

Human Trafficking & Native Peoples in Oregon: A Human Rights Report



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**Prepared by the International
Human Rights Clinic at
Willamette
University College of Law**

HUMAN TRAFFICKING & NATIVE PEOPLES IN OREGON: A HUMAN RIGHTS REPORT

Prepared by the International Human Rights Clinic
Willamette University College of Law
Under the guidance and supervision of Professor Gwynne Skinner

Student Editor: Hayley Weedn, Clinic Intern (Class of 2013)

Legal Interns in the International Human Rights Clinic engaged in the fact-finding and prepared this report over the course of three academic semesters. Clinic Interns who worked on the fact-finding or final report were:

Lead authors: Hayley Weedn (Class of 2013), Joseph Scovel (Class of 2014), and Jason Juran (Class of 2014)

Other interns in the Clinic who worked on this project and contributed valuable time and effort: Emily Apel, Christine Baker, Laura Bloom, Joseph Elwood, Andrea Flanagan, and Michael Hicks.

None of the authors of the Report identify as Native American. We realize this fact fairly creates questions about the Report's credibility. We also realize that it inherently limits our understanding regarding Native cultures and the complex repercussions of colonization. We acknowledge the long history and impact of oppressive policies and other institutional forms of cultural destruction wrought by colonization that continues today. We also maintain the highest level of respect and reverence for Native Peoples and the Tribes of Oregon. For any mistakes we make, any insensitivity we show, or any offense or upset we cause, we apologize. Please know such mistakes or insensitivities were not intentional. We approached this project with the utmost respect for Native cultures and with humility.

A note about the cover: The cover depicts the Medicine Wheel (or Sacred Hoop) – a Native American symbol representing the cycles of life, important for spiritual healing and wellness. Intern Joseph Scovel recreated this symbol and inserted the hand. The hand represents the need to reach out and bridge the cultural divide between the Native and non-Native communities through understanding and humility.

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I. INTRODUCTION

A. PURPOSE AND SCOPE OF REPORT

It is widely acknowledged that human trafficking in Oregon is a problem. In 2010, we (Willamette University College of Law’s International Human Rights Clinic (“the Clinic”)) published a report measuring how well government (state and federal) officials in Oregon were doing with regard to their obligations under international, national, and state anti-trafficking laws to *prevent* human trafficking, *prosecute* traffickers, and *protect* survivors of human trafficking. Entitled “Modern Slavery in Our Midst: A Human Rights Report on Ending Human Trafficking in Oregon” (“2010 Report”), the 2010 Report also identified gaps in the law and outlined several recommendations that, in our view, would help such officials comply with their obligations regarding human trafficking.¹

Following publication of the 2010 Report, it came to our attention, through attendance at conferences and additional research, that Native Americans² are particularly vulnerable to human trafficking, both nationally and in Oregon, and that the recommendations made in the 2010 Report did not sufficiently address these vulnerabilities and other aspects of human trafficking unique to the Native American community. Some of these considerations include: generational trauma leading to higher levels of foster care, homelessness and thus more vulnerability to trafficking; lack of resources for traditional healing; lack of trust in law enforcement due to many factors; lack of understanding about complex jurisdiction and cultural issues among law enforcement; and complex community relationships that often lead to underreporting and noncooperation with prosecutors. It also came to our attention that little was being done in Oregon (or elsewhere) to research, identify, and propose solutions for the unique aspects of human trafficking and Native Americans; nor were those who work in the area of human trafficking tracking incidences involving Native Americans (as is done with other identifiable populations).

This report, entitled “Human Trafficking & Native Peoples in Oregon: A Human Rights Report” (“the Report”), focuses specifically on Native populations within Oregon. This Report, like the 2010 Report, is not a social science study that attempts to measure the level of human trafficking involving Native Americans. Rather, it is a human rights legal fact-finding report that sets out to measure whether federal, state, and local government officials are meeting their obligations under international, national and state law in *prosecuting* traffickers, *protecting* survivors, and *preventing* trafficking as it involves the Native population in Oregon.

¹ WILLAMETTE UNIVERSITY COLLEGE OF LAW HUMAN RIGHTS CLINIC, MODERN SLAVERY IN OUR MIDST: A HUMAN RIGHTS REPORT ON ENDING HUMAN TRAFFICKING IN OREGON (2010) [hereinafter 2010 REPORT]. Copies of the 2010 Report are available through contacting the Clinic.

² Terms such as ‘Native’, ‘Native American’, ‘Indian’, ‘American Indian’, ‘tribe’, ‘tribal member’, and ‘First Nations’ are used interchangeably throughout the Report, and are intended to represent, individually and collectively, the indigenous, original, first peoples of North America. Interchangeable use of these terms respectfully reflects the combination of common language usage by interviewees and legal terminology.

These “three Ps” – *punishment, protection, and prevention* – are the generally accepted paradigm used in fighting human trafficking and comprise the philosophical backbone of most anti-human trafficking legislation.³

B. METHODOLOGY

In preparing the Report, research was focused on conducting interviews, distributing surveys to county sheriffs, and engaging in independent legal research. In order to optimize the process of information-gathering, we used a simplified but broad definition of human trafficking that could be easily understood:

- *Human trafficking occurs whenever* a person is recruited or forced into prostitution, or other services or labor, by a third person;
- In the case of a child under age 18, no coercion is required;
- The key defining feature of human trafficking is that someone other than the survivor is making him or her available for sex or other services or labor (and receives something of value in return);
- This activity does not need to occur across state lines or internationally (it can happen within a unit as small as a family);
- Sometimes trafficking can appear as prostitution.

1. Interviews

We sought interviews with approximately 64 individuals and ultimately completed 46. The individuals interviewed run the breadth of roles within prosecuting, protecting, and preventing human trafficking. These include members of law enforcement in federal, state, county, local, and tribal jurisdictions. These also include interviews with service providers, specifically those who tailor their operations to serve Natives, as well as those generally involved in serving survivors of sexual abuse and trafficking. Furthermore, we reached out to the tribes themselves and met with tribal members, tribal service coordinators, and child wellness and foster care coordinators. We were also fortunate to speak to Native human trafficking survivors.

We interviewed at least one representative or service provider of each reservation in Oregon (and often times more than one) except for Warm Springs. Although we tried on several occasions to speak with representatives of Warm Springs, we were not successful. We regret being unable to speak in depth with every tribe, as we believe gathering as full and accurate information as possible in this report is vital to the shared conversation regarding human trafficking. We were, however, able to speak with service providers and law enforcement who work closely with each tribe.

³ *United Nations Charter on Human Trafficking and Victims Smuggling*, UNODC, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Nov. 10, 2013); *see infra* Part IV.A.1 for further discussion of the three Ps.

The interviews consisted of a set of established, open-ended questions tailored to identified categories of interviewees.⁴ These categories were: law enforcement personnel, service providers, and survivors. In order to ensure accurate and consistent information, interviewers asked the same questions of interviewees in each group. Interviews ranged in length from fifteen minutes to three hours. At least two Clinic interns conducted each interview and many were accompanied by the Clinic supervising professor. The interviews were not recorded, but notes were transcribed and filed both digitally and in a hard file with the Clinic.

The interviews were conducted in-person when possible. The interviews included visits to most of the reservations located in Oregon. When in-person interviews were not possible due to scheduling complexities, phone interviews were conducted. One interview was conducted via email at the request of the interviewee.

2. Surveys

We also sent online surveys to the sheriff of each county adjacent to reservation lands located in Oregon — Clackamas, Coos, Douglas, Harney, Jefferson, Klamath, Lincoln, Linn, Marion, Polk, Umatilla, Union, Wasco, and Yamhill counties. These surveys consisted of data-based questions primarily regarding experience with human trafficking, resources available for those involved in human trafficking, and jurisdictional issues regarding law enforcement on reservations.⁵ Unfortunately, even though the survey was distributed by Oregon State Sheriff's Association, we only received three completed surveys.

3. Research

In preparing the Report, the Clinic researched Native American tribes in Oregon and the history of the tribes' relationships with the Oregon and United States governments. A summary of that research, in relevant part, is included in the Report. With permission, we also include an excerpt from *Shattered Hearts* by Alexandra "Sandi" Pierce, Ph. D., and the Minnesota Indian Women's Resource Center. *Shattered Hearts* concerns human trafficking of Native women in Minnesota, and is one of the few pieces that address the vulnerability of Native women to human trafficking. The included excerpt outlines the tragic history of Native women and children, which has contributed to generational trauma.

Much of the body of legal research surrounding human trafficking generally was completed via the 2010 Report.⁶ The Clinic, however, took note of new and updated laws, reports, and statistics related to human trafficking. In addition, the Clinic also engaged in extensive research regarding the jurisdictional complexities unique to crimes occurring in Indian Country, as well as the Indian Child Welfare Act ("ICWA"), a legislative attempt to help Native children remain with

⁴ See Appendix B (interview questions for each group).

⁵ See *id.* (to view survey questions).

⁶ See 2010 REPORT, *supra* note 1, at 8-113 (Parts III and IV discussing legal obligations and Oregon's response to human trafficking).

Native families. Detailed memoranda regarding both jurisdictional complexities and the Indian Child Welfare Act are included as addendums to the Report.⁷

A NOTE CONCERNING THE FACT THAT THE AUTHORS DO NOT IDENTIFY AS NATIVE: None of the authors of this report identify as Native American. Given this, we realize that we are speaking as outsiders on these issues. We also realize this fact fairly creates questions and concerns about the Report and its credibility. We did our best to approach the topic with humility. We acknowledge the long history and impact of oppressive policies and other institutional forms of cultural destruction wrought by colonization that continues today. We also maintain the highest level of respect and reverence for the Tribes of Oregon. For any mistakes we make, any insensitivity we show, or any offense or upset we cause, we apologize. Please know such mistakes or insensitivities were not intentional.

C. THEMES

We found that overall Oregonian and U.S. officials are not doing enough to meet their obligations with regard to human trafficking prevention, prosecution, and protection involving Natives. The Native American population has unique attributes and needs with regard to the prevention, prosecution, and protection of victims that are largely unaddressed. It should be noted at the outset that no statistical information is kept with regard to the numbers of Native American victims of trafficking, even though statistics are kept with regard to other ethnicities. This should change.

Through our interviews and research, we identified several themes related to human trafficking and Native Americans in Oregon. The *most important of these themes is the existence and impact of generational trauma*. Generational trauma is at the core of most of the significant maladies affecting Natives in the United States, including in Oregon. Generational trauma, or the “soul wound”,⁸ that Native Americans have carried since the horrors of colonization has resulted in substance abuse, broken homes, high levels of domestic and sexual abuse, juvenile delinquency, and deep internalized pain. These problems make Natives vulnerable to trafficking and other violence. It also makes them vulnerable in ways unique to their culture.

A *second major theme* is the interconnected relationship between the incidence of *foster care, homelessness, and vulnerability to human trafficking*. Many interviewees noted that most of the trafficking survivors they knew (and some said all) had spent time in the foster care system. Native children are overrepresented in the foster care system: in Oregon, Native children are placed in foster care at a rate of 5 times that of Whites; in Multnomah County, placement of Native children is at a rate of 24 times that of White children.⁹ In general, youth in foster care

⁷ See Appendix C (ICWA memo); see Appendix D (jurisdiction memo).

⁸ This is a term used by Eduardo Duran (among others) in *HEALING THE SOUL WOUND: COUNSELING WITH NATIVE AMERICANS AND OTHER NATIVE PEOPLES* (2006).

⁹ A. CURRY-STEVENS & COALITION OF COMMUNITIES OF COLOR, *THE NATIVE AMERICAN COMMUNITY IN MULTNOMAH COUNTY: AN UNSETTLING PROFILE* 79 (2011).

may also have an increased likelihood of becoming homeless,¹⁰ and homelessness also leads to an increased vulnerability to trafficking. Per one statistic, a homeless teen is approached within 72 hours of being on the street for recruitment in a trafficking enterprise.¹¹ Given that Native children are overrepresented in the foster care system, and children in foster care are generally much more likely to become homeless, Native youth appear to have increased vulnerability for human trafficking.

A *third theme* is the vast *underreporting* of sex trafficking and other crimes within Native communities. Both Native representatives and non-tribal law enforcement identified this problem as a major contributor to human trafficking. Underreporting is the result of many factors, such as: feelings of helplessness on behalf of tribal members, desire for insulation against the outside world, and fear of inconsistent treatment by law enforcement. Some interviewees also suggested that within tribal cultures, people can be pressured to not report sexual abuse or domestic violence out of shame or fear of retaliation for reporting. In addition, a few interviewees suggested that in some circumstances sex is used as a matter of debt repayment and those involved may not see clearly that they are engaging in human trafficking.

A *fourth theme* is *distrust* of non-tribal law enforcement, both police and prosecutors. There are many historical, social, and cultural factors that contribute to distrust, and this distrust inhibits the reporting of crime generally, as well as cooperation with law enforcement in preventing and prosecuting crime.

A *fifth theme* is *jurisdictional confusion* among law enforcement and tribal members over crimes that involve Native Americans or take place on reservations. Interviewees working within or closely with reservations stated that either they have, or know that there is, significant confusion over who has jurisdiction over crimes in Indian Country.¹² A few also suggested that this ‘confusion’ may be merely a means of avoiding responsibility on the part of state law enforcement for what can be huge tracts of land. We address the issue of jurisdiction in Part IV.D below, as well as a more in-depth discussion in Appendix D, including its implication in other statutes that impact human trafficking such as: the Trafficking Victims Protection Act, the Violence Against Women Act, the Tribal Law and Order Act, and Oregon SB 412.

A *sixth theme* is the *lack of funding for traditional healing methods* for Native Americans who have been victims of generational trauma and of crime, including trafficking. Most insurance and funding does not cover traditional methods of healing, which many interviewees noted greatly inhibited the healing of Native people.

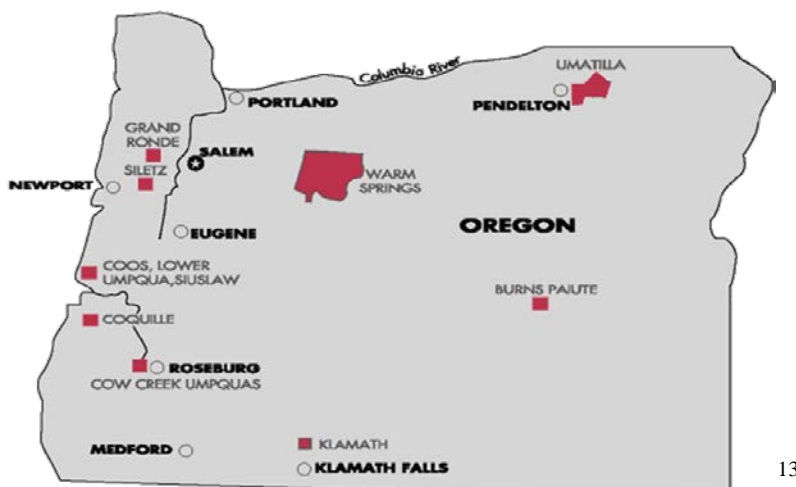
¹⁰ *Many Kids Move from Foster Care to Homelessness as They Turn 18*, COVENANT HOUSE, <http://www.covenanthouse.org/homeless-teen-issues/foster-care> (last visited Jan. 18, 2014).

¹¹ *The Numbers*, NATIONAL CLEARING HOUSE ON FAMILY AND YOUTH, <http://ncfy.acf.hhs.gov/features/trafficking-and-runaway-youth/numbers> (last visited Nov. 10, 2013).

¹² Indian Country is defined under federal law as “[a]ll land within the limits of any Indian reservation under the jurisdiction of the United States Government....” 18 U.S.C. § 1151. Indian Country is thus a technical legal term used to describe reservations and other tribal trust lands and holdings referred to throughout the Report.

The following Parts II and III discuss the relevant history of Native Americans in the United States and Oregon. Part IV then outlines the international, national, and state obligations of government officials to address trafficking through prevention, prosecution, and protection of victims. After outlining such obligations, the Report discusses its findings in Part V. In concluding the Report, Part VI provides recommendations for stakeholders, legislators, and law enforcement. Many of our suggestions relate to improving the relationship between tribes and different law enforcement entities, and to improving identification of Natives vulnerable to trafficking. Other suggestions are to improve Native access to traditional healing methods that honor tribal cultural practices, which are usually refused funding by a system that favors traditional western medicine and services over Native methods. Once tribes can begin to heal the ‘soul wound’, then progress can be made to keep Native families together, provide meaningful assistance in the form of substance abuse rehabilitation, and aid the recovery of abuse survivors.

II. BACKGROUND OF RELEVANT TRIBAL HISTORY AND STATUS



13

There are nine federally-recognized Indian reservations located within the State of Oregon: Umatilla; Grand Ronde; Siletz; Warm Springs; Coos, Lower Umpqua, and Siuslaw; Burns Paiute; Coquille; Cow Creek Umpqua; and Klamath. Six of these reservations are under state jurisdiction¹⁴ while three — Warm Springs, Umatilla, and Burns Paiute — remain under federal jurisdiction.¹⁵ Tribal holdings that comprise reservations may be as little as a few acres for administrative and tribal service buildings, while other tribes hold massive land trusts for purposes of natural resource preservation. Each of the tribes has a unique history, but the United States government has often treated the tribes as a homogenous group. The following two

¹³ Map used with permission by the Northwest Portland Area Indian Health Board, and is available at http://www.npaihb.org/member_tribes/oregon_member_tribes (last visited Nov. 19, 2013). Permission to use of this map does not imply their endorsement of this report.

¹⁴ Pursuant to Public Law 280, discussed *infra* Parts II.A.4 (discussing Termination), II.B (discussing PL 280 implementation on individual reservations), & IV.E.1 (discussing jurisdiction); *See* Appendix D, at 5.

¹⁵ Discussed *infra* II.B (discussing implementation on individual reservations) & IV.E.2 (discussing non-PL 280 jurisdiction); Appendix D, at 2.

sections provide a brief description of the general history of Native Americans in the United States and Oregon, as well as some background for the nine federally recognized reservation lands in Oregon.¹⁶ This history is important to understanding both the beginnings of generational trauma, especially as it relates to Native women, as well as the complex jurisdictional issues involving Native Americans and reservations.

A. OVERVIEW OF TREATMENT OF NATIVE AMERICANS IN OREGON AND THE UNITED STATES

1. Initial Contact between Native Americans and Europeans

First Nations located in what is now the state of Oregon started having contact with Europeans in the 1700s. Initially, this contact was with early Spanish and American ships exploring the Oregon coast between 1770 and 1780. In 1792, explorers found the Columbia River and the river became a regular port for trade. Further contact occurred in 1805 when the Lewis and Clark Expedition made its way up the Columbia River while exploring the Louisiana Purchase for the federal government. Settlers began to arrive in Oregon in the early 1800s, first in the form of the Hudson Bay Company in the 1820s, and then followed by missionaries in the 1830s and 1840s.¹⁷

This initial contact with the Europeans had devastating effects on First Nations, who had developed little or no immunities or treatments for diseases that were commonplace in European society. Consequently, contact with this new culture led to severe epidemics in the Native population. The coastal region suffered an epidemic between 1782 and 1783, the inland valley region from 1830–1833, and the plateau region in 1840. Estimates of loss of life vary, but the range is anywhere from 75 to 90 percent of the total population, with 30 to 75 percent dying from smallpox alone.¹⁸ The Lewis and Clark expedition found entire villages that were completely decimated by disease.¹⁹

These contacts also created clashes of culture. The arriving settlers and missionaries were farmers, while Native Americans were primarily hunters and gatherers. The Europeans considered their methods of land management far superior to those of the Natives. However, plowing the fields and fencing the land directly affected the ability of some tribes to seasonally migrate, hindering their long established way of life. Initially these conflicts were more of an annoyance to both sides, but as more settlers came to Oregon, these conflicts escalated to armed

¹⁶ The information in this Part of the Report is admittedly scant for the sake of brevity and flow. For your own edification, please refer to sources cited in the footnotes below for further study.

¹⁷ JEFF ZUCKER ET AL., OREGON INDIANS CULTURE, HISTORY & CURRENT AFFAIRS, AN ATLAS & INTRODUCTION 58-59 (1983).

¹⁸ *Id.* at 60; Greg Lange, *Smallpox epidemic ravages Native Americans on the northwest coast of North America in the 1770s*, HISTORYLINK.ORG (Jan. 23, 2003), http://www.historylink.org/index.cfm?DisplayPage=output.cfm&File_Id=5100.

¹⁹ STEPHEN DOW BECKHAM, THE INDIANS OF WESTERN OREGON, THIS LAND WAS THEIRS 104 (1977).

struggles over control of the land.²⁰ The armed conflicts never ended well for Natives. Although the tribes employed tactics that baffled the U.S. Army, the army had more men and cannons, and the losses to Natives were devastating.²¹

2. *The Treaty Era and Removal*

Between 1778 and 1871, the United States negotiated and signed 371 treaties with tribes in North America.²² Through such treaties, the U.S. government would persuade tribes to cede large tracts of land in exchange for goods (blankets, food), services (medical, schools), and sometimes a small portion of their home lands as a reservation.²³ Once reservations were created, the federal government forced Natives to move to them. The removal policy ignored existing tribal communities, often separating family members and placing tribes that were not friendly with each other on the same small area of land. Many of the tribes located to the same reservation did not even share a common language.²⁴ Forced marches from southwestern Oregon to the Siletz and Grand Ronde Reservations in the northwest resulted in thousands of deaths. Estimates are that when the Relocation Era was complete in Oregon, less than 10 percent of the Indian population at first contact still remained.²⁵

3. *Allotment and Reorganization*

In 1887, Congress passed the Dawes Act (also known as the General Allotment Act), which allowed the federal government to divide existing reservations into 160-acre parcels and assign each parcel to an individual tribal member. Any land remaining on the reservation was considered surplus land and was opened to settlement by non-Indians. The allotments given to tribal members were held in trust by the federal government for 25 years, at which point Natives were given the title to the land if they were deemed competent by the Bureau of Indian Affairs (“BIA”).²⁶ The goal of the act was to further assimilate Native communities in to mainstream American culture by forcing them to learn how to farm a limited piece of land.²⁷ However, Natives were not accustomed to this way of living. The ultimate result was increased poverty to the point that when title passed after 25 years, many were forced to sell their land. The Allotment Era resulted in the loss of 90 million acres of land, which had previously been given to Natives by treaty.²⁸

²⁰ ZUCKER, *supra* note 17, at 61-62.

²¹ *Id.* at 63.

²² *Id.* at 69.

²³ *Id.*; INDIANS OF WESTERN OREGON, *supra* note 19, at 124.

²⁴ ZUCKER, *supra* note 17, at 69-70, 93.

²⁵ A. CURRY-STEVENS ET AL., THE NATIVE AMERICAN COMMUNITY IN MULTNOMAH COUNTY: AN UNSETTLING PROFILE 6 (2011).

²⁶ ZUCKER, *supra* note 17, at 73-74.

²⁷ CURRY-STEVENS ET AL., *supra* note 25, at 6.

²⁸ ZUCKER, *supra* note 17, at 73-74, 95-96.

4. Termination

The 1950s saw the federal government attempt to terminate the tribes in an attempt to assimilate Natives into American culture. In 1953, Congress adopted House Concurrent Resolution No. 108, which called for a final tribal roll of all tribes, distribution of tribal assets to that roll, and severance of the federal trust relationship and any assistance to these tribes.²⁹ This resolution was the first step towards the termination of Indian tribes throughout the United States. The second step was the enactment of Public Law 280 (“PL 280”), which also occurred in 1953. PL 280 transferred criminal and civil jurisdiction of Indian trust lands from the federal government to the states. At the time it was passed, PL 280 applied to all trust lands located in Oregon except the Warm Springs Reservation.³⁰ However, the transfer of jurisdiction did not come with additional funds to the state or county sheriffs, who had to take over patrolling reservations, often very large swaths of land, with no additional funding. This caused some resentment by county law enforcement.

The final step was the actual termination of the federal trust relationship and assistance programs. Of the 109 tribes terminated nationally, 62 of them were in Oregon.³¹ The large number of tribal terminations in Oregon occurred because the Secretary of the Interior was Douglas O. McKay, who had previously been the governor of Oregon. McKay wanted to make Oregon the model of the new governmental policy of President Eisenhower.³²

By 1956, Congress officially terminated the federal trust relationship with all Oregon tribes west of the Cascades and the Klamath tribe in southern Oregon.³³ The tribes lost their land, their governmental assistance, and their laws. Many tribal members who had been allotted land and now held title to the land entered foreclosure because they were forced to pay taxes on their allotments, something they had never done before.³⁴ Overall, Termination failed to assimilate Natives, and it did nothing to fix the problems facing the Native communities in Oregon; instead it simply made the problems invisible.³⁵ After Termination, the only tribes left in Oregon were the Confederated Tribes of Warm Springs, the Confederated Tribes of Umatilla, and Burns Paiute.³⁶

5. Restoration

It took twenty years for the first of the terminated tribes to regain its federally recognized status. In 1977, following a twenty-year campaign, Congress passed a bill restoring the Confederated

²⁹ STEPHEN DOW BECKHAM, OREGON INDIANS VOICES FROM TWO CENTURIES 435 (2006); ZUCKER, *supra* note 16, at 134.

³⁰ OREGON INDIANS VOICES, *supra* note 29, at 436.

³¹ BACKGROUND BRIEF ON OREGON INDIAN TRIBES 3 (2010), available at http://www.leg.state.or.us/comm/commsrvs/background_briefs2010/briefs/GeneralGovernment/OregonIndianTribes.pdf [hereinafter BRIEF].

³² OREGON INDIANS VOICES, *supra* note 29, at 435; LAURA BERG, THE FIRST OREGONIANS 232 (2007).

³³ BERG, *supra* note 32, at 233; OREGON INDIANS VOICES, *supra* note 29, at 436.

³⁴ BERG, *supra* note 32, at 233-234.

³⁵ *Id.*

³⁶ BRIEF, *supra* note 31, at 3.

Tribes of Siletz to recognized status.³⁷ Once this initial bill was passed others followed, including bills restoring the Cow Creek Band of Umpqua in 1982, the Confederated Tribes of Grand Ronde in 1983, the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw in 1984, the Klamath Tribe in 1986, and the Coquille Tribe in 1989.³⁸

B. THE TRIBES AND RESERVATION LANDS IN OREGON

1. Confederated Tribes of Umatilla Indian Reservation

In 1855, during the treaty era, the Umatilla (You-mah-till-ah), Cayuse (Kai-yoose), and Walla Walla Tribes signed a treaty with the United States to create “The Confederated Tribes of the Umatilla Indian Reservation” (“Umatilla Reservation” or “CTUIR”). The Umatilla Reservation is currently a non-PL 280 reservation and thus is under federal criminal jurisdiction, although it was under state control from 1954 until it retroceded to federal jurisdiction in 1981.³⁹ As of January 2013, there were 2,916 CTUIR members living on the Reservation, as well as 300 non-CTUIR Native Americans and 1,500 non-Indians.⁴⁰ The Reservation is roughly 172,000 acres. Residents are primarily employed in tribal government and services, the tribal casino, and technology manufacturing. The Tribal Government building is located in Pendleton, Oregon, the nearest city. The Umatilla Reservation is roughly four hours from Portland by car.⁴¹

2. Burns-Paiute Indian Reservation

In 1872, President Grant signed an agreement creating the Malheur Reservation that overlaid the traditional lands of the Burns-Paiute (Pai-yoot) Tribe, which is a distinct branch of the Paiute tribal family. However, the federal government quickly revoked the Reservation after continued skirmishes between the Tribe and federal forces, pushing some tribal members to relocate to southeastern Washington State and others to settle on the outskirts of nearby towns. The Dawes Act of 1887 saw the return of the Burns Paiute Tribe’s members to their traditional lands, although not to the original Malheur Reservation allotment. As discussed above, the Dawes Act encouraged settlement of reservations by allotting individual parcels to tribal members; these parcels make up the current Burns Paiute Reservation.⁴² The Burns Paiute Reservation and Trust Lands is a non-PL 280 reservation and is therefore under federal criminal jurisdiction, which was accomplished through an act of retrocession in 1979.⁴³ There are approximately 400 tribal

³⁷ BERG, *supra* note 32, at 235.

³⁸ OREGON INDIANS VOICES, *supra* note 29, at 437; ZUCKER, *supra* note 17, at 139.

³⁹ Please see notes in Federal Register. 46 Fed. Reg. 2195 (1981).

