

# Child Exploitation in Special Areas and Populations

Most child sexual abuse offenses fall under state jurisdiction. However, when the offense occurs on federal lands, such as national parks, military bases, or tribal territories, then the case falls under federal jurisdiction. Other areas of federal jurisdiction include federally owned facilities, such as holding facilities or detention centers, and maritime cases, such as those occurring on a cruise ship or airplane. This chapter will explore the dynamics of combating child exploitation in some of these unique federal jurisdiction settings: Indian country, military installations, unaccompanied noncitizen minors entering the United States, cruise ships, and commercial flights.

## Indian Country

Children in tribal communities are particularly vulnerable to sexual abuse. According to the most recent 2019 National Child Abuse and Neglect Data System (NCANDS), American Indian and Alaska Native (AI/AN)<sup>1</sup> children are 50% more likely to be victims of sexual abuse than Caucasian children. The long-term impacts of this abuse are profound. Adverse childhood experiences (ACEs) like child sexual abuse are linked to chronic health problems, mental illness, and substance abuse problems in adulthood and can negatively impact education, job opportunities, and earning potential.<sup>2</sup>

“Indian country” is a legal term used to describe reservations and other lands set aside for Indian use, such as Indian allotments, and lands held in trust for Indians or Indian tribes. 18 U.S.C. § 1151.

Many of the contributing factors to child sexual abuse in Indian country are the same as in other parts of the United States. However, tribal communities face additional complex issues, such as historical or generational trauma, lack of federal support and resources, and larger systemic economic and social challenges. Community or housing situations that increase the number of people in the region or the number of people who have access to AI/AN children, may increase the risk of child exploitation. Local or regional events may also increase both tourism and travel between reservations or tribally held property, potentially increasing access to children by predators. Crowded or transient family living arrangements can also increase the number of people in a home who have access to children, and thus increase the risk of abuse.

## Federal Jurisdiction

There are 574 federally recognized tribes in the United States today. The federal government’s responsibility in child sexual abuse cases occurring in Indian country, in part, is determined by whether the crime occurred in a P.L. 280 jurisdiction or a non-P.L. 280 jurisdiction. In 1953, Congress passed P.L. 280,<sup>3</sup> which delegated criminal jurisdiction and limited civil jurisdiction

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<sup>1</sup> Throughout this document, the terms Native American, Indigenous person, and American Indian and Alaska Native are used synonymously.

<sup>2</sup> Preventing Adverse Childhood Experiences, Centers for Disease Control and Prevention [https://www.cdc.gov/violenceprevention/aces/fastfact.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Ffacestudy%2Ffastfact.html](https://www.cdc.gov/violenceprevention/aces/fastfact.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Ffacestudy%2Ffastfact.html)

<sup>3</sup> 18 U.S.C. § 1162(a).

over Indian country from the Federal Government to six states: Alaska (with the exception of the Metlakatla Indian Tribe), California, Minnesota (with the exception of the Red Lake Reservation), Nebraska, Oregon (with the exception of the Warm Springs Reservation), and Wisconsin. In non-P.L. 280 jurisdictions, the federal government has jurisdiction to investigate and prosecute sexual abuse crimes committed within Indian country if either the defendant or the victim is an Indian person.<sup>4</sup>

The Bureau of Indian Affairs, Office of Justice Services (BIA-OJS), within the Department of the Interior directly provides policing services and also contracts with tribes for policing, criminal investigations, dispatch, and corrections within Indian country. Thus, tribes may have either received one or more of those services directly from BIA-OJS or may contract to provide one or more of those services tribally.<sup>5</sup> BIA-OJS, tribal investigators, and tribal police work with the FBI on investigations involving children in Indian country. USAOs are responsible for prosecution of child sexual exploitation cases in Indian country within the federal court system. In addition, tribes often have their own court systems and criminal and civil codes that are enforced by tribal law enforcement. Many tribal criminal codes address the exploitation of children. Together, these dedicated federal and tribal resources collaborate to find and implement solutions addressing immediate and long-term public safety challenges in Indian country, particularly involving child exploitation.

### *Investigative Challenges*

Child sexual abuse cases in Indian country present special challenges and require particularized investigative strategies, training, and resources. Many child sexual abuse crimes in tribal communities involve repeated hands-on offenses committed by a person the child knows, loves, or trusts. Sexual abuse is typically committed outside the presence of witnesses and frequently lacks corroborating physical evidence.<sup>6</sup> Delayed disclosure of these offenses is common, and sometimes the delay in reporting spans many years. As with other similar cases nationally, many tribal communities are small and tightly knit, which may discourage a victim from disclosing their abuse to prevent others in the community from discovering the abuse. Moreover, the child may feel fear, shame, humiliation, or simply may not realize that they are a victim of a crime. Victims may face pressure to not to report their abuse, to recant an allegation, or may be afraid of retribution by the offender. Intergenerational sexual abuse may lead to attitudes of normalization, and reporting may damage relationships with extended family members.

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<sup>4</sup> If the crime occurred outside of Indian country it will not be investigated by tribal or federal law enforcement. Instead, the case will be handled by state or local investigators and prosecutors. Most Indigenous people and their families live outside of Indian country. See <https://www.bia.gov/frequently-asked-questions>

<sup>5</sup> “Congress has recognized the right of tribes to have a greater say over the development and implementation of federal programs and policies that directly impact on them and their tribal members. It did so by enacting two major pieces of legislation that together embody the important concepts of tribal self-determination and self-governance: The Indian Self-determination and Education Assistance Act of 1975, as amended (25 U.S.C. 450 et seq.) and the Tribal Self-Governance Act of 1994 (25 U.S.C. 458aa et seq.). Through these laws, Congress accorded tribal governments the authority to administer themselves the programs and services usually administered by the BIA for their tribal members.” <https://www.bia.gov/frequently-asked-questions>.

<sup>6</sup> Department of Justice, National Strategy for Child Exploitation Prevention and Interdiction (2016), at 105.

Child sexual abuse cases are some of the most psychologically damaging crimes to victims and their families and among the most challenging cases to investigate and prosecute. Child victims may not present in a way that might be expected by those outside the criminal justice system, sometimes appearing stoic or emotionless. Victim advocates, child forensic interviewers, law enforcement officers, and prosecutors understand this behavior and the reasons underlying it. These professionals often spend hours working with child victims, including forensic interviews, helping the child and the child's family with referrals to services to assist them in healing, and in transportation to and from interviews and court proceedings. All these services must be provided in a victim-centered, trauma-informed, and culturally-competent way – paying particular attention to the needs of the victim and family.

