



Human Trafficking (Including Sex Trafficking) of American Indians and Alaska Natives

September 2017

FRAMING PAPER SUMMARY: Consultation Questions on Conducting Research and Providing Training and Technical Assistance on Human Trafficking of American Indians and Alaska Natives

BACKGROUND

In recent years, human trafficking of American Indian and Alaska Natives has been the subject of consultation testimony, scholarly articles and media accounts, and reports issued by the federal government and tribal organizations. The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) amended the VAWA tribal grant program statutes and the statute governing this annual consultation to include sex trafficking as an area of focus. Tribal organizations, leaders, and the federal government have identified the importance of addressing human trafficking, including sex trafficking, and prioritizing measures such as providing culturally appropriate victim services, helping tribes enact trafficking codes, and training law enforcement and other professionals on identifying and responding appropriately to victims. Tribal leaders also have identified a connection between missing and murdered Native women and trafficking, and have recommended the use of public alerts and awareness campaigns to help victims find safety and resources.

RESEARCH AND STATISTICS

Existing studies and reports on trafficking victimization among American Indians and Alaska Native (AI/AN) populations have examined the historical context and experiences of Native women in the United States and Canada, particularly related to sexual violence, and the prevalence of risk factors for human trafficking and sexual exploitation among Native populations. Researchers have noted the lack of prevalence data and the challenges in obtaining such data, including the underreported nature of the crime and the range of definitions of human trafficking. A number of studies from both the federal government and the field have identified high rates of sexual exploitation of Native women and girls, gaps in data and research on trafficking of AI/AN victims, and barriers that prevent law enforcement agencies and victim service providers from identifying and responding appropriately to Native victims.

TRAINING AND TECHNICAL ASSISTANCE

Since the enactment of the Trafficking Victims Protection Act of 2000, federal government agencies have provided a range of resources and training to improve responses to human trafficking. In more recent years, agencies have developed tribal-specific resources. DOJ's National Indian Country Training Initiative, the U.S. Department of Homeland Security's Federal Law Enforcement Training Center, and the Bureau of Indian Affairs' Indian Police Academy have developed training for federal and tribal law enforcement on human trafficking in Indian country with the aim of appropriately identifying victims, investigating cases, and working effectively with Native victims. VAWA 2013 amended the authorizing statutes for



Human Trafficking (Including Sex Trafficking) of American Indians and Alaska Natives

September 2017

DOJ's Office on Violence Against Women's (OVW) Grants to Indian Tribal Governments and Grants to Tribal Domestic Violence and Sexual Assault Coalitions Programs to include sex trafficking as an additional area to be addressed by each program, and OVW has funded a number of training and technical assistance projects to help tribes and tribal organizations develop comprehensive responses to sex trafficking.

Consultation Questions on Research and Statistics:

- What mechanisms would tribes recommend for collecting more data and information on the prevalence and nature of trafficking of American Indians and Alaska Natives, both within and outside of tribal communities, and on the needs of victims?
- How do tribes view the costs and benefits of collecting non-representative and potentially identifying data on victims from federal grantees?
- What other sources of data should be explored so that the data collected actually could generate prevalence estimates and other information on the scope of the problem?
- What solutions would tribes recommend for increasing the reliability of data collected on Native status and for preventing misidentification of Native victims?
- Should research focus on all forms of human trafficking or specifically on sex trafficking?
- What other areas of research, beyond obtaining prevalence estimates of AI/AN victimization, should be funded?
- Should research focus on identifying who is trafficking AI/AN victims (e.g., parent/guardian, third party), as well as traffickers' recruitment tactics and harm to victims? Should research also focus on effective strategies for preventing trafficking of AI/AN individuals and serving AI/AN victims in a culturally appropriate manner?
- Is it possible to prioritize the areas for further research or are they all equally important?

