

Working with Children in Indian Country: Understanding Criminal Jurisdiction and Federal Mandatory Reporting Obligations



Leslie A. Hagen

National Indian Country Training Coordinator

Leslie.Hagen3@usdoj.gov

803-705-5061

Topics to be Covered

- Jurisdiction in Indian Country
- Some Relevant Federal Statutes
 - Felony Child Abuse and Neglect
 - Multidisciplinary Teams
 - Child Protection Teams
- Mandatory Reporting Requirements

Jurisdiction in Indian Country

Fact Pattern

- AUSA John Doe is delivering training to a group of Tribal Police Officers. During a coffee break, one of the officers disparages John's presentation style. Doe, outraged, picks up a ceramic mug and hits the officer over the head. The victim dies instantly.

Question:

- Which court or courts has jurisdiction to charge AUSA John Doe?
- How should he be charged?
- Do you know enough to answer this question?
- What do you need to know?

Always Ask These 4 Questions, in This Order:

- Where did the crime occur?
 - Is it Indian Country or not?
- Who is the suspect?
 - Indian or Non-Indian?
- Who is the victim?
 - Indian or Non-Indian?
- What did they do?
 - Is it a Major Crime?

Is it Indian Country?

- Indian Country defined in 18 U.S.C. § 1151
 - (a): all land w/in limits of Indian reservation under U.S. jurisdiction including patented lands & rights of way running through Indian reservation
 - (b): dependent Indian communities, and
 - (c): Indian allotments to which Indian title has not been extinguished, including rights of way through the allotment

Why is This Important?

- If it didn't happen in Indian Country, there's no tribal jurisdiction and there's no federal jurisdiction
- The case goes to the state
 - Unless Crime of General Application**

Crimes of General Application

- Those offenses in which there is a federal interest no matter where they occur and no matter who commits them:
 - Firearms offenses
 - Narcotics offenses
 - Border crimes
 - Human Trafficking
 - Bank Robbery
 - Violence Against Women Act Offenses
 - Assault on a Federal Officer

Hypothetical:

- Sam and Rick are members of the Tohono O'odham Nation who drive into Tucson for a night of drinking at a local bar. Both of them get extremely intoxicated. They get in their car and start back to Sells, with Rick driving. Half a mile before entering the T.O. Nation, Rick crosses the center line on the Highway and hits head-on a van coming the other way, killing the occupants. Who has jurisdiction over any prosecution?

Are We in Indian Country?

- Not in Indian Country

- In Indian Country

No Tribal Criminal Jurisdiction

No Federal Criminal Jurisdiction,
UNLESS
Crime of General Applicability

There might be Tribal Criminal
Jurisdiction

There might be Federal Criminal
Jurisdiction

Need to answer more questions

Always Ask These 4 Questions, in This Order:

- Where did the crime occur?
 - Is it Indian Country or not?
- Who is the suspect?
 - Indian or Non-Indian?
- Who is the victim?
 - Indian or Non-Indian?
- What did they do?
 - Is it a Major Crime?

Indian or Non-Indian?

- No Federal Statutory Definition of “Indian”
- *Morton v. Mancari* (1974) test:
- 1) some degree of Indian Blood – federally recognized tribe; and
- 2) Individual is recognized by the fed. government or tribe as an Indian

Are We in Indian Country?

- Not in Indian Country

- In Indian Country

No Tribal Criminal Jurisdiction

No Federal Criminal Jurisdiction,
UNLESS
Crime of General Applicability

There might be Tribal Criminal
Jurisdiction

There might be Federal Criminal
Jurisdiction

Need to answer more questions

Non-Indian Victim

State Jurisdiction Only –

United States v. McBratney
Supreme Court (1881)

Non-Indian Suspect

Indian Victim

Non-Indian Suspect

Federal Jurisdiction Only -
(unless SDVCJ Tribe)

Oliphant v. Suquamish Tribe
Supreme Court (1978)

Special Domestic Violence Criminal Jurisdiction

- VAWA 2014 (effective March 7, 2015, unless pilot tribe designation)
- Amended the ICRA/25 U.S.C. § 1304
- What crimes will be covered?
 - Domestic violence;
 - Dating violence; and
 - Criminal violations of protection orders.
- What crimes will not be covered?
 - Crimes committed outside of Indian country;
 - Crimes between two non-Indians;
 - Crimes between two strangers, including sexual assaults;
 - Crimes committed by a person who lacks sufficient ties to the tribe, such as living or working on its reservation; and
 - Child abuse or elder abuse that does not involve the violation of a protection order.

