NIJ’s Program of Research on Violence Against American Indian and Alaska Native Women

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Abstract
The Violence Against Women Act of 2005 (Public Law Number 109-162), at Title IX, Section 904(a) (codified at 42 U.S.C. § 3796gg-10 note) mandates that the National Institute of Justice (NIJ), in consultation with the U.S. Department of Justice’s Office on Violence Against Women (OVW), conduct a national baseline study on violence against American Indian and Alaska Native (AI and AN) women living in tribal communities. As a result, NIJ has developed a comprehensive research program consisting of multiple projects that will be accomplished over an extended period of time to address this much needed research. The purpose of the research program is to: examine violence against AI and AN women (including domestic violence, dating violence, sexual assault, stalking, and murder) and identify factors that place AI and AN women at risk for victimization; evaluate the effectiveness of federal, state, tribal, and local responses to violence against AI and AN women; and propose recommendations to improve effectiveness of these responses.

Keywords
American Indian and Alaska Native (AI and AN) communities, federal funding, violence against women

Introduction
Existing research indicates that violence against American Indian (AI) and Alaska Native (AN) women is a critical public health and public safety issue (for a comprehensive review of the literature, see Bachman, Zaykowski, Kallmyer, Poteyeva, & Lanier, 2008). After decades of grassroots advocacy by AI and AN women to address this issue, the Violence Against Women Act (VAWA) recognized Native women’s

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unique vulnerabilities to violence. For example, the original legislation in 1994 and its reauthorization in 2000 included designated grant funding for Indian tribes\(^1\) and other needed provisions such as full faith and credit for civil orders of protection granted by tribes (Bachman et al., 2008). In the 2005 reauthorization, VAWA tasked the National Institute of Justice (NIJ) with conducting a program of research on violence against AI and AN women. Specifically, the legislation states: “the National Institute of Justice, in consultation with the Office on Violence Against Women, shall conduct a national baseline study to examine violence against Indian women in Indian country”\(^2\) (Public Law Number 109-162). Further, it requests that the baseline study (a) focus on the following types of violence against Indian women: domestic violence, dating violence, sexual assault, stalking, and murder, and (b) “evaluate the effectiveness of federal, state, tribal, and local responses” to these crimes (Public Law Number 109-162).

Because of the broad scope of the study outlined in the legislation and the complexity of the topic, NIJ refers to this study as a “program of research,” rather than a single baseline study, because multiple research projects over a period of time will be commissioned to address the entire statutory mandate.

This legislation also created an Attorney General-appointed Federal Advisory Task Force on Violence Against Indian Women (hereafter referred to as the Task Force), which is managed by the Department’s Office on Violence Against Women (OVW). Task Force members include representatives from tribal governments, national tribal domestic and sexual violence nonprofit organizations, and other national tribal organizations, who serve a 2-year appointment. Task Force members assist NIJ in developing pertinent research questions to be addressed, provide feedback on the different components of the program of research, and assist with recommendations resulting from study findings.

The major goals of NIJ’s Violence Against Indian Women (VAIW) program of research are to: (a) provide an accurate reporting of violence against AI and AN women in tribal communities; (b) provide reliable and valid estimates of the scope of the problem; and (c) identify barriers to and possible solutions for dealing with these significant public safety issues. Therefore, this article will first synthesize existing research on the incidence and prevalence of violence against AI and AN women, discuss the limitations of existing research, and describe the steps NIJ has taken to fulfill Part 1 of the mandate (i.e., to conduct the baseline study). Subsequently, we will outline the jurisdictional complexities that exacerbate the problem of violence against Indian women in Indian Country, the limitations of existing justice system data on this problem, and describe the steps NIJ has taken to fulfill Part 2 of the mandate (i.e., to evaluate the effectiveness of the justice response to these crimes).

Estimating the Incidence and Prevalence of Violence Against AI and AN Women

Existing Research on Violence Against AI and AN Women

Various national and regional studies have found that violence against women is more widespread and severe among self-identified AI and AN people than among other North American people (e.g., Fairchild, Fairchild, & Stoner, 1998; Oetzel & Duran,
For example, the National Violence Against Women Survey (NVAWS) found that self-identified AI and AN women were significantly more likely than women from all other backgrounds to have been raped and/or stalked at some point in their lifetime (Tjaden & Thoennes, 2006). Also, according to estimates from the National Crime Victimization Survey (NCVS), self-identified AI and AN women experienced the highest rate of intimate partner victimization (IPV; 18.2%), compared to 6.3% among White women, 8.2% among African American women, and 1.5% among Asian American women (Catalano, 2007). However, the results from these studies cannot produce reliable estimates of violence against Native Americans, either on or off reservations.

First, neither study collected information on tribal enrollment or affiliation from self-identified AI and AN women in their samples. Second, due to sampling strategies, it is likely that many of the self-identified AI and AN women in these studies lived in urban environments. Furthermore, although the NCVS sample does include some households in Indian Country, these households do not constitute a representative sample from Indian Country. Third, the number of sample cases for both studies is not sufficient to produce reliable estimates of crime victimization in Indian Country. For this reason, NCVS and NVAWS data do not provide tribal-specific crime rates or estimates of crime in Indian country—reservations, tribal communities, and trust land. With respect to AI and AN victimizations outside Indian Country, NCVS sample sizes are so small that the AI and AN category is collapsed into an “other” category for both single-year and multiple-year data collection efforts. In aggregating multiple years, the NCVS AI and AN sample is not sufficient to produce reliable estimates of crimes against AI and AN women (e.g., fewer than 50 respondents over a 10-year period).