⁴⁰ Confederated Tribes of the Umatilla Indian Reservation, Quick Facts (Jan. 2013), <http://www.umatilla.nsn.us/CTUIR%20info%20packet.pdf>.

⁴¹ Driving distances are calculated in this manner because the Portland Metro and Willamette Valley corridor have been previously identified as areas where much human trafficking is concentrated in the state. Although the distance from Portland is not dispositive of occurrences of human trafficking, it may show that some reservations are potentially more vulnerable to encroachment by non-Natives driving to the reservations from Portland. All distance estimates are calculated using <http://maps.google.com/> (last visited May 6, 2013).

⁴² 25 U.S.C. § 331 (The Dawes Act defined how Native lands are to be allotted and compensated for.).

⁴³ 44 FR 26, 129 (1979).

members, half of which live on the Reservation, while much of the rest live in the adjacent city of Burns. The Tribe derives income from its Old Camp Casino, RV Park, and restaurant.⁴⁴ The Reservation is 11,944 acres and roughly five-and-a-half hours from Portland by car.

3. Warm Springs Reservation

In 1855, a treaty with the federal government created the 640,000-acre Warm Springs Reservation unifying the Wasco and Tenino/Warm Springs Tribes. In 1879, the United States government moved a band of Paiute people onto the Reservation despite historical animosity between the Warm Springs people and the Central Oregon Paiute Tribes. Since 1937, the Warm Springs Tribe has considered itself to be unified.⁴⁵ Warm Springs Reservation is the only reservation land in Oregon originally excluded from PL 280, therefore it has always been under federal criminal jurisdiction. The current size of the Reservation is 348,000 acres, and there are approximately 3,950 tribal members living there. Warm Springs derives a significant portion of its income from hydroelectric power sources and gaming profits from its casino. The Tribe has gained notoriety for its legal defense of exclusive fishing rights on traditional tribal waters.⁴⁶ The nearest city is Madras, Oregon, and the Reservation is roughly a two-hour drive from Portland.

4. Grand Ronde Reservation

Also in 1855, a treaty created the Grand Ronde Reservation.⁴⁷ The Reservation was to accommodate the more than 20 disparate tribes within the area. Many tribes were either forcibly moved to the Reservation or were pushed away to allow room for the Reservation. However, the federal government appropriated much of the Reservation territory to non-Natives under the Dawes Act of 1887. Not until 1936 were tribal members permitted to purchase back some of the Reservation land as a result of the Indian Reorganization Act.⁴⁸ As a result of the Termination Act of 1954, the federal government for a time did not recognize the Reservation or the Grand Ronde Tribe.⁴⁹ It was not until 1983 that tribal lobbyists convinced the federal government to recognize the Tribe again.⁵⁰ In 1986, the federal government returned 10,300 acres to the Tribe to be used as Reservation land.⁵¹ Today there are 11,040 acres designated as the Reservation. Grand Ronde maintains a robust and prosperous casino and hotel to fund tribal services.⁵² The

⁴⁴ *Old Camp Casino*, 500 NATIONS, <http://500nations.com/casinos/orOldCamp.asp> (last visited Jan. 17, 2014).

⁴⁵ *Warm Springs Tribal Chronology*, WARM SPRINGS, http://www.warmsprings.com/Warmsprings/Tribal_Community/History__Culture/Chronology/ (last visited May 6, 2013).

⁴⁶ See W.S.T.C. § 340, http://www.warmsprings.com/images/Warmsprings/Tribal_Community/Tribal_Government/Current_Governing_Body/Tribal_Code_Book/Doc_Files/340_fishing.pdf (to view Warm Springs Tribal Fishing Code).

⁴⁷ *Ntsayka Ikanum (Our Story)*, GRAND RONDE, <http://www.grandronde.org/ikanum/index> (last visited Nov. 10, 2013) (opens to an interactive video describing a brief history of The Confederated Tribes of Grand Ronde).

⁴⁸ 25 U.S.C. § 476.

⁴⁹ 25 U.S.C. § 691.

⁵⁰ Grand Ronde Restoration Act, Pub. L. No. 98-165, 97 Stat. 1064 (1983) (codified as 25 U.S.C. § 713 et seq.).

⁵¹ *Id.* at § 713f.

⁵² See SPIRIT MOUNTAIN CASINO, <http://spiritmountain.com/> (last visited Nov. 19, 2013).

Reservation has PL 280 status and thus is under state criminal jurisdiction. The nearest city is Dallas, Oregon, and the Reservation is roughly two hours from Portland by car.

5. *Siletz Reservation*

In 1865, President Johnson signed an executive order that established the Coast Reservation, intending to house the 27 coast tribes within the area. The Siletz Reservation was the result of a division of the Coast Reservation in 1875. The division of the Coast Reservation left the northernmost part predominantly populated with Siletz people.⁵³ As a result of the territory loss, tribes were forced to move into the Siletz Reservation or to move to other reservations. In 1956, both the Siletz Reservation and Tribe suffered termination under the Termination Act.⁵⁴ In 1977, however, Senator Hatfield successfully passed a bill restoring federal recognition of both the Tribe and the Reservation.⁵⁵ Currently, the Tribe has only a few Reservation buildings. Though there are approximately 4,500 tribal members, many live away from the traditional tribal lands. The Reservation is under state jurisdiction (PL 280). The Tribe runs a successful casino and convention center in Lincoln City, Oregon, which is the closest city, and is roughly two-and-a-half hours from Portland.

6. *Coos, Lower Umpqua, and Siuslaw Reservation*

The Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians (“Coos Tribes”) were initially part of the Coast Reservation established by President Johnson in 1865, discussed above. In 1876, the U.S. Army forcibly divided the Coast Reservation, destroying the traditional homeland of the Coos Tribes.⁵⁶ The Coos Tribes then had to decide whether to join the Siletz Tribe, their traditional enemies, in the northern division or venture far south. Many stayed within the region working on white-owned farms, away from community support.⁵⁷ In 1916, despite being without a reservation, the Coos Tribes elected a tribal council. The Coos Tribal Council, their governing body, has remained continuous since that time. In 1946, the Tribes were given a small six-acre parcel by the Bureau of Indian Affairs on which they built a hall and other service buildings. However, the Tribes were later subject to the Termination Act of 1954. In 1984, the federal government re-acknowledged the Tribes and reinstated funding for education and social services.⁵⁸ The Reservation currently is under state jurisdiction (PL 280). Similar to the Siletz Tribe, many of the Coos Tribes’ members live within the counties adjacent to the traditional

⁵³ *History of the Siletz Tribe*, U-S-HISTORY.COM, <http://www.u-s-history.com/pages/h1538.html> (last visited May 6, 2013).

⁵⁴ Release, U.S. Dept. of Interior, Bureau of Indian Affairs, Federal Supervision Over Western Oregon Indians Terminated (Aug. 14, 1956), <http://www.bia.gov/cs/groups/public/documents/text/idc016151.pdf>.

⁵⁵ Pub. L. No. 95-195, 91 Stat. 1415 (1977) (codified as 25 U.S.C. § 711(d)(6)).

⁵⁶ *About Us*, CONFEDERATED TRIBES OF COOS, LOWER UMPQUA, & SIUSLAW INDIANS, <http://ctclusi.org/about-us> (last visited Nov. 19, 2013).

⁵⁷ *The Coos, Lower Umpqua, and Siuslaw Indians*, U-S-HISTORY.COM, <http://www.u-s-history.com/pages/h1541.html> (last visited May 6, 2013).

⁵⁸ Pub. L. No. 98-481, 98 Stat. 225 (1984) (codified as 25 U.S.C. § 714e).

lands. The Tribes derive funding from the Three Rivers Hotel and Casino located in Florence, Oregon. The reservation is roughly four hours from Portland by car.

7. Coquille Reservation

During the creation and subsequent division of the Coast Reservation described above, the Coquille people were included with the Siletz people in the northern reservation. Although the Siletz count the Coquille as belonging to the federation of Siletz Tribes, the Coquille Tribe considers itself to be separate and autonomous. The Coquille Tribe managed to seek redress in the form of reservation lands in 1940. However, the Coquille Tribe, like other coast tribes, was terminated from federal recognition in 1954. The Tribe regained federal recognition in 1989.⁵⁹ In 1996, the Tribe received a 6,512-acre parcel of reservation land, 5,400 acres of which is reserved as a forestry trust. The Tribe operates a casino and has plans to build a second. The Coquille Reservation has a diverse economy including forest products, agriculture, and telecommunications. The Coquille Reservation is under state criminal jurisdiction (PL 280), and there are around 1,500 tribal members. The Reservation is roughly four hours from Portland.

8. Cow Creek Umpqua Reservation

In 1854, the Cow Creek Umpqua Tribe entered into a treaty with the United States that sold all traditional tribal lands to the federal government.⁶⁰ The Tribe reluctantly proceeded as a landless tribe, and many members still remained located in its traditional area. The Tribe was also subject to termination in 1954. In 1980, through litigation, the Tribe secured a \$1.5 million settlement based on the unconscionability of the original treaty with the United States. In 1982, the federal government legally recognized the Tribe.⁶¹ Although the Tribe was restored in 1982, all tribal lands have had to be reclaimed by purchase. Currently, the Tribe holds approximately 1,840 acres of land in trust.⁶² The Tribe is under state jurisdiction (PL 280 status), and there are roughly 1,500 tribal members. The majority of the Tribe's revenue is derived from its Seven Feathers Casino Resort in Canyonville, Oregon, and much of its business is conducted in Roseburg, Oregon; roughly three hours from Portland by car.

9. Klamath Reservation

In 1864, the Klamath Tribe combatted encroachment by cattle ranchers by ceding traditional lands to the United States in exchange for a secured reservation of 1.8 million acres. However, the Klamath Tribe later suffered termination by the Klamath Termination Act of 1954. It was not until 1986 that the Klamath Tribes were federally recognized again.⁶³ Currently, the Reservation is 300 acres spread amongst non-contiguous parcels. There are approximately 3,500 tribal

⁵⁹ Pub. L. No. 101-42, 103 Stat. 91 (1989) (codified as 25 U.S.C. § 715d).

⁶⁰ *The Cow Creek Story*, COW CREEK, <http://www.cowcreek.com/government-history> (last visited Nov. 19, 2013).

⁶¹ 25 U.S.C. § 714e.

⁶² *Cow Creek Band of Umpqua Tribe of Indians*, OREGON BLUE BOOK (2014), <http://bluebook.state.or.us/national/tribal/cow.htm>.

⁶³ Pub. L. No. 99-398, 100 Stat. 850 (1986) (codified as 25 U.S.C. § 556e).

members, though few live on the Reservation lands. The Klamath Tribe currently includes the Modoc, Klamath, and Yahooskin Tribes. The Reservation is under state criminal jurisdiction (PL-280). The Tribe continues to lobby and litigate to recover lands. Additionally, the Tribe won a landmark case honoring their claim to water rights within the Klamath Basin.⁶⁴ The Tribe runs a casino, the proceeds of which it uses for the betterment of tribal members. Tribal administration is located in the town of Chiloquin, Oregon, and is roughly four-and-a-half hours from Portland.

III. HISTORICAL TREATMENT OF NATIVE WOMEN AND GENERATIONAL TRAUMA: An excerpt from *Shattered Hearts*

The following excerpt is from *Shattered Hearts*, a report published in 2009 by Dr. Sandi Pierce with the Minnesota Indian Women’s Resource Center that discusses human trafficking of Native women in Minnesota. The excerpt focuses on historical experiences of Native Americans, particularly Native women,⁶⁵ to facilitate knowledge and understanding of how such historical experiences have made a lasting impact on generations of Natives and how the effects are still felt today. We include this excerpt because of its relevance to how the history of treatment of Native Americans, especially Native women, have made them vulnerable to sexual violence, including human trafficking, in unique ways. Although the following information is taken from the excerpt, we have changed the order of some of the material. The reader should understand that the following excerpt is, at times, very upsetting.

Excerpt from Part I, “The Context” in *Shattered Hearts*:⁶⁶

An understanding of Native women’s and girls’ experiences in the history of this nation is critical for understanding their unique vulnerability to commercial sexual exploitation.... The traumatic experiences of American Indian people during the colonial era and their exposure to new losses and new trauma each consecutive generation have had a devastating effect on Native people, families, and communities, and on their ability to sustain...four [fundamental] beliefs:

- [The world is a good and rewarding place,
- the world is predictable, meaningful, and fair,
- I am a worthy person, and
- people are trustworthy.⁶⁷]

⁶⁴ *Klamath River Basin Adjudication*, STATE OF OREGON, <http://www.oregon.gov/owrd/pages/adj/index.aspx> (last visited Nov. 19, 2013).

⁶⁵ Native American men also constitute a percentage of sexual exploitation survivors both presently and historically. However, women are overwhelmingly victims of such sexual exploitation.

⁶⁶ A. PIERCE, MINNESOTA INDIAN WOMEN’S RESOURCE CENTER, *SHATTERED HEARTS: THE COMMERCIAL SEXUAL EXPLOITATION OF AMERICAN INDIAN WOMEN AND GIRLS IN MINNESOTA* (2009), available at <http://www.miwrc.org/?wpdmact=process&did=Mi5ob3RsaW5r> (notes 67-95 are cited as they appear in *Shattered Hearts*).

* * *

Native women's experiences during colonization

From the times of earliest exploration and colonization, Native women have been viewed as legitimate and deserving targets for sexual violence and sexual exploitation. In the mid-1500s, the secretary of Spanish explorer Hernando de Soto wrote in his journal that De Soto and his men had captured Appalachee women in Florida “for their foul use and lewdness.”⁶⁸ Historian Kirsten Fischer reported that during the earliest years of the Carolina Colony, indigenous cultures in the area all viewed women as sacred beings. Women held and managed the community's resources, including fields and the produce from them. They also had significant autonomy in their choices regarding sexual relationships, including short-term sexual alliances, marriage, divorce, and cohabitation. Native women often played an active and high-status role in trade, sometimes using sexual liaisons to smooth trade relations while also acting as mediators providing outsiders with language skills and lessons in local customs.⁶⁹

Fischer noted that Native cultures in what came to be the Carolina Colony did not have the concept of private property or inheritance of property, so European cultures' emphasis on women's virginity and chastity to ensure that property would be inherited father-to-son was not present in the Native worldview. Fischer quoted the writings of John Lawson, a surveyor for the Carolina Colony, who published his impressions of the Native people he had seen. Lawson's writings reflected British male colonists' interpretations of Native women's high status and freedom, viewed through their own patriarchal lens:

[They are] of that tender Composition, as if they were design'd rather for the Bed than Bondag⁷⁰...[the] multiplicity of Gallants [was] never a Stain to a Female's Reputation...[the] more Whorish, the more Honorable.⁷¹

Indian men did not escape being stereotyped in this process. King's Botanist John Bartram wrote that the Indian men of South Carolina, Georgia, and Florida:

⁶⁷ Roth S and Newman E, (1995). The process of coping with sexual trauma, in Everly G and Lating J (Eds.), *Psychotraumatology: Key papers and core concepts in post-traumatic stress*. New York: Plenum Press, pp. 321-339.

⁶⁸ Gallay A, (2002). *The Indian slave trade: The rise of the English empire in the American South, 1670-1717*. New Haven: Yale University Press, pp. 34.

⁶⁹ Fischer K, (2002). *Suspect relations: Sex, race, and resistance in colonial North Carolina*. Ithaca: Cornell University Press.

⁷⁰ *Ibid.*, p. 62.

⁷¹ *Ibid.*, p. 67.

*...are courteous and polite to the women, gentle, tender, and fondling even to an appearance of effeminacy, tender and affectionate to their offspring.*⁷²

Rather than understanding Native men's behaviors as respect, self-possession and restraint, colonial writers viewed them as undersexed and passive, and either unwilling or unable to control their women or to take proper advantage of the wilderness around them. The colonists were "amazed at what seemed an unnatural breach of patriarchal authority," marveling that Indian husbands submitted to a "petticoat government" and let themselves be "cuckolded by" promiscuous wives.⁷³ These attitudes permitted colonists to justify their use of Native women and Native lands however they pleased, without obligation or limits.

Male colonists also recognized Indian women's ability to control their own fertility, which allowed them to believe that their sexual encounters with Native women, forced or consensual, had no consequences. It was a short cognitive leap to view Native women as shamelessly promiscuous and deprived, which freed male colonists from their own social rules about extramarital sexual relations.

The fact that Native women's sexual relations with colonists were often connected to trade allowed colonists to view those relations as tainted and even mercenary.⁷⁴ As a result of these beliefs, English surveying teams routinely harassed and raped Native women, considering sexual restraint in such circumstance (sic) to be foolish.⁷⁵

The conceptual framework to justify the sexual exploitation of American Indian women was now in place, supported by two critical stereotypes that emerged from this period in history: the sexually loose, mercenary, and innately immoral American Indian woman and the ineffective, profoundly lazy American Indian man, both of which exhibited a savage disregard for the norms of decent society.

Native women's experiences during national expansion

In 1769, an officer at York Factory on Hudson Bay described the frequent trafficking of Native women in and around the fur trade posts in his journal:

⁷² Waselkov, Gregory A. and Braund, Kathryn E. Holland (1995). *William Bartrand on the Southeastern Indians*. Lincoln: University of Nebraska Press, p. 114.

⁷³ Fischer K, (2002). *Suspect relations: Sex, race, and resistance in colonial North Carolina*. Ithaca: Cornell University Press, p. 37.

⁷⁴ *Ibid.*, p. 56.

⁷⁵ Fischer K, (2002). *Suspect relations: Sex, race, and resistance in colonial North Carolina*. Ithaca: Cornell University Press, p. 68.

*... the worst Brothel House in London is not common a [stew] as the men's House in this Factory was before I put a stop to it.*⁷⁶

Similar sexual exploitation of Native women occurred in Oregon Territory as the British sought to extend their fur trade south. At Fort Langley, a Hudson's Bay Company outpost on the Fraser River in Oregon, Fort Commander James Yale (1776-1871) married three Indian women within his first three years at the fort to smooth trade relations with local tribes.⁷⁷ Native women such as these were considered "secondary wives" with no legal rights, and as European women began to arrive, these wives and their children were frequently abandoned.⁷⁸

As immigrants moved westward, anti-Indian attitudes and stereotypes born in the colonial era grew and expanded. Entire villages were decimated by smallpox and measles epidemics, some deliberately launched by military distribution of blankets carrying the infection. The U.S. Army not only killed American Indian men in battle, it also slaughtered entire encampments of women, elders, and children. Troops sent to protect settlers referred to American Indian women as "breeders," justifying their rape, murder, and sexual mutilation.

U.S. Army Lieutenant James Connor wrote the following account of the attack launched by U.S. Army Colonel Chivington against Black Kettle's band of Cheyenne in 1864, despite their flag of truce:

*I heard one man say that he had cut out a woman's private parts and had them for exhibition on a stick...I also heard of numerous instances in which men had cut out the private parts of females and stretched them over the saddle-bows and wore them over their hats while riding in the ranks.*⁷⁹

In 1871, an armed "citizens' group" from Tucson attacked a group of Apache camped at Camp Grant. In a sworn affidavit presented to the Bureau of Indian Affairs, U.S. Cavalry Lieutenant Royal E. Whitman, commanding officer at the camp, reported on the aftermath:

The camp had been fired and the dead bodies of some twenty-two women and children were lying scattered over the ground; those who had been wounded in the first instance, had their brains beaten out with stones. Two of the best-looking

⁷⁶ Bourgeault R, (1989). Race, class, and gender: Colonial domination of Indian women, in Forts J et al., (Eds.), *Race, class and gender: Bonds and barriers (2nd edition)*. Toronto: Jargoned Press.

⁷⁷ Garneau D, (January 30, 2007). *Early years of the Canadian Northwest 1830-1849*. Retrieved February 2, 2009 from <http://www.telusplanet.net/public/dgarneau/B.C.6.htm>

⁷⁸ Lynn J, (August 17, 1998). *Colonialism and the sexual exploitation of Canada's Aboriginal women*, paper presented at the American Psychological Association 106th Annual Convention, San Francisco CA.

⁷⁹ Brown D, (1970). *Bury my heart at Wounded Knee: An Indian history of the American West*. New York: Holt, p. 90.

*of the squaws were lying in such a position, and from the appearance of the genital organs and of their wounds, there can be no doubt that they were first ravished and then shot dead. Nearly all the dead were mutilated.*⁸⁰

The genocide of American Indian people during this period has been likened to the Jewish Holocaust, because it was fueled by the government's formal policies calling for extermination and religious persecution of Native people. Following the Wounded Knee massacre, similar to treatment of Jewish victims at Auschwitz, victims were stripped and thrown into a mass grave "like sardines in a pit."⁸¹ Oral traditions for spiritual healing often died with the elders carrying that knowledge, further impacting Native peoples' ability to grieve losses together in healing ceremonies.

Native [children's] boarding school experiences

Mission schools were established as early as the late 1700s for the "education of the Indian." In 1879, the Bureau of Indian Affairs opened Carlisle Industrial School in Pennsylvania, which became the model for government-funded, Christian-oriented Indian boarding schools. Approximately 12,000 American Indian children attended Carlisle in its 39 years of operation.⁸² At times, there were as many as 100 government-operated Indian boarding schools nationwide.⁸³ The purpose of these schools was to destroy American Indian children's ties to their families, culture, religion, and language, and to replace those with the values and behaviors of the dominant Christian society.⁸⁴ This segment of a serialized story in Carlisle's weekly student newsletter written by a white school matron and titled "How an Indian girl might tell her own story if she had the chance" illustrates the school's goal for Native girls. In the story, an Indian girl has graduated from Carlisle and returned home to her Native community. When a white storekeeper asks if she will return to wearing "Indian clothes," she responds:

No! Do you think I can not appreciate what the great and good Government of the United States has done for me? Do you think I would be so ungrateful after the Government has spent so much time and money to educate me as not to use the

⁸⁰ Board of Indian Commissioners, (1872). Third annual report of the Board of Indian Commissioners to the President of the United States, 1871. Washington DC: Government Printing Office. Retrieved March 2, 2009 from http://www.archive.org/stream/annualreportofbo03unitrich/annualreportofbo03unitrich_djvu.txt

⁸¹ Mattes M, (1960). The enigma of Wounded Knee, *Plains Anthropologist* 5(9):1-11, p. 4.

⁸² Anderson S, (2000). On sacred ground: commemorating survival and loss at the Carlisle Indian School, *Central Pennsylvania Magazine* (May edition).

⁸³ National Public Radio, (May 12, 2008). *American Indian boarding schools haunt many*. Retrieved December 22, 2008 from <http://www.npr.org/templates/story/story.php?storyId=17645287>

⁸⁴ Hoxie F, (1989). *A final promise: The campaign to assimilate the Indians, 1880-1920*. Cambridge: Cambridge University Press.

*knowledge I have obtained? I see I cannot do much here, but I believe I can keep myself right if I try. I can keep from going back to Indian ways if I am determined. I don't believe the [tribal leader] could force me back into the Indian dress. If he tried to I should run away. I believe the white people would protect me if I should run to them.*⁸⁵

Native researchers Maria Yellow Horse Brave Heart and Lemyra DeBruyn, who have written extensively on historical trauma among American Indians, summarized the impact of “Indian education” on American Indian communities:

*The destructive and shaming messages inherent in the boarding school system...were that American Indian families are not capable of raising their own children, and that American Indians are culturally and racially inferior...abusive behaviors—physical, sexual, emotional—were experienced and learned by American Indian children raised in these settings. Spiritually and emotionally, the children were bereft of culturally integrated behaviors that led to positive self-esteem, a sense of belonging to family and community, and a solid American Indian identity.*⁸⁶

* * *

The Indian Adoption Project

Before 1978 [when Congress enacted the Indian Child Welfare Act (ICWA)⁸⁷], the wholesale removal of Native children from their families and tribes by state social services agencies and courts was commonplace.... Most often, the justification for removal was “neglect,” claiming the parent had “inappropriately” left the child with an extended family member for a prolonged period of time—ignoring the fact that in many Native cultures, extended family members play important parenting roles.⁸⁸

Building on that practice, the Bureau of Indian Affairs and the U.S. Children’s Bureau entered into a contracted collaboration with the Child Welfare League of America in 1958, to administer the Indian Adoption Project. The project was a response to the number of Native children in foster care or informal kinship care in poverty-stricken reservation settings, based on the idea that Native children would have better health and brighter futures if they escaped the conditions of

⁸⁵ Burgess M, (October 18, 1889). Segment of a serialized story in *The Indian Helper* transcribed and posted online by Barbara Landis. In 1891, the story was published as a book by Embe titled *Stiya, a Carlisle Indian Girl at Home*. Transcribed serial segment retrieved June 2, 2009 from <http://home.epix.net/~landis/stiya.html>.

⁸⁶ Yellow Horse Brave Heart M and DeBruyn L, (1998). The American Indian holocaust: Healing historical unresolved grief, *American Indian and Alaska Native Mental Health Research* 8(2):63.

⁸⁷ 25 U.S.C. § 1901.

⁸⁸ *Ibid.*

reservation life. In 1962, the Director of the Indian Adoption Project described the benefits that white families could also realize by adopting an American Indian child:

As tribal members they have the right to share in all the assets of the tribe which are distributed on a per capita basis. The actual as well as anticipated benefits of an Indian child adopted through our Project are furnished by the Secretary of the Interior.⁸⁹

From 1958 to 1967, the Indian Adoption Project removed 395 Native children from 16 western states for adoption by white families in Illinois, Indiana, New York, Massachusetts, Missouri, and other states in the East and Midwest. The Adoption Resource Exchange of North America (ARENA), a national organization, took over the work of the Indian Adoption Project in 1966 and continued placing Native American children in white adoptive homes into the early 1970s.⁹⁰ A 1969 study by the Association on American Indian Affairs found that roughly 25-35 percent of Native children had been separated from their families, and the First Nations Orphan Association estimates that between 1941 and 1978, 68 percent of all Indian children were removed from their homes and placed in orphanages or white foster homes, or adopted into white families.⁹¹ This wholesale separation of Native children from their families and communities had devastating repercussions:

- It shamed Native mothers, reinforcing the stereotype fostered by the “Indian education” era that American Indian women are not competent to raise their own children.
- It left families and communities with disenfranchised grief that could not be resolved.
- It prevented the transmission of cultural values and practices through social learning and oral story-telling traditions.

Removing Native girls from their families and tribes and adopting them into white households severely curtailed these children’s ability to foster any understanding of their roles in traditional Native community life, and their ability to build

⁸⁹ Lyslo A, (December 1962). *Suggested criteria to evaluate families to adopt American Indian children through the Indian Adoption Project*, Child Welfare League of America Papers, Box 17, Folder 3, Social Welfare History Archives, University of Minnesota, pp. 3-5.

⁹⁰ Herman E, (July 11, 2007). *The Adoption History Project*. Department of History, University of Oregon. Retrieved May 2, 2009 from <http://darkwing.uoregon.edu/~adoption/topics/IAP.html>.

⁹¹ Kreisher K, (March 2002). Coming home: The lingering effects of the Indian Adoption Project, *Children’s Voices*. Child Welfare League of America. Retrieved May 2, 2009 from <http://www.cwla.org/articles/cv0203indianadopt.htm>

relationships with other Native people.⁹² Their appearance marked them as American Indian, exposing them to racial targeting for sexual violence, but they had not been permitted to develop a culture-based identity as sacred givers of life.

* * *

... Each time, past and current trauma were transferred to the next generation along with the unresolved grief in what has been termed generational trauma or historical trauma.⁹³ The long-term impacts have been well-documented: widespread poverty, low educational attainment, high rates of community and interpersonal violence, high rates of alcohol-related deaths and suicide, poor physical health, and corroded family and community relationships.

When a dominant society refuses to recognize a people's grief and losses as legitimate, the result is sadness, anger, and shame, feeling helpless and powerless, struggles with feelings of inferiority, and difficulty with self-identity. This negatively impacts interpersonal relationships and Native peoples' sense of themselves as sacred beings.⁹⁴ Disenfranchised grief is in itself a significant barrier to the healing of trauma, either generational or recent, and it, too, prevents development of the four beliefs needed to develop a strong and resilient sense of self.

In addition to these significant influences on American Indian women's well-being, ongoing experiences with racism lead to what has been termed "colonial trauma response," which results when a Native woman experiences a current event that connects her to a collective, historical sense of injustice and trauma. Just as people with post-traumatic stress disorder are "triggered" to relive traumatic events they have experienced, American Indian women, who have endured massive trauma and injustice historically, are "triggered" to connect current experiences with racism, abuse, and/or injustice with those experienced by their female ancestors, in a very immediate and emotional way. A Native woman's response to the situation is not only based on her own experience, but on the experiences of generations of her female ancestors.⁹⁵

⁹² Jones B, *The Indian Child Welfare Act handbook: A legal guide to the custody and adoption of Native American children*. Section of Family Law, American Bar Association. (1995).