Indian Victim

Federal Jurisdiction Only –

**General Crimes Act –
18 U.S.C. § 1152**

Non-Indian Suspect

18 U.S.C. § 1152 – General Crimes Act

- Makes available in Indian Country every crime generally available in United States federal territory and defined by federal statute

Indian Victim

Federal Jurisdiction Only –

Non-Indian Suspect

General Crimes Act –
18 U.S.C. § 1152

Assimilated Crimes Act –
18 U.S.C. § 13

Assimilated Crimes Act – 18 U.S.C. § 13

- Gap filler
- When an act would be a crime under state law,
- But state has no jurisdiction because we are on federal or tribal territory,
- And there is no federal law addressing the act,
- Apply state criminal law

Indian Victim

Tribal Jd. – ICRA

Federal Jd. – Major
Crimes Act – 18 U.S.C. § 1153

Indian Suspect

Major Crimes Act

18 U.S.C. § 1153

- *Enumerated Offenses*
 - Common IC crimes (Murder, All Felony Assaults in § 113, Sexual Assault, and Felony Child Abuse or Neglect)
 - No Federal Jurisdiction to prosecute attempts or conspiracies unless the particular MCA crime permits
 - For example: Sex Offenses punish attempts as well as completed acts
 - What if Major Crime is undefined?

Indian on Indian

- If the offense is not one of the enumerated crimes in MCA, tribal jurisdiction only
 - Gap in federal coverage as yet unaddressed by Congress
 - For Lesser Included Offenses caveat, see *Keeble v. United States*, 412 U.S. 205 (1973)

Non-Indian Victim

Tribal Jd. – ICRA

Federal Jd. – Major
Crimes Act – 18 U.S.C. § 1153;

If no Major Crime fits:

General Crimes Act –
18 U.S.C. § 1152 and/or
Assimilated Crimes Act –
18 U.S.C. § 13

(**Only if tribe hasn't prosecuted first)

Indian Suspect

The Jurisdiction Puzzle

Indian D	Indian V	Major Crime Act	Federal & Tribal
Indian D	Indian V	Non-Major Crime Act	Tribal
Non-Indian D*	Indian V	Misd.	Federal *SDVCJ
Non-Indian D*	Indian V	Felony	Federal *SDVCJ
Non-Indian D	Non-Indian V	Felony or Misd	State

Example of a Drug Endangered Child Case in Indian Country

U.S. v. Allen Blake White Bear

- D charged with Felony Child Abuse and Neglect (18 U.S.C. § 1153)
- Elements of the Crime:
 1. Defendant is an Indian Person
 2. The crime occurred in Indian Country
 3. The Defendant knowingly caused or permitted a child less than 18 years old to inhale or be exposed to or have contact with meth, and
 4. The crime took place in a car where a child might reasonably be expected to be.

MDTs and CPTs

- Both meet to discuss child abuse and neglect cases.
- Their common goal is to develop a coordinated system to respond to child abuse and neglect cases.

Child Protection Team

- The recommended membership is limited to those agencies who provide necessary services to the victims of child abuse or neglect and/or their families.
- These generally include representatives from tribal courts, education, local law enforcement, judicial services, mental health services, medical clinics (a physician), community health clinic (a nurse), and social services (tribal, BIA, IHS or state/county).
- All formal members of the CPT shall be required to have undergone or submit to a background investigation.
- Each member of the CPT shall be required to sign a confidentiality agreement.
- The CPT is tasked with providing oversight regarding reported child abuse/neglect incidents, facilitating the provision of services, and providing technical assistance. The CPT focuses their efforts to more effectively use community resources in the treatment and prevention of child abuse.

Multidisciplinary Teams - 18 U.S.C. § 3509(g)(2)

- (A)** medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;
- (B)** telephone consultation services in emergencies and in other situations;
- (C)** medical evaluations related to abuse or neglect;
- (D)** psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;
- (E)** expert medical, psychological, and related professional testimony;
- (F)** case service coordination and assistance, including the location of services available from public and private agencies in the community; and
- (G)** training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

Child Abuse Reporting Laws in Indian Country

Child Abuse Reporting Laws in Indian Country:

- Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 et.seq. & 18 U.S.C. § 1169
- Victims of Child Abuse Act: 42 U.S.C. §13031 et.seq. & 18 U.S.C. § 2258
- Tribal Laws & Ordinances
- Various State Laws

Reporting of Child Abuse - 18 U.S.C. § 1169

- Anyone who is a . . .
 - Knows or has reasonable suspicion that
 - A child was abused in Indian Country, or
 - Actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian Country; and
 - Fails to immediately report such abuse or actions described above to the local child protective services agency or local law enforcement agency
 - Shall be fined or imprisoned for not more than 6 months, or both.

Which Professions are Covered by § 1169?

- A. Physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,
- B. Teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by and tribal, Federal, public or private school,
- C. Administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,
- D. Child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

Which Professions are Covered by § 1169?