Findings from several regional research studies also demonstrate high rates of victimization in this population. In a relatively large study of a random sample of women (N = 1,368) from six AI tribes in the southwest, northwest, northern Plains and northeast, Yuan, Koss, Polacca, and Goldman (2006) found that 45% reported being physically assaulted and 14% had been raped since turning 18 years old. In a study of a southwestern tribal community that included almost 600 individuals, Robin et al. (1998) found that 91% of women reported experiencing some form of IPV. Verbal and physical violence in a relationship were experienced by approximately 75% of women, and 16% of women reported forced sex by a partner. Almost half of the women reported needing medical care from injuries sustained during an episode of partner violence and a little more than one third reported incidents that involved their children.

In another study on a southwestern reservation, among all assault injuries reported by ambulatory and emergency services, one in four was due to IPV (Kulklinski & Buchanan, 1997). Recently, researchers at the University of Alaska at Anchorage reported that the incidence of domestic violence among self-identified AN women was 8 to 12 times higher than among non-AN women (Rivera, 2010). In a study of Athabaskan women residing in the interior of Alaska, almost two thirds of respondents reported experiencing IPV in their lifetime and 18% of the respondents reported experiencing IPV in the past year (Wood & Magen, 2009).

Despite these compelling indications that rates of sexual and intimate partner violence in AI and AN communities merit serious attention, these and other studies have
utilized diverse methodologies\(^3\) which therefore limits the generalizability of these studies of women living in Indian Country (for a review, see Bachman et al., 2008). NIJ’s program of research seeks to address many of the limitations of existing victimization studies.

First, there is a tendency to underestimate the diversity of culture, history, political organization, and community within Indian Country and AN villages. As of October 2012, there are 566 federally recognized tribes (FRTs) in the United States,\(^4\) and at least 300 additional tribes that have petitioned for federal and/or state recognition. It is difficult to make generalizations that authentically appreciate the wide historical and cultural diversity of each AI and AN community. Every tribe has its own history and cultural traditions. Conclusions and generalizations need to fully account for and acknowledge the uniqueness and complexity of AI and AN life and experiences.

Second, NIJ recognizes that the sampling approaches of most large-scale studies of violence against women have failed to ask respondents if their victimization occurred on a reservation or on land meeting the federal definition of Indian Country; therefore, these studies have not captured the experiences of women living in Indian Country. Moreover, these earlier studies have classified respondents as AI and AN based on self-identification rather than tribal enrollment or affiliation. Currently, there is no single definition of “Indian” that satisfies all legal, social, and personal purposes. In fact, there are many different definitions of AI and AN used in health care, social service, government and academic contexts. When determining whether a person is regarded as an “Indian,” the primary factors to be considered include tribal enrollment, tribal affiliation, and formal government recognition. For many federal jurisdictional and statutory purposes, the person must be considered a member of a federally recognized tribe. Since enrollment is often the key to acceptance as a member of the tribal community, it provides by far the best evidence of Indian status. Due to NIJ’s mandate to examine violence against Indian women living in Indian Country, this program of research will focus on women who are enrolled members of a tribe.

Current Status of NIJ’s Progress on the Mandate to Conduct a National Baseline Study

Title IX, Section 904(a) of the Violence Against Women Act of 2005 directs NIJ to conduct “a national baseline study to examine violence against Indian women in Indian Country.” Using funds appropriated for purposes consistent with this authority, and in consultation with OVW, the Federal Advisory Task Force, and tribal stakeholders, NIJ has implemented a program of research on violence against AI and AN women living in Indian Country. This is the first comprehensive national effort on violence against women that will collect information from enrolled AI and AN women living in Indian Country and in AN villages. Prior to and during the development of the program of research, NIJ sought input and feedback from multiple sources including the Task Force, prominent researchers and experts in the field, and federal stakeholders and partners. Since 2007, NIJ has commissioned and completed several research studies and in 2011 to 2012, NIJ conducted a study to pilot test study methods. In this section, we highlight these and other key steps NIJ has taken to fulfill the VAWA mandate.
Foundational Activities

Since the project formally started in 2007, NIJ has undertaken several intramural and extramural projects to systematically and comprehensively fulfill the VAWA mandate. The first step in this process was to identify existing research on the topic to prevent duplication of effort. Internally, research program staff conducted a systematic literature review to identify all published articles associated with violence against AI and AN women. In addition, NIJ commissioned a report to synthesize the empirical literature on violence against AI and AN women, the research methods used in these studies, and the justice responses (Bachman et al., 2008). This study found that (a) there is a need for valid and reliable data because existing data from national surveys or law enforcement organizations do not accurately capture the problem due to methodological flaws, sample sizes, and underreporting of crimes; (b) it is necessary to evaluate scientifically the efficacy of programs and policies aiming to help or protect AI and AN women; and (c) there are gaps associated with the justice system response that could be improved if promising practices are evaluated, if tribal law enforcement data are included in national law enforcement statistics, and law enforcement officers receive better training on violence against women (Bachman et al., 2008).

Bachman et al. (2008) also recommended several important options for NIJ consideration including: (a) fund an oversample of the AI and AN population in a national survey (e.g., the Bureau of Justice Statistics’ [BJS], NCVS, or the Centers for Disease Control [CDC] and Prevention’s National Intimate Partner and Sexual Violence Survey [NISVS]); (b) for the baseline study, randomly select tribes to participate and, if possible, randomly select individuals or households to survey; and (c) make clear that existing research does not necessarily capture the experience of AI and AN women living in tribal communities because it disproportionately includes AI and AN women living in urban areas.