Consultation Questions on Training and Technical Assistance:

- What additional types of training and technical assistance should DOJ consider funding that would be helpful to tribes and tribal organizations in addressing sex trafficking and labor trafficking?
- What additional types of training and technical assistance are needed for non-tribal grantees working on trafficking issues and for other entities that may encounter American Indian or Alaska Native victims but are not specifically focused on trafficking (such as law enforcement, homeless shelters, and medical and mental health providers)?
- Do the needs differ depending on whether the focus of the training and technical assistance is only on sex trafficking or on both sex and labor trafficking?

For more background information on these consultation questions, please see the attached Framing Paper on Human Trafficking (Including Sex Trafficking) of American Indians and Alaska Natives.



Human Trafficking (Including Sex Trafficking) of American Indians and Alaska Natives

September 2017

Consultation Question: What mechanisms would tribes recommend for collecting more data and information on the prevalence and nature of trafficking of American Indians and Alaska Natives, both within and outside of tribal communities, and on the needs of victims?

Consultation Question: What additional types of training and technical assistance should DOJ consider funding to address human trafficking, including sex trafficking, of American Indians and Alaska Natives?

INTRODUCTION

In recent years, human trafficking of American Indian and Alaska Natives has been the subject of consultation testimony, scholarly articles and media accounts, and reports issued by the federal government and tribal organizations. The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) amended the VAWA tribal grant program statutes and the statute governing this annual consultation to include sex trafficking as an area of focus.¹ At the 2016 Government-to-Government Violence Against Women Tribal Consultation, several tribal leaders or their designees testified about the impact of human trafficking, particularly sex trafficking, on their communities. Recommendations included conducting public awareness campaigns, helping tribes enact trafficking codes, establishing dedicated funding on this topic for tribes and for culturally appropriate victim services, and training law enforcement on identifying and responding to victims. Several commenters identified a connection between missing and murdered Native women and trafficking, and Alaska tribes specifically recommended establishing an alert system for missing Native women and posting information for victims at hospitals and other places where victims might seek assistance.

In referring to human trafficking, this framing paper uses the federal definition of “severe forms of trafficking in persons” originally enacted by the Trafficking Victims Protection Act of 2000,² unless otherwise noted; definitions in tribal and state laws vary widely. According to this definition, sex trafficking that constitutes a severe form of trafficking in persons is “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act,” where the commercial sex act is “induced by force, fraud, or coercion” or “the person induced to perform such act has not attained 18 years of age.”³ Under this definition, any commercial sex act involving someone under the age of 18 is considered a severe form of trafficking in persons, even if there is no third party involved. Other “severe forms of trafficking in persons” include “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery,” commonly referred to as “labor trafficking.”⁴

¹ Pub. L. No. 113-4, §§ 901-903, 127 Stat. 54, 118-20.

² Pub. L. No. 106-386, div. A, 114 Stat. 1464, 1466-91.

³ 22 U.S.C. § 7102(8)(A), (9).

⁴ *Id.* § 7102(8)(B).



Human Trafficking (Including Sex Trafficking) of American Indians and Alaska Natives

September 2017

RESEARCH AND STATISTICS

Existing studies and reports on trafficking victimization among American Indians and Alaska Natives have examined the historical context and experiences of Native women in the United States and Canada, particularly related to sexual violence, and the prevalence of risk factors for human trafficking and sexual exploitation among Native populations.⁵ These reports emphasize the lack of prevalence data and the challenges in obtaining such data, including the underreported nature of the crime and the range of definitions of human trafficking – especially sex trafficking – used for both legal and statistical purposes. Many have pointed to the overrepresentation of Native women in prostitution and the risk factors for trafficking that Native women and youth face, including prior sexual victimization, poverty, and homelessness, as indicators that the problem is significant. Existing research does not always distinguish between the commercial sexual exploitation of American Indians and Alaska Natives within Indian country (as defined in 18 U.S.C. § 1151) and such exploitation occurring off-reservation or in urban areas, a distinction that is important in allocating resources to assist victims and tribes and to improve criminal justice responses. A 2011 paper aimed at synthesizing the research and its implications for policy and practice identified a “critical need for additional research that is sensitive to Native cultural norms and historical experiences, but is larger in scope than existing studies.”⁶ The authors recommended further research, including estimating the full extent of the problem by region, determining the primary characteristics and strategies of traffickers in those areas, and identifying the types of culturally appropriate prevention and intervention that most effectively reduce Native women’s and youth’s vulnerability to trafficking.