The investigation and prosecution of child exploitation crimes in Indian country is complex and requires a multi-jurisdictional and multidisciplinary response. This is due, in part, to multiple jurisdictions (federal, state, and/or tribal) having the legal authority to investigate and prosecute a case. Federal law<sup>7</sup> and the Attorney General Guidelines for Victim and Witness Assistance (2022)<sup>8</sup> encourage law enforcement, prosecutors, and victim service providers involved in federal cases to use a multidisciplinary, collaborative approach to investigate and prosecute child sexual exploitation cases in Indian country. Multidisciplinary Teams (MDTs) may consist of federal and tribal prosecutors, law enforcement, pediatricians, victim advocates, counselors, child protective services workers, and child advocates, among others. Working collaboratively, MDTs and tribal communities work to find and implement solutions for immediate and long-term public safety challenges, particularly around child exploitation. MDTs in many parts of Indian country meet regularly to staff new and ongoing child sexual exploitation and physical abuse cases, providing a team approach to resolving the cases.

Staffing shortages, however, are a constant challenge in Indian country. One way for tribal and local law enforcement officers to obtain additional personnel who can exercise federal authority for crimes committed in Indian country is through a Bureau of Indian Affairs issued Special Law Enforcement Commission (SLEC).<sup>9</sup> A SLEC allows officers to enforce federal criminal statutes and federal hunting and fishing regulations in Indian country. Criteria for obtaining a SLEC includes successful completion of the Criminal Jurisdiction in Indian Country (CJIC) class and achieving a 70% on a test at the conclusion of the class. TLOA shifted primary responsibility for delivery of CJIC training to the DOJ, with the NICTI managing course development and training. The CJIC training curriculum covers topics such as search and seizure, federal Indian law, federal criminal procedure, the Crime Victims' Rights Act, and investigating sexual assault, domestic violence, and child abuse crimes occurring in tribal communities. This course is usually offered between 20 to 25 times a year at various locations around the country. On average, approximately 450 to 550 tribal, state, and local law enforcement personnel complete this class annually. Due to COVID-19, the training has been offered virtually with more than 3,000 officers trained since August 2020. Over 2,000 of these officers are from Oklahoma where a

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<sup>7</sup> 18 U.S.C. § 3509(g)

<sup>8</sup> A tribal liaison is required by statute for every USAO that has a federally recognized tribe within its district, regardless of PL 280 or non-PL 280 status. *The Attorney General Guidelines for Victim & Witness Assistance*, available at <https://www.justice.gov/ag/page/file/1546086/download>.

<sup>9</sup> Per 25 C.F.R. § 12.21, an SLEC is issued to a tribal or local law enforcement officer. A SLEC does not result in the deployment of federal officers to a certain area.

recent United States Supreme Court decision recognized that a large area of the state is still Indian country; this decision created an immediate need to have state and local law enforcement officers trained on federal Indian law and criminal jurisdiction. The SLEC program is an important force multiplier and an effective tool in increasing the number of officers able to respond to child exploitation crimes in tribal communities.

### *Tribal Liaisons*

All U.S. Attorneys' Offices (USAOs) with Indian country responsibilities must appoint at least one Assistant United States Attorney (AUSA) to serve as a Tribal Liaison and be the primary point of contact with tribes located within the district.<sup>10</sup> The Tribal Liaison program was established in 1995 and codified with the passage of the Tribal Law and Order Act (TLOA).<sup>11</sup> Tribal Liaisons are integral to USAOs' efforts in Indian country and play a critical and multi-faceted role. In addition to their duties as prosecutors, Tribal Liaisons often coordinate and train federal agents, BIA-OJS criminal investigators, and tribal police officers investigating violent crime and sexual abuse cases in Indian country.

Tribal Liaisons' job duties vary by district due to the nature, circumstances, and needs of the tribes in their districts. They are accessible to the community in ways that are unique as compared to other AUSAs. Tribal Liaisons develop relationships and have frequent contact with tribal governments, including government leaders, law enforcement, courts, prosecutors, and social service agency staff. These relationships enhance information sharing and assist the coordination of criminal prosecutions - federal, state, or tribal.

Tribal Liaisons continue to play a critical role in USAO implementation of TLOA and the Violence Against Women Reauthorization Act of 2013<sup>12</sup> (VAWA 2013) by fulfilling the need for skilled, committed prosecutors working on the ground in Indian country. As an example, the passage of VAWA 2013 resulted in the new federal assault crime of strangulation or suffocation,<sup>13</sup> which AUSAs frequently charge. Additionally, Tribal Liaisons work with tribal partners to assist them with Special Domestic Violence Criminal Jurisdiction (SDVCJ) implementation. SDVCJ allows participating tribes to prosecute certain non-Indian defendants in tribal court for acts of domestic violence, dating violence, and personal protection order violations.<sup>14</sup> Tribal Liaisons work with tribes in organizing MDTs that primarily address child abuse cases, and Sexual Assault Response Teams (SARTs) that coordinate community response to sexual violence. Both MDTs and SARTs consist of federal, tribal, and state subject matter experts.

Tribal Liaisons perform outreach in tribal communities to educate tribal organizations and members on various issues, including substance abuse and violent offenses. Tribal Liaisons meet regularly with tribal law enforcement and host trainings on various legal issues, and help foster and cultivate relationships among federal, state, and tribal law enforcement officials by

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<sup>10</sup> 25 U.S.C. § 2810(b).

<sup>11</sup> Pub. L. 111-211, 124 Stat. 2261, enacted July 29, 2010.

<sup>12</sup> Pub. L. 113-4, 127 Stat. 56, enacted March 7, 2013.

<sup>13</sup> 18 U.S.C. § 113(a)(8).

<sup>14</sup> 25 U.S.C. § 1304.

convening meetings to discuss jurisdictional and investigative issues. These relationships enhance information sharing and assist the coordination of all criminal prosecutions.

**U.S. Attorneys’ Offices with Indian Country Responsibility as of January 2023**

<b>District Name</b>	<b>Abbreviation</b>	<b>District Name</b>	<b>Abbreviation</b>
<b>Middle District of Alabama</b>	ALM	<b>District of Nevada</b>	NV
<b>Southern District of Alabama</b>	ALS	<b>District of New Mexico</b>	NM
<b>District of Alaska</b>	AK	<b>Eastern District of New York</b>	NYE
<b>District of Arizona</b>	AZ	<b>Northern District of New York</b>	NYN
<b>Central District of California</b>	CAC	<b>Western District of New York</b>	NYW
<b>Eastern District of California</b>	CAE	<b>Western District of North Carolina</b>	NCW
<b>Northern District of California</b>	CAN	<b>District of North Dakota</b>	ND
<b>Southern District of California</b>	CAS	<b>Eastern District of Oklahoma</b>	OKE
<b>District of Colorado</b>	CO	<b>Northern District of Oklahoma</b>	OKN
<b>District of Connecticut</b>	CT	<b>Western District of Oklahoma</b>	OKW
<b>Middle District of Florida</b>	FLM	<b>District of Oregon</b>	OR
<b>Southern District of Florida</b>	FLS	<b>District of Rhode Island</b>	RI
<b>District of Idaho</b>	ID	<b>District of South Carolina</b>	SC
<b>Northern District of Indiana</b>	INN	<b>District of South Dakota</b>	SD
<b>Northern District of Iowa</b>	IAN	<b>Western District of Tennessee</b>	TNW
<b>District of Kansas</b>	KS	<b>Eastern District of Texas</b>	TXE
<b>Western District of Louisiana</b>	LAW	<b>Western District of Texas</b>	TXW
<b>District of Maine</b>	ME	<b>District of Utah</b>	UT
<b>District of Massachusetts</b>	MA	<b>Eastern District of Virginia</b>	VAE
<b>Eastern District of Michigan</b>	MIE	<b>Western District of Virginia</b>	VAW
<b>Western District of Michigan</b>	MIW	<b>Eastern District of Washington</b>	WAE
<b>District of Minnesota</b>	MN	<b>Western District of Washington</b>	WAW
<b>Northern District of Mississippi</b>	MSN	<b>Eastern District of Wisconsin</b>	WIE
<b>Southern District of Mississippi</b>	MSS	<b>Western District of Wisconsin</b>	WIW
<b>District of Montana</b>	MT	<b>District of Wyoming</b>	WY
<b>District of Nebraska</b>	NE		