⁹³ Yellow Horse Brave Heart M and DeBruyn L, (1998). American Indian holocaust: Healing historical unresolved grief, *American Indian and Alaska Native Mental Health Research* 8(2): 60-82.

⁹⁴ Kaufman G, (1996). *The psychology of shame: Theory and treatment of shame-based syndromes*. New York: Springer.

⁹⁵ Evans-Campbell T, (2008). Historical trauma in American Indian/Native Alaska communities: A multilevel framework for exploring impacts on individuals, families, and communities, *Journal of Interpersonal Violence* 23: 316-338.

For this reason, Native women experience sexual assault, prostitution, and sex trafficking as a continuation of the colonization process, in which Native women's sacred selves were routinely exploited for the gratification of a person who claimed the right to do so while ignoring or invalidating the impact on the woman herself. When the assailant, pimp, or john is a white male, the psychological impact on a Native woman is even greater.

While the historical experiences of all Native people have intensified Native women's vulnerability to sex trafficking and other forms of commercial sexual exploitation, generational trauma has also reduced Native communities' ability to respond positively to victims of sexual crimes. Native victims of sexual assault often do not report the assault because they do not believe that authorities will investigate or charge the crime, and they fear being blamed or criticized by people in their communities. Any admission of involvement in prostitution carries an even greater stigma, so Native women and girls trafficked into prostitution rarely seek help. If unable to escape prostitution prior to reaching the age of 18, Native child trafficking victims find themselves categorized as criminals rather than victims, which only adds to the trauma they have already experienced in prostitution. Most literally have nowhere to turn, as there are very few culturally-based services to help them heal from their experiences in safety. There are also very few culturally-based "upstream" interventions in place that explicitly focus on preventing the trafficking of American Indian girls into the sex trade.

* * *

(End of Shattered Hearts excerpt.)

IV. LEGAL OBLIGATIONS WITH REGARD TO HUMAN TRAFFICKING

Again, the purpose of the Report is to measure how well officials in Oregon are meeting their legal obligations to human trafficking in the Native American community with regard to the Three Ps (protection, prevention, and prosecution). Therefore, this Part lays out international, federal, state, and tribal laws relevant to human trafficking and discusses how the law applies to Native Americans and reservation lands.

A. INTERNATIONAL LAW

International law consists of rules and principles governing the conduct of states, their relationships with one another, and their treatment of individuals.⁹⁶ The two main sources of international law are treaties and customary international law ("CIL").⁹⁷ A treaty is an agreement

⁹⁶ RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE U.S. § 101 (1987) [hereinafter RESTATEMENT].

⁹⁷ *Id.* at § 102.

between two or more countries consenting to be legally bound by the agreement,⁹⁸ while CIL “results from a general and consistent practice of [countries] followed by them from a sense of legal obligation.”⁹⁹ The United States has entered into two treaties that outline its obligations to prohibit human trafficking within the United States. Tribes themselves do not have such international obligations under the treaties due to their sovereign status.¹⁰⁰ However, tribes are arguably required to prohibit human trafficking under CIL.

1. Treaties

The United States ratified an international anti-human trafficking treaty, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (“the Protocol”), in 2005.¹⁰¹ The Protocol defines human trafficking as:

*the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*¹⁰²

The Protocol provides additional protection for children by eliminating the “by means of the threat or use of force” requirement if the victim is under the age of eighteen.¹⁰³ Under the Protocol, exploitation includes “prostitution... or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹⁰⁴ Consent of a victim to the intended exploitation is irrelevant.¹⁰⁵

The obligations under the Protocol can be divided into three categories (commonly referred to as the three Ps): *Prevent, Punish, Protect*. More specifically, the obligation to *prevent* human trafficking includes (1) educating the community and stakeholders,¹⁰⁶ (2) strengthening cooperation among parties to the treaty,¹⁰⁷ and (3) strengthening national borders.¹⁰⁸ The obligation to *punish* is reflected in the Protocol’s requirement that countries criminalize human trafficking,¹⁰⁹ as well as attempts at trafficking,¹¹⁰ being an accomplice,¹¹¹ and conspiring to

⁹⁸ *Id.* at § 301(1)-(2).

⁹⁹ *Id.* at § 102(2).

¹⁰⁰ See *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831) (characterizing Native tribes as “dependent domestic nations”).

¹⁰¹ Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Dec. 13, 2000, 2237 U.N.T.S. 319, available at <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-trafficking-protocol.html> (showing that the U.S. signed the Protocol on Dec. 13, 2000, and ratified it on Nov. 3, 2005).

¹⁰² *Id.* art. 3(a).

¹⁰³ *Id.* at art. 3(c).

¹⁰⁴ *Id.* at art. 3(a).

¹⁰⁵ *Id.* at art. 3(b).

¹⁰⁶ *Id.* at art. 9.

¹⁰⁷ *Id.* at art. 10.

¹⁰⁸ *Id.* at art. 11.

¹⁰⁹ *Id.* at art. 5(1).

traffic persons.¹¹² Finally, the specific obligations to *protect* and assist victims of human trafficking set forth in the Protocol include (1) protecting their privacy and identities,¹¹³ (2) providing them with information about relevant court proceedings,¹¹⁴ as well as assistance for their welfare¹¹⁵ and security,¹¹⁶ and (3) creating legal mechanisms for compensation.¹¹⁷

The United States has additional obligations to prohibit human trafficking under the International Covenant on Civil and Political Rights (“ICCPR”), which it ratified in 1992.¹¹⁸ The ICCPR does not address human trafficking specifically, but it prohibits “cruel, inhuman, and degrading treatment,”¹¹⁹ slavery,¹²⁰ servitude,¹²¹ and “forced or compulsory labor.”¹²² Human trafficking is inherently cruel, inhuman, and degrading; slavery, servitude and forced labor are ways in which trafficked persons are exploited. Thus, the ICCPR indirectly requires the United States to prohibit human trafficking.

As international treaties, the ICCPR and the Protocol are incorporated into United States federal and state law through the Supremacy Clause of the United States Constitution.¹²³

However, the Supremacy Clause most likely does not apply to American Indian tribes, so tribes are most likely not bound to uphold international treaties signed by the U.S. (such as the Protocol and the ICCPR). The Supreme Court has never ruled on the issue, but Indian Law scholar Robert N. Clinton argues that the Supremacy Clause was never intended to apply to the tribes.¹²⁴ As Clara Boronow explains, “[W]hile Congress, under its plenary power can enact legislation binding a tribe to the provisions of an international treaty, human rights treaties do not by their own accord apply to tribes under either international or domestic law.”¹²⁵

¹¹⁰ *Id.* at art. 5(2)(a).

¹¹¹ *Id.* at art. 5(2)(b).

¹¹² *Id.* at art. 5(2)(c).

¹¹³ *Id.* at art. 6(1).

¹¹⁴ *Id.* at art. 6(2)(a).

¹¹⁵ *Id.* at art. 6(3).

¹¹⁶ *Id.* at art. 6(5).

¹¹⁷ *Id.* at art. 6(6).

¹¹⁸ International Covenant on Civil and Political Rights, Oct. 5, 1977, 999 U.N.T.S. 171, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-4&chapter=4&lang=en (showing U.S. ratification on Jun. 5, 1992).

¹¹⁹ *Id.* art. 7.

¹²⁰ *Id.* at art. 8(1).

¹²¹ *Id.* at art. 8(2).

¹²² *Id.* at art. 8(3)(a).

¹²³ U.S. CONST. art. VI, cl. 2 (“[A]ll Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

¹²⁴ Robert N. Clinton, *There Is No Federal Supremacy Clause for Indian Tribes*, 34 ARIZ. ST. L.J. 113, 159-162 (2002).

¹²⁵ Clare Boronow, Note, *Closing the Accountability Gap for Indian Tribes: Balancing the Right to Self-Determination With the Right to a Remedy*, 98 VA. L. REV. 1372, 1412 (2012).

2. Customary International Law

The prohibition against slavery is one of the oldest and most well-established rules of CIL. In fact, it has risen to the level of *jus cogens*, making it a peremptory norm from which no derogation is permitted.¹²⁶ As human rights law scholar A. Yasmine Rassam explains, “[E]very state has illegalized institutionalized slavery and the slave trade and no state dares assert that it does not have an international legal obligation to outlaw slavery and the slave trade.”¹²⁷ Sex and labor trafficking are “deemed by the international community to be ‘contemporary forms of slavery.’”¹²⁸ Human trafficking is, therefore, arguably prohibited under CIL.

Traditionally, violations of CIL are only recognized “if practiced, encouraged, or condoned by the government of a state as official policy.”¹²⁹ A “state” is commonly defined as “an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.”¹³⁰ While such a definition unquestionably includes the United States, it may be interpreted to exclude American Indian tribes because the United States has prohibited them from engaging in relations with foreign powers in the past.¹³¹

However, as Boronow points out, the International Court of Justice (“ICJ”) acknowledges “that States are not the only subjects of international law,” and defines international legal personality “as the capacity to possess rights and duties under international law and the capacity to bring international claims.”¹³² Boronow argues that tribes are bound by CIL under the ICJ’s criteria because they have rights and duties under the United Nations Declaration on the Rights of Indigenous People (“UNDRIP”), such as the right to self-determination and the duty implicit in that right to respect human rights.¹³³ Boronow also points out that UNDRIP “suggests that indigenous people may have a right to bring claims before international bodies when suitable domestic mechanisms are unavailable.”¹³⁴ Thus, even though tribes are not “states,” they nonetheless are likely bound by CIL’s *jus cogens* norm prohibiting human trafficking. This

¹²⁶ RESTATEMENT, *supra* note 96, at §102, reporter note 6.

¹²⁷ A. Jasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT’L L. 303, 311 (1999).

¹²⁸ *Id.* at 308 (internal citation omitted).

¹²⁹ RESTATEMENT, *supra* note 96, at §702, cmt. b.

¹³⁰ *Id.* at §201.

¹³¹ *See Cherokee Nation*, 30 U.S. at 17-18 (Native tribes are “so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connexion [sic] with them, would be considered by all as an invasion of our territory, and an act of hostility.”); *United States v. Wheeler*, 435 U.S. 313, 326 (1978) (Native tribes cannot enter into direct commercial or government relations with foreign nations.”).

¹³² Boronow, *supra* note 125, at 1412-1413.

¹³³ *Id.* at 1413.

¹³⁴ *Id.* at 1414. Article 40 states that indigenous peoples “have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights.” Declaration on the Rights of Indigenous People, G.A. Res. 61/295, U.N. GAOR, 61st Sess., Supp. No. 49, U.N. Doc. A/61/49, at 10 (Sept. 13, 2007).

means that the United States, as well as the tribes, must do all they can to prevent human trafficking under customary international law.

B. FEDERAL LAW - TRAFFICKING VICTIMS' PROTECTION ACT

Even before the United States ratified the Protocol, Congress enacted the Trafficking Victims Protection Act (“TVPA”)¹³⁵ on January 24, 2000, “[t]o combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, to authorize certain federal programs to prevent violence against women, and for other purposes.”¹³⁶ Congress must reauthorize the TVPA every two years. These reauthorizations include funding changes and amendments. The Act’s purpose is to address the growing threat of modern-day slavery and other forms of crime primarily against women and children. The TVPA applies to foreign nationals, regardless of immigration status, and to citizens within the United States.¹³⁷

The United States created the TVPA to accomplish much of the same purpose of the Protocol.¹³⁸ The TVPA, Violence against Women Act (“VAWA”), and Torture Victim Protection Act are all ostensibly identical to their UN counterparts, but are tailored to comply with U.S. federal law.¹³⁹

The United States Congress voted with resounding support for the TVPA in its initial inception.¹⁴⁰ Congress reauthorized the TVPA in 2003 and 2005 nearly unanimously.¹⁴¹ In 2007, Congress introduced and passed the William Wilberforce Trafficking Victims Protection Reauthorization Act. This reauthorized the TVPA and expanded the United States' role in combating human trafficking worldwide.¹⁴² Despite the steadfast support, the TVPA became the victim of shortsighted political posturing and did not even emerge from committee for the consideration of the 112th Congress in 2011.¹⁴³ However, on February 11, 2013, the 113th Congress reauthorized VAWA, which included a reauthorization of the TVPA as a joint bill.¹⁴⁴

¹³⁵ Victims of Trafficking and Violence Protection Act of 2000, § 102(a) & (b), Pub. L. No. 106-386, 117 Stat. 2685 (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., 22 U.S.C., and 42 U.S.C.), *available at* <http://www.state.gov/j/tip/laws/61124.htm> [hereinafter TVPA].

¹³⁶ *Id.* § 102(a).

¹³⁷ *Id.* § 102(b). In case there are any questions, Native Americans are United States citizens. 8 U.S.C. § 1401(b).

¹³⁸ TVPA § 102(b).

¹³⁹ *Id.*

¹⁴⁰ *See* Senate Vote on TVPA 2000, GOVTRACK.US (Oct. 11, 2000), <http://www.govtrack.us/congress/votes/106-2000/s269>; *see* House Vote on TVPA 2000, GOVTRACK.US (Oct. 6, 2007), <http://www.govtrack.us/congress/votes/106-2000/h518>.

¹⁴¹ *See* House Vote on Trafficking Victims Protection Reauthorization Act of 2003, GOVTRACK.US (Nov 5, 2003), <https://www.govtrack.us/congress/votes/108-2003/h607>; *see* House Vote on Trafficking Victims Protection Reauthorization Act of 2005, GOVTRACK.US (Dec. 14, 2005), <https://www.govtrack.us/congress/votes/109-2005/h632>. Senate votes are unavailable for both reauthorization years.

¹⁴² William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-110hr7311rds/pdf/BILLS-110hr7311rds.pdf> [hereinafter TVPRA 2008].

¹⁴³ Overview of Trafficking Victims Protection Reauthorization Act of 2011, GOVTRACK.US (Oct. 13, 2011), <http://www.govtrack.us/congress/bills/112/s1301>.

¹⁴⁴ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013), *available at*

1. Aims of the TVPA

The TVPA is consistent with other anti-trafficking laws and treaties in that it combats trafficking by promoting the goals of the three Ps—*prevention, protection* and assistance for victims, and *prosecution* for traffickers. The aims of the TVPA are to promote interagency collaboration among the executive branch and federal, state, and local law enforcement entities.¹⁴⁵ The TVPA attempts to prevent human trafficking by providing funding for training law enforcement entities, encouraging similar and consistent state statutes, and informing vulnerable populations about human trafficking.¹⁴⁶ Initially, the TVPA was aimed at preventing human trafficking among migrant and immigrant populations. Therefore, some of the earliest actions were to empower immigration officials with educating immigrants to the potential danger of human trafficking. Later TVPA reauthorizations recognized that United States citizens were also in danger of domestic human trafficking and awareness efforts were extended to them as well.¹⁴⁷

The TVPA tries to protect and assist victims by allotting funds to state and local governments for victim services. State and local governments work with social services and other victim assistance organizations to provide tangible support to victims.¹⁴⁸ Additional funding is given to the Department of Health and Human Services to assist in the housing of victims who are not U.S. citizens. The Department of Homeland Security can also issue a T-visa, which gives lawful status to a non-citizen immigrant trafficking victim for up to four years for suffering a severe form of human trafficking, conditional upon the victim's cooperation with the prosecutorial investigation.¹⁴⁹

The TVPA assists in the prosecutions of suspected traffickers and creates a strong deterrence value by imposing strict penalties. The TVPA lists a number of aggravating circumstances such as kidnapping, assault, and age of the victim. These factors have the potential to significantly compound the sentences for traffickers. The TVPA also incentivizes civil suits by victims against their traffickers by authorizing attorney's fees.¹⁵⁰

However, it is important to note that the TVPA's criminal provisions, like all federal crimes, only apply to situations where it can be shown that the acts have an effect on interstate commerce; *i.e.*, where the acts occur across state lines or involve the mail, Internet, or telephone.

<http://www.gpo.gov/fdsys/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf> [hereinafter VAWA 2013].

¹⁴⁵ See TVPA §§ 105 & 109; TVPRA 2008, §§ 106, 108 & 110; 22 USC §§ 7103, 7106 & 7109; 8 U.S.C. § 1777.

¹⁴⁶ TVPRA 2008 § 202(b)(1)-(5) (codified as 8 U.S.C. § 1375b(b)(1)-(5)).

¹⁴⁷ See TVPRA 2008 § 202(e)(2) (codified as 8 U.S.C. § 1375b(e)(2)).

¹⁴⁸ See TVPA § 107(b)(2) (codified 22 U.S.C. § 7105(b)(2)).

¹⁴⁹ *Immigration Remedies for Trafficking Victims*, DEPARTMENT OF HOMELAND SECURITY, <http://www.dhs.gov/immigration-remedies-trafficking-victims> (last visited Nov. 19, 2013).

¹⁵⁰ However, civil actions cannot be filed until the criminal investigation and prosecution is complete, but must commence within 10 years after the cause of action arose. Trafficking Victims Protection Reauthorization Act of 2003, § 4(a)(4)(A), Pub. L. No. 108-193, 114 Stat. 1536 (codified 18 U.S.C. § 1595).

2. Inclusion of a Tribal Provision

A striking feature of the joint VAWA/TVPA reauthorization is the inclusion of a tribal provision. Under the new VAWA provision, tribal courts can now hear claims brought by tribal prosecutors against non-Natives for domestic and sex abuse crimes occurring on reservations where the victim is a tribal member.¹⁵¹ However, tribal jurisdiction is limited to certain circumstances.¹⁵² Although this provision is meant to prevent domestic violence of Natives by non-Natives, it might also work to allow tribes to prosecute some human trafficking crimes where domestic relationships exist between traffickers and victims and a violent act occurs. This increased capacity by tribal courts could play an important role in preventing non-Natives from engaging in activities that may eventually lead to the trafficking of a tribal member while on the reservation.

C. OREGON LAW

1. Provisions in Oregon's Constitution

The Oregon Constitution contains provisions that are relevant to human trafficking. For example, it prohibits slavery and involuntary servitude occurring within the state.¹⁵³ It also prohibits demanding the services of an individual without just compensation.¹⁵⁴ Because of these provisions, many acts that constitute human trafficking violate the obligations set forth in the Oregon Constitution.

2. Oregon's Human Trafficking Statutes

a. Current Statutory Framework

As of February 2013, all 50 states and Washington D.C. had passed some form of human trafficking legislation beyond the existing federal Trafficking Victims Protection Act.¹⁵⁵ In Oregon, the Legislature recognized that the state is uniquely vulnerable to trafficking because it

¹⁵¹ VAWA 2013 §904.

¹⁵² For tribal jurisdiction to apply to a non-Native offender, the offender must be in a “dating” or “domestic” relationship with a Native, and the crime charged must be based on the presence of the relationship. Additionally, either the non-Indian offender must reside or be employed on the reservation, *or* be the spouse, intimate partner, or dating partner of either a tribal member or a member of another tribe who resides on in the Tribes’ Indian country. Tribes must allow non-Indian defendants: an impartial jury of community members; effective assistance of counsel (at no cost if indigent); a competent judge; and notice of right to file for writ of habeas corpus in federal court. Tribes are further expected to uphold “all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the [tribe’s] inherent power...to exercise” its jurisdiction. VAWA 2013 § 904. In addition to the specific requirements under VAWA, tribes are also expected to uphold all requirements laid out under the Indian Civil Rights Act. 25 U.S.C. §1302.

¹⁵³ “There shall be neither slavery, nor involuntary servitude in the State, otherwise than as a punishment for crime, whereof the party shall have been duly convicted.” OR. CONST. art. I, § 34.

¹⁵⁴ “Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation[.]” OR. CONST. art. 1, § 18.

¹⁵⁵ Megan Fowler, *Wyoming Becomes 50th State to Outlaw Trafficking*, POLARIS PROJECT (Feb. 27, 2013), <http://www.polarisproject.org/media-center/press-releases/742-wyoming-becomes-50th-state-to-outlaw-human-trafficking>.

possesses the geographic quality of being a corridor state between Canada and Mexico.¹⁵⁶ In response, the Legislature passed Senate Bill 578 in 2007. Nearly all of Oregon's statutes related to trafficking were created in SB 578.¹⁵⁷ Senate Bill 578, which created the crimes of Trafficking in Persons and Involuntary Servitude, created every law directly related to trafficking in Oregon.

Oregon's trafficking in persons statute reads as follows:

*(1) A person commits the crime of trafficking in persons if the person knowingly: (a) Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person knowing that the other person will be subjected to involuntary servitude as described in ORS 163.263 or 163.264; or (b) Benefits financially or receives something of value from participation in a venture that involves an act prohibited by this section or ORS 163.263 or 163.264. (2) Trafficking in persons is a Class B felony.*¹⁵⁸

Oregon separately defines involuntary servitude as an offense in both the first and second degree. Involuntary servitude in the first degree reads as follows:

*(1) A person commits the crime of subjecting another person to involuntary servitude in the first degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by: (a) Causing or threatening to cause the death of or serious physical injury to a person; or (b) Physically restraining or threatening to physically restrain a person. (2) Subjecting another person to involuntary servitude in the first degree is a Class B felony.*¹⁵⁹

Involuntary servitude in the second degree is defined as:

(1) A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by: (a) Abusing or threatening to abuse the law or legal process; (b) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person; (c) Threatening to report a person to a government agency for the purpose of arrest or deportation; (d) Threatening to collect an unlawful debt; or (e) Instilling in the other person a fear that the actor

¹⁵⁶ *Relating to Trafficking in Persons: Hearing on SB 578 before the Subcomm. on Public Safety and the H. Comm. on Ways & Means*, 74th Leg. (2007) (statement of Sen. Joanne Verger).

¹⁵⁷ Senate Bill 578, 2007 Or. Sess. Law (originally codified as OR. REV. STAT. §§ 131.602, 137.103, 161.005).

¹⁵⁸ OR. REV. STAT. § 163.266.

¹⁵⁹ OR. REV. STAT. § 163.264.

*will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing. (2) Subjecting another person to involuntary servitude in the second degree is a Class C felony.*¹⁶⁰

With regard to the crimes of involuntary servitude in the first and second degree, Oregon has defined “services” as “activities performed by one person under the supervision or for the benefit of another person.”¹⁶¹

Despite the penalty considerations, the Oregon trafficking statutes were primarily intended to be an educational and awareness tool rather than a prosecutorial tool. Proponents of Senate Bill 578 testified that it would raise public awareness and law enforcement awareness with regard to the subject of human trafficking. Additionally, the legislature felt that enactment would illustrate the level of commitment the state afforded the human trafficking issue.¹⁶² This was further illustrated by testimony that only a handful of trafficking cases would be seen in any given year and that any fiscal impact as a result would be minimal.¹⁶³ Furthermore, any large cases would presumably be addressed at the federal level.¹⁶⁴

In addition to creating the crimes of trafficking in persons and involuntary servitude, Senate Bill 578 creates a civil cause of action for a victim to bring a claim for damages against a person conducting or involved in trafficking.¹⁶⁵ The legislature also attached a statute of limitations of six years for the victim to commence a claim.¹⁶⁶ In addition to any compensatory damages, victims may also seek restitution for economic damages suffered.¹⁶⁷

The intent of the anti-trafficking legislation was to use the trafficking statutes in conjunction with other criminal statutes.¹⁶⁸ One relevant statute is ORS 167.017, which codifies the crime of Compelling Prostitution. Many victims of trafficking are coerced or forced into prostitution. Unlike trafficking, it is a Measure 11 offense. It also has clearly defined elements making it a successful prosecutorial tool. This means many trafficking cases are prosecuted under this statute, which in turn, greatly contributes to the difficulty in keeping statistics on trafficking.

Oregon’s statute defines compelling prostitution as:

(1) A person commits the crime of compelling prostitution if the person knowingly: (a) Uses force or intimidation to compel another to engage in

¹⁶⁰ OR. REV. STAT. § 163.263.

¹⁶¹ OR. REV. STAT. § 163.261.

¹⁶² *Relating to trafficking in persons, supra* note 156 (statement from Sen. Kate Brown).

¹⁶³ *Relating to trafficking in persons, supra* note 156 (statement from Sen. Roger Beyer, Vice-Chair, Or. S. Comm. on Judiciary).

¹⁶⁴ *Id.*

¹⁶⁵ OR. REV. STAT. § 30.867.

¹⁶⁶ *Id.*

¹⁶⁷ OR. REV. STAT. §§ 137.103 & 109.

¹⁶⁸ *Id.* (statement from Sen. Roger Beyer, Vice-Chair, Or. S. Comm. on Judiciary); OR. REV. STAT. § 166.720 (stating racketeering is an unlawful crime).

*prostitution; or (b) Induces or causes a person under 18 years of age to engage in prostitution; or (c) Induces or causes the spouse, child or stepchild of the person to engage in prostitution. (2) Compelling prostitution is a Class B felony.*¹⁶⁹

Nothing in the discussion before the passage of Senate Bill 578 or any of the other relevant statutes makes specific mention of Native Americans with regard to trafficking.

b. Recent State Legislation

In 2010, the legislature passed HB 3623 (ORS 131.602) in response to Oregon’s growing human trafficking problem. It aims to increase public awareness of human trafficking within Oregon by allowing the Oregon Liquor Control Commission (OLCC) to send informational stickers to establishments that sell and serve alcohol. The sticker displays the National Human Trafficking Hotline phone number for victims, a description of human trafficking as a form of slavery, and an appeal for the public to call the hotline if they have encountered a trafficking victim. One weakness of ORS 131.602 is that posting of the stickers is not mandated; the establishment receiving the stickers decides whether to post them.

In 2011, the legislature passed HB 2714, creating the crime of patronizing a prostitute.¹⁷⁰ HB 2714 was designed to separate those paying for sex from those offering sex because, as Senate Majority Leader Diane Rosenbaum states, “[s]ex trafficking victims are not criminals and should not be treated like criminals[.]”¹⁷¹ In addition, it greatly increased fines, as well as mandatory jail time, for repeating offenders and for persons soliciting sex from underage individuals.¹⁷² When a person is charged with patronizing prostitution of a minor, HB 2714 eliminates the defense that the “john” was unaware the person was a minor.¹⁷³ In its passing, the legislature recognized that the illegal sex trade was a serious issue across Oregon, stating that HB 2714 was designed to take “a crucial step toward recognizing the problems our law enforcement and social services have encountered in Oregon and ... help us better provide services of sex trafficking.”¹⁷⁴

In 2013, Oregon also passed Senate Bill 673, creating the crime of purchasing sex with a minor and further increasing the penalty for trafficking where the victim is under the age of 15 or where force is used.¹⁷⁵ More specifically, SB 673 increases crimes of trafficking in persons (under ORS 163.266) that involve *force or minors under the age of 15* to Class A felonies, which carry a maximum penalty of up to 20 years' imprisonment, a \$375,000 fine, or both.¹⁷⁶ As mentioned

¹⁶⁹ OR. REV. STAT. § 167.017.

¹⁷⁰ House Bill 2714, 2011 Or. Sess. Law (codified OR. REV. STAT. 167.007 et seq.).

¹⁷¹ Press Release, Senate Majority Office, Bill Cracks Down on “Johns,” Will Help Young Sex Trafficking Victims (May 10, 2011), available at http://www.oregonlegislature.gov/senatedemocrats/Documents/sdo_051011.pdf.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Senate Bill 673, 2013 Or. Sess. Law (amending OR. REV. STAT. §§ 40.210, 133.724, 137.106, 144.275, 147.005, 147.015, 147.025, 147.390, 161.005, 163.266, 166.715, 167.008, 181.594 & 419B.005), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/SB673/Enrolled>.

