

**Final Report:
Focus Group
on Public Law 280
and the Sexual Assault
of Native Women**

December 31, 2007



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FINAL REPORT:

**FOCUS GROUP ON PUBLIC LAW 280 AND THE
SEXUAL ASSAULT OF NATIVE WOMEN**

DECEMBER 31, 2007

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**Focus Group on Public Law 280 and the Sexual Assault of Native Women:
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Focus Group on Public Law 280 and the Sexual Assault of Native Women

August 15-16, 2007, Green Bay, Wisconsin

On August 15-16, 2007 the Office on Violence Against Women (OVW) hosted a focus group on the Oneida Indian Reservation in Green Bay, Wisconsin to discuss challenges to, and opportunities for, collaboration between states and tribes in Public Law 280 jurisdictions to address sexual assault in Indian country. The Tribal Law and Policy Institute (TLPI) provided technical assistance and collaborated with OVW on the design and delivery of the session.

Public Law 280 Overview

General principles of federal Indian policy dating back to Acts of Congress in 1817 and 1885,¹ dictate that federal authorities will have concurrent criminal jurisdiction with tribes in Indian country in some areas, and exclusive jurisdiction in others.² This is based on the special government-to-government relationship that tribes enjoy with the United States. This arrangement works to protect tribes from state governments that have historically been hostile or indifferent to tribal concerns. While federal jurisdiction in Indian country has its own set of obstacles, it respects sovereignty and provides room for tribal justice systems to function and grow, free of state interference.

¹The General Crimes Act 18 U.S.C. 1152 (1817) and the Major Crimes Act, 18 U.S.C. 1153, 3242 (1885).

² For a discussion and guide to the complexities of federal jurisdiction in Indian country, see <http://www.tribal-institute.org/lists/jurisdiction.htm> last accessed 10/24.07.

In 1953 Congress changed this arrangement when they passed Public Law 280³ (PL 280), allowing six states to assert civil adjudicatory and criminal jurisdiction in Indian country.⁴ The six “mandatory” states are: California, Minnesota (excluding the Red Lake Reservation), Nebraska, Oregon (excluding the Warm Springs Reservation), Wisconsin, and Alaska at the time of statehood. Significantly, there was no tribal consent required for this jurisdictional change. Public Law 280 also allowed other states to “opt in” at a later date.⁵ Since its passage over

³ 18 U.S.C 1162.

⁴ Please note a few states, such as Kansas and New York, assumed jurisdiction over Indian country through state specific legislation prior to 1953. The tribes in these states likely experience similar problems to Public Law 280 tribes, and are deserving of research attention.

⁵ Since in 1953, nine other states have opted in to Public Law 280 to varying degrees. The nine states are: Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, Utah, and Washington. Significantly, some of these optional states made their acceptance of Public Law 280 jurisdiction contingent on tribal consent, which was never received. For more on the optional Public Law

fifty years ago, tribes and state/local governments have experienced many problems related to state criminal jurisdiction in Indian country, such as lack of funding to county sheriff's departments to take on the extra jurisdiction, poor response times to reservation communities, jurisdictional uncertainties, and infringement on tribal sovereignty.

Some of the most significant problems with Public Law 280 stem from misunderstandings about the law. While tribal governments retain concurrent jurisdiction over crimes that occur in Indian country impacted by Public Law 280, many tribal governments have historically been denied funding to develop tribal justice systems due to a misconception that Public Law 280 had stripped tribal governments of jurisdiction.⁶

Moreover, many state officials have insufficient information about Public Law 280 and have assumed exclusive jurisdiction. Tribes and states have faced many obstacles to collaboration; due in part to these misconceptions and

. . . many tribal governments [subject to Public Law 280] have historically been denied funding to develop tribal justice systems.

280 states, see Goldberg, C. (1997). *Planting Tail Feathers: Tribal Survival and Public Law 280*. Pg. 69. Los Angeles: UCLA American Indian Studies Center.

⁶ For more detail on funding issues, see Carole Goldberg and Duane Champagne, "Law Enforcement and Criminal Justice Under Public Law 280," Forthcoming report from the National Institute of Justice, U.S. Department of Justice.

in part to strained tribal/state relations. Victims of violence, including victims of domestic violence, sexual assault, dating violence, and stalking are impacted by these misunderstandings. With over 42%⁷ of the tribes in the lower 48 states affected by state jurisdiction as a result of Public Law 280, these barriers to effective provision of safety effect a significant portion of the tribal population.

To learn more about the impact of these issues on survivors of sexual assault in Indian country and to begin to address these problems, OVW convened a focus group of stakeholders in Public Law 280 jurisdictions to discuss problems and share ideas for collaborative solutions.

Methodology

The event was structured as a two day event, with day one providing an educational component for participants who were not familiar with the intricacies of Public Law 280 or the high rates of sexual assault in

Indian country. The second day was primarily made up of focus group sessions, where participants were encouraged to discuss their experiences with Public Law 280 and collaboration across tribal and state agencies.

⁷ Tribes subject to Public Law 280 in lower 48 (134) /total number of tribes in lower 48 (322).

Participants

The session was attended by 34 invitees selected by OVW, in consultation with TLPI (29 participants, 5 observers). There were 13 participants from Public Law 280 tribes, 7 participants from tribal coalitions in Public Law 280 states, and 9 participants and 5 observers from federal agencies and national membership organizations from disciplines such as law enforcement, prosecution, Indian Health Services, forensic nurses, etc. (See Attachment 3 for attendee list.)

Day One

Day one of the session included a presentation on Sexual Assault in Indian Country by Sarah Deer, Victim Advocacy Legal Specialist at the Tribal Law and Policy Institute, and a presentation on Public Law 280 by Carole Goldberg, Professor of Law at UCLA. In addition, three panels presented on the experiences specific to three Public Law 280 states - Minnesota, Wisconsin, and California. Day one was moderated by Carole Goldberg.

Day Two

Day two consisted of three separate time blocks of focus groups; each time block had three focus groups running concurrently in separate rooms, for a total of 9 focus groups throughout the day. Each group had a facilitator who moderated the group and guided participants through a list of questions. Groups were facilitated by Carole Goldberg, Sarah Deer, and Maureen White Eagle, consultant for the Tribal

Law and Policy Institute. Sarah Deer and Maureen White Eagle had note takers in their rooms, Carole Goldberg took notes on a computer while facilitating. A comprehensive list of the key points from these discussions can be found at Attachment 5. Focus groups ranged in size from approximately 5 – 13. There was insignificant attrition among the group as a whole, with approximately 2 participants leaving early on day two.

Focus group session #1 (1 hour, 15 minutes). Participants were divided into three homogenous groups, based on occupation. The purpose of the homogenous grouping was to allow participants a high level of comfort and to begin discussions among peers about sexual assault in Public Law 280 jurisdictions. The three groups were: Tribal coalitions - 7 members; tribal representatives - 13 members; and federal/non-tribal organizations - 9 members.⁸ All three groups met in separate rooms to discuss questions on the theme “current practices and aspirations.” Participants were asked questions such as: “What is your organization/tribe/coalition doing to address violence against native women?” And, “What would your organization/tribe/coalition like to be doing to address violence against native women?” (For a full list of questions, see Attachment 4.)

⁸ Note that numbers do not match the total number of attendees, as several attendees were observers only and sat in on several focus groups, rather than be assigned to just one.

Focus group session #2 (1 hour, 15 minutes). Participants were divided randomly into three groups. The goal was to convene a cross section of all participants in each group. The participant mix was successful (see table).

The theme of session two was “sharing impressions of current practices.” Participants

were asked questions such as: “How well trained are law enforcement and criminal justice personnel to deal with sexual assault in Public Law 280 jurisdictions?” “How well do state/county law enforcement and criminal justice agencies understand tribal cultures? How important is such understanding?” And, “Are sexual assaults of Indian women taken seriously and effectively prosecuted by the state/county criminal justice system (prosecutors, courts, etc.)? If not, why not?”

Session 2 Participant Mix			
	Tribal Coalition Members	Tribal Representatives	Federal Agency Reps/National Membership org
Group 1	2	5	3
Group 2	2	5	3
Group 3	3	3	3

Focus group session #3 (2 hours). Participants were re-divided into new random groups for session #3. The participant mix was again, successful (see table).

The theme of session 3 was “action steps to addressing sexual assault in Public

Law 280 jurisdictions.” Examples of questions asked are, “What kinds of incentives (financial or

otherwise) would make it more likely that tribal and state/county authorities would cooperate effectively in addressing sexual assault of Indian women?” “What obstacles, if any, stand in the way of greater tribal responsibility (e.g., funding, jurisdictional limits, etc.)?” And, “How can tribal and state coalitions work together to respond to the issues and challenges raised by sex offender control laws, such as civil commitment and Adam Walsh Act requirements?”

Day two closed with summary of focus group discussions. (See agenda at Attachment 2.)

Session 3 Participant Mix			
	Tribal Coalition Members	Tribal Representatives	Federal Agency Reps/National Membership org
Group 1	2	5	3
Group 2	3	3	3
Group 3	2	5	3

Results of Focus Group Discussions

Based on the detailed notes of the three facilitators, we identified several themes of concern and corresponding recommendations. Themes of concern include: funding problems; data collection issues; lack of reporting of sexual assault; not enough use of Sexual

Assault
Nurse
Examiners
(SANE) or
Sexual
Assault
Response
Teams
(SART)
and sexual
assault

Themes of concern include: funding problems; data collection issues; lack of reporting of sexual assault; not enough use of Sexual Assault Nurse Examiners (SANE) or Sexual Assault Response Teams (SART) and sexual assault protocols . . .

protocols; lack of understating at the state level of tribal culture and Public Law 280; and problems with policies within the Indian Health Service (I.H.S.).