## *Investigative Training in Indian Country*

When a crime occurs in a tribal community, the first responder is typically a tribal police officer or another local law enforcement official. First steps taken in a criminal investigation are critical steps and must be done correctly. A significant challenge in investigating child exploitation cases in tribal communities is the limited number of law enforcement personnel and frequent turnover in tribal police department staffing. In addition to the lack of available staff, child exploitation offenses often involve several issues, requiring specialized training, including: child forensic interviewing; mandatory reporting obligations; pediatric or adolescent forensic medical examinations; crime scene processing and evidence collection; searches of electronic communications and social media; defendant interviewing and interrogation techniques; victim advocacy; courtroom presentation and trial skills. Increased staffing and specialized training are the key to developing a comprehensive trauma-informed investigation and prosecution strategy for sexual abuse crimes in Indian country.

In July 2010, the Executive Office for United States Attorneys (EOUSA) launched the National Indian Country Training Initiative (NICTI) to ensure that DOJ personnel, as well as state and tribal criminal justice and social welfare professionals, receive the training and support needed to address the challenges relevant to Indian country investigations and prosecutions. Pre-pandemic, the NICTI typically hosted a dozen or more residential training courses at the National Advocacy Center (NAC) in Columbia, South Carolina. The NICTI also prepares and delivers online training and authors and disseminates written educational materials. In addition, the NICTI Coordinator teaches at dozens of other training events throughout the year. These training events are sponsored by federal and state agencies and DOJ-funded tribal training and technical assistance providers.

Since the launch of the NICTI, thousands of criminal justice and social service personnel, working in Indian country, have traveled to the NAC for training. These students represent several hundred different tribes, USAOs, and federal, state, and tribal organizations serving Indian country. The overwhelming majority of attendees are from tribes or tribal organizations. DOJ's Office of Legal Education (OLE) covers the costs of travel and lodging for tribal students attending classes sponsored by the NICTI. This allows many tribal criminal justice and social service professionals to receive cutting-edge training from national experts at no cost to the student or tribe.

Additional national, regional, and local training for tribes is made available through DOJ's grant-making components: the Office of Community Oriented Policing (COPS), Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office for Victims of Crime (OVC), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Office on Violence Against Women (OVW). These components fund technical assistance (TA) providers with expertise on Indian country issues. Funded TA is provided to federal, state, and tribal law enforcement personnel as well as key stakeholders involved in responding to child exploitation cases. This funded TA includes projects like the National AMBER Alert Training and Technical Assistance Program, the Sex Offender Registration and Notification Act (SORNA), and the Internet Crimes Against Children Task Force Program (ICAC program). These important programs receive support from OJJDP through annual grants

via the Missing Children's Act, the PROTECT Act, and from SMART through annual grants via the Adam Walsh Child Protection and Safety Act. In sum, the Department of Justice has a long history of providing training and technical assistance to law enforcement personnel and other key stakeholders on child exploitation issues impacting tribes.

The Ashlynnne Mike AMBER Alert in Indian Country Act was born out of the tragic abduction and murder of 11-year-old Ashlynnne Mike of the Navajo Nation in 2016. At the time, tribal law enforcement officers did not have an AMBER Alert plan to notify people living on the reservation—a serious problem shared by tribes across the country. The enactment of the 2018 legislation represents significant progress in addressing the problem. It makes federally recognized tribes eligible for AMBER Alert grants and permits the use of grant funds to integrate state or regional AMBER Alert communication plans with tribes across the nation.

OJJDP created an AMBER Alert in Indian Country (AIIC) Initiative as part of their broader National AMBER Alert Training and Technical Assistance Program (AATTAP).<sup>15</sup> This initiative was created to assist Tribal communities in developing programs and AMBER Alert communication plans to safely recover endangered, missing, or abducted children through the coordinated efforts of the tribes and their local, state, and federal partners by using training and technology to enhance response capabilities and increase public participation in protecting children. Since 2007, more than 2,400 tribal law enforcement and child protection providers have participated in AATTAP. The training included information on combating child sex trafficking, the dynamics of child sex trafficking, and other problems affecting high-risk youth in Indian country.

The Department of Justice SMART Office, Office of Tribal Justice, and Justice Management Division launched the Tribal Access Program (TAP) in 2015 to provide tribes access to national crime information systems for both criminal and civil purposes. Tribes face unique challenges in information sharing and accessing federal databases, which impact law enforcement and child safety not only in Indian country but across the United States. Tribes implementing SORNA had faced challenges in meeting federal requirements to submit sex offender biometrics and biographical data into various federal databases, including the National Sex Offender Registry (NSOR). To help facilitate this, TAP – fully funded initially by the SMART Office – provides tribes the ability to exchange critical data across the DOJ's Criminal Justice Information Services (CJIS) systems and other national crime information systems. TAP is currently funded by SMART, COPS, OVC, and OVW and enhances participating tribes' ability to register sex offenders, have orders of protection enforced off-reservation, protect children, keep guns out of the wrong hands, improve the safety of public housing, and allows tribes to have tribal arrests and convictions be associated with their tribe. The Violence Against Women Act Reauthorization Act of 2022 formally authorized an annual appropriation for TAP for FYs 2023 through 2027.

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<sup>15</sup> AMBER Alert in Indian Country (AAIT) Fact Sheet [https://amber-ic.org/wp-content/uploads/2020/02/AIIC\\_Fact\\_Sheet\\_11-2022.pdf](https://amber-ic.org/wp-content/uploads/2020/02/AIIC_Fact_Sheet_11-2022.pdf)



## Military

Within Department of Defense, Military Criminal Investigative Organizations (MCIOs) are responsible for investigating noncombat deaths, sexual assaults, and other violent crime.