Two studies from Minnesota examined sexual exploitation of Native women through interviews with women in prostitution in combination with analysis of secondary sources; both studies made extensive recommendations for meeting the needs of victims. A 2009 report from the Minnesota Indian Women’s Resource Center (MIWRC) reviewed published literature from the United States and Canada, client intake interviews from three MIWRC programs, roundtable discussions with providers of crisis services to Native women and youth, and secondary analysis of statewide homelessness and student survey data.⁷ The study found that 27 percent of the 95 Native women and girls interviewed reported activities constituting sex trafficking under Minnesota law, which defines sex trafficking as “receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.”⁸

⁵ See, e.g., National Congress of American Indians Policy Research Center, “Human & Sex Trafficking: Trends and Responses Across Indian Country,” Tribal Insights Brief, Spring 2016, available at <http://www.ncai.org/policy-research-center/research-data/prc-publications/TraffickingBrief.pdf>; Sarah Deer, “Relocation Revisited: Sex Trafficking of Native Women in the United States,” 36 Wm. Mitchell L. Rev. 621 (2010).

⁶ Alexandra (Sandi) Pierce & Suzanne Koeplinger, “New Language, Old Problem: Sex Trafficking of American Indian Women and Children,” VAWnet Applied Research, October 2011, available at http://vawnet.org/sites/default/files/materials/files/2016-09/AR_NativeSexTrafficking.pdf.

⁷ MIWRC, Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota (2009) (prepared by Alexandra (Sandi) Pierce), available at <https://www.miwrc.org/graphics/reports/Shattered-Hearts-Full.pdf>.

⁸ Minn. Stat. § 609.321, subd. 7a(1) (2017).



Human Trafficking (Including Sex Trafficking) of American Indians and Alaska Natives

September 2017

Similarly, a 2011 study by the Minnesota Indian Women's Sexual Assault Coalition (MIWSAC) and Prostitution Research and Education, based on interviews with 105 Native women in prostitution who had sought services from programs affiliated with MIWSAC, found that about half of the women had been trafficked, using a definition of sex trafficking that included third-party control and exploitation.⁹ In addition, 79 percent of the women interviewed in the 2011 study had been sexually abused as children by an average of four perpetrators, 92 percent had been raped in prostitution, and 84 percent had been physically assaulted in prostitution. Ninety-two percent of the interviewees wanted to exit prostitution, and the women's most frequently identified needs were individual counseling, peer support, housing, and vocational counseling.

The authors of both studies recommended increased funding for culturally appropriate victim services, both on reservations and in urban areas, including advocacy, physical and mental health care, education and employment services, legal services, and both transitional and long-term housing for victims. They further recommended increasing awareness of the problem and providing training on recognizing and supporting victims of sex trafficking for staff at homeless and domestic violence shelters, sexual assault programs, and substance abuse treatment programs, and for all professionals who may come into contact with prostituted Native women and youth, including police officers, emergency room personnel, child protection workers, teachers, and mental health professionals. They also recommended more research on sex trafficking of Native women and the provision of culturally relevant services.

In May 2014, the Willamette University College of Law produced a "legal fact-finding report" on trafficking of Native victims in Oregon based on legal research, law enforcement surveys, and interviews with individuals responsible for prosecuting traffickers, protecting survivors, and preventing trafficking.¹⁰ The authors interviewed service providers that tailor their services to Native victims and those generally involved in serving survivors of sexual abuse and trafficking; they also reached out to tribes directly and spoke with Native survivors. The report identifies a number of issues, including the interconnection between foster care, homelessness, and vulnerability to trafficking, underreporting and its causes, causes and effects of under-enforcement, jurisdictional complications and confusion, and lack of funding for traditional healing methods for Native survivors. It includes recommendations intended to address the issues identified, including comprehensive data collection, training on identifying victims, addressing Native overrepresentation in foster care, and collaboration between federal, state, county, and tribal law enforcement entities.