Some of the general recommendations to enhance the response to sexual assault included: standardization of forms between state/county and tribe; using the safety audit model developed in Duluth; using cultural traditions to help healing; increased training for both county and tribal law enforcement; increased use and training of SARTs and SANEs; education for attorneys on Public Law 280 on the state bar exam; and mandates that states that receive funding collaborate with tribes.

Below we provide additional details on these obstacles and recommendations, as well as others that emerged. Because state and tribal governments share

concurrent criminal jurisdiction in Public Law 280 jurisdictions, many of the challenges are closely intertwined. For example, both tribes and states may both be challenged by data collection in similar ways. For this reason, obstacles at the state/county and tribal level have

been grouped, with an explanation of how each jurisdiction experiences the problem, if relevant. It should be noted that the

problems presented by Public Law 280 are not homogenous. There are a variety of issues unique to each particular community. Even within a single state, the relationships between state and tribal authorities may vary from community to community. Therefore, the obstacles and recommendations in this report may not apply to every community impacted by Public Law 280.

Because of the unique role of federal authorities in Public Law 280 jurisdictions, obstacles and recommendations at the federal level are listed separately.

Public Law 280 States, Counties and Tribes: Obstacles

Some of the obstacles confronting states, counties and tribes dealing with sexual assault against Indian women are general problems associated with Public Law 280. As mentioned earlier, the law did not provide funding for states and counties saddled with new Indian country responsibilities, and was not the product of tribal consent. As a result, state criminal justice agencies on Public Law 280 reservations have long suffered from underfunding and lack of acceptance from tribal communities. Tribes too, have suffered from underfunding for tribally based justice systems, animosities from state authorities and a slow response times from county law enforcement. These general problems have been documented by scholars, lawyers, tribal leaders, and advocates (see attached bibliography). The convergence of Public Law 280 and sexual assault against Indian women presents unique challenges that warrant specific examination.

The obstacles presented by Public Law 280 to address sexual assault relate to data collection, training or awareness, lack of resources targeted at tribal communities, lack of well-funded tribal police departments, animosity toward tribal communities, and lack of reporting and cooperation from tribal community members. These obstacles have long plagued law enforcement and criminal justice personnel under Public Law 280.

Data Collection

Obstacles at the State Level: Data collection problems stem from the fact that most counties with Public Law 280 reservations do not identify crime reports according to Indian country location. Hence, there is no uniform methodology for collecting crime data for Indian country subject to state jurisdiction under Public Law 280. Even where counties are willing to identify Indian country location for crimes, the BIA will not accept such data. Apart from these difficulties, counties are often inaccurate in identifying whether victims or perpetrators are Indian. The problems of lack of tribal members' trust in state criminal justice agencies, described below, lead to underreporting of crime, which can distort crime data.

In addition, there are some data collection issues that are specific to sexual assault. It is a notoriously underreported crime, regardless of location. Moreover, some states have used Native community data for funding requests to federal agencies, but then have not used that funding to support enhanced efforts in Indian country.

Obstacles at the Tribal Level: From the tribal perspective, the inability to access state and national databases seriously limits the ability of tribal law enforcement to perform their duties. Most victimization surveys do not

address the geographic location of the offense, so adequately documenting reservation sexual assaults is difficult. Most tribes lack accurate statistical information to substantiate the problem of sexual assault within their communities or to substantiate systemic problems which fail to adequately address the issue.

Training/Education:

Obstacles at the State Level: Obstacles

related to training or education are common in Public Law 280 state or county governments. Law enforcement and criminal justice

personnel often lack an understanding of Public Law 280 and Indian law issues, seeing nothing unusual about the exercise of criminal authority in the Indian country portions of their jurisdictions. Peace Officer Standards and Training (POST) programs in such states rarely include any material about Public Law 280, and only in Washington, a partial Public Law 280 state, is Indian law included on the state bar examination. In-service trainings for prosecutors and police on the subject of Indian law generally or Public Law 280 in particular are not widely available, let alone mandatory. As a consequence, police and criminal justice personnel in Public Law 280 states are uninformed about tribal sovereignty, and the unique challenges posed by the imposition of state criminal jurisdiction.

Law enforcement and criminal justice personnel often lack an understanding of Public Law 280 and Indian law issues . . .

Problems of lack of training for state/county law enforcement and criminal justice officials are magnified in sexual assault cases, where special cultural concerns and needs may attend sexual assault victimization. Sexual assault cases are difficult for police officers regardless of the locus of the crime, as they often lack the necessary training. But for Indian country in particular, county police and prosecutors are often unaware of the

seriousness of the problem of sexual assault, and uninformed about particular cultural issues that may attend response and treatment for Native women.

Obstacles at the Tribal Level: There are substantial deficiencies in the training of tribal law enforcement. A high turnover ensures that there is a constant need for training and education. The complexity of the systems requires greater training, but the resources result in less. Many tribal courts historically have not tried sexual assault cases and training is unavailable for tribal judges and prosecutors on sexual assault.

Lack of Funding/Response

Obstacles at the State Level: Public Law 280 states have never received special federal funding to support law enforcement and criminal justice. (In contrast, state and local school districts serving Indian children on reservations receive special federal allocations.) Thus, it is rare that counties or states establish separate bases of operation on

or near reservations. In fact, because tribal communities are often some distance from centers of non-Indian population in their counties, county courts and policing agencies are typically located some distance from reservations. As a consequence, patrolling is not conducted regularly, and response time to calls for service is often too long. By the time county law enforcement may arrive at the scene of a crime, the perpetrator may be long gone, and effective action has been impeded. There are no special mechanisms of state accountability to tribal communities that could help correct these and other problems. Indeed, since tribal members are often a small percentage of county populations, local police and prosecutors have an incentive to give priority to other parts of their territory.

Problems of slow response to crime reports in Indian country, and the low priority generally given to Indian country offenses, are exacerbated in sexual assault cases. Loss of evidence is particularly harmful in such cases, where immediate examination of victims may aid successful prosecution. Furthermore, police and prosecutors serving Indian country must contend with the low priority given to sexual assault cases generally. These cases are costly and time-consuming to investigate, and because they are difficult to win, often the least experienced prosecutors are assigned to them. Out of fear of failure or lack of knowledge, these inexperienced prosecutors may wind up dropping Indian country cases. Their fear of

failure may derive from concerns about victim or witness non-cooperation, or from concerns that jurors dislike Indian victims or will not convict where the Indian victim has been drinking. Finally, some prosecutors and courts won't recognize community nurses as experts, further complicating proof of guilt.

Obstacles at the Tribal Level: Since the 1970s there has been a nationwide growth in tribally controlled criminal justice systems. With the passage of the Indian Self Determination and Education Act (ISDEA) in 1975, tribes had the resources and federal support to develop tribally controlled police agencies. More recently, the U.S. Department of Justice (DOJ) has been increasingly providing funding for tribal justice systems, including those in Public Law 280 jurisdictions. Unfortunately, there is still a dearth of tribal law enforcement and tribal courts on Public Law 280 reservations. In California, for instance, very few of the 107 federally recognized tribes have tribal law enforcement.

A few tribes have substantial gaming revenues which provides them funding to develop a criminal justice system and programs that reduce sexual assaults. Most tribes do not have this source of income and severely lack resources. Many of the barriers participants in focus groups identified relate to inadequate funding to support culturally specific prevention programs, adequate and trained law enforcement, adequate and trained prosecutors and adequate and trained court personnel.

Even when Public Law 280 tribes are able to develop tribal law enforcement, they often have difficulty retaining qualified personnel. Substantial money can be spent on training only to lose the officer to the state system. This problem is tied to the inability to pay wages and supply benefits comparable to the surrounding communities and to the substantial work load of a tribal law enforcement officer. Frequently, it is the best officers that leave for better pay, better working conditions, and more respect.

This lack of legal infrastructure at the tribal level leads to barriers to cooperation with tribal agencies. Public Law 280 states and counties often lack strong partners in tribal law enforcement or criminal justice agencies. It is difficult to establish cooperative relations, or even to take tribal police departments seriously, when they are so seriously underfunded. Disparities in power between tribal and county agencies are also barriers to cooperation.

Animosities toward Reservation Communities

Obstacles at the State Level: Hostility to tribes and prejudice toward tribal members from off-reservation communities are mindsets sometimes incorporated into the state law enforcement and court system. These animosities may be born of conflict over resources (e.g., water, fish and game),

disputes relating to tribal economic development such as gaming, or the product of racism. They translate into a lack of respect for tribal law enforcement, tribal courts, and tribal leaders. When a tribal criminal justice system exists the counties/state may not cooperate with tribes on enforcement unless the laws are consistent with the state's laws. Many tribes that have developed law enforcement are not incorporated into the state system (tribal police not linked to 911 dispatch). The state/county thus further limits the

A lack of tribal community trust in the state system presents formidable challenges for effective law enforcement and criminal justice . . .

ability of tribes to hold offenders accountable by undermining their work through a lack of support. Cooperation can be dependent upon one individual in key state/county and/or tribal offices. Relying on one or two people

decreases the potential for sustainability of cooperative agreements.

Mistrust of State Agencies

Obstacles at the Tribal level: A lack of tribal community trust in the state system presents formidable challenges for effective law enforcement and criminal justice. If reservation residents do not believe in the legitimacy of state jurisdiction, do not trust state officials, or do not believe they will receive an effective response when a crime has occurred, it is very difficult for the state criminal justice system to function. Under these conditions, tribal members are reluctant to report crime. And even where they report crime, it may be difficult to get community cooperation

with investigations and criminal trials. A negative feedback system can emerge, where the lack of community cooperation produces lack of interest in arrest and prosecution on the part of county law enforcement and criminal justice agencies, which in turn produces less community cooperation, and so on. These problems of lack of trust are compounded by cultural and language barriers.