In addition, NIJ has consulted a number of research experts to gather feedback on its research program. Thus far, two meetings have been held (2009, 2012) at critical junctures in the development of the program of research and have included a select group of prominent researchers and experts in the area of violence against women, AI and AN research and evaluation, public health and public safety in Indian Country, and conducting research in Indian Country. The group has provided input on sampling strategies, instrumentation, analytic strategies within the context of balancing cultural sensitivity, and scientific rigor of such methods.

Based on the findings of the systematic literature review, the Bachman et al. (2008) report, and input from the Task Force and research experts, NIJ identified several issues that needed further study prior to embarking on a comprehensive national baseline study. These issues included: (a) how to capture valid, reliable data in a culturally sensitive and tribally relevant manner; (b) how to obtain a random sample of women living in Indian Country; and (c) the importance and necessity of tribal–researcher partnerships and meaningful collaboration with tribes. To examine these issues, NIJ directed a methods pilot study. This study was developed with input from tribal stakeholders to help ensure that NIJ’s forthcoming national VAIW study would be viable, culturally and community appropriate, respectful of those involved, and that
the information collected would be relevant and helpful. With the approval of tribal leadership, several tribal communities were selected to pilot test the VAIW survey and methods for selecting and recruiting survey participants. The VAIW pilot study was conducted from November 2011 through March 2012.

The VAIW Method Pilot Study

The VAIW pilot study had several goals. First, the pilot was an opportunity to create and test a survey instrument with AI and AN women who resided in Indian Country. In order to capture valid, reliable data on the nature and extent of IPV, sexual violence, and stalking committed against AI and AN women, it is necessary to have a valid and reliable instrument. Second, the pilot developed and tested study methodology, including different sampling strategies and data collection approaches that would enable the safe collection of data and analysis of results, which then can be generalized to AI and AN women, aged 18 or older, residing in Indian Country.

Participants. Two tribes from different regions in the contiguous 48 states, one Alaska hub area, and three AN villages participated in the VAIW pilot. In one site, a full-scale pilot study was conducted. In another site, an innovative sampling strategy was tested. In the remaining sites, the survey instrument was cognitively tested with Native American women who had experienced violence. In each pilot site, NIJ relied on consultants and community members with strong tribal community connections to make initial contact with tribal officials. Regular conference calls, or in-person meetings when possible, were conducted with key tribal stakeholders (e.g., tribal council members, tribal administrators, and tribal service providers) to fully explain the pilot project and establish partnerships. Tribal resolutions were obtained from tribal governing bodies at each site.

Site 1: Full-Scale Pilot Study. At this site, four Indian women from the local community were recruited, hired, and trained to be field interviewers. A sample of women, age 18 and older, was selected randomly from the tribe’s enrollment list. The survey instrument that was tested at this site and in the cognitive interviews included several domains, such as perceptions of community crime and safety; victimization experiences; victim and perpetrator characteristics; impact of victimization; reporting of victimization; service needs, seeking and utilization; attitudes toward the justice system; and community strengths. The questions were developed by the research team or adapted from a variety of surveys. Table 1 includes the sources of the questions used in the pilot study.

Administration of the Survey. Two techniques were used to administer the survey: computer-assisted personal interviewing (CAPI) and audio computer-assisted self-interviewing (ACASI). The majority of the interview was conducted using the CAPI technique. During this portion, the field interviewer read the survey questions to the respondent and entered her responses into the laptop. During the victimization portion of the survey, ACASI was used. This method enhances the confidentiality of the respondent’s answers.
and has been shown to increase the accuracy of answers to sensitive questions (e.g., Metzger et al., 2000; Tourangeau & Smith, 1996). For these questions, respondents were given the touch-screen laptop and headphones. They listened to the voice of a Native American woman, who read the questions visible on the screen and the participants entered their answers directly into the computer. Although there were initially some concerns raised about the cultural appropriateness of using a computer-assisted technique in tribal communities, the respondents overwhelmingly reported that they preferred to answer the sensitive questions on the computer instead of to an interviewer. All participants received a monetary incentive of US$35 for participation.

One hundred and forty adult AI women who currently resided on the reservation were randomly selected, of whom 40 were placed in a reserve sample to be used if additional cases were required in order to reach the pilot site’s goal of 35 completed interviews. The sample of 100 adult AI women was then divided into four case assignment lists containing

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**Table 1. Sources of Existing Measures Used in VAIW Pilot Study Instrument (in order of appearance in instrument).**

<table>
<thead>
<tr>
<th>Construct</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Respondent characteristics</td>
<td>National Intimate Partner and Sexual Violence Survey (NISVS)</td>
</tr>
<tr>
<td></td>
<td>Copper River Women’s Experiences Survey (CRWES)</td>
</tr>
<tr>
<td>Depression</td>
<td>Center for Epidemiologic Studies Depression Scale, 10-item version (CES-D)</td>
</tr>
<tr>
<td>Post-traumatic stress</td>
<td>Veterans Administration Primary Care Post-Traumatic Stress Disorder Screen (PC-PTSD)</td>
</tr>
<tr>
<td>Public safety attitudes</td>
<td>British Crime Survey (BCS)</td>
</tr>
<tr>
<td>Victimization (including psychological</td>
<td>NISVS</td>
</tr>
<tr>
<td>aggression, coercive control and</td>
<td></td>
</tr>
<tr>
<td>entrapment, stalking, sexual violence, and</td>
<td></td>
</tr>
<tr>
<td>physical violence)</td>
<td></td>
</tr>
<tr>
<td>Perpetrator characteristics</td>
<td>NISVS</td>
</tr>
<tr>
<td>Impact of victimization</td>
<td>Indian Crime Victimization Survey (ICVS)</td>
</tr>
<tr>
<td></td>
<td>NISVS</td>
</tr>
<tr>
<td>Reporting</td>
<td>British Crime Survey (BCS)</td>
</tr>
<tr>
<td>Perceptions of the criminal justice system</td>
<td>Campus Sexual Assault (CSA) Survey</td>
</tr>
<tr>
<td>Cultural and spiritual identity</td>
<td>BCS</td>
</tr>
<tr>
<td></td>
<td>Indian Crime Victimization Survey (ICVS)</td>
</tr>
<tr>
<td></td>
<td>CRWES</td>
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<td></td>
<td>Anishnaabek SPF-SIG Cultural Assessment (ASSCA)</td>
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<tr>
<td>Historical trauma</td>
<td>CRWES</td>
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<tr>
<td>Social support and community cohesion</td>
<td>CRWES</td>
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<tr>
<td></td>
<td>Glynn/Naser &amp; Julian</td>
</tr>
<tr>
<td>Perceptions of social and health services</td>
<td>CRWES</td>
</tr>
</tbody>
</table>