¹⁷⁶ *Id.*; OR. REV. STAT. §§ 161.605 (maximum prison terms for felonies) & 161.625 (fines for felonies).

above, SB 673 also amends ORS 163.355 and 163.427 to create the separate crime of Purchasing Sex with a Minor in order to increase minimum and maximum penalties for such crimes that might otherwise be classified as patronizing a prostitute under ORS 167.008. The new crime classifies first offenses as Class C felonies (carrying a maximum of five years' imprisonment, a fine of \$125,000, or both) and any subsequent offenses as Class B felonies (allowing up to 10 years' imprisonment, a \$250,000 fine, or both).¹⁷⁷ Furthermore, the crime of purchasing sex with a minor permits courts to designate first offenses as sex crimes under ORS 181.594 (implicating sex offender registration) and carries a minimum sentence of 30 days in jail, \$10,000 fine, and completion of “john school”; subsequent offenses carry a minimum penalty of \$20,000 in fines and compel courts to designate such offenses as sex crimes.¹⁷⁸

3. Oregon's Constitution and the Sex Industry

The Oregon Constitution provides strong freedom of speech protections that are much broader than the protections offered at the federal level.¹⁷⁹ This expansive free speech clause allows the commercial sex industry in Oregon significant liberty.¹⁸⁰ It is likely that because of this freedom, Portland has the highest number of sexually oriented businesses per capita of any city in the nation.¹⁸¹ In addition, the legal sex industry sometimes is used as a front for illegal commercial sex activities, including commercial sexual exploitation of minors.¹⁸² Legal sex establishments can attract parallel illicit businesses and serve to hide or obscure sex trafficking and forced prostitution of adults and young girls, making it easier for traffickers to carry out their enterprise.¹⁸³ BOLI has authority to regulate these establishments to prevent the abuse of such women, which regularly occurs.¹⁸⁴

¹⁷⁷ Senate Bill 673; OR. REV. STAT. §§ 161.605 (maximum prison terms for felonies) & 161.625 (fines for felonies).

¹⁷⁸ Senate Bill 673.

¹⁷⁹ “No law shall be passed restraining the free expression of opinion ... the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.” OR. CONST. art. I, §8.

¹⁸⁰ *State v. Henry*, 732 P.2d 9 (1987); *See Brad Smith, Strip Club Foes Seek Amendment*, THE OREGONIAN, Apr. 23, 2009, at C1, C3.

¹⁸¹ *See, e.g., Susan Donaldson James, Strip Club Teases Small Oregon City*, ABC NEWS, Oct. 22, 2008, available at <http://abcnews.go.com/TheLaw/Story?id=6088041&page=1>; *See also Smith, supra* note 180, at C3 (“Oregon’s constitution and rulings by the Oregon Supreme Court have protected nude dancing, adult bookstores—and even live sex shows—through the free-speech clause. These protections have helped dub Portland the country’s per-capita strip-club capital.”).

¹⁸² RICHARD J. ESTES & NEIL ALAN WEINER, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO, Executive Summary 7 (2001) (a study finding that commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations).

¹⁸³ *See generally*, TRAFFICKING IN PERSONS REPORT, U.S. DEPT. OF STATE 27 (2007), available at <http://www.state.gov/g/tip/rls/tiprpt/2007/>. For information specific to Portland, see Ruben Rosario, *After Prostitution and Addiction, a New Beginning*, PIONEER PRESS, May 5, 2010, available at http://www.twincities.com/localnews/ci_15026537 (“She was introduced to a charismatic ‘record producer’ who turned out to be a pimp. The dancing led to client ‘dating’ and escort-service work in the Portland and San Francisco areas that involved prostitution.”).

¹⁸⁴ For example, two men pled guilty in Washington for involvement in a prostitution ring making more than \$25 million per year and operating out of a chain of strip clubs. Levi Pulkkinen, *Three plead guilty in strip-club case*, SEATTLE POST-INTELLIGENCER, Apr. 28, 2010, available at http://www.seattlepi.com/local/419168_ricks28.html.

D. TRIBAL LAWS

At this point, we are unaware of any tribal laws in Oregon that are directly related to human trafficking.¹⁸⁵ Tribes in a few other states have enacted their own human trafficking laws, which could serve as an example for Oregon tribes who also wish to do so. Examples include: the Absentee Shawnee Tribe of Oklahoma’s child trafficking law¹⁸⁶ and Snoqualmie Tribe’s sex trafficking law.¹⁸⁷ The text of these statutes is provided in Appendix A.

E. JURISDICTION OVER HUMAN TRAFFICKING CRIMES IN OREGON INDIAN COUNTRY

Matters of criminal jurisdiction—who has jurisdiction over crimes in Indian Country (*i.e.*, reservations)—is complex and to some degree, still unsettled. Not only is the race (Indian or non-Indian status) of both the victim and the offender often relevant to determining which government(s) will have jurisdiction, but whether or not a reservation is subject to Public Law 280 is also determinative.¹⁸⁸ An in-depth discussion regarding jurisdiction is attached as Appendix D to this report. However, a simplification of jurisdictional issues relevant to human trafficking in Indian Country within Oregon follows below. Even this “simplification” establishes just how complex jurisdictional issues can be.

1. Federal Jurisdiction

The question of whether crimes of human trafficking in Indian Country implicate federal jurisdiction is primarily determined by looking in three places: the *Major Crimes Act* (“MCA”),¹⁸⁹ the *General Crimes Act* (“GCA”),¹⁹⁰ and *federal crimes of general applicability*.¹⁹¹ In “mandatory”¹⁹² PL 280 states like Oregon, the MCA and the GCA generally¹⁹³ only apply to

¹⁸⁵ Tribal codes are notoriously difficult to access. Unlike federal or state law, where there exist robust and accessible clearinghouses for laws (such as LexisNexis, Westlaw, Google Scholar), there is nothing so comprehensive for tribal codes of which we are currently aware.

¹⁸⁶ AST. CRIM. LAW CODE § 568.

¹⁸⁷ SNOQ. TRIBAL CODE § 7.21.

¹⁸⁸ See Part II (explaining which tribes are subject to PL 280 and which are not); see Part II.A.4 (for a brief description of PL 280).

¹⁸⁹ Major Crimes Act, 18 U.S.C. § 1153 (originally enacted in 1885 to cover eight crimes and now covers sixteen).

¹⁹⁰ General Crimes Act, 18 U.S.C. § 1152 (originally enacted in 1817).

¹⁹¹ Note that crimes of general applicability (albeit confusingly) are different from the General Crimes Act. The GCA is a statutory enactment granting federal jurisdiction over crimes on lands owned by the U.S. (*i.e.*, non-PL 280 reservations). Crimes of general applicability, on the other hand, are the kinds of crimes implicating jurisdiction due to federal interests (and authority) independent of geographical location.

¹⁹² One way in which “mandatory” PL 280 jurisdictions differ from “optional” PL 280 jurisdictions is that those falling under the former category share concurrent jurisdiction between only the state and the tribe, while in “optional” PL 280 criminal jurisdictions authority is shared between state, tribal, and federal (MCA and GCA) governments. 18 U.S.C. § 1162 (establishing “mandatory” states); 25 U.S.C § 1321 (for “optional” PL 280 states).

¹⁹³ We use the term “generally” because while mandatory PL 280 jurisdictions traditionally follow this rule, recent enactment of the Tribal Law and Order Act (“TLOA”) created an option by which mandatory PL 280 tribes may instead share concurrent jurisdiction with both state and federal governments (where the GCA or MCA applies). For the TLOA option to apply: (1) the tribe must expressly request application of federal jurisdiction (implicating the GCA/MCA); and (2) the Attorney General must consent. 18 U.S.C. 1162(d). No tribes have done this yet in Oregon.

grant federal jurisdiction over crimes in non-PL 280 jurisdictions.¹⁹⁴ However, federal crimes of general applicability can be applied anywhere.

Federal Jurisdiction Chart:

DEFENDANT/ VICTIM	NON-PL 280	PL 280
<i>Indian/Indian</i>	Concurrent jurisdiction if MCA applies (18 U.S.C. § 1153).	No jurisdiction except federal crimes of general applicability.
<i>Indian/ Non-Indian</i>	Concurrent jurisdiction if MCA applies (18 U.S.C. § 1153). Jurisdiction if GCA/ACA applies (18 U.S.C. §§ 1153, 13) and tribe did not punish defendant.	No jurisdiction except federal crimes of general applicability.
<i>Non-Indian/ Indian</i>	Jurisdiction if GCA/ACA applies (18 U.S.C. §§ 1153, 13) and tribe did not punish defendant.	No jurisdiction except federal crimes of general applicability.
<i>Non-Indian/ Non-Indian</i>	No jurisdiction except federal crimes of general applicability.	No jurisdiction except federal crimes of general applicability.

a. When Does the TVPA Apply?

The TVPA’s child trafficking statute, 18 U.S.C. §1591, is the only of the TVPA’s provisions that clearly applies in Indian Country, because it is the only portion of the TVPA to grant federal jurisdiction where the accused violates the law “*knowingly, in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States.*”¹⁹⁵ Such language implicates federal jurisdiction to prosecute for this crime under both the GCA and as a federal crime of general applicability.

The GCA provides that “*the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States... extend to the Indian Country.*”¹⁹⁶ The “general laws” referred to in the GCA are those known as “federal enclave laws,”¹⁹⁷ which are statutes that criminalize certain acts occurring on lands solely “within the *Special Maritime and Territorial jurisdiction of the United States*”— the same authorizing language found in § 1591.¹⁹⁸ However, § 1591’s application to crimes in Indian Country through the GCA also has major restrictions. The GCA itself prohibits its own application where: (1) *the crime involves only Indians*, (2) *an Indian offender was already punished by the tribe*, or (3) *a treaty exists, stipulating exclusive jurisdiction over such offenses*

¹⁹⁴ This includes Warm Springs, Umatilla, and Burns Paiute Reservations.

¹⁹⁵ TVPA, 18 U.S.C. § 1591(a)(1).

¹⁹⁶ General Crimes Act, 18 U.S.C. § 1152.

¹⁹⁷ 18 U.S.C. § 7; *See* United States v. Strong, 778 F.2d 1393, 1396 (9th Cir.1985) (“law[s] in which the situs of the offense is an element of the crime”).

¹⁹⁸ Federal enclave laws (“within the special maritime and territorial jurisdiction”) (18 U.S.C. § 7) apply to Indian Country through the GCA (18 U.S.C. § 1152).

to the tribe.¹⁹⁹ In addition to its statutory limitations, the courts also hold that the GCA does not apply to crimes on reservations involving only non-Indians.²⁰⁰ This means that § 1591 not only applies to all Indian Country falling under federal jurisdiction (*i.e.*, subject to the GCA),²⁰¹ but any application through the GCA will limit federal prosecution to crimes involving both Indian and non-Indian parties where the offender (if Native) was not already “punished” by the tribe.²⁰²

Alternatively, § 1591 can also be applied against any offender on any reservation (or elsewhere) as a federal crime of general applicability.²⁰³ Much broader than the GCA (which only authorizes federal jurisdiction on non-PL 280 reservations); “federal crimes of general applicability” cover certain acts that are *criminalized by Congress independent of the jurisdiction in which they are committed*. This means that federal crimes of general applicability apply regardless of whether the crime was committed on PL 280 lands, non-PL 280 lands, or elsewhere.²⁰⁴ Instead, jurisdiction is based on independent grounds by which Congress may exercise its power (*i.e.*, regulating interstate commerce as in § 1591). The Supreme Court has never reviewed the question of whether these laws can be applied to crimes involving only Indians in Indian Country, but almost half of the federal circuits have. Most Circuit Courts reviewing this question have issued holdings consistent with that of the Ninth,²⁰⁵ which held in *Young*²⁰⁶ that “federal courts continue to retain jurisdiction over violations of federal laws of general, non-territorial applicability,” even where the crime is one between Natives on a reservation.²⁰⁷ However, even though § 1591 is the only part of the TVPA expressly creating a commerce hook (qualifying it as a federal crime of general applicability), federal courts *might* nonetheless *imply* such a jurisdictional basis in other of the TVPA’s provisions.

¹⁹⁹ General Crimes Act, 18 U.S.C. § 1152.

²⁰⁰ *United States v. McBratney*, 104 U.S. 621 (1882) (holding that state law applies instead).

²⁰¹ In Oregon, this means Warm Springs, Umatilla, and Burns Paiute.

²⁰² *See* 18 U.S.C. § 1152 (It’s worth noting here that the GCA’s limitation on treaties is irrelevant because no such treaty stipulations currently exist anywhere.); *See McBratney*, 104 U.S. 621.

²⁰³ 18 U.S.C. § 1591(a)(1) (crimes committed “knowingly, in or affecting interstate or foreign commerce...”).

²⁰⁴ Meaning that such laws will apply on *all* reservations.

²⁰⁵ *United States v. Blue*, 722 F.2d 383 (8th Cir. 1983); *United States v. Smith*, 562 F.2d 453 (7th Cir. 1977); *United States v. Yannott*, 42 F.3d 999 (6th Cir. 1994); *contra United States v. Markiewicz*, 978 F.2d 786, 800 (2d Cir. 1992), *cert. denied, sub nom.*, *Beglen v. United States*, 113 S. Ct. 1065 (1993) (The Second Circuit chose an alternative approach, holding that “federal jurisdiction does not exist over Indian-against-Indian crimes that congress fails to enumerate, except where such offenses constitute ‘peculiarly Federal’ crimes, and the prosecution of such offenses would protect an independent federal interest.” However, the court found jurisdiction on other grounds, obviating the need to ascertain on what grounds such “federal interest” is implicated.).

²⁰⁶ *United States v. Young*, 936 F.2d 1050, 1055 (9th Cir. 1991) (offenses charged created jurisdictional hooks on grounds independent of the offender’s identity or the location of the offense: assaulting a federal officer (18 U.S.C. § 111), jurisdiction implicated by status of victim as federal officer; possession of a firearm by a felon (18 U.S.C. § 922(g)), jurisdiction implicated by weapon’s interstate transport; use of a firearm in a crime of violence (18 U.S.C. § 924(c)), jurisdiction implicated by conviction of other federal offense).

²⁰⁷ *Young*, 936 F.2d at 1055; *see also United States v. Begay*, 42 F.3d 486 (9th Cir. 1994) (expressly rejecting *Markiewicz*); *United States v. Top Sky*, 547 F.2d 483, 484 (9th Cir. 1976); *United States v. Burns*, 529 F.2d 114, 117 (9th Cir. 1976); *Walks On Top v. United States*, 372 F.2d 422, 425 (9th Cir.), *cert. denied*, 389 U.S. 879 (1967).

b. When the TVPA Doesn't Apply

Where the TVPA cannot be directly applied to human trafficking in Indian Country, the federal government may still exercise jurisdiction to prosecute such crimes where other provisions of the GCA or MCA apply.²⁰⁸

In cases where the TVPA cannot be applied to crimes of human trafficking in Indian Country, it is possible that the GCA *might* authorize federal prosecutors to instead apply Oregon's human trafficking statutes through one of those "federal enclave laws" (discussed in the preceding subsection) known as the Assimilative Crimes Act ("ACA").²⁰⁹ The ACA allows federal prosecutors to charge offenders *for violating state law where no equivalent federal crime exists under which to prosecute*.²¹⁰ However the answer as to whether the ACA could apply in Indian Country where the TVPA cannot is somewhat unclear. This is, in part, because the ACA is only intended to apply state law where no federal law exists (and, obviously, the TVPA already exists). In the most direct case in point, *Williams*, the Supreme Court denied extending the ACA in Indian Country where an existing federal statute mirrored state law, albeit less restrictively.²¹¹ While a federal court may find *Williams* to govern where the TVPA does not apply due to jurisdictional restrictiveness, *Williams* might also be construed more narrowly. A narrower interpretation could conclude that the ACA did not extend in *Williams* because the federal government sought to apply state law for its substantive elements,²¹² but that the ACA could still apply state human trafficking law where the TVPA's procedural elements (*i.e.*, jurisdiction) are lacking. Such narrow interpretation is unlikely though, because again, thus far the ACA has only been interpreted to apply where no parallel federal laws exist.

Even if federal jurisdiction cannot be obtained by any of the means discussed above, it still might be obtained through the MCA. Like the GCA, the MCA only pertains to non-PL 280 reservations in Oregon.²¹³ The MCA is also broader than the GCA in two ways, because the MCA applies even if: (1) *the crime involves only Indians*; and/or (2) the tribe also chooses to punish the Native

²⁰⁸ Again, in Oregon this encompasses Warm Springs, Umatilla, and Burns Paiute.

²⁰⁹ 18 U.S.C. § 13 (originally enacted in 1825). However, use of the ACA through the GCA would also mean that all of the GCA restrictions still apply. *See* 18 U.S.C. 1152; *supra* Part IV.E.1.a.

²¹⁰ 18 U.S.C. § 13(a) (enables federal authorities to prosecute using state law in federal court).

²¹¹ In *Williams v. U.S.*, a white man had sexual contact with a 16-17 year old Indian girl on Colorado River Indian Reservation. Unable to prosecute for statutory rape under federal law (limited to minors under 16), federal prosecutors attempted to substitute Arizona's statutory rape law (applying to minors under 18). The Court held that Arizona law was not applicable, because "the offense known to Arizona as that of 'statutory rape' has been defined and prohibited by the Federal Criminal Code, and is not redefined and enlarged by application to it of the [ACA]." 327 U.S. 711, 717 (1946); *see also* *Lewis v. U.S.*, 523 U.S. 155 (1998) (for a similar example on a military base).

²¹² *See id.* (accompanying text within the footnote).

²¹³ However, remember that in addition to the MCA's and GCA's application to non-PL 280 (like Warm Springs) and retroceded (non-)PL 280 (like Burns Paiute and Umatilla) jurisdictions in Oregon, Indian Country in other states falling under 25 U.S.C. § 1321 (as "optional" PL 280) or 18 U.S.C. 1162(d) (subject to the new TLOA provisions) can also be subject to federal jurisdiction under the GCA and MCA. *See supra* notes 192-93 and accompanying text; *infra*, Appendix D Part II.B (for further detail on "optional" vs. "mandatory" PL 280 states and the TLOA).

offender (instead, *federal and tribal jurisdiction run concurrently*).²¹⁴ However, the MCA is not without major limitations. Specifically, the MCA *can only be applied to Native offenders* who commit any of the following enumerated crimes:

*murder, manslaughter, kidnapping, maiming, a felony under chapter 109A [(sexual abuse)], incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, [or] a felony under section 661 [(dealing with maritime jurisdiction)].*²¹⁵

Thus, any attempt to implicate federal jurisdiction over human trafficking through the MCA is limited to Native offenders who can instead be charged for related MCA crimes, like “kidnapping...felony...[sexual abuse]...incest...[or] felony child abuse or neglect...”²¹⁶

2. State Jurisdiction

There are also a few situations in which the state can apply Oregon’s human trafficking laws (discussed in detail in Part IV.C above) to prosecute trafficking crimes committed in Indian Country. While state jurisdiction is always implicated when a crime involves only non-Indians,²¹⁷ it is also implicated on reservations under PL 280 jurisdiction.²¹⁸

State Jurisdiction Chart:

DEFENDANT/ VICTIM	NON-PL 280	PL 280
<i>Indian/Indian</i>	None.	Shares concurrent jurisdiction with tribe over all crimes.
<i>Indian/ Non-Indian</i>	None.	Shares concurrent jurisdiction with tribe over all crimes.
<i>Non-Indian/ Indian</i>	None.	Jurisdiction over all crimes.
<i>Non-Indian/ Non-Indian</i>	Jurisdiction over all crimes.	Jurisdiction over all crimes.

Again, with regard to crimes involving only non-Indians, as a general rule, states maintain *sole* jurisdiction over such crimes when they occur in Indian Country.²¹⁹ Thus, Oregon’s human trafficking laws apply equally to trafficking crimes involving only non-Indian victims and offenders anywhere within the borders of the state (even if the crime occurred on a reservation).

²¹⁴ The GCA does not apply where the crime is one between Indians in Indian Country, or where an offender was already punished by the laws of the tribe. 18 U.S.C. § 1152; *see supra* Part IV.E.1.a.

²¹⁵ Major Crimes Act, 18 U.S.C. § 1153 (originally enacted in 1885 to cover eight crimes and now covers sixteen).

²¹⁶ 18 U.S.C. § 1153(a).

²¹⁷ *See McBratney*, 104 U.S. 621.

²¹⁸ Cow Creek, Coquille, Coos/Lower Umpqua/Siuslaw, Grand Ronde, Siletz, Klamath.

²¹⁹ *See McBratney*, 104 U.S. 621 (except that federal laws of general applicability still apply here as anywhere).

Oregon human trafficking laws also apply on PL 280 reservations located within the state’s borders in the same way those laws are enforced elsewhere in the state.²²⁰ Furthermore, in “mandatory” PL 280 states like Oregon, the MCA and GCA cannot be applied to find federal jurisdiction on these lands.²²¹ Instead, the state simply shares *concurrent* jurisdiction with the tribe if the offender is Indian (even if the crime is one between Indians), and holds sole jurisdiction if the offender is non-Indian.²²²

3. Tribal Jurisdiction

As briefly mentioned in Part IV.D, none of the tribes in Oregon have enacted laws specifically criminalizing human trafficking yet. However, even absent human trafficking laws, tribes can still prosecute offenders for similar or related crimes currently existing within their own criminal codes, such as: kidnapping, pimping, sex abuse, or child abuse.

Tribal Jurisdiction Chart:

DEFENDANT/ VICTIM	NON-PL 280	PL 280
<i>Indian/Indian</i>	Jurisdiction over all crimes (concurrent when applicable).	Shares concurrent jurisdiction with state.
<i>Indian/ Non-Indian</i>	Jurisdiction over all crimes (concurrent when applicable).	Shares concurrent jurisdiction with state.
<i>Non-Indian/ Indian</i>	No jurisdiction except in limited circumstances under VAWA.	No jurisdiction except in limited circumstances under VAWA.
<i>Non-Indian/ Non-Indian</i>	No jurisdiction.	No jurisdiction.

As for the question of “when is tribal jurisdiction implicated?” *Tribes generally have jurisdiction over all Indians committing crimes in Indian Country,*²²³ and that authority runs *concurrently* with any applicable state and/or federal criminal jurisdiction over the crime committed (as discussed in the previous subsections). On the other hand, the Supreme Court has consistently upheld the notion that absent an express grant of authority by Congress or treaty, *tribes are barred from exercising criminal jurisdiction over non-Indian offenders for crimes committed in*

²²⁰ Pub. L. No. 83-280, 67 Stat. 588 (1953) (codified 18 U.S.C. § 1162, 28 U.S.C. § 1360, 25 U.S.C. §§ 1321-1326).

²²¹ This is in contrast to “optional” PL 280 states, where state, federal, and tribal authorities are all deemed to hold concurrent jurisdiction where applicable. 25 U.S.C. § 1321(a); *see infra*, Appendix D Part II.B (for further detail on jurisdiction in “optional” vs. “mandatory” PL 280 states).

²²² 18 U.S.C. § 1162(c); *McBraney*, 104 U.S. 621.

²²³ Although the United States traditionally recognizes a tribe’s jurisdictional authority over its own members (U.S. v. Johnson, 637 F.2d 1224, 1231 (9th Cir.1980)), the same has not always been recognized with respect to non-member Indians or Indians of other tribes (*Duro v. Reina*, 495 U.S. 676 (1990)). To plug the gap, Congress amended the Indian Civil Rights Act in 1991 to explicitly provide tribes with criminal jurisdictional authority over *all Indians committing crimes in Indian Country*, regardless of whether that Indian is a member of the prosecuting tribe. 25 U.S.C. § 1301 (also known as the *Duro*-fix); *see U.S. v. Lara*, 541 U.S. 193, 208-09 (2004) (validity upheld).

Indian country.²²⁴ Until recently, this essentially meant that tribes were prohibited from prosecuting non-Indians—period.

However, recognizing the persistent and disproportionately high degree of violence against Native women in Indian Country, Congress recently acted to provide a (very) small exception to the blanket rule. The 2013 reauthorization of the federal Violence Against Women Act²²⁵ now authorizes tribes to exercise jurisdictional authority to prosecute non-Indian offenders for crimes of violence against any Native American with whom the offender is in a “dating” or “domestic” relationship, as long as the crime charged is based on the presence of the relationship.²²⁶ A further requirement is that the non-Indian offender must reside or be employed on the reservation, *or* be the spouse, intimate partner, or dating partner of either a member of the tribe or a non-member Indian who resides in the tribe’s Indian country.²²⁷ Tribes who wish to prosecute under this amendment must also meet certain procedural requirements.²²⁸ Most importantly, though, while some instances of human trafficking might qualify for tribal prosecution here, it is neither effective nor intended to combat the problem overall.

Oregon also recently expanded authority of tribal law enforcement through passage of Senate Bill 412 (“SB 412”) in 2011.²²⁹ The bill ensures that certified²³⁰ tribal officers are granted the same “peace-officer” status provided to other Oregon law enforcement officers so long as

²²⁴ In *Oliphant v. Suquamish*, a non-Indian resident of Port Madison Reservation was charged with “assaulting a tribal officer and resisting arrest” by the Suquamish Tribe. Defendant claimed that because he was non-Indian, the tribe had no jurisdiction. The Supreme Court agreed. 435 U.S. 191, 194-97 (1978).

²²⁵ VAWA 2013, Pub. L. No. 113-4, § 901-910, 127 Stat. 54 (2013) (effective as of 2015).

²²⁶ *Id.* at § 904.

²²⁷ *Id.*

²²⁸ In addition to the Indian Civil Rights Act’s general guidelines (discussed *infra*, pp. 40-41), tribes must also allow non-Indian defendants: an impartial jury of community members; effective assistance of counsel (at no cost if indigent); a competent judge; and notice of right to file for writ of habeas corpus in federal court. *Id.* Tribes are further expected to uphold “all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the [tribe’s] inherent power...to exercise” its jurisdiction. *Id.* At most, this language implies that tribes must provide criminal defendants with *all* rights protected by the U.S. Constitution. However, it is unclear because the issue has not yet been challenged.

²²⁹ Senate Bill 412, 2011 Or. Sess. Law (codified OR. REV. STAT. 40.275 et seq.). The impetus for SB 412 came from the Court of Appeals’ decision in *State of Oregon v. Kurtz*, 233 Or.App. 573 (2010). The *Kurtz* case arose in January 2005, when a Warm Springs Tribal officer pursued a non-Indian outside of reservation boundaries for a traffic infraction committed while driving through the reservation. Defendant failed to stop for the officer until both vehicles had crossed into Jefferson County and then resisted the officer’s efforts to take him into custody. As a result, Defendant was charged with attempting to elude a police officer and resisting arrest by a peace officer. After a state trial court convicted him of both charges, the Court of Appeals reversed, holding that tribal police do not fit either statutory definition of “police officer” or “peace officer” and therefore the defendant could not be charged with a state crime. *Kurtz*, 233 Or.App. 573. Ironically, a unanimous Oregon Supreme Court decision reversed the Court of Appeals decision while SB 412 was pending in the State legislature. *State v. Kurtz*, 350 Or. 65, 80 (2011) (concluding that the “legislature has recognized that tribal police are an integral part of the public safety system in this state and, because they are entrusted by government with the enforcement of Oregon laws, they should be treated as police officers for purposes training, certification, and discipline”).

²³⁰ As police officers according to OR. REV. STAT. 181.610-712.

specific conditions are met.²³¹ Such status *allows tribal officers, in certain circumstances, to pursue and arrest persons outside of a reservation who have committed a crime on a reservation.*²³² During the first two years of its implementation, SB 412 was limited to cases involving: investigation of crime committed in Indian Country, hot pursuit of a suspect,²³³ commission of a crime in an officer's presence, and approval of the law enforcement agency with jurisdiction. Since July 2013, SB 412 has granted the full scope of authority to tribal law enforcement officers, meaning they hold the same powers, authority, and protections as any other officer in Oregon. However, despite the expanded authority to arrest and detain, tribes nonetheless rely on the state to prosecute non-Indians for crimes committed on reservations. If the state declines, the offender is released. Furthermore, SB 412 is set to sunset on July 1, 2015.

In addition to the extreme limitations that tribes face in exercising jurisdiction over non-Indians who commit crime in Indian Country, the Indian Civil Rights Act ("ICRA")²³⁴ imposes further procedural limitations on the tribes even when they do have authority to prosecute. Originally enacted because tribes (as sovereigns not part of the federal government or the states) are not subject to the U.S. Constitution or Bill of Rights, the ICRA requires tribal courts to observe due process and other rights analogous to those arising in criminal prosecution under the Constitution (*i.e.*, the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments).²³⁵ In addition to its constitutional limitations, the ICRA also generally prohibits tribal courts from imposing sentences greater than "a term of one year and a fine of \$5,000, or both."²³⁶ The ICRA was recently further amended to expand the one year/\$5,000 sentencing limit and permit tribes to impose sentences of up to three years imprisonment (nine, if multiple convictions) and fines of up to \$15,000.²³⁷ However, the expansion applies only where tribes meet certain specific requirements²³⁸ and CTUIR is the only reservation in Oregon to qualify thus far.²³⁹ All others

²³¹ The officer must be in compliance with all of the Department of Public Safety Standards and Training set by the bill. Also, tribal governments must "comply with insurance requirements, adopt policies regarding discovery in criminal cases in conformity with state law and neighboring jurisdictions, and codify the following in tribal law: (1) waiver of sovereign immunity from tort liability; (2) provisions governing records retention, public access to records, and preservation of biological evidence; and (3) a deadly force plan." Staff Measure Summary, House Committee on Rules, Measure SB 412 C (June 27, 2011).