Tribal communities' reluctance to cooperate with state or county law enforcement is especially problematic in sexual assault cases. Many Native women are reluctant to report the intimate and sometimes family-sensitive details associated with sexual assault to state or county officials who have little understanding of their culture. Rape victims not only feel tremendous shame, but also feel that it is fruitless to report, because nothing will be done. Perpetrators benefit from the lack of trust, as it provides assurance to them that they will not be punished. Insofar as investigations, prosecutions, and convictions may be especially difficult in sexual assault cases, those difficulties may generate even more mistrust of the state or county systems. If law enforcement officers are themselves committing sexual assault, as some of the participants indicated, there may be special reason to mistrust the system.

Examination and Treatment of Victims

Obstacles at the State Level: Treatment of Indian victims of sexual assault in hospitals and throughout the investigative process presents special issues for state and county agencies.

There seems to be a shortage of properly trained SANE nurses and local advocates serving Indian country, and the standard Sexual Assault Protocol is not being followed. As a consequence, Native women receive poor treatment, proof of sexual assault is compromised, and trust in the state criminal justice system declines.

Necessary Authority

Obstacles at the Tribal level:

Authorities in Public Law 280 tribes face numerous obstacles when it comes to holding perpetrators criminally accountable. Sentencing barriers in tribal court, limiting punishment to one year under the Indian Civil Rights Act, substantially limits effective tribal punishment of sexual assault offenders. *Oliphant v. Suquamish Indian Tribe*⁹ restricts tribes from criminally prosecuting non-Indian, and most perpetrators are non-Indian. Civil options such as exclusion of perpetrators from the reservation can be extremely difficult, when gaming and intermarriage has brought so many outsiders to the community. Many tribes have no tribal laws which apply to sexual assault cases.

Tribal Leadership

Obstacles at the Tribal Level: Some tribal leaders need access to education and training in order to understand the magnitude and complexity of the problem of sexual assault. When tribal leaders and police officers are the perpetrators or have family members who are the perpetrators, they often

⁹ 435 U.S. 191 (1978)

minimize the problem and use their power to thwart productive action (this phenomenon is not unique to tribal communities). More frequently tribal leaders are too willing to hand over their responsibility to outside agencies.

Cross-Cultural Challenges

Obstacles at the Tribal Level: The loss of culture (through the boarding school system and other historical action) has stripped tribal communities of the value system that prevented sexual assault. Talking about sexual assault can still be very awkward and difficult in many tribal communities due to cultural mores and can be traumatic to the many who have been sexually victimized in the past. Change comes very slowly in most tribal communities.

Recommendations for States and Counties

Data Collection: Counties can alter their data collection software easily to collect information on whether or not a crime was located in Indian country. In addition, enhanced efforts should be made to identify Native women victims in databases currently maintained or to be created by state police and prosecutors and by U.S. Attorneys. Anonymous reporting may be an aid in such efforts, so that there is a record of the case for statistical purposes, even if the crime is not formally reported to the police.

Training/Education: To address deficiencies of training for police officers, POST programs, both initially and on an ongoing basis, should include training on Public Law 280 and sexual assault victims' issues in Indian country

as a mandatory component. Additional training is needed for law

enforcement officers who serve reservations, and who serve on SANE and SART teams. Examples of the types of material that could be used are those that have been produced by Professor Carole Goldberg.

Training issues also exist for prosecutors. For Public Law 280 states, Indian law should be included on the bar examination. Furthermore, special mentoring or training should be

provided for prosecuting attorneys who may seldom have sexual assault cases in Indian country, and continuing legal education (CLE) programs should be developed for sexual assault and domestic violence trainings targeted at reservation communities.

Education programs at the undergraduate level, and especially clinical programs provided through law schools, could be a very effective way to raise awareness, improve training, and provide service to tribal communities facing high rates of sexual assault. States should support their law schools in developing and operating clinical courses focused on sexual assault prosecutions in Indian country. Finally, targeted loan forgiveness programs for prosecutors and public defenders could

help attract more experienced attorneys to sexual assault cases.

Enhanced training and understanding

of tribal communities are also important at the treatment/investigative stage. SANE and SART teams are helpful, but they need more training to deal with Native victims. Coordinated Community Response Teams (CCR) should always include someone from a SART. And we need to train more Native forensic nurses and connect them with national organizations and criminal justice personnel, so they can bring their knowledge and cultural

Additional training is needed for law enforcement officers who serve reservations, and who serve on SANE and SART teams.

sensitivity to treatment and investigations where Indian women are the victims.

Funding/Response: To improve the quality and accountability of state law enforcement and criminal justice for Public Law 280 reservations, audits should be made of state and local agencies' response to sexual assault against Native women. These audits can identify problems and highlight areas of success. Police departments and prosecutors' offices with notable lack of response to sexual assault of Native women should be held responsible for their records.

To make the criminal justice system more accessible to tribal community members, counties should consider holding some of their court sessions on reservation lands. In at least one Public Law 280 jurisdiction, the county has been utilizing the tribal courthouse for this purpose, with very beneficial consequences for appearances by victims, witnesses, and defendants.

It would also be helpful to provide earmarked funding in police departments and prosecutors' offices for sexual assault specialists. These individuals could then receive customized training in Indian country issues.

Prosecutors' offices need leadership and incentives in order to channel more experienced prosecutors into sexual

assault cases. The District Attorney of each jurisdiction can set the proper tone, by acknowledging the importance of these cases, despite some of the difficulties in securing convictions. It is important to change the institutional culture in such offices, which currently is that sexual assault cases are difficult to try, and the victims particularly difficult to work with. One way to do so is to cultivate incentives for experienced attorneys to take on such cases. For example, prosecutors' offices could have separate benchmarking of sexual assault

cases, so that improvements in conviction rates for those offenses can be tracked and rewarded. In addition, these offices can conduct surveys of victims, asking them

how their cases were handled and how they feel about the outcome; then these surveys can be used to evaluate the prosecutors' work, not just the conviction rates. To improve those conviction rates, prosecutors and judges should be encouraged to recognize community nurses as experts, and partner community health aides with licensed nurses. In this way, expert testimony will be easier to obtain and introduce at trial.

Cooperation with Tribal Agencies: To build respect for tribal police and a more cooperative spirit on the part of local agencies, states should provide incentives for cooperative relations. A notable example is Wisconsin, which has allocated a special fund, established from gaming revenues, designed

... Counties should consider holding some of their court sessions on reservation lands.

especially for tribes and counties that have cooperative agreements. It would also help if there were incentives in VAWA grants for developing MOUs between counties and tribes. (See National recommendations, below.) Where sheriffs' departments have good relationships with tribal law enforcement in Public Law 280 jurisdictions, their experience should be examined, publicized, and recognized. As a general matter, state and county agencies should be aware that cooperation with tribes can assist in securing grants from government agencies and foundations. One county, for example, used such a grant to create a special domestic violence unit.

In addition, counties should become better informed about tribal services, and refer Native sexual assault victims to those services. For example, non-Native prosecutors need to know about tribal advocates, and ensure that they are contacted and that Indian victims are aware of their capacity to help. Cross-trainings involving county law enforcement and tribal advocates would also facilitate such cooperation. In general, collaboration between tribal and state coalitions can help bridge gaps in service.

Finally, states should build on the success of initiatives such as "Project Passport," which has facilitated cross-jurisdictional enforcement of state and tribal domestic violence protection orders. Such efforts should be extended to cases of sexual assault.

Overcoming Animosity: At the time of hiring, police and prosecutors should be screened to identify and exclude those with anti-Indian bias. Furthermore, prosecutors could develop protocols for the *voir dire* process (questioning of potential jurors) at trial, enabling them to identify and perhaps minimize anti-Indian bias among prospective jurors.

Examination and Treatment of Victims: Counties should work to increase availability of SANE nurses who are equipped to handle Native victims and testify in criminal cases. For example, one tribe worked with the county's CCR to help the local hospital get SANE nurses, one of whom was Native. They then built her credentials for court testimony through opportunities for case review.

Recommendations for Tribes

Data Collection: Cooperative efforts between the tribe and state to document the numbers of sexual assaults on reservations are a necessity. An audit of a community's criminal justice system is helpful in identifying the problem areas in addressing sexual assault and could provide some statistical analysis of the problems. It could also identify what is working well.

Education and Training: Education of tribal judges on sexual assault issues is important in empowering the tribal courts. More tribal court systems need development in the criminal areas and more tribal judges are needed. Sovereignty classes for tribal leaders on Public Law 280, as well as education on sexual assault, are important to create a deeper understanding of the issues involved and support change. Training for law enforcement and tribal prosecutors on handling sexual assault cases is important. Generally community education on sexual assault is also important. Collaborative training with local counties, can educated as well as build relationships.

Funding and Resources: Tribes need to use tribal consultations and other methods of influence to leverage and prioritizing federal funding. Tribes with funds need to review their priorities to ensure sexual assault is addressed.

Successful programs should be highlighted, honored and replicated. Tribes should be meaningful partners with states and counties. The need for resources is great. Ensuring funds are used for prevention and not just punishment is important for the future.

Retention of Qualified Law

Enforcement: Efforts should be made to expand the numbers of tribal police, better addressing crime and reduce the stress on individual law enforcement officers. Salaries of tribal law enforcement need to be comparable to the surrounding county law enforcement to insure retention of qualified officers.