Note: VAIW = Violence Against Indian Women.

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25 sample members each, one list for each field interviewer. During the 3-week data collection period, 33 completed interviews were collected.

**Site 2: Testing an Innovative Sampling Method.** Because some tribes may be reluctant to release tribal enrollment lists to researchers, the research team at another site tested a relatively new and innovative sampling method that has never been used in Indian Country to our knowledge. This method, called map-based sampling, uses geographic information system (GIS) technology to randomly select households in a given area (e.g., a county, a state, or an Indian reservation). Once permission was granted from the tribe and a tribal resolution was signed by the leader of the tribe, the research team traveled to the site to conduct “counting and listing”—the traditional method for selecting households—and compared the list of households identified to the list identified via the map-based sampling approach.

During the counting and listing activities, the on-the-ground research team identified and enumerated 223 households across the three areas. The map-based approach identified and enumerated 220 households across the same three areas. The discrepancies were as follows: two houses were not visible in the aerial photographs due to smoke or cloud cover, and one house enumerated during the counting and listing exercise was clearly outside the boundary according to the maps and aerial photographs. This resulted in a 1.35% discrepancy between the counting and listing and map-based methods, which suggests that map-based methods for creating a sampling frame of households in Indian Country are sufficiently valid. The findings from this effort suggest that map-based methods may be a viable option for research in tribal communities if a list-based sampling method is not possible.

**Remaining Sites: Cognitive Interviewing.** At the final four sites, the research team conducted 17 cognitive interviews (11 in a hub town and 6 in three villages) to further test selected portions of the survey instrument. This round of cognitive testing supplemented a previous round that was conducted in three different locations (Alaska, Midwest, and Southwest) in the summer of 2010. The female participants in this portion of the pilot study were identified by a local victim services agency. The research team was accompanied by bilingual Native American cointerviewers who were from the surrounding area. These cointerviewers were available to interpret, if necessary, during the interview and conducted a separate debriefing interview (without the research team present) to ascertain each participant’s comfort level with the interview and the laptop; preference for interview location and interviewer characteristics; and overall opinion of the project.

The key areas of cognitive testing included the strength and clarity of the informed consent language, bounding of the past 12-month reference period, participants’ reactions to the ACASI tutorial and completing one section of the interview using ACASI, and individual question testing (focusing mostly on the use of scales, the effectiveness of positively vs. negatively worded questions, and question meaning). The interviews lasted approximately 90 minutes each, and participants were paid US$40 for their participation.

**Considerations for the Development of a Nationally Representative Study.** NIJ is also examining the feasibility of a nationally representative study given the heterogeneity of the
566 FRTs in the 48 contiguous states and Alaska. Initially, NIJ discussed developing a sample plan that would result in a representative sample from Indian Country with a preferred catchment area that included AI reservations, AN villages, AI off-reservation trust lands, AI tribal subdivisions, and Oklahoma tribal statistical areas. Factors considered in this initial plan involved geographic location and size, population, physical jurisdiction, and justice, political, and social systems. Presently, NIJ is exploring the idea of an integrated probability sample design that will produce reliable national estimates. It is anticipated that the design will call for proportional stratification by region and size (AI and AN population) and, within each region, tribal areas will be selected with probability proportionate to size.

However, research cannot be conducted within these AI and AN communities without gaining consent not only from the individual subjects, but also from tribal government authorities. Generally, this requires submitting proposals to the tribal council or to tribal Institutional Review Boards (IRB). Many tribal communities have created IRBs and have generated guidelines for researchers. The method and detail of research requirements vary among tribal communities according to their resources and experience with researchers. The development of ethical research standards in tribal communities is a work in progress. In recent years, tribal governments and communities have moved to gain control over the research conducted within their tribal borders. Consequently, university researchers will need to undergo IRB review at their home institution and with their federal or other funding agency, as well as gain permission from tribal governments.

It is anticipated that a number of tribes may not wish to participate in the national baseline study. For this reason, NIJ will most likely oversample some tribal areas to ensure an adequate sample size while avoiding convenience sampling. A reserve sample most likely will be incorporated into the overall sampling plan that can replace nonparticipating sites from the original group.