²³² The U.S. Supreme Court has already affirmed the authority of tribal police to stop and detain non-Indian offenders who violate state law *on* Indian land. *See* *Strate v. A-1 Contractors*, 520 U.S. 438, 456 n. 11 (1997).

²³³ As defined in OR. REV. STAT. 133.420.

²³⁴ Indian Civil Rights Act, Pub. L. No. 90-284, 82 Stat. 77 (1968) (codified at 25 U.S.C. § 1301 *et seq.*).

²³⁵ 25 U.S.C. § 1302; *see* WILLIAM C. CANBY, JR., *AMERICAN INDIAN LAW IN A NUTSHELL* 29, 137 (4th ed. 2004).

²³⁶ 25 U.S.C. § 1302(a)(7)(B).

²³⁷ Tribes may sentence up to three years imprisonment and/or \$15,000, *if*: (1) the defendant was previously convicted of the same or similar crime; *or* (2) the offense would be punishable for more than one year in a U.S. or state court. 25 U.S.C. § 1302(b). Collectively, sentences may add up to a maximum of nine years imprisonment where multiple convictions apply. 25 U.S.C. § 1302(a)(7)(D). This ICRA amendment was made through passage of the Tribal Law and Order Act of 2010, Pub. L. No. 111-211, 124 Stat. 2261.

²³⁸ To meet the requirements, tribes must provide: (1) indigent defendants with competent no-cost representation on par with that "guaranteed by the U.S. Constitution"; (2) judges licensed to practice law in the United States who have sufficient knowledge of criminal proceedings; (3) public notice of criminal laws, procedure, and rules of evidence; and (4) record of criminal proceedings. 25 U.S.C. § 1302(c).

are still restricted to the one-year/\$5,000 maximum. Furthermore, regardless of which ICRA sentencing limits are applied, tribes are nonetheless left unable to adequately address the most serious crimes occurring in Indian Country, such as human trafficking.

V. FINDINGS AND CONCLUSIONS

This Part of the Report contains the findings of our research through a synthesis of the interviews and survey conducted.²⁴⁰ The findings are composed of general observations and conclusions regarding the nature, demographics, causes, effects, and potential solutions to human trafficking in Oregon as it relates to Native communities. In order to encourage thorough and candid cooperation on the part of participants, we have elected to represent their responses primarily in the form of consensus statements, although we offer some specific examples as illustration. To further provide an accurate description of the full range of responses, these findings also highlight major divergences in interviewees' responses. As a whole, the findings seek to portray interviewees' overall general observations of human trafficking, reactions to certain initiatives enacted to combat the problem, knowledge of barriers to effective resolution, and recommendations for addressing issues related to trafficking.

Based on these findings, we concluded that government officials (federal, state, and local) within Oregon are not meeting their obligations under international, federal, and state law to prevent trafficking among the Native American community; to prosecute offenders where Native Americans are victims; and to provide adequate services to Native survivors of trafficking.

1. LACK OF STATISTICAL DATA AND FOCUS ON NATIVES IN HUMAN TRAFFICKING

One of the problems in understanding the level of trafficking involving Native Americans appears to be that neither law enforcement nor human services organizations keep track of the percentage of Native Americans among known or suspected trafficking survivors, even though they do keep track of other ethnicities. It is unclear why statistics are not kept on Native American survivors; interviewees could come up with no good reasons, other than the population of Natives is relatively small compared to other ethnicities.

Additionally, no government agency is organized to address or investigate the problem of human trafficking with specific regard to the Native population.²⁴¹ Several interviewees pointed out that

²³⁹ Interview with Tom Woolworth, Special Agent in Charge, BIA Office of Justice Services, Portland, in Portland, Or. (March 14, 2013) (on file at the Clinic).

²⁴⁰ Copies of all interviews and survey responses remain on file with the Clinic; *See* Appendix B (to view copies of survey and interview questions).

²⁴¹ Keith Bickford, Director of the Oregon Human Trafficking Task Force, reported that he began recent efforts to look into human trafficking as it involves Natives in the state about three months before the Clinic contacted him, but had thus far been unable to gather much specific information. Phone interview with Keith Bickford, Director, Oregon Human Trafficking Task Force (Sept. 13, 2012) (on file with the Clinic).

state and federal efforts are primarily focused on combating urban and international trafficking. They voiced that Native victims, particularly those on reservations, could hardly be further from the main focus of attention.

The Oregon Department of Justice recently conducted an 18-month Listening Tour to help facilitate intergovernmental communication and address tribes' needs. However, interviewees reported that the topic of trafficking or prosecution was never raised once during the Listening Tour.

Additionally, one interviewee reported that DA's offices in Oregon are required to organize sexual assault response teams to meet and develop procedures for dealing with sexual violence, but that tribes have mostly been excluded from that whole process.

Although there are no resources directly focused on Natives in human trafficking, there may be more general efforts that could benefit at least some. For example, there have recently been improved efforts to combat trafficking more generally through expansion of the U.S. Attorney General's Task Force and reorganization of the Oregon State Department of Justice's trafficking units. One interviewee explained a change of focus from prosecution, which can re-victimize those who come forward, to understanding, which explores the context of each case separately. This approach is designed to better serve the needs of each victim and build trust between victims and law enforcement. The FBI also provides ongoing victim support through the use of victim specialists who assist victims through the justice process and in obtaining social and health services as needed.

2. SPECIFIC KNOWLEDGE OF HUMAN TRAFFICKING INVOLVING NATIVE AMERICANS

Of the groups interviewed, *service providers*—(specifically in assistance or treatment programs) who focus their work within Native communities or serve a significant number of persons who identify as Native American—appeared to have the *most direct knowledge* of human trafficking involving Native Americans in Oregon, often identifying and recalling specific instances of which they were aware. On the other hand, service providers who assist a proportionately low number of Native Americans and law enforcement seemed to possess a much more limited knowledge of human trafficking as it effects and involves Natives in Oregon. Some of these interviewees claimed to have no knowledge of human trafficking, either involving Native Americans or in general. However, of those who initially claimed no knowledge, many went on to list instances where they suspected it occurred or where elements of trafficking existed (per our definition of human trafficking),²⁴² though the circumstances were never formally identified as human trafficking at the time they occurred.

²⁴² See *supra* Part I.B (explaining the definition used for the purposes of this report).

Many interviewees reported the concern that law enforcement, in particular, remains largely unaware of human trafficking due to underreporting as well as misidentification of trafficking victims. As one interviewee noted:

Officers may not recognize trafficking victims because they do not know what trafficking looks like within Native communities and because it is not talked about.

One service provider further described the problem as “a revolving door.” Others echoed similar sentiment, stating the concern that:

When officers make arrests, they may not recognize the underlying problem when trafficking exists, instead only seeing a prostitute or drug addict.

It is important to note that while several interviewees did have extensive direct knowledge of human trafficking involving Natives in the state, a couple of interviewees made a point to say they did not believe the problem to be worse among Natives (although, as discussed herein, nearly all agreed that Natives were vulnerable to trafficking and lack protection in unique ways). It is also important to note that a few interviewees also voiced specific concerns for both labor and sex trafficking of (non-Native) migrant laborers in certain parts of Oregon.

3. WHO, WHAT, WHERE, WHEN AND HOW IS TRAFFICKING OCCURRING?

While the scope of research set out to identify any and all forms of human trafficking involving Natives in Oregon, all interviewees who had either heard of, or had personal knowledge, identified the problem as one of sex trafficking.²⁴³ Furthermore, interviewees from all groups who had knowledge of human trafficking primarily identified that:

Victims and persons most vulnerable to human trafficking are teen girls and young women (approximately ages 14-24) who have spent time in foster care and been previously sexually abused.²⁴⁴

Characteristics identifying who the traffickers are and where human trafficking occurs were much less consistent among interviewees, and appear to be somewhat dependent on varying demographic factors in different parts of the state. However, there were some broad themes.

Interviewees with knowledge of human trafficking *in metropolitan areas* such as Multnomah County indicated that traffickers most often pick up young women on *public transit* (TriMet), at *shopping malls* (such as Lloyd Center), and *online*. In addition, there were reports of recruiting taking place *at shelters*. These reports indicated that a trafficker would work with a woman (or

²⁴³ Keith Bickford, Director of the Oregon Human Trafficking Task Force, *also* report hearing of potential labor trafficking at fisheries on the coast, but we were unable to confirm this statement. Phone interview with Keith Bickford, Director, Oregon Human Trafficking Task Force (Sept. 13, 2012) (on file with the Clinic).

²⁴⁴ However it is important to note that we also received some reports of women, both slightly younger and older than the general range, as well as a few reports involving instances of young men being trafficked by older women.

girl) to get her into the shelter so that she could recruit more girls for the trafficker. One interviewee also reported accounts of trafficking recruitment through *stripping* and *modeling* work.

Interviewees working on or in close proximity to *reservations* most often reported instances of prostitution and human trafficking as occurring at locations near (but not on) the reservation, such as *highway truck stops* or *neighboring towns*. For example, some interviewees mentioned previous prostitution and potential trafficking from a tent set up near a highway truck stop just north of Klamath Falls before the stop burned down. There is also reportedly a significant amount of trafficking and prostitution of Native, Hispanic, and White women in Madras (just outside of Warm Springs), where pimps pick up young women to take back to Portland. One interviewee also reported knowledge of a young woman who had been recruited into trafficking through her attendance at a *community college* in Baker City, Oregon.

Although concern was occasionally voiced over the possibility of human trafficking through casinos on reservation lands, interviewees overall did not report it as a major problem. Interviewees of only one reservation knew of prostitution and trafficking in hotels and parking lots nearby their casino, and interviewees of another reservation were aware of prostitution occurring in areas nearby their casino but had no knowledge of human trafficking.

Beyond the question of where human trafficking is occurring, there are also several themes as to who recruits women for trafficking.

Traffickers were most frequently identified as non-Native “intimate partners” or men with whom young women are engaged in a sexual relationship, who initially gain the victim’s trust and dependence by providing emotional and economic security, only to pimp them out to friends and other acquaintances.

In many cases, trafficking victims were reported to have been brutalized or raped by multiple men who were permitted to do so by the intimate partner. Some service providers reported encountering a handful of such cases involving Native women every year. One interviewee recalled two similar cases in the recent past, one occurring a couple of days prior to the interview where the victim confided that her “baby’s daddy allowed many men to beat and rape her.” Interviewees further reported that:

Other dynamics present in these types of relationships, such as manipulation, drug or alcohol addiction, or basic needs such as housing, often perpetuate victims’ feelings of dependence or a perceived inability to leave their traffickers.

Although this type of human trafficking was most prevalently discussed as a problem in the state’s most densely populated areas, all interviewees with a knowledge of human trafficking reported the existence of this kind of trafficking, making it a relevant concern in all parts of the state.

In other cases, interviewees reported knowledge of victims being held captive against their will, or subjected to “gorilla pimping” (threat or physical violence) in order to coerce women into submission for prostitution.

Sometimes traffickers will drug, hold hostage, and rape women when bringing them into human trafficking. Traffickers may also hold prized possessions, threaten victims, family members, or loved ones, and may use other dehumanizing tactics to elicit sex or other desired activities.

For example, a few months prior to interviewing, one service provider had encountered a Native woman who told them that she had been held hostage, drugged, and repeatedly raped. The woman said that she also knew three other women who had experienced the same thing. In a few cases, interviewees have also heard of and encountered Native women whose hair has been cut short or shaved off by traffickers.

Although not widely reported as a primary concern, a number of interviewees specifically discussed gang activity as a related problem. These reports of gang-related trafficking could generally be divided under the above two categories (“intimate partner” or “gorilla pimping”). However, some interviewees were careful to distinguish “intimate partner” trafficking from a similar kind of gang trafficking in that the latter more frequently involved a need or desire on the part of the victim to belong to a group identity or family dynamic. “Intimate partner” trafficking, on the other hand, was more likely linked to basic needs of the victim such as shelter, money, or love.

Little information was gathered regarding gang-related human trafficking off reservations. However, interviewees reporting gang-related human trafficking on reservations (primarily Klamath, but also possibly Warm Springs) identified gang members as consisting of primarily Hispanic men, some Native men, and other locals in and out of incarceration; customers were typically identified as truckers traveling nearby highways, gang members, and other men from the community or neighboring towns.

Accounts of family involvement in human trafficking were rare, but were discussed by interviewees as usually relating to social problems in the home such as poverty, drug dependency, domestic violence, and normalization of sex abuse.

Interviewees recounted a few similar situations in which children had been prostituted or traded for drugs or even basic material goods.

For example, one interviewee had recently investigated an allegation of sex trafficking at CTUIR where a mother was accused of prostituting herself and her children for drugs. Some interviewees further suggested that family involvement in human trafficking is a learned behavior passed to the tribes by socialization with outsiders. It was also identified as a form of lateral oppression resulting from generational trauma.

4. FOSTER CARE AS A CORRELATING FACTOR IN HUMAN TRAFFICKING

Some service providers said that every victim of trafficking they knew had been in the foster care system, and most had been sexually abused as children. Service providers contributed a general lack of security and emotional support for children in foster care to their increased vulnerability, especially for teens that are being aged out of the system.

Girls in their mid to late teens, who are being aged out of foster care, are at increased risk for trafficking because they may be vulnerable to emotional manipulation and often lack basic life skills that will be necessary to support themselves.

These at-risk youth can fall prey to human trafficking for fear of otherwise facing life on the streets. The problem seems compounded by the difficulty service providers have in reaching youth in high-risk situations because they are semi-independent (mid-late teens), and can thus avoid perceived authority or outsiders' attempts to help.

Vulnerability of teens in foster care is particularly relevant to Native American children who are significantly overrepresented.

The high level of Native Americans in foster care with Non-natives has been a significant problem, especially before 1978. In 1978, Congress passed the Indian Child Welfare Act in response to the “alarmingly high percentage” of Indian children taken from their homes and “placed in non-Indian foster and adoptive homes and institutions” by non-Indian child welfare workers.²⁴⁵ ICWA requires that (1) tribes be notified and given an opportunity to intervene when the state places a child subject to ICWA in foster care or seeks to terminate parental rights on behalf of such a child and (2) children be placed, if possible, with relatives or tribal families. A more in-depth description of ICWA can be found at Appendix C.

Several interviewees felt that the overrepresentation of Native children in foster care is in part due to the disproportionately high rate of poverty among Natives in the state, particularly on reservations. While neglect, substance abuse, and sex abuse were among the most commonly named legitimate reasons for removing children from their homes,²⁴⁶ service providers reported that extreme poverty is also often misidentified as neglect or abuse.

Despite the disproportionately high number of Native children in foster care, interviewees' feelings toward ICWA seemed generally positive. Specifically, with regard to ICWA's efforts to keep Native children within Native communities as a remedy for previously oppressive policies that breakdown generational transmission of tribal cultures (boarding schools and adopting out to white families).

²⁴⁵ 25 U.S.C. § 1901.

²⁴⁶ Primary reasons for removal from the home varied *slightly* depending on the tribe and child welfare system interviewed—some reporting sex abuse as less common a reason for removal as neglect or substance abuse, and others reporting that up to half of child welfare cases involving sex abuse.

However, interviewees also made clear that ICWA is not without drawbacks, listing difficulties such as:

- Underfunding or misappropriation of funding;
- A lack of understanding rights under ICWA by both families and the State;
- Cultural disconnect between tribal communities and the State;
- Excessive red tape; and
- Misidentification of children as other races.

Beyond legal issues directly associated with state implementation and the law itself, keeping with ICWA can present problems in practice as well. Several interviewees addressed issues that:

ICWA's aims to keep Native foster care children as closely connected with their tribes as possible (often by keeping them on the reservation) can often result in caregivers in small communities being harassed.

Interviewees explained that because reservation communities are small and relatively geographically isolated, they remain close knit and families know each other well. When children are placed with another family in the same small community, parents, other family members, or even other members of the community may retaliate against the placement family. Placement of Native children on their reservation also allows for greater accessibility to families who may attempt to retrieve their children from the new home or may otherwise make the placement difficult for everyone involved.

Some tribes are beginning to employ their own progressive child welfare programs. Interviewees from reservations implementing such programs suggested that their programs are aimed at avoiding break-up of families and working more closely with parents to enforce parenting skills and offer other assistance. Not subject to ICWA, the tribes can also cater their child welfare programs to more adequately address the specific needs of their own individual communities, as well as give them the freedom to decide when and where to place their own children. For example:

CTUIR works more diligently now to make sure all child welfare cases are quickly investigated because in the past some families felt they were treated unfairly. CTUIR has moved to a "best practices" model and away from a punitive one, only removing a child where there is "no possibility for safety" within the home.

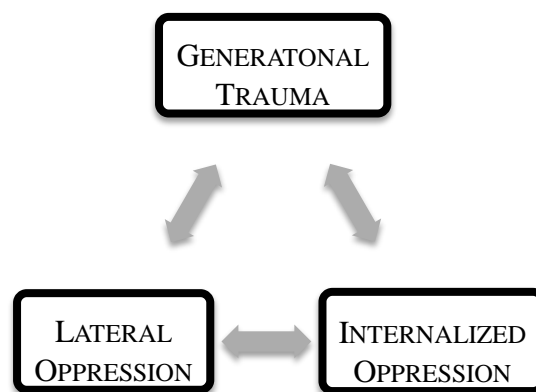
Grand Ronde's Child & Family Services also focuses on prevention rather than placement, and looks for whatever living situation will be in the best interest of the child whenever placement is necessary. The tribal court also plays an important role in thoroughly reviewing details of each case and maintaining close ties to the community.

5. CYCLICAL NATURE OF GENERATIONAL TRAUMA AND LATERAL OPPRESSION AS CONTRIBUTING FACTORS

Recurring themes of generational trauma, as well as internalized and lateral oppression amongst Natives, play multiple roles in human trafficking. More generally, interviewees identified the overall effects of the cycle of oppression as a major contributing cause of many problems among Natives, particularly on reservations. These included:

- High levels of alcohol and substance abuse;
- Poverty;
- Early sexualization; and
- Normalization of abuse or violence within the family or community.

The long history of oppression that Natives have suffered as a result of the practices and policies of colonizers has become a source of internal strife for many. *Internalized oppression* leads those affected to feel disempowerment or a low sense of self-worth connected to their identity as Indian. In many situations, this can also lead to other social problems such as substance abuse, domestic abuse, and vulnerability to victimization. Internalized oppression often results in *generational trauma*, a cycle in which internalized oppression (and all of its related problems) is perpetually passed on to future generations of young people who inherit the cycle of oppression from their families and their surroundings. Past federal policies of Assimilation, Termination, and Relocation have also had socio-economic consequences such as disparate poverty amongst Natives, especially where such policies have left tribes with a lack of resources and economic opportunities on reservations. This has in turn led to *lateral oppression* in some circumstances, and “just as they have been oppressed, they oppress each other.”²⁴⁷ As lateral oppression manifests where opportunity is scarce, pitting community members against one another for competition and causing some to lash out, it also acts as a barrier to change.



²⁴⁷ Interview with Marvin Garcia, Director of Social Services, Klamath Tribes, in Chiloquin, Or. (Feb. 15, 2013) (on file with the Clinic).

Several interviewees more specifically addressed the cyclical nature of these problems as they relate to the issue of human trafficking and the problem that victims are often criminalized as prostitutes. These interviewees pointed out that:

If you are being sexually exploited from a young age sometimes it is all you really know, but the moment these girls turn 18 they go from being seen as sexually exploited children to prostitutes. The only real difference is in the eyes of the law because the girls themselves never saw it as a choice.

Some interviewees also explained that many Native children who are taken out of their homes and placed in foster care due to parental substance abuse, neglect, or even poverty mistaken as abuse or neglect (which are forms of lateral oppression as well as effects of internalized oppression) are at increased vulnerability to trafficking as well. These early life experiences lead some children to experience generational trauma, leading to internalized oppression and increased vulnerability to human trafficking at the hands of an intimate partner or pimp, as many are easily manipulated or desperate for stability in their teens. Many young women in these situations become pregnant and, not knowing how to care for the child or themselves, the cycle continues.²⁴⁸

6. UNDERREPORTING AND ITS CAUSES

The problem of underreporting is another major barrier to successful prevention, prosecution, and protection related to human trafficking. Interviewees' responses regarding the reasons for underreporting amongst Native Americans reflected a variety of common reasons for underreporting, but also reflected some issues more unique to Natives, particularly on reservations.

As for underreporting on reservations, interviewees indicated that human trafficking and related issues are seldom discussed openly among tribal members. Interviewees frequently pointed out that:

Due to the unique nature of reservations as typically small, tight-knit, and isolated communities, speaking out is likely to cause the victim shame or embarrassment, and might result in shunning or retaliation by the offender, the offender's family, or other community members.

Interviewees who frequently deal with victims living on reservations further commented that reporting sometimes does not happen because victims on reservations feel they have nowhere else to go; reservations are small and leaving the reservation would mean leaving family, culture, everything they have ever known, behind.

²⁴⁸ Interview with representatives of Native American Youth and Family Center, in Portland, Or. (Nov. 10, 2012) (on file with the Clinic).

Social structure or politics can also play a role in reporting crime on some reservations.

Political influence chills reporting where tribal hierarchy is unwilling to listen, turns a blind eye, or gives certain families preferential treatment, refusing to punish or investigate certain offenders.

Several interviewees reported knowledge of incidences in which crime has been ignored where the offender or the offender's family holds power or positions of leadership within the tribe. One interviewee also noted that tribal leadership and reservation communities often turn a blind eye to trauma because they are "in survival mode" and instinctually protect themselves from exposure to further trauma.

The problem extends itself in a broader sense in that tribal members, particularly those living on reservations, often maintain long held and deep-seated feelings of mistrust toward outsiders due to past discrimination and underrepresentation under state and federal laws. Although the United States now aims to end oppressive practices and tribes are now living in a purported era of self-determination, interviewees reported that negative feelings nonetheless continue to perpetuate, manifesting most notably with a distrust of law enforcement.

Many fail to report crime due to a past lack of responsiveness and under enforcement of crime by law enforcement; many tribal members think that law enforcement will fail to assist them now because it is hard to forget the past.

Essentially, Natives living on reservations often fail to report crime because they do not want to be discriminated by law enforcement, or because they feel the effort would be futile, which further inhibits unified efforts to address human trafficking.²⁴⁹

More generally, interviewees reported that persons who have been recruited for human trafficking may also fail to report due to a fear of punishment by law enforcement.

Women often fear being identified as prostitutes and prosecuted or placed in State care (if the victim is a juvenile).

Likewise, as alluded to above, where a victim sees the trafficker as a protector or intimate partner:

She may not want the trafficker to be punished due to a fear of losing a place to live, financial or other support, or due to the belief that the trafficker loves or cares for her.

Similarly, because many victims come from a history of broken-promises and environments where healthy, trusting relationships with loved ones and authority figures were not present, they are particularly vulnerable to manipulation. For example, interviewees commented that:

²⁴⁹ See *infra* V.7-8 (Findings 7 and 8) for more findings related to reporting crime and law enforcement responsiveness.

Where victims are manipulated to believe the trafficker truly cares about them, it often leads to an “us versus them” mentality; victims feel they cannot trust law enforcement or anyone else who might compromise the relationship, and the more the relationship is threatened, the more tightly some victims cling to the trafficker thinking that it will provide them the safest and easiest path.

For some, sexual abuse is a social norm to the extent that many such victims do not report abuse because they do not realize that what is happening to them is wrong.

7. CAUSES AND EFFECTS OF UNDER-ENFORCEMENT

Interviewees discussed several reasons for under-enforcement that are relevant to issues of enforcing crime on and around reservations in general. It is important to note that many of the reasons stated for under-enforcement were particularly dependent on whether or not the interviewee worked on or close to a reservation, and whether the interviewee was law enforcement or a service provider.

The majority of service providers working closely with Native communities were concerned for under enforcement due to slow response times, ineffective investigation, and high rates of declination to prosecute crimes committed in Indian Country on the part of state, county, and federal law enforcement.

One service provider interviewee recalled a case in which she attempted to assist a 14 year old girl who had been sexually abused starting at age 12, stating that they had great difficulty in finding a law enforcement officer to believe her or to investigate the case. Several of these interviewees further reported that these problems might be perpetuated by the refusal of outside governments to acknowledge patterns of past and present discrimination (especially with regard to local or county law enforcement).

However, interviewees working in county, state, and federal law enforcement generally reported that although there may have been discrimination or neglect of crimes occurring in Indian Country in the past, these problems are largely no longer a problem.

One interviewee illustrated the problem in saying that “promises made, promises broken” is the reason for the absence of trust in the federal government, “and rightfully so.” However, several interviewees went on to clarify that they feel these perceptions of current law enforcement practices are “outdated” and “dead wrong,” further stating that state and federal governments are currently attempting to mend the lines of communication by creating open dialogue with tribes.

The divergence in responses as a whole seems to indicate a general *lack of communication, cooperation, and collaboration between state, federal, and tribal entities* due to cultural differences and a history of broken promises, discrimination, and oppression. The most salient example of how this overall lack of communication and cooperation manifests was through

interviewees' opinions of police response times to crime on reservations. All interviewees were aware of the complaints and concerns for better response to crime on reservations by law enforcement (especially county law enforcement). However, they were somewhat divided on the question of how much of a problem it is today.

Interviewees working on or closely with reservations generally reported feeling that slow response times by law enforcement is a legitimate concern—non-Natives get better and more prompt police response than Natives who report crime on reservations. They explained that:

Slow response times for tribal members leads to perceived discrimination, which in turn makes them reluctant to report crime. It also leads offenders to believe they will not be punished for committing crimes on reservations, resulting in higher crime rates overall.

One interviewee indicated that when Congress gave the states jurisdiction over large swaths of reservation lands pursuant to PL 280 without any corresponding additional resources, sheriffs were both angered and overwhelmed by the additional responsibility and lack of resources. Thus, slow response times might be intentional in some cases.

However, law enforcement interviewees reported that response times in rural areas are all around lagging, and not specific to tribal members. These interviewees explained that response times are generally slow in sparsely populated areas because law enforcement officers have larger areas to patrol due to limitations in funding and resources.

Many interviewees in law enforcement reported feeling that such myths and misperceptions about law enforcement in Indian Country perpetuate feelings of discrimination and oppression amongst Natives, making cooperation difficult, and further inhibiting the effectiveness of law enforcement in Native communities.

Issues related to underreporting, as discussed above, were also identified as major contributing factors in under-enforcement of human trafficking.

County, state, and federal law enforcement pointed out that arrest and prosecution of offenders is often made much more difficult due to an absence of victim testimony and unwillingness to cooperate with law enforcement.

Though retraction of witness testimony is not uncommon in sexual abuse cases generally, interviewees did note a connection between the lack of victim cooperation and the general lack of faith in law enforcement on reservations. As noted in Finding 6 above, victims may be reluctant to cooperate where they fear shame or embarrassment, or where the offender, offender's family, or other community members are likely to shun, harass, or retaliate against the victim. Victims are also deterred from cooperating where the offender or the offender's family maintain a high level of power and influence within the tribe if they feel it is likely to result in light or no punishment.

8. JURISDICTIONAL COMPLICATIONS AND CONFUSION AS CONTRIBUTING FACTORS

Jurisdictional issues are in many ways interrelated with the issues in under-enforcement and underreporting discussed in the preceding sections. In general, many interviewees agreed that jurisdictional issues cause complications with enforcing crime on reservations due to the complexity and a lack of understanding on the part of law enforcement officers.

Several interviewees said that confusion arises as to which law enforcement entities have the responsibility to patrol certain areas and investigate crime, as well as which laws can be enforced.

Traffickers, like other offenders, may easily take advantage of this confusion. Almost all interviewees noted the problem that:

Offenders are more likely to commit crime where word of jurisdictional complications is widespread, believing they are less likely to be prosecuted on reservations than elsewhere.