Legal Infrastructure: Tribes should be encouraged to build their legal infrastructure and use the power they have. If the state is not providing

Tribes should be encouraged to build their legal infrastructure and use the power they have.

appropriate interventions, tribes should take greater responsibility for sexual assault cases. Understanding the nature of concurrent jurisdiction is an opportunity to exercise greater authority. Tribal police should be supported by the community and become a more active presence in the community. Tribes need to take control of prosecution and the detention of offenders. Some tribes with sufficient gambling revenues have been able to increase law enforcement by contracting with the county for additional officers

and establishing a sub-station on the reservation and hiring tribal police.

Tribal-State Relationships:

Collaborations are important to provide a meaningful response to sexual assault on reservations. Using the same procedures on the reservation as surrounding counties can improve response to sexual assault. Sexual Assault Response Teams (SARTs) focus on building relationships and potentially provide a model for tribal communities. Cooperative agreements between tribes and the state/county should be encouraged. Tribes should take more responsibility through agreements with the bordering counties. Tribes need to be pro-active in initiating and developing agreements. Greater economic success and political influence of some tribes is bringing greater responsiveness from county law enforcement and prosecutors. Tribes can offer services to non-tribal members, helping in building relationships. Tribal judges can lead initiatives. Tribal programs can do outreach to state organizations.

Lack of Trust: SARTs could be helpful in building trust between communities. Keeping accurate statistical information on sexual assaults and requiring law enforcement and prosecutorial accountability can demonstrate improvement and promote trust.

Necessary Authority: Tribes should use their sovereignty to the greatest extent possible in the enforcement and prosecution of sexual assaults. Tribes can benefit greatly from assistance in the

development of sexual assault laws, protocols, and procedures. Tribes with influence should encourage legislative change of the restrictions on the tribes' sentencing authority and other jurisdictional limitations.

Tribal Leadership: Developing sexual assault prevention experts/spokespersons among current tribal leadership is effective. Encouraging survivors/advocates to become community activists could lead to improvements. Prohibiting violent offenders from holding any type of leadership role in the tribe could eliminate some internal conflict.

Cross-Cultural Challenges: Developing programs that focus on cultural development can be helpful in prevention and helpful in healing. Men's groups that teach respect without labeling men can be helpful in prevention. Cultural immersion programs are an option for some perpetrators. Programs such as women's groups and women's cultural activities facilitate healing while enabling women to do positive things for themselves and their families. The use of women's stories of resistance and recovery from sexual violence to empower women should be further developed. Elders could be used in public service announcements recognizing that violence is not traditional. Native women leaders need to take greater control of their community and be more assertive in voicing their expectations and concerns. Tribally-initiated projects have the highest likelihood of success.

The Role of the Federal Government and National Organizations

Federal Level: Obstacles

Because Public Law 280 conferred a great deal of criminal jurisdiction upon state governments, it is often assumed that the federal government no longer plays any role in responding to crimes on Public Law 280 reservations.

However, there are a variety of ways in which the federal government and national organizations can provide leadership in responding to the crisis of rape of Native women within Public Law 280 jurisdictions.

In many Public Law 280 communities, there is no clear guidance on how I.H.S. officials work with local law enforcement (both tribal and non-tribal) to preserve the chain of evidence once a forensic exam is performed.

First and foremost, Public Law 280 did not extinguish the federal trust relationship between the United States and Indian tribal nations. Therefore, the federal government has a legal and moral obligation to work closely with Indian tribes to ensure that safety, health, and education are available to Indian people, regardless of jurisdictional changes imposed by Public Law 280. The federal government continues to play a major role in sexual assault-related needs, such as health care and grant making. In addition, federal officials may be able to provide guidance, training, and technical assistance to both states and tribes who respond to sexual assault in Indian country.

Health care and forensic exams

A forensic exam provides critical evidence that is almost always a component of a sexual assault prosecution – particularly when the victim is an adult. While prosecution without a forensic exam is not impossible, the lack of this crucial evidence can present numerous challenges to a prosecutor. Forensic examinations need to be carried out by a trained

medical professional – most often a Sexual Assault Nurse Examiner (SANE). However, the exam may also be carried out by other health care providers, such as physicians.

Indian Health Service (I.H.S.), a federal government agency, is the primary health care provider for Indian people in the United States. Tribes in both Public Law 280 and non-Public Law 280 states rely largely on I.H.S. to provide a range of health care needs. At this time, I.H.S. does not have national standards or protocols for responding to sexual assault. While individual facilities may have developed protocol and requirements for responding to sexual assault, there is no consistent national protocol to which all I.H.S. facilities must adhere. Participants at the focus

group noted that in some cases, if there is no one trained to perform a forensic exam at a local I.H.S. facility, the victim may be transported to a city hospital which may be hundreds of miles away. In some cases, the victim may be reluctant to travel far away (especially in cases where she is instructed not to bathe, eat or drink, or use the restroom) and decline to proceed with the investigation.

In many Public Law 280 communities, there is no clear guidance on how I.H.S. officials work with local law enforcement (both tribal and non-tribal) to preserve the chain of evidence once a forensic exam is performed. County sheriffs and local law enforcement may be unfamiliar with the I.H.S. facility and its role in performing forensic exams. Moreover, there may not be a clear protocol regarding the processing of forensic exam evidence. Whereas I.H.S. facilities in non-Public Law 280 states may work directly with federal crime laboratories, there is not a consistent protocol on the relationship between I.H.S. and state crime laboratories.

Lack of training on Public Law 280

Focus group participants noted that there are deficiencies in training and education about the role of federal officials in responding to sexual assault cases in Public Law 280 jurisdictions. While a single incident of sexual assault may fall under the purview of state and/or tribal criminal law, federal laws of general applicability (including federal crimes enacted within Violence Against Women Act (VAWA)) still apply. There does appear to be some

degree of confusion about the relationship between individual U.S. Attorneys Offices and tribal governments in regards to sexual assault. Federal prosecutors play a critical role in enforcing cross-jurisdictional crimes. For example, one of the federal VAWA criminal provisions prohibits entering or leaving Indian country with the intent to injure or harass another person (18 U.S.C. 2261A). This federal law applies independently of a state or tribal sexual assault law and can be pursued by the local U.S. Attorney's Office. However, state, tribal, and federal officials need to understand this important issue in order to respond effectively.

Education is also needed for federal grant making agencies on Public Law 280. Without substantial training, a federal program officer may not recognize the significance of an application for funding from a state government or non-tribal agency in a Public Law 280 states. Focus group participants noted that while some applications for federal assistance may require a "Memorandum of Understanding" (MOU) or "Memorandum of Agreement" (MOA) between state and local authorities, many grants are awarded that do not seem to include tribal governments and/or tribal agencies. Few grant programs mandate a cooperative approach between states and tribes as a prerequisite for funding.

Recommendations for Federal Agencies

Health care and forensic exams

Strengthening the capacity of health care service providers (specifically, I.H.S.) to perform forensic exams will likely increase the number of prosecutions at the federal, state, and tribal levels. In 2004, the United States Department of Justice Office on Violence Against Women (OVW) issued “A National Protocol for Sexual Assault

Medical Forensic Examinations.”¹⁰

This document provides important guidance for the development of victim-centered forensic exams and could be used to develop protocols for

I.H.S. facilities. OVW has entered into cooperative agreements with the International Association of Forensic Nurses (IAFN) to provide training to any health care entity that may be in the position to perform forensic exams (including a toll-free helpline). In June 2006, OVW issued “National Training Standards for Sexual Assault Medical Forensic Examiners” – which could be used as a guiding document for I.H.S. and other health care facilities serving tribal governments. Most recently, DOJ announced that it will soon be unveiling a “virtual” training for health care providers that has been developed by

Dartmouth Medical School. The advent of technology (including telemedicine) creates many opportunities to provide needed training to entities with limited resources.

Education

The Office on Violence Against Women (OVW) is in a unique position to address the gaps in training and

education regarding Public Law 280 and sexual assault. Because of its role as a grant making entity, OVW can facilitate improved communication between state and tribal entities by encouraging MOUs

and MOAs as part of grant applications. In addition, OVW should support more discipline specific training, such as a training component in VAWA grants that helps prosecutors understand how their own culture affects their actual or perceived ability to relate to victims and convince jurors in sexual assault cases. Moreover, OVW enters into cooperative agreements with national training organizations, several of whom were represented at the focus group.

- American Prosecutor’s Research Institute (APRI)
- International Association of Chiefs of Police (IACP)

Because of its role as a grant making entity, OVW can facilitate improved communication between state and tribal entities by encouraging MOUs and MOAs as part of grant applications.

¹⁰ Available at <http://www.ncjrs.gov/pdffiles1/ovw/206554.pdf>

- National Sheriffs Association (NSA)
- International Association of Forensic Nurses (IAFN)

OVW can continue to encourage these organizations to pay close attention to the issues facing Native survivors of sexual assault in Public Law 280 states in their national training events and publications.

Because it is situated within the Department of Justice, OVW can also facilitate more education for and among U.S. Attorneys and other federal officials to understand the continuing important role played by federal officials in responding to sexual assault in Indian country. Working with other DOJ offices such as the Office for Tribal Justice and the Executive Office of U.S. Attorneys, OVW can participate in dialogue about ensuring that federal crimes of general applicability are enforced in Public Law 280 jurisdictions.

In July 2006, Congress passed the Adam Walsh Act Child Protection and Safety Act (PL 109-248). The language has created concern and confusion for Public Law 280 tribes because the federal law potentially undermines the concurrent authority tribes have over sex offenders. Several focus group participants noted that both tribes and states in Public Law 280 states will need

intensive training and technical assistance to fulfill the requirements of the Adam Walsh Act.