**Next Steps: Field Implementation of the Tribal Study of Public Safety and Public Health Issues Facing AI and AN Women**

In partnership with NIJ, a research team will implement the study’s core questionnaire and manage and update all supporting documents designed to generate estimates of the prevalence and incidence of domestic violence, dating violence, sexual assault, and stalking among Indian women in Indian Country. Based on a solid, scientific sampling design plan, sufficient funding, and tribal nation authorization and participation, a satisfactory number of sites will be identified for data collection that reflect a high-quality geographic distribution of AI and AN women that reside in Indian Country for the entire United States. The research team will work closely with NIJ and its tribal stakeholders to achieve this task. Phase II activities are anticipated to occur over a 30- to 42-month study period beginning in late 2012.

**The AI and AN Lifetime Prevalence of Interpersonal and Sexual Violence Survey**

To complement NIJ’s program of research, NIJ partnered with the CDC to conduct a special study of AI and AN people using CDC’s National Intimate Partner and Sexual
Violence Against Women Survey (NISVS). CDC’s National Center for Injury Prevention and Control launched the NISVS general population study in 2010. The primary objectives of this national study are to describe: (a) the prevalence and characteristics of sexual violence, stalking, and IPV; (b) who is most likely to experience these forms of violence; (c) the context in which sexual violence, stalking, and IPV are experienced; and (d) the consequences and impacts of these forms of violence.

Like NISVS, the AI and AN special study was conducted using a random digit dial (RDD) telephone survey of the noninstitutionalized U.S. population age 18 or older. For the special study, the included landline phone numbers were in telephone exchanges associated with at least 50% self-identified AI and AN populations, in any of the 50 states and the District of Columbia. Although the manner in which participants were selected was the same (i.e., RDD), it is important to note that there were methodological differences between the special study and the general population study. In the AI and AN study, respondents were screened for participation at the beginning of the survey if they identified themselves as an adult AI or AN person currently living in a private household. In the general population study, respondents were asked about AI or AN status later in the survey. Other pertinent questions asked of respondents in both studies included: “Are you affiliated or enrolled with a tribe or village?” “Which tribe or village are you affiliated or enrolled with?” “Have you ever lived within reservation boundaries or in an Alaska Native village?” and “Have you lived within reservation boundaries or in an Alaska Native village during the past 12 months, that is since {fill: date, 12 mos. ago}?”. NIJ’s financial support enabled the addition of this separate sample of AI and AN respondents that will be combined with the self-identified AI and AN respondents from the 2010 general population study. Data from this additional study were not presented in the initial NISVS report released December 15, 2011 but will be described in a future NIJ publication.

Evaluating the Criminal Justice Response to Violence Against AI and AN Women

This section of the article will outline the jurisdictional issues that complicate the justice system response to violence against AI and AN women, the limitations of existing justice system data on these types of crimes, and the steps NIJ has taken to evaluate the effectiveness of the justice system to these crimes.

Brief Background on Federal Indian Law and Criminal Justice

Federally recognized tribes in the United States are considered domestic dependents in which they have the inherent authority to govern themselves within the borders of the United States. As such, tribal members have U.S. citizenship rights, while maintaining their own tribal governments, communities, and cultures. However, tribal communities and leaders continue to struggle to protect their land, cultures, and political rights, which have led to greater legal, political, and cultural assertions of tribal sovereignty.

Furthermore, there are multiple and overlapping governing systems in Indian Country that present unique challenges. For example, on reservations, federal and
tribal laws apply to members of a tribe unless federal law provides otherwise, but non-
AI and non-AN people who commit crimes in Indian Country cannot be prosecuted by
tribal courts. These complicated jurisdictional arrangements create numerous barriers
for those who seek help from the justice system, and often result in several agencies
responding to a single complaint, including tribal police, the FBI (Federal Bureau of
Investigation), the BIA (Bureau of Indian Affairs), and state, county, or local police. It
can be challenging for first responders to determine who is the appropriate authority
and responsible agent to respond to and investigate a particular crime (i.e., federal,
state, local, or tribal law enforcement). Jurisdiction is ultimately determined by the
following criteria:

- Where was the location of the crime (Indian Country or not)?
- What type of crime was committed (felony or misdemeanor)?
- What is the status of the perpetrator (Indian or non-Indian)?
- What is the status of the victim (Indian or non-Indian)?

The jurisdictional confusion that ensues can cause inadequate and delayed response to
victims that is exacerbated by insufficient funding, inadequate training, and distrust of
non-tribal authority (Bachman et al., 2008).

**Federal Criminal Jurisdiction.** Prior to colonization, tribes had full jurisdiction over their
people and their own methods to address any and all crimes (Canby, 2009). Although
several federal laws have affected FRTs’ ability to respond to crimes that occur on their
land, there are five that bear noting: the General Crimes Act, the Major Crimes Act,
Public Law 280, the Indian Civil Rights Act, and the Tribal Law and Order Act. In
1817, the General Crimes Act (18 USC § 1152) extended federal jurisdiction to any
non-Indian offender committing a crime against an Indian victim in Indian Country.
After the U.S. Supreme Court held in *Ex Parte Crow Dog* (1883) that the federal gov-
ernment had no jurisdiction over a crime committed against an Indian victim by an
Indian offender on tribal land, Congress responded in 1885 by passing the Major
Crimes Act (18 USC § 1152). This legislation made certain serious felony offenses
(e.g., murder, assault resulting in serious bodily injury, sexual abuse) committed by an
Indian offender in Indian Country a federal offense triable by the U.S. federal govern-
ment (Canby, 2009). For these offenses, the tribe and federal government have con-
current jurisdiction and a defendant may be legally tried and convicted in each
jurisdiction. However, tribal courts have no criminal jurisdiction over non-Indian
offenders as a result of the U.S. Supreme Court decision in *Oliphant v. Suquamish

**State Jurisdiction (Public Law 280).** In 1953, Congress passed Public Law 280 (PL 280)
(25 USC § 1321), which transferred criminal jurisdiction from the federal system to
the state system in certain states (Canby, 2009). This legislation was passed because
some non-Indians living on or near certain reservations believed that Indian Country
had become lawless. The extension of state jurisdiction in Indian Country was per-
ceived as a remedy. With some exceptions, six states are considered mandatory PL
280 states: Minnesota, Wisconsin, California, Oregon, and Nebraska and, later upon statehood, Alaska (Canby, 2009). All other states are considered “optional” states and several states have assumed jurisdiction over one or more reservations located within their borders (Canby, 2009) [Act of August 15, 1953].

