as professionals involved in child protection find new and innovative ways to address problems, receive support from other professionals, conduct and receive joint training, and participate in larger community efforts to prevent child abuse and neglect.

When tribes have been in leadership positions with respect to investigations, whether they perform all the functions or not, better methods for investigation have been developed and utilized. Other benefits from tribes being in leadership positions include: greater community acceptance of investigative services; clearer expectations and definitions of what constitutes child abuse and neglect; and use of natural helping systems and other cultural practices that are more effective in protecting Indian children.

The development of culturally relevant trainings and technical assistance has helped many tribes initiate improvements in investigative services. NICWA has been instrumental in developing curriculum and training on child protection services that is tailored to the needs of tribal agencies. Our partnership with four of the ten National Resource Centers in Child Welfare has enabled us to provide technical assistance to tribes on topics such as child protection team development, interviewing skills, child abuse and neglect assessment, intergovernmental agreement, and investigation protocol development.

Strong tribal court systems have also had an important impact. Where they have been supported, tribal courts have been effective in prosecuting and deterring child abuse in tribal communities. Some courts have adopted more traditional methods of addressing child abuse that utilize elders and leaders from the community to influence positive changes in abusive behavior that are difficult to get in state courts. Tribal courts also support investigation by providing some oversight into the process and failures that may occur.

Prevention

Prevention Approaches in Indian Country - Prevention of child abuse and neglect in Indian Country is one of the least supported child welfare activities, but has one of the highest potential benefits for Indian children, families, and tribal communities. Indian communities have characteristics that help protect children from abuse or neglect. Historically, tribes have had customs and traditions for regulating civil matter such as child custody. Tribal elders acted as judges; traditional chiefs governed as the protectors of child well-being. Clans, bands, societies, and kinship systems functioned as social service providers. The teachings of the past and natural prevention support systems continue to facilitate prevention today. When new families are intact, new parents can receive a lot of support. In tribal communities almost everyone knows everyone else. These networks of people can often help identify and support child abuse victims. When communities are intact and aware, neighbors, friends, and family can provide checks and balances against unacceptable behavior.

The key to prevention is making sure that services are community-based, culturally appropriate, and adequately funded. Promoting awareness of child abuse and neglect is the starting place and then facilitating ownership of the problem by the community follows. Everyone in the community that wants to support prevention efforts should have an opportunity to do so. Community involvement can take many forms; from participating in larger community prevention planning to helping out with child care for members of your own family that are experiencing stressful events. In Indian Country the primary approaches to prevention include, public awareness, parent support, child resistance education (safe touch and stranger danger, etc.), intervention to reduce problem behavior, social risk reduction (restoring cultural norms, substance abuse prevention, wellness projects, etc.), and promoting cultural strengths (Cross and Ollgaard, 1999).

Funding of Prevention Efforts - Funding for child abuse and neglect prevention in Indian Country is very limited. Most funding for child welfare services comes from federal sources, such as the Bureau of Indian Affairs or Department of Health and Human Services. Because tribal funding in child welfare overall is very limited, available funding is often used to support non-prevention services, such as foster care or child welfare case management. What little prevention funding is available, such as Title IV-B, Subpart 2 Promoting Safe and Stable Families, only goes to approximately 66 tribes in the United States and is allocated in amounts that are very small. State governments, while not having access to adequate prevention funding either, still receive funding from sources that tribal programs are not eligible for, such as the Title XX Social Services Block Grant and the Child Abuse Prevention and Treatment Act.

Related to funding is the need for technical assistance and training resources for tribal communities and programs that want to engage in prevention efforts. While numerous tribes have developed effective prevention strategies, this information is not widely available to other tribes who may want to learn from and replicate. Historically, technical assistance that has been available was created with mainstream communities in mind and had limited application to diverse tribal communities. The National Resource Centers in Child Welfare have tried to meet some of the need, but are not well equipped to provide ongoing technical assistance in Indian Country and have often not utilized tribal people in the development of their trainings and technical assistance. The Indian Child Protection and Family Violence Prevention Act authorizes the establishment of Indian Child Resource and Family Services Centers and Indian Child Protection and Family Violence Prevention Program, which include technical assistance and prevention activities respectively, but our understanding is that neither program has received appropriations by Congress.