Certain interviewees stated that some tribal members will even insist that the county does not have jurisdiction to try to confuse police and prevent them from intervening. There is indication that in other states, gangs are actively taking advantage of jurisdictional gaps and/or jurisdictional confusion by engaging in trafficking behavior or recruiting on reservations. There are no reports of this yet in Oregon, although there is indication that gang activity involving trafficking has occurred on the Klamath Reservation and possibly the Warm Springs Reservation.

Many interviewees noted that confusion is not the only problem with jurisdictional complexities, adding that many jurisdictional problems are also due to factors such as lax law enforcement and a general lack of resources.

Some of these interviewees indicated that there really was not that much confusion, but that the jurisdiction problem is a misleading notion—jurisdictional concepts are not complicated; the issue is simply used as a scapegoat for ineffective enforcement.

This kind of problem has been most directly noted with regard to reservations under PL 280 jurisdiction. As discussed above, when jurisdiction over certain reservations was transferred to the state, adding thousands of additional acres for state and county law enforcement to police, the transfer came with no additional assistance, funds, or resources to ensure effective law enforcement.

The result of PL 280 has been resources spread too thin in sparsely populated areas (like reservations), and in some cases, animosity between local law enforcement and tribes.

Besides the jurisdictional problems associated with ineffective enforcement at state and local levels, federal policies on policing non-PL 280 reservations may further add to problems associated with ineffective enforcement. In particular, interviewees working for the federal government reported that:

Federal law enforcement is more concerned with the quality of cases than with quantity.

These interviewees explained that case files are typically reviewed for an hour or so. If there does not appear to be much of a case, it will usually be declined. The most commonly cited reasons for declination were a lack of cooperation by the victim or other tribal members and errors in investigation or collection of evidence. These interviewees further emphasized the importance of federal involvement in the initial arrest and investigation (typically within the first 15 minutes of the case), noting again how early errors in investigation often preclude prosecution. However, a problem with eliciting immediate federal involvement in investigations on reservations is that federal officers are often several hours from reach. For tribal members and others working on or closely with tribes, high declination rates often translate to the perception that federal law enforcement will not get involved in a crime unless death or serious injury is involved.

Overall, law enforcement officers generally believed they had a good grasp of the jurisdictional issues, but during the interviews, it became apparent that many did not and that there was still some confusion (granted some of this is attributed to the fact that some jurisdictional issues are still unsettled legally). However, notwithstanding this confusion, law enforcement interviewees, by in large, felt that coordination between tribal and federal law enforcement is successful, and that law enforcement does an effective job of investigating and prosecuting the cases that come to their attention.

Whether or not all of the cited problems with jurisdiction are real, the public perception that these complications exist contributes directly to under-enforcement and underreporting of crime on reservations for several reasons. As discussed above, where members of Native communities feel that crime will be ineffectively handled by law enforcement, victims often fail to report, feeling that to do so would be futile.

It is also important to note here that many tribal members and others working closely with or living on reservations feel a deep sense of frustration in the fact that tribes hold little power to arrest, investigate, and prosecute non-Indian offenders on tribal lands.

One interviewee, illustrating an example from personal experience, noted that although sex offenders are not allowed to live in homes with children, tribes' child welfare services are prohibited from investigating potential non-Indian offenders who live on the reservations with Native women and their children. Another service provider interviewee working on a non-PL 280 reservation commented that federal law enforcement does not investigate domestic violence complaints most of the time, adding that it makes non-Native offenders a particular problem

because jurisdictional complications (*i.e.*, the tribe's inability to punish non-Indians) can tie up pursuit of offenders and allow them to go unpunished.

For those who feel that jurisdiction is an issue with regard to law enforcement, the most frequently cited solution was to give tribes general prosecutorial jurisdiction over all non-Indian offenders who commit crime in Indian Country.

9. SUCCESS OF OREGON SB 412

Notwithstanding the previously stated concerns for problems with communication, cooperation, and jurisdiction between the state and tribal governments, interviewees from all groups seemed to feel that Oregon Senate Bill 412 is making an overall positive impact on law enforcement. All interviewees with knowledge of SB 412 felt that:

The increased training requirements and expanded arresting authority granted to tribal law enforcement under SB 412 has led county law enforcement to view tribal police as more legitimate, and has resulted in better policing of Indian Country in general.

For example, one law enforcement interviewee noted that SB 412 helps put tribal law enforcement on “equal footing” with state and local counterparts, not only by specifying standards for tribal law enforcement to meet the same requirements as those provided by the state, but also by expanding tribal law enforcements' arresting authority. In addition, the new bill was hailed by several interviewees for its attempt to improve the relationship between state, county, and tribal law enforcement. Where tribal law enforcement officers were previously thought of or treated as lesser by other law enforcement agencies, passage of SB 412 has been largely interpreted as a sign that attitudes are changing.

10. LACK OF TRAINING TO IDENTIFY AND ASSIST VULNERABLE AND TRAFFICKED PERSONS

Responses from law enforcement officers also indicate that there may be a gap in training officers to recognize and properly deal with victims of human trafficking, especially those vulnerable or exposed to sex trafficking.

Although many law enforcement officers did report receiving training on investigation of human trafficking, this training seemed to focus more often on labor, rather than sex trafficking.

A larger percentage of law enforcement officers receive training for sexual abuse and/or domestic violence. Of the law enforcement officers interviewed, all had received sex abuse and domestic violence training and indicated that a high percentage (if not all) other officers within their agency had received the same or similar training.

Most law enforcement interviewees felt their sex abuse and domestic violence trainings could also be translated in dealing with some sex trafficking cases.

However, the fact that law enforcement officers are not specifically trained to recognize and assist victims of sex trafficking likely contributes to the problem exemplified as one of a “revolving door” in Finding 2 above.

Failure to train law enforcement specifically on identification of sex trafficking victims may result in misidentification of victims as prostitutes, criminals, and deviants themselves.

Such misidentification of trafficked persons as criminals perpetuates victimization within the justice system and leaves them vulnerable to re-victimization in trafficking due to a fear of further punishment through law enforcement.

11. LACK OF RESOURCES FOR SERVICE PROGRAMS

Although several programs offer general assistance that might be helpful for trafficking victims, there were no social service programs identified as specifically directed at assisting domestic trafficking victims, either Native or non-Native.

Several interviewees stated that while tribes can provide some services, victims of trafficking may have to travel long distances for certain types of assistance, depending on what their tribe offers.

To the question of what resources they provide, one tribal service provider responded: “we pass out Band-Aids,” adding that they simply do not have the resources to offer effective assistance or a collaborative, cohesive approach to helping Native victims and the poor in general. In terms of specific areas where resources are needed, interviewees working on reservations in multiple locations around the state reported the need for:

- Services through IHS to help women with substance abuse problems stay clean;
- SANE nurses available at IHS locations;
- Counselors and victim advocates who are trained to assist victims of domestic violence and sexual abuse;
- General funding to promote advocacy and community building efforts;
- Shelters for women, particularly those who have been exposed to prostitution or sex trafficking; and
- Tribal healing methods and services.

Despite the need for resources, interviewees associated with some of Oregon’s reservations indicated that they have recently implemented their own community building efforts.

Some tribes discussed recent implementation of programs such as early sex-education, elementary-aged education on sex abuse, progressive child welfare policies, and traditional healing methods in the hope that these programs will have positive effects in the affected communities overall in combating various social problems, including human trafficking.

However, programs designed to specifically assist persons who are most vulnerable or who have already been exposed to trafficking and other forms of sexual abuse are met with varied success.

A common observation by service provider interviewees was that the longer victims or vulnerable persons stayed with a given program, the greater chance they had of getting out of abusive situations, or avoiding them in the future.

Several interviewees reported that they typically have funding to cover approximately 30 days of treatment for survivors of abuse and persons seeking treatment for substance abuse. However, all of these interviewees also commented that 30 days is almost always an insufficient amount of time to truly help.

Although service providers encounter many victims for only a few hours or weeks at most, many have observed that working with individuals over a period of several months significantly increased the chances of success.

Several of these interviewees noted that even after 30 days of assistance, many people are still in the very early phases of recovering from victimization or substance abuse, and that they would see a much higher rate of success if they had the ability to offer assistance over the course of about three months. However, there are major barriers to keeping survivors in programs for several months, such as: difficulty eliciting involvement of victims for prolonged periods, as well as a lack of resources for service providers to supply or refer victims to a full range of services necessary to keep them involved.

Shelters

Service provider interviewees explained that shelters equipped to assist victims of crimes such as trafficking are few and far between outside of the Portland metro area, which is a problem for tribal members who are required to travel long distances to unfamiliar areas to seek shelter.

Of the shelters available, most of these may not serve as a very good option for persons subject to or at risk of trafficking.

Many shelters provide poor living conditions for trafficking survivors that can re-trigger past trauma. Certain interviewees felt that shelters may also help perpetuate the risk of re-victimization for survivors, as gang and general trafficking recruitment has been known to occur in some shelters.

Furthermore, many shelters that are directed at assisting victims of domestic violence may exclude victims of trafficking if they cannot also claim to be victims of domestic violence. Most other shelters are for the homeless and primarily serve men. Women subject to trafficking often do not feel safe in these shelters, or may otherwise be reluctant to go because it is a place that represents failure. They feel that “it’s where you go when no one else wants you.”

Culturally-Appropriate Healing Methods and Services

One of the biggest complaints among service providers was the lack of funding for culturally appropriate healing methods. In addition, medical insurance rarely pays for such traditional methods. Yet, nearly all of the service providers discussed the importance of such healing methods, and indicated that where they are employed, they often work.

Sometimes service providers can work cultural or traditional healing methods into the parameters of what their funding covers. However, other times they cannot. For example, sometimes victims may be in need of a “sweat” or a “smudge”, but funding does not cover such services.

Tribal service providers feel that the inability to use program funding for certain cultural and traditional healing methods is a problem, because sometimes those methods help more than recognized techniques that are covered.

For example, one interviewee reported that the tribe refers victims to talk therapy, but that such mainstream counseling services are not always as effective with tribal members. Some feel there is sometimes a disconnect with tribal communities and these types of mainstream services—“a feeling that white people do not understand their problems.” It is worth noting that those working on or closely with reservations may also suffer a secondary trauma. This is because some communities are so small that persons living and working there are deeply invested in the well-being of the community as a whole and often personally know the persons involved in cases outside of their jobs. Furthermore, service providers maintain heavy case loads and have difficulty finding time to focus on their own well-being.

VI. RECOMMENDATIONS

Based on our conclusion that federal, state, and local government officials in Oregon are not meeting their legal obligations to the Native community with regard to the prevention of trafficking, prosecution of offenders, and protection of victims, we offer the following recommendations that will allow government officials to better fulfill their legal obligations. These recommendations are *in addition to* the general recommendations regarding trafficking we made in our 2010 Report:²⁵⁰

²⁵⁰ 2010 REPORT, *supra* note 1, at 116-120 (Part V). Copies of the 2010 Report are available on request through the Clinic.

- 1. All law enforcement, survivor services, legal entities, and child and foster care organizations should begin recording whether human trafficking survivors identify as Native American when keeping such statistics.**

Unlike other ethnic and racial groups, no one appears to be keeping statistics on whether or not trafficking survivors identify as Native American. Thus, there are no hard statistics regarding the level of trafficking among Native populations. Given the disproportionate rate of Native youth in foster care and generational trauma among Natives generally, it is likely that Natives are also trafficking victims at a rate that is disproportionately high. Data collection and analysis is the key to understanding and fighting human trafficking among Native populations. All stakeholders, including law enforcement and survivor services, are strongly encouraged to add Native American to their list of ethnicities when keeping track of the ethnic composition of trafficking survivors. They are also encouraged to share findings and cooperate with outside agencies to create a more complete picture of trafficking among Native Americans in Oregon.

- 2. Require training on the identification of trafficking victims for all federal, state, county, local, and tribal law enforcement officers.**

Throughout our interviews, it became abundantly clear that many service providers, law enforcement personnel, tribal members, and affected communities often lacked the ability or desire to notice potential incidences of human trafficking as they occur. In addition, often what appears as prostitution is in fact, trafficking. There must be more training of tribal and non-tribal law enforcement and service providers in the identification of trafficking victims. In addition, **law enforcement must dig deeper when encountering prostitution, domestic abuse, and substance abuse situations, making additional efforts to not simply label the person as a criminal rather than a potential trafficking victim when appropriate.** Ideally, service providers and law enforcement could in turn conduct trainings in affected communities. Those communities will then be able to assist service providers and law enforcement by alerting them when they see signs of trafficking. This recommendation would obviously go hand in hand with an increase in reporting and statistics. More data can give a clearer picture of exactly where, when, and with whom trafficking is occurring. Then it will be easier to train communities on how to notice the problems around them so they may enable proper authorities.

- 3. Focus on efforts to reduce Native overrepresentation in Foster Care. Ensure adequate funding for tribal programs aimed at reducing incidences of events that lead to family intervention.**

It is well documented that someone in the foster care system has a higher vulnerability to a host of problems, including being the victim of human trafficking. Due to the overrepresentation of Native children within the foster care system—a true crisis—there must be a heightened focus on both preventing disruption of Native families and on ensuring safe foster care. As is apparent from our findings, adequate resources are needed to aid tribes' programs so they can effectively reduce incidences leading to family disruption. Furthermore, there needs to be an honest

conversation regarding the causes of overrepresentation and a focus on programs that directly address them. This, like most of the recommendations, requires efforts both on and off the reservation. ICWA attempts to address the problem, but its procedural barriers can increase time spent in foster care. It also does little to address specific abuse on reservations. Our solution would be to better inform service providers and families subject to ICWA of its requirements. In addition, tribes should continue efforts to increase awareness and outreach programs on reservations to decrease custody cases. The cultural and practical issues surrounding ICWA and foster care are complicated and can be difficult and delicate to address. **Any steps taken to address this problem must also address the cyclical generational trauma** that the foster system perpetuates, as well as provide adequate resources for traditional healing methods. These issues are addressed next.

4. Non-tribal and tribal officials and service providers must work to recognize and address generational trauma and its effects.

Generational trauma is a cause of many factors contributing to Native peoples' vulnerability to sexual abuse and trafficking. Tribal leadership and service providers should work collaboratively to create an open dialogue to raise awareness of the effects of generational trauma, and internalized and lateral oppression within Native communities. Service providers and other community educators are encouraged to discuss generational trauma in conjunction with services and programs directed at assisting vulnerable populations. This includes developing and implementing cultural programs directed at encouraging a strong sense of self-esteem and cultural identity in Native youth and vulnerable community members. State and federal governments should work with tribes to realize the effects of generational trauma and commit to not only ending, but also remedying, policies and practices that oppress and exploit Natives and Native communities.

In addition, all parties, especially non-tribal law enforcement, officials and service providers must publicly acknowledge the horrors that were wrought upon Native populations as a cause of this trauma, and understand that building a better relationship between tribes and outsiders will take time, energy, and trust.

5. Engage in active efforts to reduce underreporting of human trafficking crimes through building of trust between law enforcement and survivors of trafficking.

Victims of human trafficking must be encouraged directly and indirectly to come forward and report crime. All parties must engage in active efforts to discourage shaming and harassing of victims. Tribal officials and law enforcement must engage in active efforts to protect victims and insulate them from the hostility of others for coming forward. In addition, there should be an increase of funding and availability for shelter, substance abuse programs, and other resources directed at encouraging, protecting and assisting trafficking victims who report. Stakeholders should also enlist survivors of human trafficking to communicate their experiences with teens

and other vulnerable populations, and to work closely with victims as victim advocates. Law enforcement, tribal and non-tribal, must be trained to recognize and appropriately respond to human trafficking victims, particularly in responding to suspected prostitution or domestic violence. Efforts should also be made to raise community awareness of the existence of human trafficking and its different forms in order to discourage normalization of sexual abuse and mischaracterization of victims as offenders or contributors.

6. Non-Tribal entities should engage in frequent, consistent, in-depth, and culturally sensitive conversations with tribes in order to continue building trust. State and federal entities should demonstrate a genuine understanding of generational trauma and maintain a conciliatory tone when working with tribal entities.

Non-tribal law enforcement (especially county sheriffs) and tribal law enforcement must make a concerted effort to improve relationships. Everything in our Report indicates that a lack of communication, understanding and trust between all affected parties inhibits the effective combatting of human trafficking. Many years and levels of abuse and prejudice have led to the Native trafficking issues we now face. While we cannot change this course of events, we can understand the history and see how it perpetuates the cycles of abuse and trauma. Practically, this may mean an open acknowledgement of past failures and difficulties moving forward. The Report shows that law enforcement, tribal authorities, policy makers and communities have all contributed on some level to the problem and each needs to do everything in their power to truly follow through on any agreed commitments. When this is impossible, there needs to be a forum for clear communication to minimize finger pointing. Genuine and trusting relationships are neither easily nor quickly fostered but—as is clear from our studies and interviews—they are required for any meaningful change related to human trafficking involving Natives.

All law enforcement must understand that the lack of cooperation significantly adds to underreporting, inaccurate reporting, and confusion regarding laws and jurisdiction, as well as the exploitation of that confusion by human traffickers. Efforts to improve relations must be culturally appropriate to tribal entities, must be consistent, must be made in good faith, and must have a long-term relationship as a goal. This takes substantial time, not a simple hour-long meeting from time to time. In addition, county law enforcement must make efforts to treat tribal constituents as an equal priority when determining how they budget their resources.

7. Address jurisdictional complexities through training and by improving collaboration and cooperation between federal, state, county, and tribal law enforcement entities.

The Report demonstrates that there is significant misunderstanding and complication regarding jurisdiction, which leads to underreporting, under-enforcement, and even the targeting of reservations as places to commit crime. There must be increased cooperative efforts to reduce jurisdictional complications within Native communities in order to cultivate positive

relationships with law enforcement and encourage reporting of crime. Training on Indian Country jurisdiction for all federal, state, county, local, and tribal law enforcement officers and prosecutors working on or surrounding tribal lands should take place annually. In addition, the Oregon State Legislature should reauthorize Oregon Senate Bill 412 (currently scheduled to sunset in 2015). Tribes should consider adding laws that specifically criminalize crimes of human trafficking in their criminal codes. This would further assist in efforts to measure rates of human trafficking and reduce misidentification of trafficking victims. Efforts should also be made to bring tribal court systems into compliance with VAWA requirements to permit tribes to *prosecute non-Indians* who commit intimate partner crimes of human trafficking. The federal government is also encouraged to rethink current policy regarding criminal jurisdiction in Indian Country in general; considerations should be made to allow all tribes to arrest and punish any non-Indians who commit any crime on tribal lands.

Parties should also work together to improve response times, investigation efforts, and closing of criminal cases on tribal lands.

8. Provide more resources for trafficking survivors, and such services must be culturally appropriate. This includes recognizing tribal healing methods.

As with all programs addressing trafficking, there must be more resources and funding given to Native communities and IHS to provide services to Native survivors of human trafficking and sexual exploitation. In addition, county, state, and federal agencies must recognize the use of traditional tribal healing methods as appropriate and efficacious to tribal communities. Non-tribal service providers must also recognize tribal healing methods as a viable option for the healing of Native survivors of human trafficking. Additionally, any state or federal health insurance or assistance programs must recognize generational trauma and traditional tribal healing methods as legitimate treatment.

APPENDIX A: Selected Texts of Tribal Human Trafficking Statutes

SNOQUALMIE TRIBE

SNOQ. TRIBAL CODE § 7.21. Sex Trafficking

- (a) A person is guilty of sex trafficking when they are knowingly involved in the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.
- (b) The buying of selling of children for any reason.
- (c) Sex trafficking is a Class A offense.

[Class A Offenses

Maximum Penalty: One (1) year in jail and/or \$5,000 fine and/or community service.

Minimum Penalty: Six (6) months in jail and/or \$2,500 fine and/or community service.

SNOQ. TRIBAL CODE § 17.2 (Sentencing Guidelines)]

ABSENTEE SHAWNEE TRIBE OF OKLAHOMA

AST. CRIM. LAW CODE § 568. Trafficking In Children

- (a) It shall be unlawful to:
 - (1) Accept any compensation, in money, property or other thing of value, at any time, from the person or persons adopting a child, for services of any kind performed or rendered, or purported to be performed or rendered, in connection with such adoption; or
 - (2) Accept any compensation, in money, property or other thing of value, from any other person, in return for placing, assisting to place, or attempting to place a child for adoption or for permanent care in a foster home; or
 - (3) Offer to place, or advertise to place, a child for adoption or for care in a foster home, as an inducement to any woman to enter an institution or home or other place for maternity care or for the delivery of a child.
- (b) "Child" means an unmarried or unemancipated person under the age of eighteen years.
- (c) This section does not apply to attorneys or advocates licensed by the Tribal Courts receiving reasonable fees for legal services actually rendered in the course of lawful adoption proceedings, nor shall subparagraphs (a) (1) or (a) (2) apply to any bonafide social worker or government employee receiving their normal salary and making such placements as a part of their official duties.
- (d) Trafficking in children shall be punishable by a fine not to exceed Two Hundred fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

APPENDIX B: Copies of Survey & Interview Questions

QUESTIONS FOR LAW ENFORCEMENT INTERVIEWS

I. Introductions & Report Background:

In 2010 the International Human and Refugee Rights Clinic completed a human rights report assessing Oregon's efforts to combat human trafficking. We are currently building on that report to address human trafficking as it relates to Native Americans in Oregon. We have been conducting interviews to gain insight into the scope of the problem, efforts to prevent it, and services available to protect or assist survivors or those vulnerable to human trafficking.

[Discuss interviewee's job/position/role]

The term "human trafficking" evokes different definitions and ideas, so we find it helpful to begin by explaining how our report defines human trafficking:

- *Human trafficking occurs whenever a person is recruited or forced into prostitution, or other services or labor, by a third person.*
- *In the case of a child under age 18, no coercion is required.*
- *The key defining feature of human trafficking is that someone other than the survivor is making him or her available for sex or other services or labor.*
- *This activity does not need to occur across state lines or internationally. It can happen within a unit as small as a family.*
- *Sometimes trafficking can appear as prostitution, so we will ask you about prostitution as well.*

II. Areas of Inquiry:

A. *Sex Trafficking Demographics*

1. Have you heard of Native Americans who have been forced or coerced into prostitution?
 - a. What have you heard?
 - b. Who told you?
 - c. How old were the survivors?
 - d. Who coerced the survivor into prostitution?
 - e. Where did the coercion or recruitment take place?
 - f. Where did the actual sex acts occur?
 - g. Who were the customers?
2. Have you ever encountered any person who was subjected to forced prostitution?
 - a. How did you know they were subjected to forced prostitution?
 - b. How many times has someone told you this happened to him or her?
 - c. How old were those involved?
 - d. Who coerced the survivor into prostitution?
 - e. Where did the coercion or recruitment take place?
 - f. Where did sex acts occur? With whom?

- g. What, if anything, did you do to assist the survivor?
- 3. How often do you believe that Native Americans are coerced into prostitution?
 - a. Why do you believe that?
- 4. Have you heard about or been involved in prostitution arrests:
 - a. occurring on a reservation?
 - b. involving Native Americans?
- 5. Have you heard about or been involved in child sexual abuse arrests:
 - a. occurring on the reservation?
 - b. involving Native Americans?
 - c. involving family members?
- 6. Would you be willing to share any second-hand or personal knowledge of specific instances of trafficking, prostitution, or child sexual abuse?

B. Labor or Service Trafficking Demographics

- 1. Have you heard of Native Americans being forced to provide labor or services?
 - a. What have you heard?
 - b. Who told you?
 - c. Age of survivors?
 - d. Who coerced the survivor into labor or services?
 - e. Where did the coercion or recruitment take place?
 - f. Where was the actual labor or services performed?
 - g. Who is using trafficked persons for labor or services?
- 2. Have you ever encountered anyone who was subjected to forced labor or services?
 - a. How did you know that person was subjected to forced labor or services?
 - b. What did they tell you?
 - c. How old were they?
 - d. Who coerced the survivor into labor or services?
 - e. Where did the coercion or recruitment take place?
 - f. Where was the actual labor or services performed?
 - g. Who is hiring the survivors for labor or services?
 - h. How many times has someone told you this happened to him or her?
 - i. What, if anything, did you do to assist the survivor?
- 3. How often do you believe that Native Americans are coerced into labor?
 - a. Why do you believe that?
- 4. Would you be willing to share any second-hand or personal knowledge of specific instances?

C. Gangs

- 1. Have you heard about gang activity on the reservation?
 - a. What have you heard?

- b. Are gangs involved in forced prostitution or other services or labor? Why do you think that?

D. Jurisdiction

1. Do you ever have jurisdiction over crimes committed on a reservation? If so, when?
2. How often do you deal with crimes committed on reservations?
3. Who do you understand has jurisdiction when a crime is committed on a PL 280/non-PL 280 reservation:
 - a. If both the offender and victim are Native American?
 - b. If the offender is Native American and the victim is non-Native?
 - c. If the offender is non-Native and the victim is Native American?
 - d. If the both the offender and victim are non-Native?
4. How does jurisdiction change in each of these situations when the crime is a:
 - a. Federally listed Major Crime?
 - b. Crime of general applicability?
 - c. State crime?
5. Does jurisdiction work differently on PL 280/non-PL 280 reservations? How?
6. Who has jurisdiction when the offender and victim are both Native American but the crime is committed *off* of a reservation?
7. Who has jurisdiction to investigate and prosecute reports of human trafficking on tribal land? If it depends, what does it depend upon?
8. Are you aware of the federal Trafficking Victim Protection Act? If so, how does this federal statute apply on the reservation?
9. Are you aware of Oregon's statutes criminalizing involuntary servitude and human trafficking?
10. Are you aware of any specific tribal statute/ordinance addressing human trafficking?
 - a. Aware of other tribes' statutes?
11. Do you feel that jurisdictional issues ever impede the investigation or prosecution of crimes committed on reservations? If so how / why?
 - a. Have you personally encountered any situation when jurisdiction was an issue?
 - b. Have you heard that others have had similar problems? If so, what did you hear?
12. Are you aware of Senate Bill 412?
 - a. What are your feelings about SB 412? Why?

E. Prevention

1. Do you receive any kind of training regarding human trafficking in your line of work? Is it required?

2. Other kinds of training that might be relevant in dealing with human trafficking?
How? Is it required?
3. Do you feel that anything is being done, either directly or indirectly, to prevent people from being trafficked?
4. What do you think would help to prevent trafficking?
5. What barriers do you think exist in preventive efforts?
 - a. Why do you think that?
 - b. Solutions?
6. What group of people do you believe is most vulnerable to trafficking? Why?
7. Is human trafficking a growing problem or is it just getting more attention?
8. What factors do you think prevent survivors from reporting crimes committed against them?

F. Remedial Protective Measures

1. Are you aware of any services (social, health, community, law enforcement, etc.) available to victims of trafficking? Services specific to trafficking? Services generally available that trafficking victims could benefit from?
2. Do you ever refer trafficking victims to services for assistance? If so:
 - a. Where/What services?
 - b. How often do you refer?
 - c. How often do they take advantage of services?
3. What gaps or barriers can you identify in services? Ideas as to bridging these gaps?

III. Closing:

1. Are there other people you would recommend that we contact about this issue? Who?
2. Discuss confidentiality and use of interview information in Report.
3. Are you willing to speak with us again if we have questions, clarifications, etc.?

IV. If Interview Subject Discloses Personal Story of Trafficking:

[Thank them for sharing]

After I finish asking you questions regarding your role in law enforcement / the justice system, would you be comfortable speaking with me about your personal experience?

ADVOCATE/SERVICE PROVIDER INTERVIEW QUESTIONS

I. Introductions & Report Background:

In 2010 the International Human and Refugee Rights Clinic completed a human rights report assessing Oregon's efforts to combat human trafficking. We are currently building on that report to address human trafficking as it relates to Native Americans in Oregon. We have been conducting interviews to gain insight into the scope of the problem, efforts to prevent it, and services available to protect or assist survivors or those vulnerable to human trafficking.

[Discuss interviewee's job/position/role]

The term "human trafficking" evokes different definitions and ideas, so we find it helpful to begin by explaining how our report defines human trafficking:

- *Human trafficking occurs whenever a person is recruited or forced into prostitution, or other services or labor, by a third person.*
- *In the case of a child under age 18, no coercion is required.*
- *The key defining feature of human trafficking is that someone other than the survivor is making him or her available for sex or other services or labor.*
- *This activity does not need to occur across state lines or internationally. It can happen within a unit as small as a family.*
- *Sometimes trafficking can appear as prostitution, so we will ask you about prostitution as well.*

II. Areas of Inquiry:

A. *Sex Trafficking Demographics*

1. Have you heard of Native Americans who have been forced or coerced into prostitution?
 - a. What have you heard?
 - b. Who told you?
 - c. How old were the survivors?
 - d. Who coerced the survivor into prostitution?
 - e. Where did the coercion or recruitment take place?
 - f. Where did the actual sex acts occur?
 - g. Who were the customers?
2. Have you ever encountered any person who was subjected to forced prostitution?
 - a. How did you know they were subjected to forced prostitution?
 - b. How many times has someone told you this happened to him or her?
 - c. How old were those involved?
 - d. Who coerced the survivor into prostitution?
 - e. Where did the coercion or recruitment take place?
 - f. Where did sex acts occur? With whom?
 - g. What, if anything, did you do to assist the survivor?