Examples of MCIOs include:

- U.S. Army Criminal Investigation Command (CID)
- Naval Criminal Investigative Service (NCIS)
- Air Force Office of Special Investigations (AFOSI)

In addressing child sexual exploitation and abuse, the Department of Defense's (DOD) responsibilities span more than 1.3 million active duty uniformed and 760,000 civilian employees, 1.2 million school-age children of those employees, and more than 4,775 military sites DOD occupies worldwide.<sup>16</sup> The Family Advocacy Program (FAP) is the congressionally mandated Department of Defense program responsible for providing clinical assessment, support, and treatment services in response to reported incidents of child abuse and neglect in military families. FAPs are available at every military installation where families are located, and work closely with other military programs, as well as with civilian social service agencies and

civilian law enforcement, to provide comprehensive prevention and response to family maltreatment.

### *Legal Limitations on Domestic Law Enforcement Functions*

The DOD contributes to the fight against child sexual exploitation in a variety of ways, including through each of the military services' criminal investigative organization (MCIO).<sup>17</sup> MCIO special agents are military and civilian personnel who have the authority to investigate criminal statutes identified in the Uniform Code of Military Justice (UCMJ) and the United States Code.<sup>18</sup> Participation of all military personnel, including MCIO special agents, in civilian law enforcement activities, however, is limited by a federal statute known as the Posse Comitatus Act<sup>19</sup> (PCA), and military department policies and regulations.<sup>20</sup>

Due to PCA-like restrictions, the MCIO's are restricted from engaging in law enforcement activities outside a statutorily defined jurisdiction. The MCIO jurisdictions are specifically limited to enforcement of federal laws, Title 10 (UCMJ) and Title 18 laws where there is a DOD-nexus. There is no statutory authority for MCIOs to enforce state laws, therefore PCA-like

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<sup>16</sup> *Child Welfare: Increased Guidance and Collaboration Needed to Improve DOD's Tracking and Response to Child Abuse*, GAO-20-110 (February 2020) retrieved from: <https://www.gao.gov/products/gao-20-110>; *Federal Workforce Statistics Sources: OPM and OMB*, Congressional Research Service (June 24, 2021) retrieved from: <https://fas.org/sgp/crs/misc/R43590.pdf>; *Military and Civilian Personnel by Service/Agency by State/Country* (March 2021) retrieved from: <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports>.

<sup>17</sup> The MCIOs include U.S. Army Criminal Investigation Command (USACIDC), Naval Criminal Investigative Service (NCIS), and Air Force Office of Special Investigations (AFOSI).

<sup>18</sup> *Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations*, Department of Defense Inspector General Report No. DODIG-2020-127 (September 4, 2020) at p.6.

<sup>19</sup> 18 U.S.C. § 1385.

<sup>20</sup> See DOD Instruction 3025.21 retrieved from: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302521p.pdf?ver=2019-02-08-082258-453>



restrictions apply. Because most juvenile offender cases will be investigated as violations of state laws and through state courts, MCIO's are restricted from active participation in law enforcement activities. MCIO's can and do support state law enforcement agencies with administrative investigative activities.

In *United States v. Dreyer*, the Ninth Circuit Court of Appeals addressed the Posse Comitatus Act (PCA) and PCA-like restrictions in the context of an online child sexual exploitation investigation, conducted by a special agent of the Naval Criminal Investigative Service (NCIS).<sup>21</sup> Using RoundUp,<sup>22</sup> a software investigative tool that monitors online distribution of known child pornography files,<sup>23</sup> the NCIS agent conducted an audit of all computers engaged in file sharing on certain peer-to-peer networks within the state of Washington. The Ninth Circuit described the agent as having “cast a net across the entire state of Washington, knowing the sweep would include countless devices that had no ties to the military,” and found that “the investigation was not reasonably tied to military bases, military facilities, military personnel, or military equipment,” and that the methodology employed “violated DOD and naval policy, as well as the boundary Congress imposed through the PCA.”<sup>24</sup> The court also found that “the violations in this case likely resulted from institutional confusion about the scope and contours of the PCA and PCA-like restrictions.” The court stated, however, that “we are persuaded that the Government should have the opportunity to self-correct before we resort to the exclusionary rule, particularly because it has already acknowledged the need to do so.”<sup>25</sup> The court observed that after the *Dreyer* investigation, “DOD adopted new regulations that acknowledge the applicability of PCA-like restrictions to the Navy and to NCIS” and to the fact that “the Government represented at oral argument that the military is already in the process of changing its practices and limiting its participation in civilian law enforcement to conform to PCA-like restrictions.”<sup>26</sup>

To comply with these legal restrictions, child exploitation interdiction efforts undertaken by military personnel must be carefully tailored to ensure that sufficient military nexus exists. However, in the absence of specific, department-wide guidance on what constitutes “sufficient” military nexus in the context of online child exploitation investigations, determining which investigations violate the PCA and PCA-like restrictions is challenging and somewhat unclear. It is particularly challenging as military and civilian lines blur. In proactive investigations, a difficult “catch-22” arises because investigators need to ensure a sufficient military nexus exists prior to investigation—but the investigation is often required to uncover whether that nexus exists (e.g., the target’s identity and active-duty status). As such, many MCIOs are uncomfortable pursuing certain child exploitation investigations and no longer investigate certain cases.

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<sup>21</sup> *United States v. Dreyer*, 804 F.3d 1266 (9th Cir. 2015) (en banc).

<sup>22</sup> RoundUp was developed for the Internet Crimes Against Children (ICAC) task forces, comprised of federal, state, and local law enforcement officers investigating internet crimes against children, including distribution of child pornography. *Id.* at 1270.

<sup>23</sup> See *Protecting Law Enforcement Peer-to-Peer Investigations*, Department of Justice Journal of Law and Technology (January 2018), retrieved from: <https://www.justice.gov/usao/resources/journal-of-federal-law-and-practice>.

<sup>24</sup> *U.S. v. Dreyer*, 804 F.3d at 1276.

<sup>25</sup> *Id.* at 1280.

<sup>26</sup> *Id.*

Since *Dreyer*, DOD and the military services have taken steps, including revising policies, to ensure that MCIO special agents engaging in online child exploitation investigations do not violate the PCA or the PCA-like restrictions established by DOD or their respective military service.<sup>27</sup> In order to comply with these legal restrictions, MCIO special agents and federal prosecutors engaging in online child exploitation investigations must have clear guidance and receive adequate education and training to ensure a sufficient military nexus is present. Collaboration and communication between the MCIO office that is planning and conducting an online child exploitation investigative operation, and the appropriate United States Attorney's Office or DOJ's Child Exploitation and Obscenity Section, can help ensure the investigation is tailored accordingly.