One of the key funding sources for state prevention efforts are the Children's Trust Funds, which are set up in states to raise funding for child abuse and neglect prevention efforts. All states have established trust funds, which raise public and private prevention funding through a variety of methods including partnerships with private foundations, private donors, and state tax return donations (check offs) to name a few. These trust funds together raise \$100 million dollars annually through their fund raising efforts and leverage even more. They also have been effective at keeping prevention in the eye of the communities, policymakers, and service providers. They are a strong voice for prevention efforts, and millions of families have reaped the benefits of their work. Unfortunately, no such effort is working on behalf of Indian children, families, and communities. NICWA believes that a national Indian Children's Trust Fund could be developed, possibly organized along the lines of what is proposed in S. 555 the Native American Health and Wellness Foundation Act of 2003 that would provide functions similar to what a state Children's Trust Fund does.

Character and Criminal Background Checks - Central to prevention efforts under the Indian Child Protection and Family Violence Prevention Act is the requirement to conduct character investigations and criminal background checks with the Bureau of Indian Affairs, Indian Health Services, and tribal employees or individuals who are being considered for employment with these entities. Character

investigations are generally rigorous investigations into the suitability of a person's character to perform duties assigned in a job. In this case, the suitability pertains to working with or having control over Indian children. This can include interviews with the subject of the investigation, as well as interviews with people who have knowledge of the character of the person being investigated. Criminal background checks generally use fingerprints and the name of the individual to investigate the criminal record of a person regarding arrests, warrants that were issued, or convictions related to crimes that have been determined unsuitable to the duties of the job. Both the BIA and IHS have regulations regarding the implementation of this requirement.

The implementation of these character and background checks, however, is less certain in Indian Country. In an article published in American Indian Report (Hinkle, 2003), the author interviews several people involved in or with knowledge of the implementation of these checks. Available information from 1998 points to serious problems in completing these checks, primarily with the Bureau of Indian Affairs education employees. The article does not provide any information on how the checks are being implemented elsewhere, such as Indian Health Services or in tribal settings. However, our experience is that many tribes remain unaware of the law's specific requirements for character and criminal background checks and the availability of resources to conduct them. In some instances, we have had tribes tell us about the considerable expense of doing a character check, which requires special expertise and considerable time. Tribes that have tried to contract for character checks found out quickly that one check can cost as much as \$1,500 or more and take months to complete.

Criminal checks, which can be done through the Bureau of Indian Affairs in most cases for a small fee and take much less time to complete, have not been well publicized to tribes. Some tribes are not aware that the requirements also apply to checks on prospective tribal foster and adoptive homes. There are also technical issues involved in providing readable fingerprints for a criminal background check that have caused delays in some cases. Contractors and volunteers have also been viewed as exempt in many cases from the character and background checks even if they are in contact with Indian children. Overall, it appears that much more information and training is needed to achieve consistent implementation of the checks. Resources also seem to be an issue for tribes and possibly the Bureau of Indian Affairs and Indian Health Service in facilitating and completing these checks. Without funding to support this requirement many tribes may not be able to meet the expectations of the law.

After the passage of the Adoption and Safe Families Act in 1997, states were required to conduct background checks on prospective foster and adoptive homes where they place children under their custody. Because state and county agencies also use tribally licensed foster and adoptive homes for placements of Indian children under their custody, tribal child placing agencies would get requests for tribal homes to undergo state background checks. The state background check would be in addition to tribal background checks that tribal foster and adoptive families had already undergone. Federal law also requires that states view tribally licensed foster and adoptive homes as equivalent to state licensed homes. The inadvertent conflict in policy has states unnecessarily cautious about using tribally licensed homes

and has made it difficult for Indian families who want to volunteer their home to needy children. It has also created a burden for tribal governments. It is our view that Congress never intended tribal foster and adoptive homes to be subjected to a double standard and has primarily been concerned with making sure that tribal foster and adoptive homes receive a criminal background check and not who administers the check.