3. How often do you believe that Native Americans are coerced into prostitution?
 - a. Why do you believe that?
4. Have you heard about or been involved in prostitution arrests:
 - a. occurring on a reservation?
 - b. involving Native Americans?
5. Have you heard about or been involved in child sexual abuse arrests:
 - a. occurring on the reservation?
 - b. involving Native Americans?
 - c. involving family members?
6. Would you be willing to share any second-hand or personal knowledge of specific instances of trafficking, prostitution, or child sexual abuse?

B. Labor or Service Trafficking Demographics

1. Have you heard of Native Americans being forced to provide labor or services?
 - a. What have you heard?
 - b. Who told you?
 - c. Age of survivors?
 - d. Who coerced the survivor into labor or services?
 - e. Where did the coercion or recruitment take place?
 - f. Where was the actual labor or services performed?
 - g. Who is using trafficked persons for labor or services?
2. Have you ever encountered anyone who was subjected to forced labor or services?
 - a. How did you know that person was subjected to forced labor or services?
 - b. What did they tell you?
 - c. How old were they?
 - d. Who coerced the survivor into labor or services?
 - e. Where did the coercion or recruitment take place?
 - f. Where was the actual labor or services performed?
 - g. Who is hiring the survivors for labor or services?
 - h. How many times has someone told you this happened to him or her?
 - i. What, if anything, did you do to assist the survivor?
3. How often do you believe that Native Americans are coerced into labor?
 - a. Why do you believe that?
4. Would you be willing to share any second-hand or personal knowledge of specific instances?

C. Particular Factors for Vulnerability

1. Does placement of Native Children in foster care contribute to the problem?
 - a. If so, How? Why do you think that?
 - b. What effect does the Indian Child Welfare Act have on protecting Native Americans from exploitation? Why?

2. Do you think that generational trauma and internalized oppression have affected the rate of sexual abuse on the reservation and/or the Native population generally? How?

D. Gangs

1. Have you heard about gang activity on the reservation?
 - a. What have you heard?
 - b. Are gangs involved in forced prostitution or other services or labor? Why do you think that?

E. Remedial Protective Measures

1. What services do you offer to survivors of these situations?
2. How often do people use your services? For how long do they need your help?
3. How are your services funded?
 - a. Is your funding adequate?
 - b. Do you ever have to turn people away?
 - c. Are there other services you would like to be able to offer? Or are there existing services you would like to improve?
4. Are you aware of other services (social, health, community, law enforcement, etc.) available to survivors of these types of situations? Services specific to trafficking? Services generally available that trafficking survivors could benefit from?
5. How often do you refer people to these services?
 - a. How often do people take advantage of the services?
 - b. Do you ever collaborate with other service providers? If so, in what way?
6. What gaps or barriers can you identify in services:
 - a. Generally?
 - b. You/your organization, specifically?
 - c. Do you have ideas about how to bridge these gaps?
7. Are there specific barriers to survivors reporting? If so, what?
8. Are survivors comfortable using services on the reservation? In surrounding counties? Why or why not?

F. Prevention

1. Do you feel that anything is being done, either directly or indirectly, to prevent people from being placed in trafficking situations?
2. What do you think would help to prevent?
3. What barriers do you think exist in prevention efforts?

- a. Why do you think that?
 - b. Solutions?
4. Do you hear reports of arrests for:
 - a. Trafficking, specifically? If so: What kind? How often?
 - b. Pimping? (other related areas)? If so: What kind? How often?
 - c. Prostitution? (or related offense?) If so: What kind? How often?
 - i. Are they ever referred to services for help/assistance?
 - ii. Do you think any of these might be trafficking victims?
 5. Do you have concerns about working with law enforcement (Tribal, Federal, State)? If so, what are your concerns?
 6. Does confusion about jurisdiction hinder prevention or survivor assistance efforts?
 - a. Are survivors aware of jurisdictional issues?
 - b. Does it matter to survivors who (tribe, federal, state) has jurisdiction over their case?
 7. Are there barriers preventing survivors from seeking help or reporting? If so, what?

III. Closing:

1. Are there other people you would recommend that we contact about this issue?
2. Discuss confidentiality and use of interview information in Report.
3. Are you willing to speak with us again if we have questions, clarifications, etc.?

IV. If Interview Subject Discloses Personal Story of Trafficking:

[Thank them for sharing]

After I finish asking you questions regarding your role in law enforcement / the justice system, would you be comfortable speaking with me about your personal experience?

SURVIVOR INTERVIEW QUESTIONS

I. Introductions & Report Background:

[Thank the person for agreeing to meet with us]

We are speaking to survivors to listen to their stories and experiences. The stories of survivors are important to understanding human trafficking, and by helping with this report survivors have power to validate their status as a survivor and make a change with their stories.

II. Questions:

A. Would you be comfortable telling me about your experience as a survivor?

[Let interviewee know we are not police and are not reporting to any law enforcement agency]

[Let interviewee know that if they feel uncomfortable that they do not need to answer a question]

[Let interviewee know that they can take a break at any time or cut short the interview]

B. Can you tell me about where you grew up?

C. What was your home life like growing up?

1. At any time before you reached age 18 did you live with another family or were you part of the foster system? If so, can you tell me about that experience?

a. Did you ever suffer abuse (sexual, physical, emotional) while living with someone else or in the foster system?

D. Do you remember if you told anyone about your situation(s)? Did you seek help from anyone?

1. If no: What are some of the reasons you could not seek help?

2. If yes: Who did you speak with? When?

a. How did they help you? How long?

b. Would you be comfortable if we contacted those organizations/groups and spoke with them?

[Let interviewee know that we would like to learn of additional resources and that we do not have to use their information if they are uncomfortable]

E. Do you feel that there are other people who are or were in your situation?

F. Would you feel comfortable introducing us to other survivors or other people you believe might have similar experiences to share with us?

****Survivor interviews were conducted in a more informal manner when compared with the other interviews. We allowed survivors to talk as much as they wished about a particular question, and we attempted to use our best judgment with regard to backfilling for more detailed information without causing distress or discomfort to the interviewee****

SURVEY FOR COUNTY SHERIFFS

The Willamette University College of Law, International Human Rights Clinic, is researching how human trafficking affects Native Americans in Oregon. We are gathering information on the extent of human trafficking involving Natives both on and off reservations, as well as the procedures, policies and practices of state, federal, and tribal agencies in combatting human trafficking. The results and recommendations will be published in a comprehensive report.

Your feedback on the past experiences, current efforts, and needs of law enforcement in Oregon is important. Our hope is that this assessment will shed light on the strengths and obstacles affecting local anti-human trafficking efforts.

If you have any questions or concerns, please contact the W.U. Clinic at (503) 370-6140. Please complete the survey by April 12, 2013. Thank you!

Which law enforcement agency do you work for?

Please list any law enforcement agencies with which you are cross-deputized:

Please list any law enforcement agencies with which other officers in your department are cross-deputized:

How many allegations of human trafficking involving Native Americans have you (or your agency) investigated in the last five years?

- | | | |
|------|-------|-----------------|
| a. 1 | f. 6 | k. 11-15 |
| b. 2 | g. 7 | l. 16-20 |
| c. 3 | h. 8 | m. More than 20 |
| d. 4 | i. 9 | |
| e. 5 | j. 10 | |

If you answered 1 or more to the previous question, how many of these investigations resulted in arrests, prosecutions, or convictions? Please specify how many of each.

How many allegations of prostitution involving Native Americans have you (or your agency) investigated the last five years?

- | | |
|----------|----------|
| a. 1-3 | e. 31-40 |
| b. 4-10 | f. 41-50 |
| c. 11-20 | g. 50+ |
| d. 21-30 | |

During investigation of prostitution, were there any attempts to determine if a third person was involved? Please explain.

How many "Johns" have been arrested or prosecuted in investigations of human trafficking or prostitution? Please specify how many of each.

If there were investigations of prostitution or human trafficking, but no arrests, prosecutions, or convictions, can you explain what any barriers were?

On which Indian reservation(s) do you have jurisdiction to investigate cases of human trafficking?

- | | | |
|------------------------------------|----------------|-----------------|
| a. Burns Paiute | d. Cow Creek | i. Warm Springs |
| b. Coos, Lower Umpqua, and Siuslaw | e. Grand Ronde | j. All |
| c. Coquille | f. Klamath | k. None |
| | g. Siletz | l. Don't Know |
| | h. Umatilla | |

My agency has jurisdiction to investigate allegations of human trafficking ON the above-noted Indian reservation(s) ___.

- a. Only if both the offender and the victim are non-Indian.
- b. As long as the offender is non-Indian.
- c. As long as the victim is non-Indian.
- d. If EITHER the offender OR the victim are non-Indian.
- e. In all cases, regardless of the offender's or victim's Indian/non-Indian status.
- f. Don't Know
- g. None/Not Applicable

If human trafficking occurs OFF of the reservation, and both the trafficker and the victim are Native, do you have jurisdiction to investigate?

- | | |
|--------|---------------|
| a. Yes | c. Don't Know |
| b. No | d. Other |

What other agencies have jurisdiction to investigate when there are reports of human trafficking involving tribal members ON the reservation?

Have you ever received training regarding human trafficking, or other training you feel would be relevant in human trafficking cases? Please specify what training and when the training occurred.

What percentage of your office has received training on human trafficking?

Is anything missing from your training to adequately address the needs of your office/county? If yes, please explain.

Does your agency have any procedure in place to screen detained prostitutes or migrant laborers, to determine if they may be trafficked victims? If yes, please explain.

Does your agency have any procedure in place to screen children after child welfare calls, to determine if they may be trafficked victims? If yes, please explain.

Please explain what steps your office takes (or would take) after identifying a human trafficking case.

Do you forward case details to any agencies for statistics and intelligence gathering? If yes, please list those agencies.

Does your office have a separate process for dealing with human trafficking cases involving a Native American victim or offender? If yes, please explain.

Please list any agencies or organizations you (would) forward human trafficking case details for statistics and intelligence gathering.

Please identify any obstacles your office faces in investigating human trafficking and what is done to overcome them.

Are any of the above listed obstacles unique to cases involving Native Americans? If yes, please explain.

Please identify any other measures that need to be taken to address human trafficking in Oregon.

APPENDIX C: Indian Child Welfare Act Memorandum

INDIAN CHILD WELFARE ACT OF 1978

In 1978, Congress passed the Indian Child Welfare Act (“ICWA”) in response to the “alarmingly high percentage” of Indian children taken from their homes and “placed in non-Indian foster and adoptive homes and institutions” by non-Indian child welfare workers.¹ ICWA requires that (1) tribes be notified and given an opportunity to intervene when the state places a child subject to ICWA in foster care or seeks to terminate parental rights on behalf of such a child and (2) children be placed, if possible, with relatives or tribal families.

I. ICWA Overview

A. Requirements

ICWA applies to cases in state courts that are (1) child custody proceedings (2) involving an Indian child.² Where a Native child resides or is domiciled on a reservation or is the ward of the tribal court, the tribal court may exercise jurisdiction. For all other children, the state court may exercise jurisdiction but must transfer the case to the tribal court when a request is made unless there is “good cause” not to transfer the case.³ Where there is a conflict between state law and ICWA’s requirements regarding termination of parental rights to Indian children, state law will be displaced.⁴

Tribal intervention in a child custody case occurs when a tribe acts on its right to participate in a child custody proceeding. ICWA states that “in any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have a right to intervene at any point in the proceeding.”⁵ The tribe may request to transfer the case to tribal court or the tribe may choose to only monitor the case through court records. Either the parent or the tribe may request a transfer of jurisdiction to a tribal court. Additionally, the tribe may intervene at any point in an Indian child custody proceeding.

ICWA has both procedural and substantive safeguards. For example, under ICWA, a court must determine “that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child” before it can terminate parental

¹ 25 U.S.C. § 1901.

² 25 U.S.C. § 1903(1) and (4).

³ 25 U.S.C. § 1911(a); *see also* 25 U.S.C. § 1918.

⁴ *See State ex rel. SOSCF v. Amador*, 176 Or. App. 237, 243, 30 P.3d 1223, *rev. den.*, 333 Or. 73, 36 P.3d 974 (2001).

⁵ 25 U.S.C. § 1911.

rights.⁶ The court's decision must be "supported by evidence beyond a reasonable doubt, including testimony of qualified witnesses."⁷

B. Existing Family Exception

Some have argued, however, that state courts have acted in direct defiance of ICWA's plain language and congressional intent by judicial creation of the existing Indian family exception.⁸ Some courts have refused to apply ICWA in situations where the court deems the child is not part of a sufficiently Indian family. For example, in *In re Baby Boy L*, the Kansas Supreme Court found "that an illegitimate infant who ha[d] never been a member of an Indian home or culture, and probably would never be, should [not] be removed from its primary cultural heritage and placed in an Indian environment over the express objections of its non-Indian mother."⁹ In the Court's opinion, if it was found that a child's family was not an "existing Indian family," ICWA did not apply.¹⁰ This interpretation of the Act seems to be based on the theory that Congress sought to protect only families that exhibited a certain amount of connectedness to their Native culture. Oregon, along with a majority of states, has rejected the Indian family exception.¹¹

C. 'Active Efforts' Findings

Proponents of ICWA believe that the law protects Indian children's connections to their families, tribes, and cultural heritage. However some argue that ICWA's procedural requirements could result in Indian children spending a longer time in foster care, working against more recent child welfare policies. In 1997, Congress enacted the Adoption and Safe Families Act ("ASFA") to help states move children more quickly through foster care and into safe and permanent homes. ASFA requires that when "determining reasonable efforts to be made with respect to a child ... the child's health and safety shall be the paramount concern."¹² ASFA, however, excuses the reasonable efforts test in "aggravated circumstances (as defined in state law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse)."¹³

In contrast, ICWA requires the state to make active efforts findings in all cases involving an Indian child, even in aggravated circumstances.

⁶ 25 U.S.C. § 1912(f); *see also* OR. REV. STAT. § 419B.521(4).

⁷ 25 U.S.C. § 1912(f).

⁸ *See* Suzianne D. Painter-Thorne, *One Step Forward, Two Giant Steps Back: How the "Existing Indian Family" Exception (Re)imposes Anglo American Legal Values on American Indian Tribes to the Detriment of Cultural Autonomy*, 33 AM. INDIAN L. REV. 329, 330 (2008-2009).

⁹ *In re Baby Boy L*, 643 P.2d 168, 175 (Kan. 1982).

¹⁰ *Id.*

¹¹ *See* *Quinn v. Walters*, 845 P.2d 206, 209 n. 2 (Or. App. 1993).

¹² 42 U.S.C. § 671(a)(15)(A).

¹³ 42 U.S.C. § 671(a)(15)(D)(i)(2003).

While ICWA requires active efforts findings in all cases, it does not directly define “active efforts,” instead leaving it to the states to define. This has led, in some cases, to state-defined exceptions to the active efforts that could severely limit the strength of ICWA’s protections.¹⁴

II. ICWA in Oregon

Oregon has incorporated ICWA’s active efforts requirement. ORS 419b.498(2)(B)(c) requires DHS to “satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”¹⁵ The Oregon Court of Appeals has held that “[a]ctive efforts’ entails more than ‘reasonable efforts’ and ‘imposes on the agency an obligation greater than simply creating a reunification plan and requiring the client to execute it independently.’”¹⁶ The active efforts standard is intended to serve as a procedural safeguard to ensure that appropriate services are provided to Native families. There is nothing in ICWA that requires courts to reunite children with dangerous parents. In fact, courts have an obligation to keep dangerous parents apart from their children in any event. Oregon’s definition of “active efforts” allows for a variety of services to be offered across a variety of situations.

However, there will be situations in which services to a parent will do little to maintain the family. It is in those cases that state courts may be tempted to construct ways around applying ICWA, but rather than circumventing the Act’s purpose, active efforts can be shifted to other Indian family members to reasonably maintain the family. As many Native cultures define family more broadly than immediate, or ‘nuclear family’, preservation of an Indian child’s family is not necessarily the same as preservation of parental rights. ICWA “would not require active efforts to parents who are incapable of safely caring for the child, but may require that those efforts be targeted at other family members who may be more appropriate.”¹⁷ Many of the problems that led to the enactment of ICWA are of continuing relevance, notably the high rate of Indian children in the child welfare system. Today, American Indian children represent 2 percent of the children in foster care overall, but only 1 percent of the United States child population.¹⁸ Evidence indicates that cultural bias and court hostility continues to exist. Some argue that state courts and social workers are not properly educated with regards to ICWA requirements.¹⁹

¹⁴ See C. Eric Davis, *In Defense of the Indian Child Welfare Act in Aggravated Circumstances*, 13 MICH. J. RACE & L. 433, 438 (2008) (quoting H.R. Rep. No. 104-808 (1996)).

¹⁵ See also 25 U.S.C. §1912(d).

¹⁶ Dept. of Human Services v. K.C.J., 228 Or. App. 70 (2009) (quoting State ex rel. Juv. Dept. v. T.N., 226 Or. App. 121, 124, 203 P.3d 262 (2009)).

¹⁷ *Reconciling ASFA and ICWA*, 21 A.B.A. CHILD LAW PRACTICE 91 (2002).

¹⁸ See Casey Family Programs, Child Welfare Fact Sheets (Sept. 2011), <http://www.casey.org/Newsroom/MediaKit/pdf/CWFactSheet.pdf>.

¹⁹ See Ruth Steinberger, *Victims of South Dakota Injustice Speak Out*, THE LAKOTA TIMES, Jan. 26, 2005, at A2 (quoting Sandy White Hawk), http://www.lakotacountrytimes.com/sites/www.lakotacountrytimes.com/files/pastarchives/pdf/V1iss17_Jan26_2005.pdf.

Statistics and anecdotal evidence demonstrate the need for adequate resources available to front line tribal programs to effectively reduce the incidences leading to child custody cases, as well as the need for state courts to properly apply ICWA in accordance with congressional intent to protect Indian families.

III. ICWA and Human Trafficking

ICWA plays an important role in analyzing how Native populations are impacted by human trafficking. The likelihood of children ending up in foster care can greatly increase their vulnerability to recruitment for human trafficking, particularly for Native children. Many interviewees felt that the number of Native children in foster care is in some ways representative of the level of generational trauma within Native communities.²⁰ In general, children in foster care often grow up lacking the emotional support and stability required to teach them the life skills necessary to help them make it on their own when aged out of the system, which can lead them to repeat the cycle of trauma with their own children. This also often means that children being aged out of foster care are at an increased vulnerability to normalization of deviant behavior and manipulation by persons trying to take advantage of them (such as traffickers).²¹

²⁰ It is worth noting here that interviewees also voiced concern for over-representation of Native children in foster care due to misidentification of poverty as abuse or neglect.

²¹ See *infra* Part VI(C) and (D) on Findings pertaining to ICWA and generational trauma.

APPENDIX D: Jurisdiction Memorandum and Matrix

JURISDICTION: WHAT LAW APPLIES IN INDIAN COUNTRY?¹

I. Foundations in Federal Indian Law

To understand the complexities of jurisdiction as it exists today, it is useful to begin by looking to the foundations of federal Indian law in three U.S. Supreme Court decisions of the early nineteenth century, often referred to as the “Marshall Trilogy”.² Most notably, it was in these cases that Chief Justice Marshall termed the tribes “domestic dependent nations.”³ As such, these cases collectively established that while tribes merely maintain possession (rather than ownership) of their lands,⁴ they are also “distinct political communities, having territorial boundaries, within which their authority is exclusive” from the states, except as limited by Congress.⁵ These cases can, therefore, be seen as laying the framework for criminal jurisdiction because they established that tribes may govern their own lands, and while not subject to the laws of the states, they are subject to the United States where Congress intends to exert such authority.

Approximately fifty years after the last of the Trilogy cases, the Supreme Court had its first chance to examine criminal jurisdiction where the crime involved only Indians in Indian Country. In *Ex Parte Crow Dog*,⁶ the Court affirmed the idea that the tribes govern their own lands, holding that federal courts retain no subject matter jurisdiction over such cases.⁷ This holding was based primarily on the language of the General Crimes Act (“GCA”), which provides that:

*the “general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States... extend to the Indian Country,” except where: (1) both parties are Indian, (2) an Indian offender is punished under the laws of the tribe, or (3) a treaty exists, stipulating exclusive jurisdiction over such offenses by the tribe.*⁸

¹ Indian Country is defined under federal law as “[a]ll land within the limits of any Indian reservation under the jurisdiction of the United States Government....” 18 U.S.C. § 1151.

² These three cases are: *Johnson v. M’Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832).

³ *Cherokee Nation*, 30 U.S. at 17.

⁴ See generally, *M’Intosh*, 21 U.S. 543.

⁵ *Worcester*, 31 U.S. at 557.

⁶ The crime involved the murder of Spotted Tail on Rosebud Sioux Indian Reservation. The tribe ordered Crow Dog to pay restitution (in the form of horses and blankets) and care for the victim’s family or face banishment. Federal prosecutors, dissatisfied with the sentence, charged him with murder in district court, which sentenced him to hanging. *Ex Parte Crow Dog*, 109 U.S. 556 (1883).

⁷ *Crow Dog*, 109 U.S. at 607-608.

⁸ General Crimes Act, 18 U.S.C. § 1152 (originally enacted in 1817).

Essentially, because both Crow Dog and his victim were Indian, and because Crow Dog was already punished under tribal law, federal courts held no jurisdiction under the GCA.

In turn, *Crow Dog* is importantly recognized as a basis for Congress' enactment of the Major Crimes Act ("MCA") just two years later, which granted the federal government *concurrent* jurisdiction (with tribes) over certain *crimes committed in Indian country by a Native American*. Today, the MCA encompasses the following crimes:⁹

"murder, manslaughter, kidnapping, maiming, a felony under chapter 109A [(sexual abuse)], incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 [(dealing with maritime jurisdiction)]."

The MCA effectively worked to circumvent the *Crow Dog* holding, thus providing federal jurisdiction to prosecute for those enumerated crimes occurring on reservation lands, regardless of who is involved.¹⁰

II. Who May Prosecute Whom?

Determining which laws apply and which government entities have jurisdiction to prosecute crimes occurring on reservations has only become more complicated since *Crow Dog*. Not only is the race (Indian or non-Indian status) of the victim and the offender relevant to determining which government(s) will have jurisdiction, but whether or not a reservation is subject to PL 280 is also determinative. This Part therefore seeks to set the background for understanding jurisdiction and generally explain its parameters, which are in turn analyzed specifically with reference to human trafficking laws in the following Part (III).

A. Federal Jurisdiction Over Crimes Committed in Indian Country

1. *Crimes between Indians*

The above Part (I) illustrates that tribes traditionally hold exclusive jurisdiction over disputes between their own members on their own lands.¹¹ However, the federal government has created a few important exceptions to this presumption. First, as discussed above, the MCA grants federal jurisdiction over any of its enumerated crimes.¹² Additionally, the federal government has also been recognized to hold jurisdiction over all *federal crimes of general applicability*, which are acts criminalized by Congress independent of the jurisdiction in which they are

⁹ Major Crimes Act, 18 U.S.C. § 1153 (originally enacted in 1885 to cover eight crimes and now covers sixteen).

¹⁰ The Supreme Court first upheld the MCA's validity in *U.S. v. Kagama*, 118 U.S. 375 (1886).

¹¹ See *United States v. Johnson*, 637 F.2d 1224, 1231 (9th Cir.1980).

¹² 18 U.S.C. § 1153(a).

committed.¹³

Although the Supreme Court has never reviewed the question of whether federal courts maintain jurisdiction over crimes of general applicability among Indians in Indian Country, almost half of the federal circuits have. The Ninth Circuit, in *Young*, determined that the offenses charged created jurisdictional hooks on grounds independent of the offender's identity or the location of the offense,¹⁴ holding that "federal courts continue to retain jurisdiction over violations of federal laws of general, non-territorial applicability," even where the crime is one between Natives on the reservation.¹⁵ While most Circuit Courts reviewing this question have issued holdings consistent with that of the Ninth,¹⁶ the Second Circuit has chosen an alternative approach. In *Markiewicz*, it held that "federal jurisdiction does not exist over Indian-against-Indian crimes that congress fails to enumerate, except where such offenses constitute 'peculiarly Federal' crimes, and the prosecution of such offenses would protect an independent federal interest."¹⁷

2. Crimes Involving non-Indians

Involvement of non-Native offenders and victims can further complicate the determination of which law applies. While states generally maintain jurisdiction over crimes between non-Indians in Indian Country,¹⁸ the federal government still maintains prosecutorial authority over distinctly federal crimes, such as those of general applicability.

Interracial crimes involving both Native and non-Native parties require even further analysis, potentially implicating federal criminal jurisdiction in one of three ways. Once again, the federal government may prosecute if the crime is one of general applicability, or is enumerated under the

¹³ It is important to distinguish crimes of general applicability (albeit confusingly) from those implicated under the GCA. The GCA grants federal jurisdiction for crimes on lands owned by the United States (*i.e.*, non-PL 280 reservations) and is further restricted by the statutory limitations of 18 U.S.C. § 1152, but crimes of general applicability are not so limited, granting jurisdiction independent of geographical location and who is involved.

¹⁴ *United States v. Young*, 936 F.2d 1050, 1055 (9th Cir. 1991) (charges were: assaulting a federal officer (18 U.S.C. § 111), jurisdiction implicated by status of victim as federal officer; possession of a firearm by a felon (18 U.S.C. § 922(g)), jurisdiction implicated by weapon's interstate transport; use of a firearm in a crime of violence (18 U.S.C. § 924(c)), jurisdiction implicated by conviction of other federal offense).

¹⁵ *Young*, 936 F.2d at 1055; *See also* *United States v. Begay*, 42 F.3d 486 (9th Cir. 1994) (expressly rejecting the Second Circuit's approach in *Markiewicz*); *United States v. Top Sky*, 547 F.2d 483, 484 (9th Cir.1976); *United States v. Burns*, 529 F.2d 114, 117 (9th Cir.1976); *Walks On Top v. United States*, 372 F.2d 422, 425 (9th Cir.), *cert. denied*, 389 U.S. 879 (1967).

¹⁶ *See* *United States v. Blue*, 722 F.2d 383 (8th Cir. 1983); *United States v. Smith*, 562 F.2d 453 (7th Cir. 1977); *United States v. Yannott*, 42 F.3d 999 (6th Cir. 1994).

¹⁷ *United States v. Markiewicz*, 978 F.2d 786, 800 (2d Cir. 1992), *cert. denied, sub nom.*, *Beglen v. United States*, 113 S. Ct. 1065 (1993) (However, the court found federal jurisdiction on other grounds, obviating the need to ascertain on what grounds such "federal interest" is implicated.).

¹⁸ *See* *United States v. McBratney*, 104 U.S. 621 (1882) (holding that state law applied, rather than the GCA).

MCA¹⁹ (although the MCA applies only where the offender is Indian). Additionally, the GCA also specifically extends to such interracial crimes occurring in Indian Country.²⁰

More specifically, the “general laws” encompassed by the GCA are those known as “federal enclave laws.”²¹ These are statutes criminalizing certain acts occurring on lands solely within the *Special Maritime and Territorial jurisdiction of the United States*—“law[s] in which the *situs of the offense is an element of the crime.*”²² However, remember that the GCA has major restrictions. In addition to its three statutorily placed limits (discussed above with reference to *Crow Dog*),²³ the courts have traditionally held that the GCA does not apply to crimes occurring on reservations between non-Indians.²⁴ Thus, the GCA effectively only applies to crimes involving both Indian and non-Indian parties, where the offender (if Indian) was not prosecuted in tribal court.²⁵

Beyond its general limitations, one particularly noteworthy aspect of the GCA is the Assimilative Crimes Act (“ACA”),²⁶ which is one of those “federal enclave” laws applied to Indian Country through the GCA. The ACA allows federal prosecutors to charge offenders of violating state law for acts committed in Indian Country where no equivalent federal crime exists under which to prosecute.²⁷ However, the Supreme Court places an equally notable limitation on use of the ACA, interpreting it to prohibit the federal government from substituting state law to obtain conviction where the Federal Code does criminalize the act, albeit less restrictively.²⁸

B. State Jurisdiction (PL 280)

While the complex collection of federal laws described above applies with regard to some tribal lands, state law is the default for reservations affected by the enactment of Public Law 280 (“PL 280”).²⁹ As a general rule, the jurisdictional shift in areas affected by PL 280 means that the MCA and GCA no longer apply. Instead, these states fully enforce their own criminal laws for

¹⁹ 18 U.S.C. § 1153.

