

Child Sexual Abuse in Indian Country: Prevalence, Disclosure, and Criminal Case Outcomes

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Although there is lack of empirical research concerning child sexual abuse (CSA) in Indian country, a strong argument can be made that CSA is a significant social problem both in terms of its prevalence (U.S. Department of Health and Human Services, 2012) and its profound short- and long-term consequences for Indian children (Barker-Collo, 1999; Blum, Harmon, Harris, Bergeisen, & Resnick, 1992; Boyer & Fine, 1992; Duran et al., 2004; Malley-Morrison & Hines, 2004). A plausible case can be made that Indian children are at relatively greater risk of CSA, and that the systems in place to control it have been less effective in protecting them than those protecting children outside of Indian country.

Prevalence

It is difficult to collect accurate crime data in Indian country (Earle, 2000; Willeto & Goodluck, 2003), and many crimes are likely underreported and undocumented. Crime rates also vary considerably across the 566 federally recognized tribes, so aggregate results can be misleading for a particular Native community (Harvard Project, 2008). The federal government's Uniform Crime Report (UCR) Program and National Crime Victimization Survey (NCVS) provide little information concerning CSA in Indian country for a number of reasons. Neither system distinguishes between crimes occurring in or outside of Indian country. The UCR does not track CSA as a specific category of crime. The NCVS is a national prevalence sample but is not representative of subgroups, such as state or tribal populations, does not distinguish victims residing in Indian country, and does not survey individual household members younger than 12 years of age.

In 2010, the Tribal Law and Order Act directed federal agencies to study the handling of American Indian and Alaska Native (AIAN) juvenile and adult criminal cases in the federal justice system, improve the collection of crime and justice data in Indian country, and enhance current funding programs to support tribal participation in regional and national criminal

justice databases. As a result, there has been some growth in the number of tribal law enforcement agencies reporting crime data to the federal Uniform Crime Report (UCR) program (U.S. Department of Justice, 2013), but no systematic Indian country crime or victim data analysis has been published since the implementation of the Act.

In spite of the absence of systematic data, other indicators of risk—such as overall violent crime, poverty, and substance abuse rates—lend circumstantial support to the magnitude of the problem. Federal crime reports consistently show that rates of Indian crime and victimization are higher than those for other citizens (Greenfeld & Smith, 1999; Perry, 2004). The average violent crime rate among Native Americans was estimated at 101 per 1000 persons age 12 or older between 1992 and 2001—almost 2 ½ times the U.S. national rate (Perry, 2004). Indian country homicide rates are similar to or exceed those of the most violent cities in the United States (U.S. Department of Justice, 1997). Arrest rates for Indian youth are higher than for other ethnic and racial groups (Bad Wound, 2000), and gang activity continues to grow at an alarming rate (Martinez, 2005; Mydans, 1995), especially among larger tribes (Major, Egley, Howell, Mendenhall, & Armstrong, 2000). Rape, assault, and robbery rates translate into 1 violent crime for every 8 Native Americans 12 years or older, compared with 1 for every 20 residents 12 or older nationally (U.S. Department of Justice, 1999). These crimes are often associated with poverty (Finkelhor & Baron, 1986; Sedlak & Broadhurst, 1996) and alcohol abuse (Mancall, 1995; Perry, 2004; Steele, 2006), both significant problems for Indians.

One in four Indians between the ages of 18 and 24 years becomes a victim of a violent crime (Nessi, 1999), and when victimization rates are high, women and children suffer the most. The violent crime victimization rate for Indian women is 50% higher than that of African American men (Greenfeld & Smith, 1999; Rennison, 2001). Among low-income Native American women, rates of domestic abuse, both physical and sexual, are significantly higher than among all U.S. women (Malcoe, Duran, &

Montgomery, 2004), and Native women are twice as likely as their non-Native counterparts to be raped by a domestic partner (Greenfeld & Smith, 1999).

Jones and associates (1997) found that 61% of Northern Plains youth between the ages of 8 and 11 years had been exposed to some kind of traumatic event and exhibited more trauma-related symptoms than non-Indian children. Child protective service data indicate that CSA rates are higher among Indians than other ethnic groups. In 2011, American Indian–Alaska Native (AIAN) children in the United States were reported to have been abused at a rate of 11.4 per thousand, 44% higher than the 7.9 per thousand for Anglo children (U.S. Department of Health and Human Services, 2012). Survey research found that 21.6% of AIAN females reported sexual abuse by the 12th grade (Blum et al., 1992), and that 49% of adult women from a Southwestern tribe reported they were victims of CSA (Robin, Chester, & Rasmussen, 1997).

Characteristics of Abuse Episodes

There is little information that describes the nature of CSA episodes in Indian country, but what is available suggests patterns are similar to those among the general population in the U.S. On the one hand, Robin et al. (1997) found that in most cases, offenders were family or persons known to the victim and incidents involved penetration. Navajo officials reported that in cases reported in 1994, all but one of the offenders were males, ranging in age from 5 to 56 (Center for Sex Offender Management, 2001).