More recently, the U.S. Senate Committee on Indian Affairs requested two studies from the U.S. Government Accountability Office (GAO) on human trafficking of American Indians and Alaska Natives. In March 2017, GAO reported that American Indians and Alaska Natives are

⁹ Melissa Farley et al., *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota* (2011), available at <http://miwsac.org/images/pdf/Garden%20of%20Truth%20Final%20Project%20WEB.pdf>.

¹⁰ Int'l Human Rts. Clinic, Willamette Univ. Coll. of Law, *Human Trafficking and Native Peoples in Oregon: A Human Rights Report* (2014), available at <http://www.willamette.edu/law/pdf/hrc/human-trafficking-native-peoples.pdf>.



Human Trafficking (Including Sex Trafficking) of American Indians and Alaska Natives

September 2017

considered to be vulnerable to severe forms of trafficking in persons, as defined in the Trafficking Victims Protection Act of 2000.¹¹ In preparing its report, GAO examined federal data on investigations and prosecutions,¹² federal grant programs addressing human trafficking, and federal data on the number of American Indian and Alaska Native (AI/AN) victims served through these programs. GAO found that federal agencies were not collecting data on AI/AN victims as part of an investigation or from victim service providers for a number of reasons, including lack of relevance to the investigation or to eligibility for services, sensitivity of asking victims about their race or tribal affiliation, and concerns that collecting personal information about victims that could make them identifiable to traffickers or others in the community. The report also included an appendix describing federally-funded human trafficking studies and discussing whether the methodologies from these studies could be adapted to examine trafficking of American Indians and Alaska Natives.

In July 2017, GAO released a related report titled “Human Trafficking: Information on Cases in Indian Country or that Involved Native Americans.”¹³ GAO surveyed tribal and major city law enforcement agencies and victim service providers on human trafficking investigations, victim services, and barriers to identifying and serving Native victims. Twenty-seven of the 132 tribal law enforcement agencies that responded to the survey reported initiating investigations involving human trafficking from 2014 to 2016, and six of 61 major city law enforcement agencies reported initiating human trafficking investigations that involved at least one Native victim during the same period. Survey respondents identified lack of training on identifying and responding appropriately to victims, victim shame and reluctance to come forward, and lack of service provider resources as barriers to investigating cases and serving victims.

In its March 2017 report, GAO recommended that the Department of Justice (DOJ) require grantees to report the number of human trafficking victims served with grant funds, including the AI/AN status of those victims. The Department partially concurred with the GAO recommendation, citing planned improvements to grantee data collection, but did not concur with requiring all grantees providing services to trafficking victims to report on the Native status of victims. DOJ noted that requiring grantees to ask a potential victim about the victim’s Native status during client intake could cause confusion or fear, make victims less likely to engage in services, compromise victim confidentiality, and unjustifiably burden service providers that already have limited time and resources to meet victim needs. The Department recognized the importance of obtaining accurate data on the scope of human trafficking of AI/AN populations

¹¹ GAO, *Human Trafficking: Action Needed to Identify the Number of Native American Victims Receiving Federally-funded Services* (2017) (GAO-17-235).

¹² It is important to note that federal data on prosecutions under 18 U.S.C. § 1591 (sex trafficking of children or by force, fraud, or coercion) will not capture cases resolved by plea to another criminal offense, such as sexual abuse or child abuse. Defendants who plead guilty to a crime other than trafficking receive stiff penalties frequently on par with sentences meted out for trafficking convictions. However, plea agreements allow for resolution of a case without the necessity of putting the victim through trial. A public trial can be devastating to a victim who may be struggling physically, mentally, and emotionally with the aftereffects of being trafficked, and this is particularly true for victims in Indian country.

¹³ GAO-17-624.



Human Trafficking (Including Sex Trafficking) of American Indians and Alaska Natives

September 2017

but noted that collecting more detailed grantee data would not meet this goal because it would not provide generalizable, representative data on AI/AN victimization. DOJ also has learned from grantees that non-tribal victim service providers, law enforcement, and other criminal justice system personnel may misidentify AI/AN victims as a member of another race – a systemic problem that grantee performance data cannot solve and for which carefully designed solutions are needed. DOJ further noted that trained researchers and statisticians are in the best position to conduct a study on the scope of the problem, in the past the National Institute of Justice (NIJ) attempted to fund appropriate research in this area, and it remains an area of interest for NIJ.