According to Goldberg and Singleton (2005), PL 280 “covers 28% of all FRTs in the contiguous 48 states and 70% of all FRTs (including Alaska Native villages)” (p. 4). This mandate was unfunded and passed without the consent of states and tribes (Canby, 2009). In 1968, PL 280 was amended to require consent by “a majority vote of the adult Indians of the tribe in a special election,” this requirement was not retroactive and few tribes have taken advantage of this option (Canby, 2009, p. 280). In 2010, the Tribal Law and Order Act (TLOA) was passed thereby amending PL 280, which now allows tribes in mandatory PL 280 states to request assumption of concurrent federal jurisdiction.12

Tribal Criminal and Concurrent Jurisdiction. Despite state and federal criminal jurisdiction on reservations and other tribal communities, tribes can still prosecute Indian offenders within their own tribal justice systems, in addition to any prosecution undertaken by the federal or state systems (also called concurrent jurisdiction). However, tribal court powers are limited. In 1968, the Indian Civil Rights Act (ICRA) (25 U.S.C § 1302) extended certain federal rights to Indians in Indian Country, similar to federal constitutional rights. When originally passed, ICRA limited tribal courts’ sentencing authority to 6 months in jail and a US$5,000 fine. A 1986 amendment to ICRA increased the tribal court sentencing limit to a maximum of 1 year in jail and a US$5,000 fine for any one crime. TLOA restored limited felony sentencing authority to tribes and allows for sentencing up to 3 years imprisonment and a US$15,000 fine per offense, for a combined maximum sentence of 9 years per criminal proceeding. Tribes using this enhanced sentencing authority are required to guarantee certain rights to defendants, including the right to indigent defense counsel. To qualify as a felony, a tribal offense must either be a repeat offense or an offense considered to be a felony by any state or the Federal government. In addition, the shortage of jail space in Indian Country further limits tribes’ ability to incarcerate offenders. According to some, offenders commit crimes in Indian Country precisely because of the jurisdictional gaps and lack of resources for tribal citizens (Deer, 2004).

Law Enforcement in Tribal Communities. The extent and type of law enforcement in tribal communities varies. A survey of police departments in Indian Country found that many tribal police departments are underfunded and lack necessary resources such as sufficient staffing (administrative and law enforcement personnel), technology, vehicles, and equipment (Wakeling, Jorgensen, Michaelson, & Begay, 2001). One study reported that it is typical for a police department in Indian Country to rely on no more than three officers to patrol an area the size of the state of Delaware (Goldberg & Singleton, 2005). The lack of resources available to tribal law enforcement and the AI and AN people that need them means that the first response by law enforcement is sometimes hours later, the next day, or even days later (Ned-Sunnyboy, 2008).
Upon arrival, the officer must attempt to first secure the crime scene and any evidence, and second, depending on the location of the tribal community, determine who will investigate (the tribe, the state, BIA, or the FBI) based on where the crime was committed, whether an Indian or non-Indian offender committed the crime, and what crime or crimes were committed (Wakeling et al., 2001). Then, if it is determined that jurisdiction is not tribal, the responding officer or criminal investigator must contact the appropriate authority to notify them to come to the crime scene to start their investigation.

One can imagine that this delayed law enforcement response affects the quality of evidence and the availability of witnesses, and effectively communicates to community members that no one will be available when help is most needed. Indian reservations not subject to PL 280 must rely on the FBI or, in some cases, the BIA to investigate alleged crimes and the U.S. Attorney’s Office (USAO) to prosecute Major Crimes Act violations committed by Indian offenders, and misdemeanor and felony crimes committed by non-Indian offenders. Of course, these problems with evidence and jurisdictional confusion contribute to the inability of the USAO to prosecute crimes. Due to concerns that USAOs were declining to prosecute crimes in Indian Country, the TLOA requires that USAOs annually submit declination statistics to Congress (25 U.S.C. §2809).

Alaska. Almost half of all FRTs are located in Alaska (Jaeger, 2004). The state of Alaska faces additional challenges related to the criminal justice response to violence against AN women. Alaska State Troopers have jurisdiction over AN villages. However, the first responders to crimes are typically paraprofessional police officers—such as Village Public Safety Officers (VPSOs), Village Police Officers (VPOs), or Tribal Police Officers (TPOs)—if the village has one. According to 2005 Alaska Department of Public Safety data, 82% of the rural areas of the state under the jurisdiction of the Alaska State Troopers had a VPSO position in their community; however, one third of these positions were vacant (Roberts, 2005). The VPSO program suffers from turnover rates that are 10 times greater than what is typical in urban law enforcement agencies, and even greater than those in rural areas (Wood, 2001, 2002). In his study of turnover among VPSOs, Wood (2002) wrote:

these officers usually serve by themselves, without a firearm, in a village not connected to a road system and often at least an hour or more away by air from any backup. VPSOs are expected to be on call twenty-four hours a day seven days a week in order to deal with the problems that arise in what are some of the most violent-and-accident prone places in the Nation. For this job, VPSOs receive wages and benefits substantially lower than what is given those with similar responsibilities elsewhere across the state. (p. 197)

The Alaska state government is in the process of adding 15 VPSO positions every year for 10 years, but struggles to fill the added positions (Friedman, 2012).