Data Collection

While crime data collection in Public Law 280 states may seem like a local issue, federal authorities can mandate that states collect this information. The FBI Criminal Justice Information Services (CJIS) should add Indian country location to its list of data that must be provided in crime reports. In addition, if counties have difficulties collecting this data due to database limitations, the federal government should provide funds and technical assistance for counties to update software.

Other opportunities

Several focus group participants noted that it would be helpful for federal agencies and national organizations to elevate effective collaborative efforts between states and tribes in Public Law 280 jurisdictions by profiling them in publications or even making awards. Websites and trainings could provide positive examples of Public Law 280 jurisdictions in which Native survivors have access to a wide range of services. This positive feedback could also serve to address some of the negative perceptions of Public Law 280.

Conclusion

This two day focus group on sexual assault of Native women and Public Law 280 was a significant event in an important continuing dialogue about the obstacles faced by tribes and states and the opportunities for collaboration. In their evaluations, participants indicated a high level of satisfaction with the event, and specifically with the focus group discussions themselves. (See Attachment 6 for compiled evaluation results.) Convening this small multi-disciplinary group was an important first step at addressing obstacles to collaboration. Subsequent steps should facilitate implementation of the recommendations listed in this report, so that the safety of Native women in Public Law 280 jurisdictions is strengthened through an increased federal role, better resource provision, increased education and training, tribally controlled judicial systems, traditional approaches to addressing sexual assault, and improved relationships between tribes and states.

Final Report Attachments:
Focus Group on Public Law 280 and the Sexual Assault of Native Women

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Attachment 1:
Further Reading on Public Law 280 and Sexual Assault

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***Focus Group on Public Law 280
And the Sexual Assault of American Indian Women***

**August 15 - 16, 2007
Oneida Nation Reservation, Green Bay, Wisconsin
AGENDA**

Tuesday, August 14, 2007

7:00 pm - 9:00 pm **Meeting Registration**

Day One, Wednesday, August 15, 2007

7:30 am - 8:30 am **Registration and Buffet Breakfast**

8:30 am – 9:30 am **Invocation, Welcome, Introductions, and
Review of the Agenda**

- Chairman Gerald Danforth, Chairman, Oneida Nation of Wisconsin
- Lorraine P. Edmo, Deputy Director for Tribal Affairs, Office on Violence Against Women (OVW), U.S. Department of Justice
- Carole Goldberg, Professor, UCLA School of Law
- Participants introduce themselves

9:30 am – 10:15 am **Presentation: *Understanding Public Law 280***

- Carole Goldberg, Professor, UCLA School of Law

10:15 am – 10:30 am **Questions and Answers: *Understanding Public Law 280***

10:30 am- 10:45 am **BREAK**

Day One, Wednesday, August 15, 2007, Continued

- 10:45 am- 11:45 am **Presentation: *Overview of Sexual Assault and American Indian Women***
- Sarah Deer, Victim Advocacy Legal Specialist, Tribal Law and Policy Institute (TLPI)
- 11:45 am - 12:00 pm **Questions and Answers: *Overview of Sexual Assault and American Indian Women***
- 12:00 pm – 1:00 pm **Lunch on your own**
- 1:00 pm – 2:00 pm **Panel Discussion: *Inter-Jurisdictional Coordination in Wisconsin***
- Gene Red Hail, STOP Coordinator, Oneida Nation
 - Oneida Nation Coordinated Community Response (CCR) Team Members
- 2:00 pm - 2:15 pm **Questions and Answers: *Inter-Jurisdictional Coordination in Wisconsin***
- 2:15 pm – 3:15 pm **Panel Discussion: *Development of Tribal Sex Offender Registries in Minnesota***
- Bill Brunelle, Director of Public Safety, Red Lake Reservation
 - Nicole Mathews, Executive Director, Minnesota Indian Women’s’ Sexual Assault Coalition
 - Sarah Deer, Victim Advocacy Legal Specialist, TLPI
 - Lisa Brunner, Executive Director, Community Resource Alliance
- 3:15 pm -3:30 pm **Questions and Answers: *Development of Tribal Sex Offender Registries in Minnesota***
- 3:30 pm – 3:45 pm **BREAK**

Day One, Wednesday, August 15, 2007, Continued

- 3:45 pm – 4:45 pm **Panel Discussion: *Challenges to Building a Local Coordinated Response in California***
- Norma McAdams, Grants Specialist/Domestic Violence Advocate, Hoopa Valley Tribe
 - Jolanda Ingram-Marshall, Executive Director, Niwhongwh xw E:na:wh Stop the Violence Coalition, Inc.
- 4:45 pm – 5:00 pm **Questions and Answers: *Challenges to Building a Local Coordinated Response in California***
- 5:00 pm- 5:15 pm **Summary of the Day**
- Carole Goldberg, Professor, UCLA School of Law

Day Two, Thursday, August 16, 2007

7:30 am – 8:30 am **Buffet Breakfast**

8:30 am – 8:45 am **Overview of the Agenda for Day Two**

- Carole Goldberg, Professor, UCLA School of Law

8:45 am – 9:00 am **Participants transition to small group discussion rooms**

9:00 am – 10:15 am **Focus Group Session #1, Homogenous groups:**
Barriers to Cooperation

- Facilitators:
 - Maureen White Eagle, Consultant, TLPI
 - Sarah Deer, Victim Advocacy Legal Specialist, TLPI
 - Carole Goldberg, Professor, UCLA School of Law

10:15am-10:30 am **BREAK**

10:30 am – 11:45 am **Focus Group Session #2, Heterogeneous groups:**
Sexual Assault in Indian Country

- Facilitators:
 - Maureen White Eagle, Consultant, TLPI
 - Sarah Deer, Victim Advocacy Legal Specialist, TLPI
 - Carole Goldberg, Professor, UCLA School of Law

11:45am -12:00pm **Morning Recap**

- Carole Goldberg, Professor, UCLA School of Law

12:00 pm – 1:00 pm **Lunch on Your Own**

1:00pm – 3:00 pm **Focus Group Session #3, Heterogeneous groups: Actions**
Steps to Address Sexual Assault in PL 280 Jurisdictions

- Facilitators:
 - Maureen White Eagle, Consultant, TLPI
 - Sarah Deer, Victim Advocacy Legal Specialist, TLPI
 - Carole Goldberg, Professor, UCLA School of Law

Day Two, Thursday, August 16, 2007, Continued

3:00 pm – 3:30 pm **BREAK and Participants transition to plenary meeting space**

3:30 pm – 4:15 pm **Sharing of Recommendations for Future Action**

- Carole Goldberg, Professor, UCLA School of Law

4:15 pm - 4:30 pm **Discussion of Next Steps**

- Lorraine P. Edmo, Deputy Director for Tribal Affairs, Office on Violence Against Women (OVW), U.S. Department of Justice

4:30 pm **Adjourn**

**Attachment 3: Focus Group on Public Law 280 and the Sexual Assault of Native Women
August 15-16, 2007**

Attendees

Last Name	First Name	Organization/Tribe
Aycock	Steven D.	National Council of Juvenile and Family Court Judges
Barber	Roseanne	American Indians Against Abuse, Inc.
Bojorquez	Marlaine	Pauma Band of Mission Indians
Branham	Ben	Hoopa Valley Tribe
Brennan	Belinda	Oneida Domestic Abuse Program
Brunelle	William	Red Lake Tribal Police
Brunner	Lisa	Community Resource Alliance
Burris	Dean	Executive Office of United States Attorneys, U.S. DOJ
Chasson	Susan	International Association of Forensic Nurse Examiners
Cole	Camille	Klamath Tribe of Oregon
*Edmo	Lorraine	Office on Violence Against Women, U.S. DOJ
Galbraith	Christine	National Sheriff's Association
Godwin	Julie	Klamath Tribe of Oregon
Hagen	Leslie	Office of Justice Programs/SMART Office
Hostler	Monika Johnson	Resource Sharing Project
*Howkumi	Kathy	U.S. DOJ - OVW
Hurst	Linda	Reach Counseling Services (Oneida)
Ingraham- Marshall	Jolanda	Niwongwh xw E:na:wh Stop the Violence Coalition, Inc.
Long	Jennifer	American Prosecutor's Resource Institute
Majel Dixon	Juana	Pauma Band of Mission Indians
Manley	Jacqueline	Southern Indian Health Council
Matthews	Nichole	Minnesota Indian Women's Sexual Assault Coalition
Olson	Tina	Mending the Sacred Hoop Coalition
Omish- Gauchena	Germaine	Strong Hearted Native Women's Coalition
Parker	Jessica	Sexual Assault Center of Family Services (Oneida)
Pole-McAdams	Norma	Hoopa Valley Tribe
Red Hail	Gene	Oneida Nation STOP Program
RedCloud	Jan	Stockbridge-Munsee Community
*Rowe	Kirsten	U.S. DOJ - OVW
Thundercloud	Deborah	Oneida Nation
*Tyner-Dawson	Gena	U.S. DOJ- OJP
Waldrop	Lindsay	International Association of Chiefs of Police
Wolfe	Judy	Indian Health Service
*Woodard	Kimberly	U.S. DOJ - OVW

* indicates observer only, did not participate in focus groups.

Attachment 4
Public Law 280 and the Sexual Assault of Native Women:
Focus Group Guide

9:00am – 10:15am: **Focus Group Session #1: Homogenous groups**
THEME: Current Practices and Aspirations

Sarah: Homogenous Non Tribal Group

- 1) What did you hear in the presentations yesterday that were important to your organization?
- 2) What is your organization doing to address violence against native women?
- 3) To what degree is your organization addressing responses to sexual assault in PL 280 jurisdictions?
 - a. i.e. policy, education, training?
- 4) What would you *like* to do?
- 5) Do you hear from people in your organization about these issues?
- 6) If so, what are they saying?
- 7) If not, why not?