Central Registry - The existing law authorized a feasibility study on the need for and establishment of a central registry in Indian Country. Central registries operate in all 50 states and were established with the help of federal government with funding authorized under the Child Abuse Prevention and Treatment Act. Registries were originally created to help in the identification and treatment of abused and neglected children and their families, although these registries perform an expanded list of functions today. This includes: data for researchers to assess trends; reveal patterns of re-reporting and re-abuse on the same child or parent; develop a plan for intervention in a particular case to use as an intrajurisdictional and interjurisdictional source of information; to find mandated reporters in protective custody actions; to assess risk in new reports; and to generally determine who is accessing and using the registry information. How information on a central registry is used and collected depends upon the agency or government that sets up the registry and what their priorities are. In many cases, central registries have been an important tool in helping protect children.

The downside to a central registry is the risk of infringing upon a person's right to due process and the liability that comes from putting people on a registry where access is difficult to manage. The feasibility study that was conducted under the authorization of the Indian Child Protection and Family Violence Prevention Act came to some of the same conclusions to our understanding. They concluded that a registry could only safely provide records of criminal convictions, which could be found through criminal records check rendering the idea of a central registry as providing little real benefit. Alternatives to developing a central registry should be looked at nonetheless.

Treatment Services for Victims

Treatment programs and services for child abuse victims are in very short supply. Evidence for this conclusion can be found in the statistic that only 17 child trained therapist or mental health counselors were working in the Indian Health Services' service areas for a population of almost 400,000 children living on tribal lands (U.S. Congress, 1986). Indian Health Services is the primary provider of mental health services in Indian Country. While this data is over 15 years old, recent budget requests and justification notes (less than 50 percent of all health needs being met) from the Indian Health Service have implied that this situation has not changed much, if at all. In addition, the Surgeon General in a report on mental health wrote that the need for mental health services is still great; availability of services is severely limited and a higher number of Indian people who do not have health insurance than the average for Whites (U.S. Department of Health and Human Services, 2001). Where mental health and treatment programs do exist at the tribal level, they often are overwhelmed with trying to meet crisis proportion

needs for both adults and children. This can often result in treatment services being slow in coming and not being designed for the specific needs of child abuse victims.

Traditional Healing Based Services - Issues related to utilization and effectiveness of services by Indian families is a critical factor in the ability of Indian children receiving treatment and becoming well again. It is well-known that many tribal communities and families rely on natural helping systems or traditional healers in their pursuit of healing, which have been reported to be some of the most effective treatment. Treatment services supported by the Indian Health Services, the primary provider of mental health services on tribal lands, uses a primarily western model of providing mental health services. Consequently, besides services availability being limited in many communities, services may not be culturally matched to the tribal community and their values, beliefs, customs, and traditions. This has a tendency to limit the effectiveness of treatment for Indian children and families, and provides a disincentive for families to seek mental health services from providers that only offer services in a mainstream model.

What has begun to surface is more advocacy for the establishment of treatment services that incorporate traditional healing. In 1999 the Substance Abuse and Mental Health Services Administration and the Indian Health Services entered into a partnership to promote the development of more culturally appropriate children's mental health services in Indian Country designed around the System of Care principles that encourage community-based and family involved service delivery. These agencies have funded over 15 tribes in their efforts to plan for children's mental health services and the majority of these tribal grantees have gone on to implement their service designs by leveraging federal, state, county, tribal, and private funding. The services that they have designed and are now offering in several communities have had widespread community support and have reached children and families in ways that were not evident with other mental health treatment.