In sum, when violence against women occurs in Indian Country and AN villages, victims face many interpersonal and jurisdictional obstacles that prevent reporting, law enforcement response, the ability to hold perpetrators accountable, and overall access to justice (Ned-Sunnyboy, 2008). Within this context, AI and AN women who experience violence face many barriers that prevent them from reporting an incident to law
enforcement and receiving assistance when necessary. In addition to the inadequate law enforcement response, victims living in tribal communities may be reluctant to report crimes for a number of reasons including their “(1) need to protect family honor; (2) fear of retaliation by the perpetrator or perpetrator’s family; (3) fear of gossip; (4) [fear of] going against unspoken rules that you do not turn in your own; (5) fear and distrust of systems, maltreatment, and racist treatment; and (6) fear they may be arrested” (Deer, 2003, n.p.; see also Ned-Sunnyboy, 2008). Additional barriers include fear of being blamed, fear of prejudice, geographic isolation, lack of services available, and “conflict between Western approaches to intervention and AI values” (Hamby, 2008, p. 97).

Limitations of Existing Indian Country Criminal Justice Data

Currently no principal organization is tasked with regularly collecting, analyzing, and disseminating crime and victimization data in Indian Country. There also is no systematic national data collection effort or program of research focused on crime in Indian Country. It is very rare that federal, state, and local crime data reports even distinguish between offenses committed in Indian Country from those committed elsewhere. The primary mechanisms for reporting crime data—the FBI’s Uniform Crime Reporting (UCR) program and the National Incident Based Reporting System (NIBRS)—do not include offenses committed on reservations or criminal and delinquency arrests and subsequent processing by federal agents (e.g., FBI, BIA, The Drug Enforcement Administration [DEA], Bureau of Alcohol, Tobacco, Firearms and Explosives [ATF], U.S. Immigration and Customs Enforcement [ICE]). Until recently, tribal crime data were rarely reported directly to the UCR. Most tribes reported crime data to the BIA, which then transmitted these data to the FBI for inclusion in the UCR as a single line, a total for all reporting tribes.

Other considerations regarding the UCR and NIBRS data include no mechanism for collecting information on all crimes, and reports only for those crimes that show up in administrative records of the justice system. Where reports use state data sources to supplement the UCR statistics, there is an apparent “double counting” of crime rates, especially in PL 280 states (tribal, local, county/city reporting the same incident). As far as the data systems that do exist and could be used to report crime rates in Indian Country, in-depth review has found that because they were not designed for data collection or statistical analysis they are, for the most part, inappropriate platforms to use to report on Indian Country crime.

Current Status of NIJ’s Progress on the Mandate to Evaluate the Effectiveness of the Criminal Justice Response to Violence Against AI and AN Women

In addition to asking women directly about their experiences with the justice system in the baseline study, NIJ has conducted and currently conducts a number of studies evaluating the effectiveness of federal, state, tribal, and local responses to violence against Indian women in Indian Country and AN villages. These studies include secondary
analyses of case management data from the Executive Office for United States Attorneys (EOUSA) and the FBI, and a qualitative study to capture the perspectives of federal and tribal justice and victim services personnel. Each of these studies will be discussed in more detail below.

The EOUSA Legal Information Office Network System (LIONS) case management system review: Fiscal year 2008. The primary purpose of this study was to provide a thoughtful examination of the Justice Department’s Indian Country practice as it pertains to the United States Attorneys’ activities in Indian Country. NIJ partnered with the EOUSA to examine LIONS data in an attempt to provide a snapshot of Indian Country cases handled by United States Attorneys during the 2008 Fiscal Year. The proposed activities involved in the needs assessment included two phases. Phase I entailed reviewing all reporting tools and systems that Assistant U.S. Attorneys (AUSAs) use to manage cases and report annual statistics. Phase II involved: (a) reviewing and documenting established internal control procedures and systems for gathering, verifying, and reporting statistics; and (b) reviewing case file documentation from official documents, such as annual statistical reports.

Prior to this effort, there had never been a systematic, detailed description of the United States Attorneys’ activities in Indian Country, primarily because federal data systems were never designed to collect information about Indian Country. While EOUSA includes cases from Indian Country in its Annual Statistical Report, much of the detail and context of Indian Country cases are lost when presented in aggregate-level reports. NIJ’s review was intended to address this lack of information by providing a snapshot of Indian Country cases handled by United States Attorneys. However, this review identified several serious limitations in using these data as a measure either of crime or of prosecution efforts in Indian Country. It was determined that proper analysis of case processing in Indian Country requires a thorough review of individual case information that can only be obtained by reviewing individual hardcopy case files and consulting with individual AUSAs. Given the limitations of the data and the prohibitive government investment that would be required to conduct hard copy case file reviews, this project was suspended.

FBI Case File Review of Crimes Against AI Women That Occurred in Indian Country. NIJ formed a partnership with the FBI’s Indian Country Crimes Unit to better understand the FBI’s response to violence against AI women in Indian Country. Both agencies were interested in obtaining baseline statistics about the number of cases opened, pending, and closed each year in Indian Country; the percentage and nature of those cases that involve a form of violence against adult Native American women; and the response and strategies used by the FBI in investigating these crimes.