On the other hand, Steele and associates (Steele, 2006, 2009; Steele, Damon, & Denman, 2004) found some significant differences in patterns of abuse in a statistical comparison of 393 Indian country CSA cases with a comparison group of 3006 cases involving non-Indian country children. Indian child victims were significantly more likely to be sexually abused by members of their extended family than were non-Indian victims. Also, while older non-Indian child victims were significantly less likely to be abused by a member of their immediate family than their younger counterparts, the same pattern, while slightly apparent, was not statistically significant for Indian children.

Disclosure of Abuse in Forensic Interviews

When CSA is reported to legal authorities, suspected child victims may facilitate the investigation by disclosing details to law enforcement and child protective service professionals. If their case proceeds into court, they may be called upon to testify against the defendant. Relatively few CSA investigations yield definitive physical evidence (Faller, 2008), so successful prosecutions rely to a large degree on testimonial evidence. Because adult witnesses to the crime are rare, prosecutors must rely on the child victim for a criminal conviction.

Although children might make an outcry to a family member or friend and preliminary statements to first responders, the justice system relies on more complete and formal statements from children made to forensic interviewers. The extensive literature concerning disclosure behaviors in formal forensic interviews identifies many factors that can influence the child's willingness to disclose and affect the completeness of their disclosure. These include characteristics of the child and offender, the abuse episode, family influences, case reporting to authorities, and the manner in which the forensic interview is conducted. Cultural factors are also thought to exert considerable influence on disclosures.

The role of culture in formal disclosure has been examined primarily in cases involving African American child victims, and researchers have concluded from these studies that culture can affect disclosure in a number of ways. Children from minority groups face culture-specific barriers to disclosure that could contribute to delays or denials (Dunkerley & Dalenberg, 1999; Elliott & Briere, 1994; Olafson & Lederman, 2006). For example, groups holding relatively strong prohibitions concerning sexual behaviors, and those emphasizing family preservation and independence from government regulation, are likely to inhibit disclosure (Alaggia, 2004; Fontes, 2009). In some cultures, it is bad taste to discuss personal matters with outsiders (Fontes, 2008). Marginalized cultures in which discrimination, instability, and poverty are commonplace are likely to have lower rates of disclosure as well (Fontes, 2009). Alaggia (2004) concluded, "Children who have been marginalized because of discrimination related to race, ethnicity, and poverty may feel too disempowered to tell about abuse" (p. 1216).

Fontes (2009) observed that children born into ethnic minority groups are actually bicultural in varying degrees. Younger children are particularly acculturated into the values and beliefs of their culture-of-origin and less aware of those of other cultures that are distinctive from their own, including the dominant culture. As children mature, they become more reconciled to the characteristics and behaviors of people from a different cultural heritage. Related to disclosures during formal forensic interviewing, research findings concerning child–interviewer ethnic matching are inconsistent, but some researchers assert that as child victims mature, the preference of Anglo children for Anglo interviewers disappears. However, this process may be retarded by minority group status. Dunkerley and Dalenberg (1999) assert that African American differences in disclosure by race of interviewer stays the same regardless of the child's age, suggesting the internalization of racial mistrust.

Race interacts with the relationship to the offender in that children are often asked to implicate not only another family member but also a member of their racial or ethnic group. Thus black families may be reporting at a later phase than are white families due to the role of secrecy and insulation in the black community (Dunkerley & Dahlberg, 1999).

Disclosure Rates in Indian Country

Steele (2009) found that even when the interview protocol and interviewers were held constant, Indian children residing in Indian country were significantly less likely to disclose to forensic interviewers than children in non-Indian country cases. The difference between the groups is most pronounced for children younger than 6 years of age. Consistent with Fontes' observations, as children mature the difference in disclosure rates becomes smaller, to the point that Indian country children between ages 12 and 17 years disclose at a slightly higher rate than their non-Indian country counterparts. The disclosure rate for males is significantly lower for both Indian country and non-Indian country cases. Indian country boys are less likely to disclose abuse, and the difference in disclosure rates is most profound among very young boys.

Children from Indian country are less likely to disclose against members of their extended family. While Indian and non-Indian children have similar disclosure rates when the offender is an immediate-family member (i.e., parent, step-parent, or sibling), Indian country children are statistically significantly less likely than their counterparts to disclose abuse at the hands of their extended family and non-family members. Apparently, Indian children make relatively less distinction between immediate family and both extended- and non-family members. However, non-Indians are much more likely to distinguish between nuclear, extended, and non-family members, and imposing this scheme on Native cultures fails to recognize communal networks, including clan members with no biological connection to the child.