Carole and Maureen: Homogeneous Tribes and Tribal Coalitions (Maureen: substitute “your tribe” for “tribes in your coalition”)

- 1) What did you hear in the presentations yesterday that was important to your tribe?
- 2) What is your tribe doing to address violence against native women?
- 3) To what degree is your tribe working with other jurisdictions to address sexual assault?
 - a. i.e. policy, education, training?
- 4) What would you *like* to do?
- 5) Do you hear from people in your organization about these issues?
- 6) In what ways does the tribe suffer from lack of cooperation?
- 7) How have you benefited from cooperation that exists?
- 8) What are the external barriers to cooperating?
- 9) What strategies have been effective in approaching in state/county authorities to enter into cooperative agreements?
- 10) What strategies have been ineffective in approaching in state/county authorities to enter into cooperative agreements?
- 11) Are there problems within your tribe that make it difficult to work cooperatively?
 - a. Are there problems conceptualizing the terms of agreement?
 - b. Are there are obstacles associated with the process?

10:15am-10:30am **Break**

10:30am – 11:45

***Focus Group Session #2: Heterogeneous groups
THEME: Sharing impressions of current practices***

- 1) How serious is the problem of sexual assault of Indian women on reservations?
- 2) What is the perspective of non native organizations on this?
- 3) Are sexual assaults on reservations reported to tribal authorities? to state or county authorities? Why or why not? What could increase the likelihood of reporting?
- 4) Do tribal and state/county law enforcement and criminal justice agencies show respect for one another? What would constitute evidence of such respect?
- 5) How well trained are law enforcement and criminal justice personnel to deal with sexual assault in PL 280 jurisdictions?
- 6) How well do state/county law enforcement and criminal justice agencies understand tribal cultures? How important is such understanding? If you think it's important, what kind of training would be preferable?
- 7) Are sexual assaults of Indian women taken seriously and effectively prosecuted by the state/county criminal justice system (prosecutors, courts, etc.)? If not, why not?

11:45am -12:00pm

Morning Recap

12:00 pm– 1:00pm

Lunch on your own

1:00pm – 3:00:

***Focus Group Session #3: New Heterogeneous Groups
THEME: Action Steps to Addressing Sexual Assault in
Public Law 280 Jurisdictions***

- 1) What kinds of incentives (financial or otherwise) would make it more likely that tribal and state/county authorities would cooperate effectively in addressing sexual assault of Indian women?
- 2) In what ways, if any, would the system other than your own (tribal or state/county) have to change in order for cooperation in addressing sexual assault of Indian women to increase?
- 3) Would it be preferable to have tribal law enforcement and justice agencies take greater responsibility for sexual assault of Indian women? Why or why not? What obstacles, if any, stand in the way of greater tribal responsibility (e.g., funding, jurisdictional limits, etc.)?
- 4) If a Public Law 280 state government prosecutes a case of sexual violence that occurred on the reservation, how can the state authorities best cooperate with tribal advocacy programs?
- 5) How can tribal and state coalitions work together to respond to the issues and challenges raised by sex offender control laws, such as civil commitment and Adam Walsh Act requirements?

- 6) Should national (non-Native) sexual assault trainings and initiatives attempt to incorporate Public Law 280 tribal issues? If yes, how should this be done?
- 7) Should existing non-Native Sexual Assault Response Teams (SARTs) be expanded to include tribal issues or are separate SARTs needed?

*Attachment 5:
Summarized Comments from Focus Groups*

Below is a comprehensive bullet pointed list of the comments made during the nine focus group sessions. The challenges and opportunities/recommendations are divided by jurisdiction: tribal; state/county; and national.

Please note that because this list includes all comments made at all focus group sessions, there is significant repetition. This repetition should indicate to the reader that the point was brought up more than once in separate focus groups.

Tribal

Challenges at the Tribal Level

Non-reporting/fear of testifying

- Victims don't report because nothing will be done. Incidence of sexual assault is much higher than statistics indicate.
- The non-reporting of rape is because of shame and concern that nothing will be done.
- Underreporting of sexual assault sends message to perpetrators that they will not be held accountable.
- There is a fear of providing testimony.
- Fears exist that perpetrators who are related to tribal leaders and/or law enforcement will be protected from the reach of the law, so victims want to remain anonymous.

Retaining Qualified Tribal Law Enforcement

- Tribes need higher salaries for offices/officers.
- There is a high loss of trained officers [to higher paying positions].
- Tribes train police officers, and then lose them to higher paying state and county law enforcement agencies.

Strained Tribal – State Law Enforcement Relations

- Many tribes that have developed law enforcement are not incorporated into the state system. An example: tribal police are not linked to 911 dispatch.

- Some states and sheriffs' associations aren't open to working with tribes or treating tribal police as full peace officers, despite their training.
- Cooperation with county agencies is too dependent on who happens to be occupying county offices at any given time.
- Some state police officers don't want to come in tribal area to network, some counties will cooperate, and some will not.
- Off-reservation communities have hostility toward tribes, sometimes because of resource conflicts (water, fish), which can lead to prejudice against tribal members among state court juries.

Training Needs

- There is a need for training of law enforcement on ethical issues or recusal if officers are related to victim or perpetrator.
- There is difficulty excluding people (non-Indians as well as Indians) who are perpetrating sexual assault on the reservation, because of gaming and intermarriage that bring outsiders into the community.

Funding/Resource Issues

- There is great inequality between the tribes – some with adequate gaming revenue can take effective action to address the issues. Most tribes can't.
- Some tribes would like to try some more culturally specific activities with men for prevention purposes – but lack funding.
- Tribal police are understaffed and under-funded.

Data Collection/Statistics

- Data collection problems include access to state/national criminal justice databases.
- Victimization surveys do not address the location of offense.
- We lack accurate statistical information to substantiate the problem of sexual assault.
- The absence of accurate statistics regarding sexual assault against Native women makes documenting the problem difficult.

Lack of Trust

- Tribal communities lack trust in some state law enforcement and prosecutors because they don't carry through with arrests and prosecutions.
- Tribal communities lack trust in some state child welfare and child protective services departments, because of concern that children will be removed from victims and the state system will not be very cooperative.
- Fear and trust issues are a barrier for collaboration.
- There is insufficient trust and collaboration at the tribal level.

Cultural Challenges

- Tribes are very slow to change.
- There is a difficulty in talking about sexual assault.
- The loss of culture (through boarding school system and otherwise) has stripped tribal communities of value system that prevented sexual assault, leaving the idea that men are entitled to rape women.

Lack of Knowledge of the Issue

- Tribal leaders are not hearing about the issues.
- There is insufficient awareness on the part of community and leadership regarding incidence of rape of Native women.
- Some local counties don't see sexual assault as a serious problem.

Problems at the Leadership Level

- Tribal leaders and police officers are sometimes the perpetrators.
- Tribal leadership is sometimes too willing to hand over responsibility to outside agencies in the state.

Lack of Legal Infrastructure/Barriers to Creating Legal Infrastructure

- Most Public Law 280 tribes don't have the system (court or law enforcement) to take on enforcement and prosecution of sexual assault.
- There are sentencing barriers at the tribal level - ICRA (Indian Civil Rights Act).
- Some tribes don't yet have tribal courts.

- Some states demand that the tribes match their laws before they will cooperate.

Other

- There are no programs for molesters who are not substance abusers.
- Native women are taken across the border into Mexico and sexually assaulted. There are trafficking concerns.
- Focus on domestic violence (within and outside tribe) can distract attention from sexual assault as a distinct crime.
- Relying on one agency/one person makes success less likely.
- Reliance solely on the state is ultimately not going to make women safe.
- Border towns are still challenged to address tribal issues in a progressive way.
- Vicarious Post Traumatic Stress Disorder is not being addressed.

Opportunities at the Tribal Level

Creative Collaboration/Standardization

- Collaborating and using the same procedures in the tribe and county is important and helpful in dealing with sexual assault cases. The Coordinated Community Response (CCR) model could work and builds good relationships.
- Cooperate agreements between the state (not individual counties) would be more effective.
- Tribal CCR fosters cooperation, as well as participation in county's CCR.
- Tribes should take more responsibility through Memorandums of Understanding (MOUs) with counties.
- Tribes need to be meeting with liaisons for the Federal Bureau of Investigations (FBI) or counties when they are not doing their job. They need to be proactive in demanding accountability.
- We need cooperative efforts, tribes and states, to document numbers of sexual assault.

Commitments from Prosecution

- Get states and counties to commit to prosecution even if cases aren't the strongest, because even if there is no conviction the woman's story has been validated.

Increased Exercise of Sovereignty/Tribal Police

- Tribes could use more of their power. Some tribes have commenced prosecuting all sexual assaults in tribal court because state was not doing the job.
- It is better to have tribes take greater responsibility on sexual assault cases.
- Increase support for tribal police to expand activities and become more of an active presence in the community.
- Tribe needs control over prosecution and detention of offenders; tribes in southern CA and elsewhere are in early stages of doing so.

Education for Tribe and County/State

- Education of Tribal Judges on sexual assault issues is important in empowering the tribal courts. More tribal court systems need development in the criminal area and more Tribal Judges are needed.
- Tribes can film elders giving public service announcements about how violence is not part of the tradition.
- Share Cangleska and other materials with tribal community and non-tribal community.
- Tribes should provide sovereignty classes to tribal leaders who don't understand the history of Public Law 280.
- Tribes can invite county officials to meet with tribe so the county officials can be made aware how serious the problem is.
- Build a greater understanding at the tribal level.
- Identify leaders in the community who are strong and able to articulate the importance of sexual assault responses.