- E. Psychiatrist, psychologist, or psychological assistant,
- F. Licensed or unlicensed marriage, family, or child counselor,
- G. Person employed in the mental health profession, or
- H. Law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders

18 U.S.C. § 1169(b)

- Any person who -
 - supervises, or has authority over, a person who is a mandatory reporter under federal law, and
 - inhibits or prevents that person from making a report
 - Shall be fined or imprisoned for not more than 6 months or both.

§ 1169 Definitions: What Must You Report?

- Child” means an individual who -
 - is not married, and
 - has not attained eighteen years of age.
- “abuse” includes any case in which a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and
- such condition is not justifiably explained or may not be the product of an accidental occurrence; and
- any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.

18 U.S.C. § 1169(d) – Immunity Provision

- “any person making a report . . . which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.”

§ 1169: Who Do You Report To?

- “Local Law Enforcement Agency”
 - Means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian Country involved;
- “Local Child Protective Services Agency”
 - Means that agency of the Federal Government, of a state, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian Country

Indian Child Protection and Family Violence Act

PL 101-630 (25 U.S.C. § 3203)

- Certain professionals are required to report suspected abuse to the “local law enforcement agency.”
 - Terms are defined to mean the Federal, State or Tribal agency that has the primary responsibility for child protection or the investigation of child abuse within the portion of the Indian Country involved.
- Where the report indicates the victim or abuser is an Indian and a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the FBI, **must report** the occurrence **immediately** to the FBI (25 U.S.C. § 3203(b)(2))

Receiving Agency Reporting Procedures

(25 U.S.C. § 3203)

- Reports received by L.E. or Soc. Svcs. *shall* notify the other agency *immediately* and submit a written report within 36 hours
- Responsible law enforcement & child protection agency *shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved.*
- Upon completion of the investigation, the agency shall prepare a final written report

Indian Child Protection and Family Violence Prevention Act - 25 U.S.C. § 3206

- Photos, x-rays, medical exams, psychological exams, and interviews of an Indian child alleged to have been subject to abuse in IC shall be allowed without parental consent if local child protective services or local law enforcement officials have reason to believe the child has been subject to abuse.
- In any case in which officials of the local law enforcement agency or local child protective services agency have reason to believe that an Indian child has been subject to abuse in IC, the officials of those agencies shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian.

Who is a Mandatory Reporter Under The Victims of Child Abuse - 42 U.S.C. § 13031?

- Mandated Reporters –
 - The federal child abuse reporting law requires certain professionals (including police, probation, prosecutors, juvenile and detention facility employees, and social workers) working on federal land or in a federally operated (or contracted) facility in which children are cared for or reside, to report suspected child abuse to an investigative agency designated by the Attorney General to receive and investigate such reports.
 - 42 U.S.C. § 13031(a)

Sanctions for Failure to Report

- A covered professional who, while working on federal land or in a federally operated (or contracted) facility in which children are cared for or reside, learns of facts that give reasons to suspect that a child has suffered an incident of child abuse and fails to timely report shall be fined or imprisoned not more than one year or both
- 18 U.S.C. § 2258

Agencies Designated by the AG to Receive Reports

- Reports of child abuse on federal lands or in federally operated (or contracted) facilities pursuant to 42 U.S.C. § 13031 shall be made to the local law enforcement agency or local child protective services agency that has jurisdiction to investigate reports of child abuse or to protect child abuse victims in the area or facility in question. When no such agency has entered into a formal written agreement with the AG to investigate such reports, the FBI shall receive and investigate such reports.

Immediate Reports

- The report of suspected child abuse should be made by a method best suited to giving immediate notice. According to 42 U.S.C. § 13031(e), use of a standardized form is encouraged, but shall not take the place of the immediate making of reports by other means when circumstances dictate. Reports may be made anonymously. Reports are presumed to have been made in good faith and reporters are immune from civil and criminal liability arising from the report unless they act in bad faith. (42 U.S.C. § 13031(f)).

18 U.S.C. § 3509

Confidentiality of Child Victims

- 1. In federal criminal proceedings
- 2. Involving child physical or sexual abuse
- 3. All employees of the Government, or
- 4. Any law enforcement agency involved in the case shall . . .

- 1. Keep all documents that disclose the child's name in a secure place (where a person who has no reason to know the contents of the documents cannot access the documents).
- 2. Disclose these secured documents or the information in them only to persons who, by reason of their participation in the criminal proceeding need to know.

Penalties for Violation of 18 U.S.C. § 3509

- 18 U.S.C. § 403 punishes the knowing or intentional violation of the statute as criminal contempt
- Punishable by a maximum of one year imprisonment, or a fine, or both

Scenarios

Questions?