### *Military Extraterritorial Jurisdiction Act*

The Military Extraterritorial Jurisdiction Act (MEJA)<sup>28</sup> was enacted on November 22, 2000. MEJA permits the exercise of federal criminal jurisdiction over crimes committed outside the United States, if at the time of the offense the offender was employed by the Armed Forces outside the United States;<sup>29</sup> accompanying the Armed Forces outside the United States;<sup>30</sup> or (in limited circumstances) a member of the Armed Forces.<sup>31,32</sup>

MEJA cases are often difficult and complex. Many of the same issues that exist in extraterritorial child sexual abuse investigations and prosecutions are present in MEJA cases.<sup>33</sup> In addition, through the life-cycle of the investigation (and any prosecution), due to military policies and resource constraints, the MCIO case agent is subject to performing temporary duty (TDY) assignments of varying lengths, attending off-site training programs that might last weeks or

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<sup>27</sup> See, e.g., *Evaluation of the Air Force Office of Special Investigations' Conduct of Internet-Based Operations and Investigations*, Department of Defense Inspector General Report No. DODIG-2016-075 (April 25, 2016) retrieved from: <https://www.oversight.gov/sites/default/files/oig-reports/DODIG-2016-075.pdf>; and Department of Defense Instruction No. 3025.21 (February 27, 2013, Incorporating Change 1, Effective February 8, 2019) retrieved from: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302521p.pdf>

<sup>28</sup> 18 U.S.C. §§ 3261-67.

<sup>29</sup> Under MEJA, a person "employed by the Armed Forces outside the United States" is defined as (1) a civilian employee, contractor (including a subcontractor at any tier), or employee of a contractor of the Department of Defense; or (2) a civilian employee, contractor (including a subcontractor at any tier), or employee of a contractor of any other federal agency or a provisional authority, to the extent that the person's employment "relates to supporting the mission of the Department of Defense overseas."

<sup>30</sup> A person "accompanying the Armed Forces outside the United States" is defined as a dependent or other qualified family member residing overseas with (1) a member of the Armed Forces, (2) a civilian employee the Department of Defense, (3) a Department of Defense contractor (including a subcontractor at any tier), or (4) an employee of a Department of Defense contractor.

<sup>31</sup> There are limited circumstances. One circumstance in which such a prosecution against a member of the Armed Forces could be so commenced is if, at the time of prosecution, the member is no longer subject to the Uniform Code of Military Justice ("UCMJ"). Generally, a military service member is subject to the UCMJ for an offense that the service member commits anywhere in the world. However, if the service member separates from military service, and thus is no longer subject to the UCMJ, MEJA would allow prosecution for the applicable federal felony offense that the service member had committed overseas before that separation. Another circumstance is that the member is charged with committing the offense with one or more other defendants who are not subject to the UCMJ.

<sup>32</sup> MEJA does not, however, cover offenses committed by any of these individuals if they are nationals of the foreign country where the offense occurred, or ordinarily reside in the foreign country where the offense occurred.

<sup>33</sup> More information can be found in the Extraterritorial Child Sexual Abuse chapter.

months, or being deployed or rotated to a new position or assignment away from the investigating jurisdiction. Any of those events is detrimental to investigative tempo, the quality and timeliness of the investigation, and disrupts any potential rapport developed with victims. This lack of case agent continuity often creates an impediment to being able to bring a successful MEJA prosecution.

Moreover, the frequency and rapidity with which overseas military-affiliated personnel (i.e., members of the Armed Forces, DOD civilian employees, and contractors -- and their dependents and family members) move presents further challenges in these investigations and prosecutions. Witnesses, victims, and alleged perpetrators tend to move to very different geographic locations while investigations are ongoing. Prosecutors often must rely on leads/interviews conducted by investigators who are not familiar with the parties or facts of the investigation. This leads to less fulsome interviews being conducted requiring prosecutors to re-interview witnesses and victims to obtain more information. If an alleged perpetrator is moved, it is not uncommon for the case to be transferred with him/her and away from the original investigator. This poses significant challenges for continuity of investigation.

Additional complexities are raised in cases in which the subject falls within the following categories: 1) “third country nationals”<sup>34</sup> who are covered by MEJA’s jurisdictional reach because they are a person “accompanying the Armed Forces outside the United States”; 2) retired military members who remain subject to recall; and 3) military and national guard reservists who commit extraterritorial offenses while in an active status or executing orders, but then at the time of investigation and prosecution are no longer active, or, alternatively, commit the offense when they are not in an active status but their reserve commitment has not yet expired leaving them amenable to recall by the military.

First, “third country nationals” who are either accompanying military members abroad, or more frequently are working as contractors for the military, raise a host of challenges for ensuring accountability under MEJA. As a general matter, their nationality may facilitate their ability to evade arrest and prosecution by immediately returning to their home countries. In addition, MEJA has very specific arrest, detention, and removal requirements. Various international agreements, including applicable SOFAs (Status of Forces Agreements) may apply and limit when and how MEJA may be used against a third country national. Specifically, if a judge orders the removal of a third country national from a foreign country pursuant to MEJA, the physical

### By the Numbers

According to the *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2020* issued by the Department of Defense, there was a statistically significant decrease in child sexual abuse incidents in 2020. DOD data has shown a steady decrease in child sexual abuse over the past decade.

In FY 2020, there were 209 unique victims of child sexual abuse. 92.3% of the victims were female. More than half of victims were between the ages 11-17, nearly a third were between 6-10, and roughly 12% were under the age of 5.

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<sup>34</sup> A “third country national” in this context identifies a person who is not a United States national or a national of the country in which the offense is committed.

movement of that subject through other countries en route to the United States or even directly to the United States, may raise a host of diplomatic issues or sensitivities.<sup>35</sup>

Next, offenses committed by retired military members raise complications. An active component retiree entitled to pay is a member of the Armed Forces subject to chapter 47 of title 10 of the United States code (the Uniform Code of Military Justice), unlike, for example, a former military member who is separated honorably or otherwise, but who is not retired. Accordingly, retired military members remain subject to the UCMJ<sup>36</sup> and do not fall within the jurisdictional reach of MEJA for child sexual offenses. In practice, this means that retired military members, some of whom frequently serve as United States contractors abroad, cannot be held accountable under MEJA but rather must be recalled to active duty, attached to a military unit, and then court-martialed. This can be a challenge and impediment to both effective investigation and prosecution. Indeed, the subject may have been retired for many years and accordingly the process of recall for purposes of prosecution can add significant delay and complexity.