²⁰ However, it does not cover crimes involving only Natives (18 U.S.C. § 1152) or crimes involving only non-Natives (*McBratney*, 104 U.S. 621).

²¹ 18 U.S.C. § 7.

²² *United States v. Strong*, 778 F.2d 1393, 1396 (9th Cir.1985).

²³ The GCA does not extend to: (1) offenses between Indians, (2) Indian offenders already punished by the tribe, and (3) treaties granting the tribe(s) exclusive jurisdiction. 18 U.S.C. § 1152.

²⁴ *McBratney*, 104 U.S. 621 (holding that state law applies instead).

²⁵ The GCA’s limitation on treaties is irrelevant because no such treaty stipulations currently exist.

²⁶ 18 U.S.C. § 13 (originally enacted in 1825).

²⁷ 18 U.S.C. § 13(a) (enables federal authorities to prosecute using state law in federal court).

²⁸ In *Williams v. U.S.*, a white man living near Colorado River Indian Reservation had sexual contact with a 16-17 year old Indian girl on the Reservation. Unable to prosecute for statutory rape under federal law (limited to minors under 16), federal prosecutors attempted substitute it for Arizona’s statutory rape law (requiring the girl to be under 18). The Court held that Arizona law was not applicable, because “the offense known to Arizona as that of ‘statutory rape’ has been defined and prohibited by the Federal Criminal Code, and is not redefined and enlarged by application to it of the [ACA].” 327 U.S. 711, 717 (1946) (For a similar example on a military base, *see generally*, *Lewis v. U.S.*, 523 U.S. 155 (1998)).

²⁹ Pub. L. No. 83-280, 67 Stat. 588 (1953) (codified 18 U.S.C. § 1162, 28 U.S.C. § 1360, 25 U.S.C. §§ 1321-1326).

crimes committed on reservation lands within their borders, sharing *concurrent* jurisdiction with tribes where the offender is Indian, and maintaining sole jurisdiction where the offender is not. Although PL 280 basically works as a jurisdictional “hand-off” from the federal government to the states, there are three circumstances worth noting in which federal law may still apply.

First, regardless of any jurisdictional divestitures as a result of PL 280, the federal government nonetheless retains jurisdiction over crimes of general applicability. As explained in detail above, federal crimes of general applicability are within the purview of the federal courts to decide, regardless of the status of the offender or where the crime is committed, because their jurisdiction is based on the independent grounds by which Congress exercised its power to enact these laws in the first place.

The other two circumstances in which federal law may still apply are dependent on whether the reservation is located in an “optional” or “mandatory” PL 280 state.³⁰

In mandatory PL 280 states like Oregon, reservation lands originally subject to PL 280³¹ were automatically and completely divested from federal jurisdiction upon PL 280’s enactment. Those tribes have been permitted to retrocede to federal criminal jurisdiction since the ICRA was amended to allow it in 1968.³² However, an act of retrocession has the effect of divesting any state jurisdictional authority in exchange for that of the MCA and GCA under federal government. More recently however, the Tribal Law and Order Act (“TLOA”)³³ added another jurisdictional option for these mandatory PL 280 reservations, which permits concurrent jurisdiction between all three governing bodies (state, federal, and tribal) where applicable. For this kind of concurrent (or “tricurrent”)³⁴ jurisdiction to apply, two requirements must be met: (1) the tribe must expressly request application of federal jurisdiction (implicating the GCA and MCA); and (2) the Attorney General must consent.³⁵ Where these requirements are met, concurrent jurisdiction over Indian offenders exists between three governments—state, federal, and tribal.³⁶

Concurrent jurisdiction between state, federal, and tribal authorities can also exist in what are considered “optional” PL 280 states. All states with Indian Country not mandatorily subject to PL 280 have the option to adopt PL 280 jurisdiction in whole or in part (with consent of the

³⁰ 18 U.S.C. § 1162 (establishes the following “mandatory” states: Oregon (except for Warm Springs), Alaska (with limited exception), California, Minnesota (except for Red Lake), Nebraska, and Wisconsin); 25 U.S.C § 1321 (for “optional” PL 280 states).

³¹ In Oregon, all but Warm Springs.

³² 25 U.S.C. § 1323. In 1979 and 1981, Burns Paiute and Umatilla Reservations (respectively) became the first and only in Oregon to retrocede PL 280 jurisdiction under this amendment. 44 FR 26,129 (1979) (Burns Paiute); 46 Fed. Reg. 2195 (1981) (Umatilla).

³³ Tribal Law and Order Act of 2010, Pub. L. No. 111-211, 124 Stat. 2261 [hereinafter T.L.O.A.].

³⁴ I have to credit this term. B.J. Jones, Director, Tribal Judicial Institute, Lecture on an Overview of the Tribal Law and Order Act and Tribal Implementation Issues (Feb. 27, 2012) (slides available at http://law.und.edu/tji/_files/docs/tloa-bjones.pdf).

³⁵ T.L.O.A., § 221 (codified 18 U.S.C. § 1162(d)).

³⁶ No tribes have done this yet in Oregon.

tribe),³⁷ and such optional PL 280 jurisdiction results in shared jurisdictional authority between all three governments where applicable.

C. Tribal Jurisdiction

1. *Crimes Involving Indian Defendants*

Generally speaking, tribes may exercise their sovereign authority to prosecute Native Americans for crimes committed in Indian Country, and are interpreted to maintain jurisdiction concurrently with state or federal governments in the circumstances discussed in the preceding sections. However, an unfortunate consequence of this policy is that the Supreme Court finds no double jeopardy where a Native offender is tried for the same crime by both U.S. courts and tribal courts.³⁸

Furthermore, although the United States traditionally recognizes a tribe's jurisdictional authority over its own members, the same has not always been recognized with respect to non-member Indians or Indians of other tribes.³⁹ In order to plug this gap, Congress amended the Indian Civil Rights Act ("ICRA")⁴⁰ in 1991 to explicitly provide tribes with criminal jurisdictional authority over *all Indians committing crimes in Indian Country*, regardless of whether that Indian is a member of the prosecuting tribe.⁴¹

However, despite good intentions, the ICRA has simultaneously acted to limit tribal justice systems since its inception. Originally enacted because tribes (as sovereigns not part of the federal government or the states) are not subject to the U.S. Constitution or Bill of Rights, the ICRA requires tribal courts to observe due process and other rights analogous to those arising in criminal prosecution under the Constitution (*i.e.*, the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments).⁴² In addition to its constitutional limitations, the ICRA also generally prohibits tribal courts from imposing sentences greater than "a term of one year [imprisonment] and a fine of \$5,000, or both."⁴³

³⁷ 25 U.S.C. § 1321(a). It is also worth noting here that consent of the tribe to PL 280 jurisdiction was not required before 1968, and since the statute was amended to require such tribal consent no tribe has ever consented.

³⁸ The most notable case in point, *United States v. Wheeler*, involved a Navajo defendant who was first convicted in Navajo Nation's tribal court, and later tried in federal court for the same crime. The Supreme Court held that "the source of the power to punish offenders is an *inherent part of tribal sovereignty* and not a grant of federal power. Thus, because the two prosecutions were by separate sovereigns... the subsequent federal prosecution did not violate the defendant's right against double jeopardy." 435 U.S. 313, 313 (1978); *see* *U.S. v. Lara*, 541 U.S. 193, 208-09 (2004) (upholding *Wheeler* and the ICRA's *Duro*-fix).

³⁹ *See Duro v. Reina*, 495 U.S. 676 (1990).

⁴⁰ Indian Civil Rights Act, Pub. L. No. 90-284, 82 Stat. 77 (1968) (codified at 25 U.S.C. § 1301 *et seq.*).

⁴¹ 25 U.S.C. § 1301 (also known as the *Duro*-fix, recognizes tribes' "inherent power...to exercise criminal jurisdiction over *all Indians*"). The amendment was subsequently upheld in *Lara*, 541 U.S. at 208-09.

⁴² 25 U.S.C. § 1302; *see* WILLIAM C. CANBY, JR., *AMERICAN INDIAN LAW IN A NUTSHELL* 29, 137 (4th ed. 2004).

⁴³ 25 U.S.C. § 1302(a)(7)(B).

The TLOA recently amended the ICRA to expand sentencing limits. However, this amendment applies only to tribes who meet certain specific requirements,⁴⁴ and Umatilla is the only reservation in Oregon to qualify thus far. All other Oregon tribal justice systems are still restricted to the one-year/\$5,000 maximum.⁴⁵ Even beyond the potential difficulties associated with qualifying, tribes meeting the requirements are still limited to imposing sentences of no more than three years imprisonment (or nine, if multiple convictions) and a fine of up to \$15,000.⁴⁶ Thus, even where the TLOA provides some relief, tribes are nonetheless left without power to adequately prosecute serious crimes, such as human trafficking.

2. *Crimes Involving non-Indian Defendants*

The preceding subsections (II.A & B) establish that state and federal governments often have jurisdiction over crimes committed by Indians. Conversely however, the Supreme Court has consistently upheld the notion that absent an express grant of authority by Congress or treaty, *tribes are barred from any attempt to exercise criminal jurisdiction over non-Indian offenders for any crime committed in Indian country.*⁴⁷ In other words, tribes are generally prohibited from prosecuting non-Indians—period.

However, recognizing the persistent and disproportionately high degree of violence against Native women in Indian Country, Congress recently acted to create a (very) small exception to this general rule through its 2013 reauthorization of the Violence Against Women Act (“VAWA”).⁴⁸ Specifically, VAWA amends the ICRA to allow tribes to prosecute any non-Indian offender for crimes of violence against any Native American with whom the offender is in a “dating” or “domestic” relationship, as long as the crime charged is based on the presence of the relationship.⁴⁹ More specifically, the non-Indian offender *must* reside or be employed on the reservation, *or* be the spouse, intimate partner, or dating partner of either a member of the tribe or a non-member Indian who resides in the tribe’s Indian country.⁵⁰

⁴⁴ In addition to meeting the ICRA’s general requirements, tribes must also provide: (1) indigent defendants with competent no-cost representation on par with that “guaranteed by the U.S. Constitution”; (2) judges licensed to practice law in the United States with sufficient knowledge of criminal proceedings; (3) public notice of criminal laws, procedure, and rules of evidence; and (4) record of criminal proceedings. 25 U.S.C. § 1302(c).

⁴⁵ Interview with Tom Woolworth, Special Agent in Charge, BIA Office of Justice Services, Portland, in Portland, Or. (March 14, 2013) (on file at the Clinic).

⁴⁶ The TLOA provides that tribes may sentence up to three years imprisonment and/or \$15,000, *only if*: (1) the defendant was previously convicted of the same or similar crime; *or* (2) the offense would be punishable for more than one year in a U.S. or state court. 25 U.S.C. §1302(b). Collectively, sentences may add up to a maximum of nine years imprisonment where multiple convictions apply. 25 U.S.C. §1302(a)(7)(D).

⁴⁷ In *Oliphant v. Suquamish*, a non-Indian resident of Port Madison Reservation was charged with “assaulting a tribal officer and resisting arrest” by the Suquamish Tribe. Defendant claimed that because he was non-Indian, the tribe had no jurisdiction. The Supreme Court agreed. 435 U.S. 191, 194-97 (1978).

⁴⁸ Violence Against Women Act 2013 Reauthorization, Pub. L. No. 113-4, § 901-910, 127 Stat. 54 (2013) (effective as of 2015) [hereinafter VAWA 2013].

⁴⁹ *Id.* at § 904.

⁵⁰ *Id.*

Tribes who wish to prosecute under this amendment must also meet certain procedural requirements. In addition to following the ICRA’s general guidelines, tribes must allow non-Indian defendants: an impartial jury of community members; effective assistance of counsel (at no cost if indigent); a competent judge; and notice of right to file for writ of habeas corpus in federal court.⁵¹ Tribes are further expected to uphold “all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the [tribe’s] inherent power...to exercise” its jurisdiction.⁵² A problem is that while some instances of human trafficking might qualify for tribal prosecution here, it is neither effective nor intended to combat the problem overall.

III. APPLYING THE JURISDICTIONAL MAZE TO CRIMES OF HUMAN TRAFFICKING

A. Federal Jurisdiction Over Human Trafficking in Indian Country

1. *The Trafficking Victims’ Protection Act*

The only provision of the Trafficking Victims’ Protection Act (“TVPA”) providing explicit guidance as to whether the Act applies in Indian Country is under its child trafficking statute, 18 U.S.C. § 1591. 18 U.S.C. § 1591 grants federal jurisdiction where the accused violates the law “*knowingly, in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States.*”⁵³ Such language implicates the crime both under the GCA⁵⁴ and as one of general applicability.

With regard to the GCA, this means that § 1591 applies to Native lands which the federal government never divested criminal jurisdictional authority to the state (Warm Springs), those falling under “optional” PL 280 jurisdiction, and those “mandatory” PL 280 jurisdictions that have returned to federal jurisdiction through retrocession (Umatilla and Burns Paiute) or the TLOA. It also means that any application of § 1591 through the GCA will be limited to interracial crimes involving both Indian and non-Indian parties, where the offender (if Native) has not already been “punished” by the tribe.⁵⁵

Alternatively, where § 1591 is violated “in or affecting interstate or foreign commerce,”⁵⁶ the statute can be applied regardless of who is involved and the location of the crime. This means that anyone violating § 1591, Native or not, off or on reservation (PL 280 or non-PL 280), is subject to jurisdiction of the federal courts as long as the crime meets the commerce hook. Although § 1591 is the only part of the TVPA expressly naming commerce as a jurisdictional

⁵¹ *Id.*

⁵² *Id.* At most, this language implies that tribes must provide criminal defendants with *all* rights protected by the Constitution. However, it is unclear because the issue has not yet been challenged.

⁵³ 18 U.S.C. § 1591(a)(1) .

⁵⁴ The authorizing language—*within special maritime and territorial jurisdiction*—identifies it as a federal enclave law (18 U.S.C. § 7), applying to Indian Country through the GCA (18 U.S.C. § 1152).

⁵⁵ 18 U.S.C. § 1152; *McBratney*, 104 U.S. 621 (state law applies to crime between non-Indians in Indian Country).

⁵⁶ 18 U.S.C. § 1591(a)(1).

basis (qualifying it as a federal crime of general applicability), federal courts *might* nonetheless *imply* such a jurisdictional basis in other of the TVPA’s provisions. However, because no part of the Act has yet been applied in Indian Country, the answer is unclear. Furthermore, in so far as any TVPA provision qualifies as a crime of general applicability by using “commerce” as a jurisdictional hook, the federal government *might* still theoretically be prohibited from exercising jurisdiction if the crime occurs *solely* on a reservation, or within the bounds of a state, and has *no* effect on interstate commerce.

If human trafficking occurred on a reservation under circumstances not implicating federal jurisdiction under the TVPA (neither through the GCA nor as a crime of general applicability), the tribe could still prosecute *if* the offender is Indian *and* the tribe maintains its own court system. However, even those tribes with both the authority and ability to prosecute would nonetheless be severely limited by the restrictive sentencing provisions discussed above with reference to the ICRA. This kind of situation also highlights the problem that tribes are presumed to have no jurisdictional authority over non-Indians. Thus, where federal jurisdiction does not attach and tribes lack their own court systems, or are barred from prosecution due to the offender’s status as non-Indian, the offender may be lost from prosecution in a proverbial jurisdictional black-hole.

2. *Finding Federal Jurisdiction Where the TVPA Does Not Apply*

Even where the TVPA does not apply, the federal government may still exercise jurisdiction over crimes of human trafficking in Indian Country where the MCA or GCA is implicated (in Oregon, this is Burns Paiute, Umatilla, and Warm Springs). However, without the TVPA, the federal government is restricted to prosecuting offenders for related crimes other than human trafficking. For example, a Native American suspected of human trafficking in Indian Country where the crime does not meet TVPA requirements might instead be charged with an alternative crime under the MCA, such as “kidnapping...a felony under chapter 109A [(sexual abuse)]...incest...[and] felony child abuse or neglect...”⁵⁷

Alternatively, remember that the ACA can apply state law through the GCA (subject to its limitations as discussed above). It seems that any federal effort to apply state human trafficking law under the ACA could go one of two ways. One possibility is that a federal court may find the rule in *Williams* to govern—prohibiting application of the ACA—because federal human trafficking crime exists (under the TVPA) and does not apply on the basis that the federal crime is defined differently than state law.⁵⁸ On the other hand, a federal court may construe *Williams* more narrowly, finding that application of the ACA is prohibited if the TVPA does not apply because the substantive elements of the crime differ from state law, but that the ACA does still apply where the TVPA is inapplicable purely by its failure to apply due to a procedural element,

⁵⁷ 18 U.S.C. § 1153(a).

⁵⁸ The Supreme Court, in *Williams*, denied extension of the ACA because an existing federal statute mirrored the state law, except that the federal statute was more narrow. 327 U.S. at 717; *see also* *Lewis*, 523 U.S. 155.

such as jurisdiction. Thus, while the ACA might conceivably be interpreted to allow federal prosecutors to substitute Oregon's (or any other state's) human trafficking laws where the TVPA does not apply, such application would likely be considered prohibitive because the ACA has so far only been interpreted to apply in cases where no parallel federal law exists.

B. State Jurisdiction Over Human Trafficking in Indian Country

Today, all fifty states including the District of Columbia have enacted legislation to combat human trafficking.⁵⁹ Oregon has three statutes making it a crime to subject a person to involuntary servitude or human trafficking.⁶⁰

In addition to their general application to human trafficking crimes committed within the state of Oregon, these state laws also apply to human trafficking crimes committed within Indian Country involving only non-Indians.⁶¹

As explained above however, where a crime of human trafficking involves either an Indian offender or victim in Indian Country, a state will only have criminal jurisdiction to prosecute if PL 280 jurisdiction applies. For states that have designated PL 280 Indian Country within their borders (mandatory or optional), states can apply their human trafficking laws in the same way those laws apply elsewhere in the state.⁶² For Oregon, this means the state has jurisdiction over all crimes of human trafficking occurring on Cow Creek, Coquille, Coos/Lower Umpqua, Grand Ronde, Siletz, Klamath Indian Reservations. Thus, Native defendants in these jurisdictions are subject to concurrent jurisdiction between the state and the tribe (and in certain circumstances, the federal government).⁶³

Remember from the preceding subsection that in certain circumstances federal courts *might* still allow *federal* application of state trafficking laws on reservations through the ACA where the crime involves Indian and non-Indian parties (depending on how narrowly *Williams* is construed). However, although this kind of situation would implicate state law, it would nonetheless fall under federal jurisdiction.

C. Tribal Jurisdiction Over Human Trafficking in Indian Country

Not all tribes in Oregon have criminal justice systems. Tribes that do generally only have jurisdiction to prosecute Natives for crimes committed in Indian Country, and that authority runs concurrent with any applicable state or federal criminal jurisdiction over the crime committed.

⁵⁹ Megan Fowler, *Wyoming Becomes 50th State to Outlaw Trafficking*, POLARIS PROJECT (Feb. 27, 2013), <http://www.polarisproject.org/media-center/press-releases/742-wyoming-becomes-50th-state-to-outlaw-human-trafficking>.

⁶⁰ OR. REV. STAT. §163.263; OR. REV. STAT. §163.264; OR. REV. STAT. §163.266.

⁶¹ See *McBratney*, 104 U.S. 621.

⁶² That is, assuming that a given "optional" PL 280 jurisdiction has opted for state criminal jurisdiction (rather than just civil). Remember that any state opting in to PL 280 could choose to assume only partial jurisdiction.

⁶³ See Part II.B (explaining the potential for concurrent ("tricurrent") criminal jurisdiction between all three governments for Indian Country that is "optional" PL 280 or "mandatory" but falling under the TLOA exception).

As a general rule, remember that tribes cannot prosecute non-Indians for crimes committed in Indian Country. Thus they are greatly inhibited in their ability to protect those living on their lands from crimes of human trafficking by non-Indians. Although in some cases tribes might assume jurisdictional authority over non-Indians for crimes arising out of certain “dating” or “domestic” relationships implicated under the VAWA provisions discussed above, such restrictions on prosecution of non-Indian offenders severely limits tribes’ abilities to punish and protect against human trafficking.

None of the tribes in Oregon have enacted laws specifically criminalizing human trafficking yet. However, even absent such laws, tribes (with criminal justice systems) can still prosecute offenders for similar or related crimes currently existing within their own criminal codes, such as: kidnapping, pimping, sex abuse, or child abuse. In the future, these tribes might also consider enacting tribal human trafficking laws. Tribes in a few other states have already enacted their own human trafficking laws, which may serve as a model for other tribes who wish to do the same in the future.⁶⁴

⁶⁴ Examples include: Absentee Shawnee Tribe of Oklahoma’s child trafficking law (AST. CRIM. LAW CODE § 568) and Snoqualmie Tribe’s sex trafficking law (SNOQ. TRIBAL CODE § 7.21).

INDIAN COUNTRY JURISDICTION MATRIX

	NON-PL 280			PL 280		
	FEDERAL	STATE	TRIBAL	FEDERAL	STATE	TRIBAL
<i>Indian¹ Offender/ Indian Victim</i>	Yes, concurrent jurisdiction if crime is an MCA listed felony (18 U.S.C. § 1153).	No jurisdiction.	Yes, all crimes (concurrent when applicable).	No, unless “optional” PL 280 or TLOA applies (even then, only if MCA applies).	Yes, shares concurrent jurisdiction with tribe.	Yes, shares concurrent jurisdiction with state.
<i>Indian Offender/ non-Indian Victim</i>	Yes. Concurrent if MCA felony (18 U.S.C. § 1153). Jurisdiction for GCA/ACA crimes (18 U.S.C. §§ 1153, 13) only if tribe did not punish defendant.	No jurisdiction.	Yes, all crimes (concurrent when applicable).	No, unless “optional” PL 280 or TLOA applies (even then, only if MCA or GCA applies).	Yes, shares concurrent jurisdiction with tribe.	Yes, shares concurrent jurisdiction with state.
<i>non-Indian Offender /Indian Victim</i>	Yes, sole jurisdiction for GCA/ACA crimes (18 U.S.C. §§ 1153, 13).	No jurisdiction.	No, unless VAWA is implemented and applies.	No, unless “optional” PL 280 or TLOA applies (even then, only if GCA applies).	Yes, jurisdiction.	No, unless VAWA 2013 is implemented and applies.
<i>non-Indian Offender /non-Indian Victim</i>	No jurisdiction.	Yes, for all crimes.	No jurisdiction.	No jurisdiction.	Yes, sole jurisdiction.	No jurisdiction.
<i>Victimless Crime by Indian Offender</i>	Yes, jurisdiction for GCA/ACA crimes (18 U.S.C. §§ 1153, 13) if tribe did not punish defendant.	No jurisdiction.	Yes, for all crimes.	No, unless “optional” PL 280 or TLOA applies (even then, only if GCA applies).	Yes, shares concurrent jurisdiction with tribe.	Yes, shares concurrent jurisdiction with state.
<i>Victimless Crime by non-Indian Offender</i>	No jurisdiction.	Yes, state has sole jurisdiction.	No jurisdiction.	No jurisdiction.	Yes, sole jurisdiction.	No jurisdiction.

****FEDERAL CRIMES OF GENERAL APPLICABILITY:** Authorize federal prosecution on grounds other than territorial jurisdiction.

¹ A person enrolled in any federally recognized Indian tribe or otherwise recognized as ‘Indian’ by a government, who has some degree of Indian blood.

APPENDIX E: List of Interviewees

Nita Belles

Central Oregon Regional Director, Oregonians Against Trafficking Humans (OATH)

Keith Bickford

Director, Oregon Human Trafficking Task Force (OHTTF)

Shelley Clift

ICWA Intake Specialist, Children and Family Services, Confederated Tribes of Grand Ronde

Desiree Coyote

Program Manager, Family Violence Services, Confederated Tribes of Umatilla Indian Reservation

Mark Creighton

Chief of Tribal Police, Burns Paiute Tribe

Candi Crume

Child Protection Service Specialist, Klamath Tribes

Camille DeLorme

Domestic & Sexual Violence Prevention Program Manager/Healing Winds, Klamath Tribes

Shirley Didier

Director of Crime Victims' Rights Program, Oregon Department of Justice

Pam Elton

Program Manager, Office of Victim Assistance, Federal Bureau of Investigation

Cassandra Ferder

Commission Assistant, Legislative Commission on Indian Services, Oregon State Legislature

Diana Fleming

Violence Against Women Act (VAWA) & Sexual Assault Service Program (SASP) Fund Coordinator, Oregon Department of Justice

Craig Gabriel

Assistant U.S. Attorney, Indian Country Crime, District of Oregon, U.S. Attorney's Office

Marvin Garcia

Director of Social Services, Klamath Tribes

Abby Gassama

Healing Circle Manager, Native American Youth & Family Center (NAYA)

David Glerup
Sheriff, Harney County Sheriff's Office

Mazie Goggles
Indian Child Welfare Act Coordinator, Burns Paiute Tribe

Norma Gonzalez
Bilingual Sexual Assault Services Advocate, Mid-Valley Women's Crisis Service

Benjamin Thomas Greer
Special Duty Attorney General, California Department of Justice, Office of the Attorney General

Lt. Gregg Hastings
Public Information Officer, Oregon State Police

Hannah Horsley
Assistant U.S. Attorney, Chair of Oregon Foreign-born Human Trafficking Task Force, District of Oregon, U.S. Attorney's Office

Julie Johnson
Substance Abuse Prevention Coordinator, Burns Paiute Tribe

Scott Kerin
Assistant U.S. Attorney, Chief of Drug Unit/Fmr. Head of Gang and Sex Trafficking Prosecution Team, District of Oregon, U.S. Attorney's Office

Erin Kevin
Victim Support Specialist, Federal Bureau of Investigation

Chris Killmer
Program Manager, Anti-Trafficking Division, Immigration Counseling Service

Brad Kneaper
Chief of Police, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians

Brent Leonhard
Attorney, Office of Legal Counsel, Confederated Tribes of Umatilla Indian Reservation Department of Justice

Nicomi Levine
Foster Care Support Specialist/Domestic Violence Advocate, Native American Youth & Family Center (NAYA)

Jim Littlefield
Undersheriff, Umatilla County Sheriff's Office

Karen McGowan
Indian Child Welfare Director, Confederated Tribes of Siletz Indians

Amanda Mercier
Tribal Foster Care Recruitment Specialist, Children and Family Services, Confederated Tribes of Grand Ronde

Robert Miller
Professor, Lewis & Clark Law School

Robert Miller
Child Welfare Investigator, Confederated Tribes of Umatilla Indian Reservation

Terrence O'Brien
Supervisory Senior Resident Agent, Federal Bureau of Investigation

Dr. Sandi Pierce
Author of *Shattered Hearts*

Dan Primus
District Attorney, Umatilla County

Terry Rowan
Sheriff, Umatilla County Sheriff's Office

Alise Sanchez
Foster Care Service Manager, Native American Youth & Family Center (NAYA)

Tawna Sanchez
Director of Family Services, Native American Youth & Family Center (NAYA)

Diane Schwartz-Sykes
Senior Assistant Attorney General, Oregon Department of Justice, Civil Rights Unit

Stephanie Striffler
Senior Assistant Attorney General & Native American Affairs Coordinator, Oregon Department of Justice

Angela Temple
Child Welfare Supervisor, Malheur County, Oregon Department of Human Services

Bill Williams
Assistant U.S. Attorney, Chief of Criminal Division, District of Oregon, U.S. Attorney's Office

David Williams

Senior Police Officer, Confederated Tribes of Umatilla Indian Reservation

Eva Williams

Domestic Violence Advocate, Native American Youth & Family Center (NAYA)

Jeri Williams

Northwest Coalition Against Trafficking (NWCAT), Survivor Network Coordinator
Neighborhood Program Coordinator, City of Portland

Thomas Woolworth

Special Agent in Charge, Office of Justice Services, District 8, Bureau of Indian Affairs