Training and Technical Assistance - Training and technical assistance is also important to ensuring that tribal programs have access to information and skills development in treatment. NICWA has provided technical assistance to the Circles of Care grantee communities since the inception of the program in 1999. Assistance offered has helped tribes assess their community planning efforts, develop new culturally appropriate methods for designing and offering services, and provided support to parent groups who want to be more involved in services for their children, to name a few. At the University of Oklahoma, Delores Subia BigFoot, PhD has developed a training program, Making Medicine, for tribal mental health providers that trains them in culturally appropriate treatment approaches to working with Indian children who have been victims of child abuse, primarily sexual abuse. This is the only tribal specific children's mental health training program in the country to our understanding.

Comments on Indian Child Protection and Family Violence Prevention Reauthorization Act of 2003 (S. 1601)

As we stated earlier in the testimony, NICWA is supportive of the direction that S. 1601 is taking in addressing child protection issues in Indian Country. While the realities that challenge efforts to improve protections for Indian children are daunting, S. 1601 provides some remedies for critical problems.

Specifically, we are supportive of the amendments to cover contractors and volunteers under the character and background check requirements. This will add to the list of required individuals, additional people who either work with or have control over Indian children. However, given the uneven levels of compliance with this requirement under the existing law, we urge the Committee to consider providing resources for those government agencies and tribal governments that are engaged in conducting and providing administration of this requirement.

We also support the proposed study to identify impediments to the reduction of child abuse on Indian reservations. As our testimony revealed, there are a large number of potential impediments to our knowledge and little information known about the scope of these problems. With accurate and reliable data, we believe Congress will be able to make informed decisions about how to reduce and eliminate impediments to child protection for Indian children.

Grant programs under Sections seven, eight, and nine are also important additions to the legislation. Funding is probably the key impediment to Indian children not getting the protections they need. Child Abuse and Neglect Prevention and treatment services are desperately needed by all tribes, along with quality technical assistance and information to support necessary services. Infrastructure development is also a welcome addition to the eligible grant activities. Our only concerns are that the programs seem to be discretionary grant programs, which will likely mean that not all tribes who are eligible and have the capacity will be funded. Our other concern is that unless the statute provides specific information on what tribes will be eligible, how the funds will be allocated to tribes and what the criteria are for funding tribes, it could result in funding decisions not intended by the Committee or sponsors.

Including children subjected to family violence under the definitions for child abuse is also a positive addition. We know that family violence is present in high rates in Indian Country and that many times children also suffer because of their exposure to this violence. Measures for the safety of child protection workers is also a good addition to the bill. This is an issue that has not been addressed adequately.

Should the Committee want to consider other provisions, we would direct you to our recommendations and invite you to discuss these with us further.

Recommendations

- Provide non-discretionary funding that will allow all tribal governments to operate a basic level of child protection services if they choose. The funding should allow tribes to enhance existing child protection services or work to develop capacity to offer services in the future (planning, infrastructure development).
- Provide for the establishment of a national technical assistance and training center designed to support tribal programs and tribal child protection workers in all areas of child protection services.
- Provide support and funding for research into how character and criminal background checks are being implemented in Indian Country and recommendations on how to improve compliance.
- Provide funding to establish non-discretionary funding for tribes to use to support prevention and treatment services for Indian children that have become the victims of child abuse or neglect.
- Amend S. 1601 to reflect that tribal governments who are approving or licensing foster care and adoptive homes only need to meet the federal background checks under P.L. 101-630 in order for their homes to be accepted for use by state or county placing agencies. Currently, states are asking tribal foster care and adoptive homes to undergo state background checks, in addition to tribal background checks required under P.L. 101-630.
- Provide support for an examination of state and federal rules of evidence that make it easier to use child victim testimony in federal court. The study should make recommendations on how to bring current rules into best practice to assist in successful prosecution of child sexual abuse.