This project examines all Indian Country FBI law enforcement case files that were opened and investigated for Fiscal Year 2008 to include death investigations, domestic violence, sexual assault, and assault case files. The information gathered provides a more detailed description about Indian Country cases than what was available by simply running queries in FBI systems. The information collected for this project gives details about geographic dispersion of cases and more information about the number of cases associated with constructs such as domestic violence or homicide. The
anticipated benefits of this research primarily consist of the new information available to detail the FBI’s efforts in addressing violent crime in Indian Country and, more specifically, violence against women in Indian Country. The previously unknown statistics and crime pattern information are informing FBI resource management and will be used to inform further exploratory research efforts regarding the Indian Country subprogram.

**Federal and Tribal Response to Indian Country Crime Study.** This NIJ project seeks better information on federal and tribal responses to sexual violence, IPV, and stalking of AI and AN women living in Indian Country. It involves face-to-face interviews with federal and tribal agency representatives responsible for investigating and prosecuting these crimes, including tribal law enforcement and prosecutors; FBI special agents and victim specialists; AUSAs and AUSAs serving as tribal liaisons; USAO victim/witness staff; and BIA special agents, criminal investigators, police officers, and victim specialists. Current practices, district policies, training, and outreach efforts are being documented. Study findings are expected to provide a better understanding of existing issues in justice system responses to violence against AI and AN women to improve law enforcement, prosecution, and judicial responses (including interagency coordination and communication); strengthen training and outreach efforts to build cultural competence; build victims’ trust in law enforcement; encourage reporting of victimization; and, ultimately, reduce violence among AI and AN living in Indian Country.

**Conclusion**

The Justice Department has a legal and trust responsibility to support tribal justice systems and may better carry out this critical function through the improved data collection, research, analyses, and reporting on crime and justice administration in Indian Country. Accurate, comprehensive, and current information on the incidence, prevalence, and nature of crime and victimization in Indian Country and AN villages is critically needed to improve our understanding of the programmatic, service, and policy needs of AI and AN people and communities, and to educate and inform policy-makers and the public about the threat to the health and well-being of AI and AN people. Information also is needed on victims’ experiences with and opinions of the services they receive from justice authorities and health care providers, as well as their reasons for not seeking those services. NIJ’s program of research is particularly crucial in the wake of the signing of TLOA, which changes how federal government agencies are expected to deliver law enforcement, prosecution, and correctional services in Indian Country. TLOA also aims to increase AI and AN victims’ access to justice system resources in Indian Country and imposes higher standards on tribes for the reporting of crimes to federal law enforcement and prosecution, including crimes of violence against women.

To date, NIJ has made significant progress in evaluating the effectiveness of federal responses to crimes committed against AI and AN women living in Indian Country. However, state, local, and tribal responses have not been evaluated. In the near future,
NIJ will seek proposals to conduct evaluations of promising programs that effectively respond to violence against AI and AN women living in Indian Country and AN villages. As tribal justice systems expand and as tribal jurisdiction is enhanced, NIJ has an increasingly urgent responsibility to establish best practices in Indian Country. To date, no such practices have been established. NIJ needs to identify the extent to which tribal, local, state, and federal justice systems network with one another and other organizations serving AI and AN women, document the degree of coordination between organizations, and identify reasons for gaps in coordination. Moreover it is important for NIJ to support expanded (but focused) evaluations that will further explain how programs facilitate reporting, arrest, and prosecution. Results from these evaluations are expected to help establish and enhance justice systems that successfully restore victim safety and promote healing.

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**Notes**

1. For purposes of this article, “Indian tribe” is an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.
2. “Indian Country” is defined by 18 U.S.C. § 1151 as: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including the rights-of-way through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the title to which have not been extinguished, including rights-of-way running through the same” (see http://www.law.cornell.edu/uscode/text/18/1151).
3. Bachman et al. (2008) identified the following reasons for variability in estimates of violence against AI and AN women: screening questions, reference period, sampling differences, and cultural sensitivity of research project staff.
4. For more information, see http://www/bia.gov/FAQs/index.htm
5. This database of articles is updated annually and is available upon request.
6. Hub refers to a service/commercial center, often a centrally located village or town, that has grown to include services for surrounding villages.

7. For more information on the U.S. Census Bureau’s Tribal Statistics Areas Program, see http://www.census.gov/geo/www/tsap2010/tsap2010.html

8. For more information on regulating research in tribal communities, see Considerations for Regulating Research in Native Communities, at http://www.ncaiprc.org/research-regulation-papers

9. For the report on the NISVS general population study, see http://www.cdc.gov/violenceprevention/nisvs/

10. Portions of this section and the next two sections of the article were published in Palmer (2012).

11. Select reservations in these states remained under federal jurisdiction.


13. Only one tribe, the Metlakatla Indians, live on a federally designated reservation. However, most crimes against AN women would fall under local jurisdiction.

14. The VSPO program, begun in the late 1970s, trains and employs individuals residing in rural Alaskan villages as first responders to public safety emergencies (see http://www.dps.state.ak.us/ast/vpso/). VPSOs are employees of the village government, and TPOs are tribal employees. VPSOs, VPOs, and TPOs are three types of local paraprofessional police in Alaska, but differ with regard to the level of training they receive and their funding sources. VPOs and TPOs are not trained by the state and are not certified by the Alaska Police Standards Council (see http://justice.uaa.alaska.edu/forum/28/2-3summerfall2011/e_vpsos.html or http://akjusticecommission.org/pdf/reports/ARJLEC_2012_Report.pdf

15. See http://www.justice.gov/usao/reading_room/foiamanuals.html#reports


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*General Crimes Act, USC Title 18 Part I Chapter 53 § 1152 (June 25, 1948, ch. 645, 62 Stat. 757).*


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