Promising Practices

- The audit of the urban community (Duluth) should help in identifying the problem areas in addressing sexual assault and provide some statistical analysis of the problems.

- Sexual assault awareness month at Klamath included weekly events, such as candle light vigil, a march, honor song, dance troupe of students. Klamath partnered with a local church for these events.
- It would help to highlight successful programs in Indian Country through something like Harvard Project's Honoring Nations program.
- At Klamath and Stockbridge Munsee, tribal service providers and programs work collaboratively with local county crisis center and victim advocate when there is a tribal member victim.
- One tribe gave out \$50/person to spend in local county in order to help build good relations.

Economically Successful Tribes

- Some tribes with gambling funds have been able to increase law enforcement by contracting with the county for additional officers, building a substation on reservation land and hiring tribal police.
- Tribes with money can get a response from the state or federal government.
- Greater economic success and political influence of some tribes is bringing greater responsiveness from county law enforcement and prosecutors.

Culturally Based Programs

- Programs which focus on cultural development can be helpful in prevention and also, helpful in healing.
- Tribes can impose traditional sanctions on offenders, such as service to elders (with assurances of safety for elders).
- Tribes can institute programs such as women's groups and women's cultural activities (berry-gathering) to facilitate healing and enable women to do positive things for themselves and their families.
- Communities can empower women through stories of resistance to sexual violence, as in Sarah's presentation.
- Women of the community, such as female leaders of clans, need to take control (even from Tribal Councils) and express what they expect of offenders.

- Try to be creative in attracting community to programs, including informal talk circles, giveaways, music, food, and gifting women with shawls.
- Create men's programs that teach respect without labeling the men, using referrals from probation, from ICWA, and self-referrals.
- Cultural immersion programs can be an option for perpetrators.
- Tribally-initiated projects have the highest likelihood of success.

Tribes Providing Services to Non-Tribal Community

- Tribes are not limited to providing services to just tribal members – tribes can offer services to non-tribal members as well.
- Tribal programs can do outreach to state organizations.

Other

- Gaining trust from tribal community may be easier for programs that don't advertise or have high profile regarding labels of domestic violence or sexual assault.
- Tribal judges can lead initiatives.
- Include food in grants, because that facilitates communication.
- Provide havens for victims on other reservations.
- Sometimes one person can make a difference – they can be the glue that holds us together.
- Tribally-initiated Public Law 280 summits are very important in opening communication lines.

County/State

Challenges at the County/State Level

Lack of Education/Training

- Lack of understanding of Public Law 280 and Indian law issues at the state level is a big challenge to overcome.
- Tribal sovereignty is misunderstood by state authorities.
- There is a lack of knowledge of Indian law by state authorities.
- Sexual assault cases are difficult for police officers, who often lack training.
- There is no awareness of the seriousness of the problem in the community. Awareness on the treatment of victims also lacking.

Data Collection Problems

- Crime data from counties is not being accepted at Bureau of Indian Affairs. Some counties do not have accurate data collection for race or location of crime – (whether or not crime happened on reservation).
- Some counties are using Native community crime data for funding, but then not helping tribal communities.

Lack of Accountability

- There is a lack of accountability in the system – states are not held accountable for the lack of investigation/prosecution of sexual assault cases.

Long Response Times/Low Priority

- Law enforcement doesn't come for hours and by that time the perpetrator is long gone. Response time and system delays prevent effective action.
- Sexual assault has a low priority within some law enforcement agencies.

Problems with Prosecution

- It is difficult to get a conviction because of the cost of investigation and the difficulty of convincing a jury when any drinking has been involved on the part of the victim.
- Law enforcement will respond, but some prosecutors do nothing.
- If cases aren't reported, there's nothing prosecutors can do.

- There is inconsistency in prosecutorial response.
- The least experienced prosecutors are often assigned to sexual assault, and out of fear or lack of knowledge they may wind up dropping cases.
- Some prosecutors and courts won't recognize community nurses as experts.
- Sometimes victims want to drop the cases.

Reporting

- From the law enforcement perspective, reporting is as far as it goes. Victims are concerned about their reputation. People don't trust the system so they don't report. Why report if nothing is going to happen?

Cultural Barriers

- Many Native women are reluctant to report to non-Native law enforcement.
- Language barriers lead to non-reporting.

Racism/Historical Animosity/Attitudes Toward Tribal Police

- Awareness alone will not increase reporting. A victim must have trust in the system to report and when the system does little or nothing, victims naturally will not report. Good relationships take time to develop.
- Racism, disparities in power, and lack of respect are all barriers to collaborative agreements between tribes and states/counties.
- Some non-Indian agencies don't want to serve Native clients.
- Lack of trust between tribes/states is a problem.
- Racism/ignorance about Native people creates a barrier to collaboration.
- An anti-Indian bias among jurors makes conviction difficult.
- There is poor treatment of Native women in some hospitals and a lack of properly trained Sexual Assault Nurse Examiners (SANE) nurses. We need more local advocates.
- It's hard to take tribal police seriously when they are so under-funded and understaffed.

Other

- Sexual assault protocol is big problem on or near reservations.
- Some law enforcement are perpetrators of sexual assault.
- Public Law 280 is viewed in a negative light.
- Sometimes there is a need for a mandate to ensure state cooperation.

Opportunities at the State/County Level

Increased Law Enforcement Training

- Peace Officer Standards and Training (POST) should require Public Law 280 training.
- State should provide ongoing training for law enforcement on victim issues.
- Training programs need additional time to train law enforcement that come onto reservations– county or tribal.
- A wider distribution of materials authored by Carole Goldberg will help.
- More training on SANE and Sexual Assault Response Teams (SART) is needed.

Implement SANE/SART

- SANE/SART teams are helpful, but we are only seeing the tip of the iceberg.
- CCR's should always include someone from SART.
- Train more Native forensic nurses and connect them with national organizations and criminal justice personnel.

Legal Education/Training

- Prosecuting attorneys who may seldom have sexual assault cases should get training/mentoring.
- Provide support for law school clinics and provide clinical experience out of Law School.
- Provide training/education at the undergraduate level and in law school on sexual assault and domestic violence.

- Provide continuing legal education credit for sexual assault and domestic violence trainings.
- Some law schools have loan forgiveness programs; these are needed for prosecutors and public defenders.
- Need a uniform way to educate attorneys on Indian law and Public Law 280 issues. Make it a part of the State Bar Exam, for those states with tribal communities.

Develop Data Collection Methods

- States need to develop better methods to obtain accurate statistical information.
- We need to ensure that we can get statistics of Native women victims from counties and U.S. attorneys.
- Use anonymous reporting so at least we have a record of the case for statistical purposes, even if it is not reported to police.

Initiate Audits

- Do a state-wide audit of the state response to sexual assault of Native women.
- Initiate audits of state responses to sexual assault of Native women – this will help identify problems.

Increased County Respect for Tribal Police/Tribal Programs

- There is a need to build respect for police – possibly by requiring relationships between the tribal and county law enforcement. Have states require counties to cooperate with tribes – fund those that cooperate (possibly through state legislation).
- County should provide referrals to tribal services.

Sexual Assault Specialists

- Funding should be provided for sexual assault specialists within the district attorney's office.
- Counties should have position in law enforcement/prosecution dedicated to sexual assault.

Prosecutorial Changes

- Encourage prosecutors and judges to recognize community nurses as experts, and partner community health aides with licensed nurses.
- The district attorney can set the proper tone on how to handle sexual assault cases.
- Cultivate incentives with prosecutors to put most experienced attorneys on sexual assault and domestic violence cases.
- Change the institutional culture, which currently is that sexual assault cases are terrible, and victims are difficult to work with.
- Have separate benchmarking of sexual assault cases. Do surveys of victims, asking them how their cases were handled (outcomes and processes), and evaluate prosecutors' work on that basis rather than solely on conviction rate.
- Address anti-Indian bias through the *voir dire* process at trial.

Utilizing Advocates

- Non-Native prosecutors need to know the tribal advocates.
- It is important to have cross-training between law enforcement and advocates.
- Tribal advocates need to be contacted.

Training and Incentives Tied to Violence Against Women Act (VAWA) Grants

- Have a training component in VAWA grants that helps prosecutors understand how their own culture affects real or perceived ability to relate to victims and convince jurors.
- Give a bonus in VAWA grants where an MOU has resulted.

Promising Practices

- "Project Passport" and similar programs have laid foundation for cross-jurisdictional enforcement.
- Use surveys/evaluations for victims on sexual assault cases (outcomes), using a point system to determine victim satisfaction.
- One county created a special domestic violence unit with help from a grant.

- One tribe worked with county's CCR to help the hospital get SANE nurses, one of whom was Native, and built her credentials through opportunities for case review.

Other

- Hold counties (law enforcement & prosecuting attorneys) responsible for lack of response to sexual assault of Native women.
- Collaboration between tribal and state coalitions can bridge gaps.
- Having the tribe as a partner can make it easier to get grants from the government and foundations.
- Working on prevention may be at least as important as working with the criminal justice system.
- Some sheriff's departments have good relationships with tribal law enforcement – build on successful MOUs.

National

Challenges at the National Level

I.H.S. Procedural Issues

- There are challenges in ensuring that IHS doctors/nurses respond to subpoenas. Turnover of staff also causes difficulties.
- In the past, IHS wasn't asking questions about sexual violence in examinations for injuries or otherwise, and they didn't know where states had mandatory reporting requirements. (They are now.)
- IHS procedures in many facilities do not properly respond to sexual assault.