Finally, extraterritorial offenses committed by a member of the Reserve component are not only complex, they can also result in accountability gaps. Certainly, while on active duty or executing Reserve orders, a member of the Reserve component may be court-martialed for offenses proscribed by the UCMJ. Likewise, if a Reservist committed the offense while on active duty or orders but was no longer in that status at the time the investigation and prosecution commenced, *and whose reserve commitment had not expired*, that situation would raise the same complications as retired military members who must be recalled to active duty before charges can be preferred and a court martial may be commenced. However, if a member of the Reserve component commits the offense while not on active duty or Reserve orders, and the individual's reserve commitment has not ended, there are varying analyses of whether MEJA applies and whether the Reservist remains subject to, or amenable to, UCMJ jurisdiction.<sup>37</sup> Given the litigation risks of indicting such a Reservist under MEJA, the safer course is likely a court-martial. However, although historically the Department of Defense took the position that MEJA jurisdiction could not attach to anyone who was subject to recall, because they were still amenable to UCMJ jurisdiction for the offense, presently military prosecutors and investigative

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<sup>35</sup> MEJA contains provisions to remove the subject from the host country without having to rely upon the traditional extradition protocols. Such removals may be relatively straightforward when they involve United States nationals that are DOD dependents, military contractors and others supporting the mission of the Department of Defense abroad. But they can raise concerns when subjects who are not United States nationals are removed from the host country without reliance upon the host country's procedures and/or [due] process requirements.

<sup>36</sup> However, the United States District Court for the District of Columbia recently upended this well-established interpretation when it found the UCMJ unconstitutional as applied to retirees, thereby potentially expanding MEJA's applicability to retirees. *See Larrabee v. Braithwaite*, 502 F.Supp.3d 322 (D.D.C. Nov. 20, 2020). The Department has appealed this decision.

<sup>37</sup> MEJA provides that "[n]o prosecution may be commenced against a [m]ember of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice) ...unless...such member ceases to be subject to such chapter." Arguably, then, if the subject is not in a title 10 status at the time the prosecution is commenced, then a valid interpretation could be that the subject does not fall within that provision. However, at least one case has endorsed the view that because the military has the power to render the reservist "subject" to the UCMJ (by recalling him or her), that MEJA will not apply. *See United States v. Santiago*, 966 F. Supp. 2d 247, 255-58 (S.D.N.Y. 2013); *United States v. Santiago*, 987 F. Supp. 2d 465, 480 n.13 (S.D.N.Y. 2013). This interpretation frustrates the extension of MEJA jurisdiction to any reservist whose commitment has not ended, including those who may have committed an offense even when not in an active status.

agencies routinely assert that the UCMJ does not apply as the offense was not committed while the Reservist was “subject to” the code. Given the competing analyses and the current precedent in federal court, there is no clear consensus as to how a reservist who was inactive and not on reserve orders at the time of the offense can and should be held accountable absent an explicit legislative determination as to whether such Reservist remain subject to the UCMJ, subject to MEJA or subject to both concurrently.

### *Problematic Sexual Behavior in Children and Youth (PSB-CY)*

Media reports in March 2018 highlighted DOD’s challenges in responding to incidents of juvenile-on-juvenile sexual abuse occurring on military installations and overseas.<sup>38</sup> Within weeks, the Office of the Secretary of Defense established a DOD team to assess DOD’s policies, procedures, and responses to child abuse, juvenile-on-juvenile sexual abuse, and problematic sexual behavior in children and youth (PSB-CY). Simultaneously, the DOJ and DOD formed a working group to examine the issues presented by juvenile-on-juvenile sexual abuse occurring on military installations or involving military dependents to ensure that such incidents are effectively addressed. Since the formation of the DOD team and the DOJ/DOD working group, DOD has expanded and made improvements to its policies and procedures concerning child abuse, juvenile-on-juvenile sexual abuse, and PSB-CY, but gaps remain.<sup>39</sup>

The most significant gap identified by the working group is DOD and DOJ’s inability to ensure juvenile justice system access in all appropriate cases. While *procedures* exist for handling in federal court juveniles who have committed violations of federal criminal law,<sup>40</sup> there is no federal juvenile justice *system*.<sup>41</sup> In contrast, every state has a juvenile justice system. Consequently, federal law and policy is that juvenile matters should be handled by state authorities whenever possible because the States are in the best position to do so. Yet, in several states, military children are deprived of access to the state’s juvenile justice system and rehabilitative programs solely because the incident occurred in an area of a military installation where the legislative jurisdiction is “exclusive federal jurisdiction.”<sup>42</sup>

Some states’ juvenile justice systems will intervene and exercise jurisdiction over an incident occurring on a military installation within their state borders so long as federal authorities choose

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<sup>38</sup> “Child-on-Child sex assault cases languish on US Bases”, Justin Prichard and Reese Dunklin, March 14, 2018 Associated Press <https://apnews.com/article/hidden-victims-41da2867897042399f3f9c55cfde3f16>

<sup>39</sup> See, generally, GAO-20-110.

<sup>40</sup> See 18 U.S.C. §§ 5031-5043.

<sup>41</sup> “For all practical purposes, there is no federal juvenile justice system.” Robert G. Schwartz, Opportunities for Juvenile Justice Reform: Paper Prepared for the William T. Grant Forum on Reforming Publicly Funded Youth Systems I (Mar. 2003) <https://www.aspeninstitute.org/sites/default/files/content/docs/rcc/rccRobertSchwartz.pdf>. For a definition and description of “juvenile justice system” see pp. 77-82 of “Reforming Juvenile Justice: A Developmental Approach,” National Research Council (2013). Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>

<sup>42</sup> GAO 20-110 at pp. 15-16 and 57-58.

not to exercise jurisdiction.<sup>43</sup> Other states' juvenile justice systems will not exercise authority over such incidents claiming a lack of jurisdiction, and despite requests being made by DOD, DOJ, and the victims.<sup>44</sup> To address this latter scenario, new federal legislation is needed, and such has been proposed by the Department,<sup>45</sup> to expressly give states jurisdiction over juvenile offenses committed in areas of exclusive federal jurisdiction.<sup>46</sup>

### Problematic Sexual Behavior in Children and Youth (PSB-CY)

While some use the term “juvenile-on-juvenile sexual abuse”, the Department of Defense prefers not to use terms that imply this behavior is on par with child exploitation perpetrated by adults. PSB-CY is a broad spectrum of behaviors that does include sexual assault involving minors, but also a range of otherwise normative sexual behaviors that are inappropriate for a particular time or place, but which do no harm to others. Given the developmental nature of children, the DOD does not characterize PSB-CY as a form of child sexual exploitation or child sexual abuse, which are criminal acts committed by adults against minors.

Research shows that youth who are criminalized and put on juvenile sex offender registries report more problems or fewer strengths in the domains of mental health, peer relationships, and experiences with safety and victimization.<sup>47</sup> Instead, problematic sexual behavior in children and youth should be met with a preventative and rehabilitative approach that includes clinical and socio-emotional behavioral understanding.

At its core, DOD's approach to PSB-CY is rehabilitative, rather than criminal justice oriented. The DOD policy on how to handle PSB-CY is based on Public Law 115-232, Section 1089, which prescribes a clinical, social services approach to cases of PSB-CY, as defined in DOD issuance 6400.01. After becoming aware of concerning sexual behavior, military law enforcement may refer the behavior to the Family Advocacy Program (FAP). Before a criminal justice response is considered, the FAP reviews the behavior and coordinates a multidisciplinary team to determine next steps. Cases that involve sexual assault are passed on to law enforcement.