A logistic multiple regression analysis allowed Steele and associates to simultaneously determine the relative association of a measure of disclosure in a formal forensic setting (dependent variable) with measures of the child's gender, age, and residence in Indian country; the offender's age, ethnicity, family relationship to the child; and the gender and ethnicity of the interviewer. Like other researchers studying disclosure behaviors, they found that girls, older children, and those who had been abused by an adult male who was not a member of the child's immediate family were more likely to disclose. Relevant to the current topic, they also found that, when taking all of these independent variables into account, children who resided in Indian country were slightly less than two thirds as likely to disclose abuse than were their non-Indian country counterparts (Steele, 2009).

Criminal Case Outcomes

One of the foundations of our common-law criminal justice system is the notion of intentionality (i.e., offenders intended to commit their crime or acted in an irresponsible manner that resulted in a crime for which they are responsible). Although the rationality and intentionality of sex offenders might be open to discussion, criminal justice policies assume that offenders and

potential offenders are rational and can be deterred from committing crimes. Deterrence, in turn, is based on the following elements: the certainty that if a crime is committed that the offender will be punished, the swiftness with which the penalty will be invoked, and the severity of the punishment.

While policy makers in the United States have emphasized severity of punishment as a deterrent in recent decades, scholars have demonstrated that the certainty that the commission of a crime will result in punishment is the element of greatest influence in deterring crime (Tyler, 2006). As shown with CSA cases occurring in Indian country, low certainty of conviction and punishment are likely to result in a limited criminal justice system deterrent effect.

Although rates vary dramatically, CSA cases overall have low rates of charges filed relative to other felony cases (Cross, Walsh, Simone, & Jones, 2003) and relatively high overall attrition rates in the criminal justice system (Steele, 2008). Federal cases occurring in Indian country seem to be even less likely to result in conviction (Steele, n.d.). Terry Cross (2006), until recently Executive Director of the National Indian Child Welfare Association, reported that in the Northwestern region only 2% of Indian country child abuse cases are prosecuted in federal court, but other than anecdotes and autobiographical statements, it is difficult to determine federal justice system activities in Indian cases.

Still, we can formulate at least a rough estimate of conviction rates for Indian country criminal cases that are handled in federal court by combining information from the U.S. Census Bureau, testimony given before congressional committees, and federal justice agency correspondence. Beginning with testimony provided by Terry Cross to the Senate Indian Affairs Subcommittee (2006), 20% of an estimated 30,000 cases of abuse that occur each year in Indian country are sexual in nature, resulting in an estimated annual rate of 6,000 CSA cases. Cross further estimated that only 10% of CSA cases are criminally investigated, resulting in approximately 600 CSA investigations per year. Since the enactment of Public Law 280 in 1953, states have jurisdiction over criminal matters on Indian lands in California, Minnesota, Nebraska, Oregon, Wisconsin, and (later) Alaska, and on some reservations in other states. Taking into consideration that, according to the 2000 U.S. Census, 20.5% of all Indians in the United States reside in PL-280 states, and assuming similarity in the incidence of CSA cases between PL-280 and non-PL 280 states, we can estimate that 480 criminal investigations are conducted by the Federal Bureau of Investigation (FBI) (out of the 6,000 CSA cases) each year in Indian country.

This estimate grounded in Cross' congressional testimony is remarkably close to FBI reports for 2003–2005 documenting an average of 483 case investigations per year (Swecker, 2006). The

FBI also claims that these cases resulted in 179 CSA convictions in 2004, and 177 in 2005 (Burrus, 2006), yielding a conviction rate per investigation of 36.9%. These federal investigations and convictions do not include cases in Indian country that were investigated by state authorities. Using Cross' estimate of 6,000 CSA cases per year (of which 4,800, on average, occur in non-PL-280 states), offenders stand a 3.7% chance of conviction in federal court. When asked about the low conviction rates in all cases from Indian country, prosecutors asserted that they refuse to prosecute cases, including 61% of CSA cases, due to a lack of admissible evidence (Williams, 2012). Evidentiary problems are complicated by a general mistrust of the federal and state justice systems by Indians who get the message that nothing is being done (Williams, 2012).

Can tribes improve child protection and implementation of justice? Since passage of the Tribal Law and Order Act in 2010, tribal courts have found their sentencing authority increased to a maximum of 3 years for felonies and could conceivably take action in CSA cases declined for prosecution in federal courts. However, U.S. attorneys do not generally turn over their evidence to tribal courts or notify tribes before the tribe's statute of limitations has expired (U.S. Government Accountability Office, 2011). Tribal governments have also been plagued with lack of resources, inconsistency in policies and their implementation, power struggles (Lovett, 2012), and corruption (Snell, 2011). Officer training and coordinated investigations have improved in some Indian nations, but equal protection for Indian children in the United States will require more thoughtful and intensive efforts to minimize personal and community risk factors and to increase both traditional and governmental prevention and intervention efforts.

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