Conclusion

Child protection has to be one, if not the most, important government responsibility. We know that rates of child abuse and neglect of Indian children are higher than that for many other ethnic and racial groups, and the system for protection of Indian children is fragmented and needing attention. We also know that resources to address this issue from prevention to prosecution are not nearly enough to get the job done. This is the reality for thousands of Indian children, their families, and communities. Tribal governments have the authority, responsibility, and knowledge to set things right, but resources to exercise that authority are not available. S. 1601 is an important step in the right direction and, if enacted, will definitely help, but there is much more that can be done. We thank the Committee for inviting us to provide testimony and look forward to continuing the good work of ensuring protection and well-being for Indian children.

References

Child Welfare League of America. (1999). *Child abuse and neglect: A look at the states. 1999 CWLA Stat Book*. Washington, DC: CWLA Press.

Cornell, S. and Kalt, J. (1998). *Sovereignty and Nation-Building: The Development Challenge in Indian Country Today*. Cambridge, MA: Harvard University.

Cross, T.A., Earle, K.A., and Simmons, D. (2000). Child abuse and neglect in Indian Country: policy issues. *Families in Society*, 81 (1). 49.

Cross, T.L. and Ollgaard, S. (1999). *The Status of Child Abuse and Neglect Prevention in American Indian Communities*. Portland, OR: National Indian Child Welfare Association.

Earle, K. (2000). *Child Abuse and Neglect: An Examination of the American Indian Data*. Seattle, WA: Casey Family Programs.

Earle, A. and Cross, A. (2001). *Child Abuse and Neglect Among American Indian/Alaska Native Children: An Analysis of Existing Data*. Seattle, WA: Casey Family Programs.

George, L.J. (1997). Why the need for the Indian Child Welfare Act? *Journal of Multi-Cultural Social Work*, 5, 165-175.

Hinkle, J. (2003). A Law's Hidden Failure. *American Indian Report*, 19 (1). 12-14.

Indian Health Service. (1990). *Trends in Indian Health*.

Johansen, B.E. (2000). Education – The nightmare and the dream: A shared national tragedy, a shared national disgrace. *Native Americas*, 17 (4), 10-19.

Mannes, M. (1993). Seeking the balance between child protection and family preservation in Indian child welfare. *Child Welfare*, 72 (2), 141-152.

National Clearinghouse on Child Abuse and Neglect. (2002). *Due Process and Central Registries: An Overview of Issues and Perspectives*. Washington, D.C: National Clearinghouse on Child Abuse and Neglect.

National Research Council Panel on Research on Child Abuse and Neglect (1993). *Understanding Child Abuse and Neglect*. Washington, DC: National Academy.

Nelson, K. et al. (1994). *Family Functioning of Neglectful Families: Final Report*. Iowa City: University of Iowa.

Prucha, F.P. (1990.) *Documents of the United States Indian Policy*, 2nd Edition, Expanded. Lincoln: University of Nebraska Press.

Unger, S. (1977). *The destruction of American Indian Families*. New York: Association on American Indian Affairs.

University of Minnesota, Adolescent Health Program. (1992). *The State of Native American Youth Health*. St. Paul, MN: University of Minnesota.

U.S. Bureau of the Census. (1995). Selected Social and Economic Characteristics for the 25 Largest American Indian Tribes: 1990. U.S. Bureau of Census Website
<http://www.census.gov/population/socdemo/race/indian/ailang2.txt>

U.S. Congress, Office Technology Assessment. (1990). *Indian Adolescent Mental Health*. OTA-H-446. Washington, D.C: U.S. Government Printing Office.

U.S. Department of Health and Human Services, Administration for Children and Families. (2001). *Child maltreatment 1999*. Washington, DC: U.S. Government Printing Office.

U.S. Department of Health and Human Services. (2001). *Mental Health: Culture, Race and Ethnicity – A Supplement to Mental Health: A Report of the Surgeon General – Executive Summary*. Rockville, MD: U.S. U.S. Department of Health and Human Services, Public Health Service, Office of the Surgeon General.

U.S. Department of the Interior, Bureau of Indian Affairs. (1998). “*Indian Child Abuse Report*” (Unpublished).

U.S. Department of Justice. (1999). *American Indians and Crime*. Washington, DC: U.S. Government Printing Office.