Consultation Questions on Research and Statistics:

- What mechanisms would tribes recommend for collecting more data and information on the prevalence and nature of trafficking of American Indians and Alaska Natives, both within and outside of tribal communities, and on the needs of victims?
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- Is it possible to prioritize the areas for further research or are they all equally important?

TRAINING AND TECHNICAL ASSISTANCE

Multiple jurisdictions in tribal communities may have the legal authority to investigate and prosecute crimes of human trafficking, and both tribal and non-tribal victim service providers and law enforcement may encounter Native victims. Many of the media reports and Congressional inquiries have focused on the federal government's role in uncovering and prosecuting these offenses. However, tribal prosecutors and state prosecutors also may have the ability to charge and try these cases. The issue is nuanced and a balanced discussion of the issue must involve the following: the location of the offense, the Indian/non-Indian status of the trafficker, if known, and whether the elements of the offense under federal, tribal, or state law have been met. For example, under federal law on sex trafficking, if the victim is an adult, this analysis involves examining whether there was force, fraud, or coercion exerted on the victim to induce the commercial sex act. Training for both tribal and non-tribal law enforcement and



Human Trafficking (Including Sex Trafficking) of American Indians and Alaska Natives

September 2017

victim services providers needs to address these jurisdictional complexities, and the skills needed to identify Native victims of trafficking and respond in a culturally appropriate manner.

Since the enactment of the Trafficking Victims Protection Act of 2000, federal government agencies have provided a range of resources and training to improve responses to human trafficking. In more recent years, agencies have developed tribal-specific resources. For example, DOJ's National Indian Country Training Initiative has provided training for federal and tribal law enforcement on human trafficking in Indian country, including identifying victims, investigating cases, and working effectively with Native victims. Similarly, the U.S. Department of Homeland Security's Federal Law Enforcement Training Center has partnered with the Bureau of Indian Affairs' Indian Police Academy to deliver a train-the-trainer course for tribal law enforcement on indicators of human trafficking, with Indian country case examples, and information on victims' rights. In January 2015, the Administration for Native Americans at the U.S. Department of Health and Human Services issued an information memorandum on recognizing and responding to human trafficking among American Indian, Alaska Native, and Pacific Islander communities that included tips for recognizing the signs of human trafficking and preventing it, as well as resources for developing more effective responses.

VAWA 2013 amended the authorizing statutes for DOJ's Office on Violence Against Women's (OVW) Grants to Indian Tribal Governments and Grants to Tribal Domestic Violence and Sexual Assault Coalitions Programs to include sex trafficking as an additional area to be addressed by each program. In addition to revising grant solicitations to reflect the expanded purposes of the programs, OVW has funded a number of training and technical assistance projects to help tribes and tribal organizations develop comprehensive responses to sex trafficking. For example, the Tribal Law and Policy Institute developed a resource book on sex trafficking for tribal coalitions and advocates and training curricula on advocacy and legal issues related to sex trafficking in Indian country. OVW also funded MIWSAC to partner with Mending the Sacred Hoop to provide training and technical assistance to tribal communities to increase their capacity to respond to sex trafficking. This includes on-site technical assistance, a resource manual of best practices, and a national convening in early 2018 of service providers, criminal justice professionals, survivors, and other community stakeholders to share resources and develop coordinated community responses to sex trafficking.

Consultation Questions on Training and Technical Assistance:

- What additional types of training and technical assistance should DOJ consider funding that would be helpful to tribes and tribal organizations in addressing sex trafficking and labor trafficking?
 - What additional types of training and technical assistance are needed for non-tribal grantees working on trafficking issues and for other entities that may encounter American Indian or Alaska Native victims but are not specifically focused on trafficking (such as law enforcement, homeless shelters, and medical and mental health providers)?
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