Adam Walsh Act Problems

- The tribal resistance to new sex offender registry requirements is due to the lack of consultation with tribes.
- Public Law 280 tribes not given ability to create their own registries.
- Residence restrictions for sex offenders can drive them underground.

Problems with Investigations

- There are difficulties of proof and victim/witness cooperation in sexual assault cases.
- There may be difficulty getting reports from the tribal system, where tribe has done the investigation.

Lack of Federal Involvement

- Many U.S. Attorneys not using VAWA to punish offenders federally.
- Sexual assault is not a priority.

Obstacles to Obtaining Funding

- Competitive grants cause tribes to compete with states for funding.
- Homeland Security funding is only available to states.

Other

- Sometimes there is a gap between "tribal" section and "violence against women" section in national organizations.
- Perpetrators are not being held accountable.

- Communication gaps exist. The national non-tribal organizations don't understand the problems because of the lack of communication.

Opportunities at the National Level

Funding Requirements/Priorities

- Federal government should not supply money to states unless there is real collaboration with the tribes.
- Federal government should require cooperation with local tribes as a condition of VAWA grants in Public Law 280 jurisdictions.
- OVW and other federal funders can "strongly encourage" cooperative agreements between states and tribes.
- Grants should require certain types of training for prosecutors and law enforcement and that they have MOU's in place with tribes within their jurisdiction.
- Make cooperative outcomes (such as MOUs) the basis for a bonus at the end of VAWA grants.
- Provide funding to support tribes in expansion to sexual assault cases.
- Provide more funding for victim services.
- Provide support for law school clinical training to work on sexual assault cases in Public Law 280 states.
- Reward/highlight those programs which are examples of excellence.

I.H.S. Changes

- IHS standard procedures need to change to properly respond to sexual assault.
- Medical providers need the appropriate training and forms to ask the appropriate questions.
- Sexual assault exams need to be in budgets.

More Federal Involvement

- Have U.S. Attorney's prosecute VAWA cases when Public Law 280 states don't act or there is a delayed response.

- Secure commitment from U.S. Attorneys to use VAWA provision where possible. Hold U.S. attorneys responsible for the lack of response to federal laws protecting women.
- Sexual assault needs to be a national priority.

Training

- Registries and commitments bring in new categories of federal officials who need training, such as US Marshals and sex offender registry management folks, as well as sex offender treatment providers. A task force should be created.
- US Attorney's offices (especially Assistant U.S. Attorney tribal liaisons) can initiate cross-training.
- Numerous opportunities to include Public Law 280 issues in already-existing training.
- Provide training for advocates on forensic exam issues – don't just limit the training to nurses. Advocates can be an information source.
- Train other health care workers (other than nurses) to do exams.
- More tribal judges are needed. More training for tribal judges.
- Prejudices of tribal judges, courts and law enforcement against sexual assault should be dealt with.
- Include a training component for state criminal justice officials in VAWA grants.

Support for CCR's

- CCR's are useful to establish standard protocols for categories of victims (as in San Diego).
- Foster more CCRs for sexual assault cases.
- Nothing prohibits inviting the U.S. Attorney's Office to be on a CCR – even in a Public Law 280 state.

BIA Changes

- Have position dedicated to sexual assault in BIA law enforcement.

- BIA has maps that will be helpful to state law enforcement agencies in determining Indian Country locations.

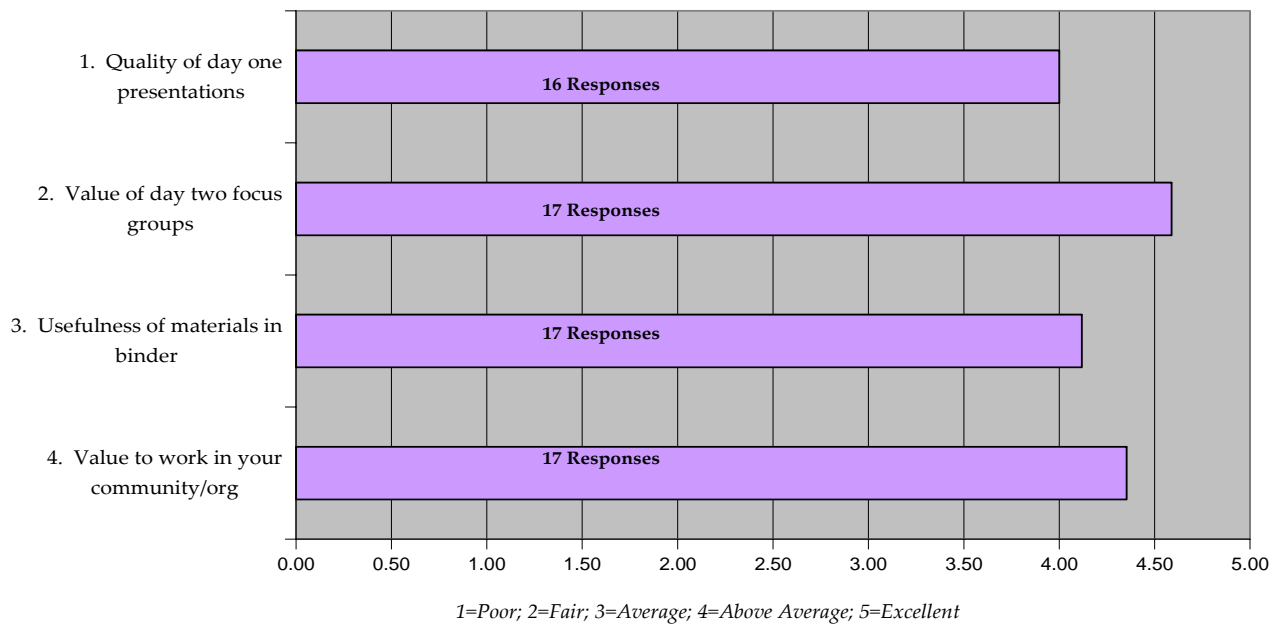
Other

- Use the “Capone” approach, prosecuting assailants for gun crimes or other ancillary offenses.
- Commitments to include tribal prosecutors in national membership organizations can improve communication and enhance education.
- Sexual Assault Coalition National Resource Sharing Project is a good opportunity to increase awareness with sexual assault coalitions.
- Provide national recognition, just like Honoring Nations, for effectively coordinated activity between tribes and counties in Public Law 280 jurisdictions; use celebrities or highly visible political figures.
- Tribal advocates should have US Marshall’s authority to arrest.

**Attachment 6:
Focus Group on Sexual Assault of Native Women and
Public Law 280
August 15-16, 2007, Green Bay, WI
Compiled Evaluations**

The assessment instrument for the focus group used a scale of 1 to 5. The results are shown in the table below (1=Poor; 2=Fair; 3=Average; 4=Above Average; 5=Excellent)

Average Assessments of Focus Group on Sexual Assault of Native Women and Public Law 280



	Appropriate	Too basic/general	Too advanced	Total Responses
5. Level of Presentations (overall)	14 (93.33%)	1 (6.7%)	0 (0%)	15
	Yes	No	Total Responses	
6. Did FG meet you expectations?	15 (93.8%)	1 (6.2%)	16	
7. FG discussions educational?	16 (100%)	0 (0%)	16	

Written comments on evaluations

What one point was positive about these discussions?

- That OVW [Office on Violence Against Women], DOJ [Department of Justice], US attorneys, and OJP [Office of Justice Programs] were in attendance to learn about these issues of PL280.
- Action plans of agency representatives and hearing how fellow participants can help.
- How individuals have worked creatively to ensure the success of their CCRs [Coordinated Community Response Teams].
- Creative new approaches.
- Reminder that SANE [Sexual Assault Nurse Examiner] exams are for the woman, not the prosecutor.
- Multi-disciplinary and multi-jurisdictional.
- Lots of great ideas.
- The discussion groups on day 2 were very informative.
- Thread of similarities (sameness).
- Learning different viewpoints.
- Each barrier identified was coupled with a solution.
- Everyone was given the opportunity to give input from various backgrounds and expertise.
- That finally a U.S attorney participated in a discussion in a respectful manner.
- Being able to brainstorm and get some of the issues on the table with people in positions that can make changes in DC.
- That if you care about what you do, don't give up.

What one thing would you changes about this focus group?

- More time spent identifying issues and solutions.
- I would change the days so I could've made day 1.
- The format – more mix between small and large group.
- More discussion, less panel; more food please. Was very hungry at this event. Or flag to us that we will have to find our own food.
- Nothing.
- Really nothing –all good.
- Invite more people in.
- Need food!!!
- Make it clear what you are doing with this information. It was never made clear who the audience is for the report, nor what they will do with it.

- Nothing.
- Have facilitator talk less and allow participants to talk.
- All focus groups were good.

What was the most valuable thing about this session?

- Fact that PL 280 and violence against Indian Women in this particular jurisdiction is finally being focused on.
- Hearing ways participants thought of to increase collaboration between tribal and non-tribal agencies.
- The opportunities to hear others experiences, challenges and successes.
- Sharing ideas for national partners.
- Education, meeting with passionate people, hard recommendations to take back to my organization.
- Hearing about creative programs from the community. Need to work on starting up SANE [Sexual Assault Nurse Examiner] unit again.
- Good discussions on day 2.
- Making contacts with other people.
- Networking ideas.
- Networking.
- Ability to form relationships with individuals in community with whom we can work to address issues and problems related to PL 280 and prosecutions of violence against women.
- That it happened at all! Need follow up from this event.
- Collaborations between agencies.
- Knowing that others are looking at the same or almost the same problems.

General

- What now? I hope OVW and the federal government intends to do something with all the ideas. We don't need another report – we need action! Thank you!
- Please give us a copy of the report.