Military has not seen a large increase in PSB-CY, in no small part thanks to the FAP's work educating children and families on what sort of behavior is normal for a given age group and whether behavior should be escalated.

<sup>43</sup> See, e.g., 103 Md. Op. Atty. Gen. 49 (Md.A.G.), 2018 WL 7575213 (Dec. 26, 2018) at pp. 14-15. Juvenile matters should be handled by state authorities whenever possible since they are best suited to handle them. *Id.* at pp. 13-14; GAO-20-110 at p. 57.

<sup>44</sup> Lack of access to state juvenile justice systems also occurs when the offense takes place overseas. GAO-20-110 at 58.

<sup>45</sup> See Department of Justice Legislative Proposals Appendix.

<sup>46</sup> Lack of access to state juvenile justice systems also occurs when the offense takes place overseas. GAO-20-110 at 58. For those offenses, however, even if federal legislation was enacted that would expressly provide states with concurrent jurisdiction over select extraterritorial offenses over which the federal government currently has jurisdiction, there may well be state constitutional or other barriers to a state's ability to exercise jurisdiction over an extraterritorial criminal offense.

<sup>47</sup> Letourneau, E. J., Harris, A. J., Shields, R. T., Walfield, S. M., Ruzicka, A. E., Buckman, C., Kahn, G. D., & Nair, R. (2018). Effects of juvenile sex offender registration on adolescent well-being: An empirical examination. *Psychology, Public Policy, and Law*, 24(1), 105–117. <https://doi.org/10.1037/law0000155>



The DOD, with the assistance and support of DOJ, is continuing its efforts to attempt to remove barriers preventing military children from having access to state juvenile justice systems and rehabilitative programs. In June 2019, the Acting Deputy Secretary of Defense issued a memorandum directing each military department to seek to establish concurrent jurisdiction, with the respective states, for offenses committed by juveniles in areas on military installations that are currently exclusive federal jurisdiction, through the existing statutory process of “retrocession.”<sup>48</sup> Military installations have also been directed to update or establish memoranda of agreement with their corresponding USAO and local/state authorities for the referral of juvenile offenses to the state juvenile justice system.

### *Military Sex Offender Reporting Act*

Congress amended the Sex Offender Registration and Notification Act (SORNA)<sup>49</sup> in 2015 by enacting the Military Sex Offender Reporting Act (MSORA).<sup>50</sup> MSORA requires DOD to provide information to the National Sex Offender Registry (NSOR) and the National Sex Offender Public Registry Website (NSOPW) on any sex offender who is adjudged by courts-martial or released from a military corrections facility.<sup>51</sup> DOD and the military services subsequently established policy and assigned responsibility for implementing the requirements of MSORA.<sup>52</sup>

### *Victim Support*

The Family Advocacy Program (FAP)<sup>53</sup> is the main support for victims and non-abusive family members within the military. The primary challenge to victim assistance in the military are the Child Abuse Prevention and Treatment Act (CAPTA) definitions for cases. Eligible beneficiaries of services are defined based on the relationship between the perpetrator and child. An abuser must be a parent, caregiver, or an older sibling or relative that is specifically in a caregiving role.<sup>54</sup> When the offender is not a qualifying family member, there is no specific military service

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<sup>48</sup> GAO 20-110 at pp. 16-17. The Department of Justice is supporting and assisting DOD in this endeavor. It is important to note that although each military service Secretary has the authority, pursuant to 18 U.S.C. § 2683, to relinquish to a State (or to a territory or possession of the United States) all or part of the legislative jurisdiction of the United States over lands under the Secretary’s control in that State, such does not and cannot occur unless and until the State accepts the retrocession (unless the State’s laws provide differently).

<sup>49</sup> For more information on SORNA, see the Sex Offender Registration Violations chapter.

<sup>50</sup> Pub. L. No. 114-22, § 502, 129 Stat. 227 (codified at 34 U.S.C. § 20931).

<sup>51</sup> See, generally, *Sex Offender Registration and Notification in the United States -- Current Case Law Summary and Issues: Military Registration*, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), U.S. Department of Justice (July 2022) available at: <https://smart.ojp.gov/sorna/current-law/case-law/i-sorna-requirements#5-registration-for-military-convictions>

<sup>52</sup> See *Registered Sex Offender (RSO) Management in DOD*, Department of Defense Instruction No. 5525.20 (November 14, 2016); and *Evaluation of DOD Law Enforcement Organization Submissions of Criminal History Information to the Federal Bureau of Investigation*, Department of Defense Inspector General Report No. DODIG-2020-064 (February 21, 2020) at pp. v-vi, viii, x, 82-98.

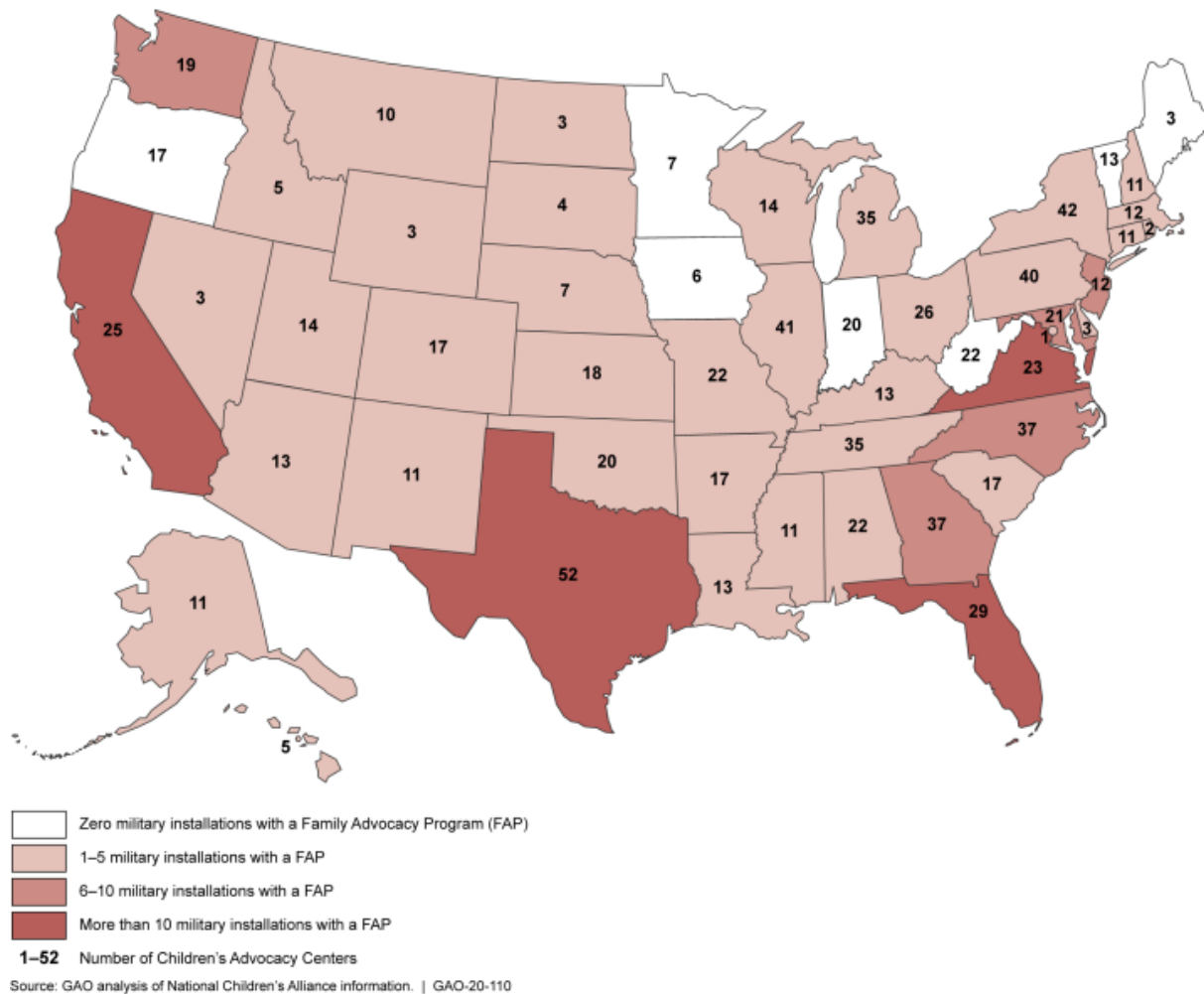
<sup>53</sup> There are FAPs located in 230+ military installations.

<sup>54</sup> Per DOD Instruction 6400.01; Department of Defense Annual Report on Sexual Assault in the Military, Fiscal Year 2020 – Appendix H: Child Sexual Abuse



response for victims of exploitation. CAPTA challenges are even more significant overseas due to the lack of state-equivalent services (i.e., CPS, family court system). If a minor victim is exploited by another American minor or the offender is a foreign national, the military lacks the infrastructure and resources to provide the needed response and victim support. For example, due to a lack of state-equivalent services, investigations may not have access to the child or children for interviews or other investigative needs when it is unclear who the offending parent is or when the non-offending parent denies access to the child.

**Number of Military Installations and Children’s Advocacy Centers by State as of August 2019**



Since the last National Strategy for Child Exploitation Prevention and Interdiction was issued in 2016, DOD and the military services have taken steps to improve the services and support provided to victims of child sexual exploitation or abuse, but as documented in a February 2020 GAO Report, additional gaps remain.<sup>55</sup>

<sup>55</sup> See, generally, GAO-20-110.

In its report, the GAO noted that the military services do not consistently make use of the Children's Advocacy Centers (CACs)<sup>56</sup> in the United States despite the fact that most military installations in the United States with Family Advocacy Program services are located within 50 miles of a CAC. A 2019 study found that only 7% of Child Advocacy Centers (CACs) with military installations in their service area reported having the memorandum of understanding (MOU) that is needed in order to authorize services associated with a Family Advocacy Program referral.<sup>57</sup> It has been recommended that each military service seek to develop a memorandum of understanding with the National Children's Alliance that makes CAC services available to all the service's installations.<sup>58</sup>

As to child victims overseas, additional gaps remain. The GAO found that the availability of certified pediatric sexual assault forensic examiners across DOD is limited and that without processes that ensure timely access to certified pediatric examiners, child victims of sexual abuse overseas may not receive exams in time for evidence to be collected for use in prosecution, increasing the stress and trauma of affected victims.<sup>59</sup> The GAO recommended that DOD should establish processes that help ensure children who are sexually abused overseas have timely access to a certified pediatric sexual assault forensic examiner to conduct the examination.<sup>60</sup> The GAO also found that the military services' guidance regarding the extent of commander authority to remove children from unsafe homes on overseas installations is unclear,<sup>61</sup> and recommended that DOD and the military services clarify, in guidance, the circumstances under which commanders may exercise their authority to remove a child from a potentially unsafe home on an overseas installation.<sup>62</sup>

The GAO also found victims' families receive inconsistent levels of information and available services after an incident of child abuse is reported.<sup>63</sup> The report recommended that each military service establish efforts to comprehensively inform victims' families about how reported incidents of child abuse will be addressed following the report. For example, a guide that explains the process the Family Advocacy Program and military law enforcement organizations will follow, and available victim services.<sup>64</sup>

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<sup>56</sup> "CACs have considerable experience working with abused children. Specifically, according to the National Children's Alliance, in 2018 CACs collectively served over 367,000 children, conducted over 260,000 forensic interviews, and completed over 91,000 medical exams and treatments. Further, CACs provide a child-friendly environment to conduct these interviews and exams, which are then reviewed by a multidisciplinary team that includes medical, law enforcement, mental health, and legal personnel, victim advocates, and state child welfare agencies. The purpose of the multidisciplinary team is to determine how to best support the child, such as through therapy, courtroom preparation, and victim advocacy." *Id.* at pp. 61-63.

<sup>57</sup> *Id.* at p. 61.

<sup>58</sup> *Id.* at p.70.

<sup>59</sup> *Id.* at pp. 51-55.

<sup>60</sup> *Id.* at p. 70.

<sup>61</sup> *Id.* at 48-51.

<sup>62</sup> *Id.* at 69

<sup>63</sup> *Id.* at pp. 46-48.

<sup>64</sup> *Id.* at p. 69.

## Unaccompanied Noncitizen Minors

When an unaccompanied noncitizen minor arrives at the border, the Department of Homeland Security's U.S. Customs and Border Protection (DHS/CBP) typically takes initial custody of the minor before referring them into U.S. Department of Health and Human Services' Office of Refugee Resettlement (HHS/ORR) care and custody. ORR facilitates the minor's placement with a vetted sponsor, usually a parent or a close relative in the United States. However, placement time varies depending on the sponsor-child relationship. Accordingly, ORR funds a network of providers to care for unaccompanied minors until they are safely released to a vetted sponsor, or otherwise leave ORR care following an immigration judge's order of removal, turning 18 years of age, or obtaining immigration status in the United States.<sup>65</sup>

The Homeland Security Act of 2002 requires the HHS's Office of Refugee Resettlement (ORR) to house all unaccompanied children that enter the United States without legal authorization until they could be placed with vetted sponsors, who are typically family members residing in the U.S. The agency cannot house minors once they reach legal age. In these circumstances, under 8 U.S.C. 1232(c)(2)(B), when the minor is transferred into Immigration and Customs Enforcement (ICE) custody, a custody determination will be made that will consider placement in the least restrictive setting available.

ORR requires all care provider facilities to adhere to the *Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children*,<sup>66</sup> and to report emergency incidents<sup>67</sup> that immediately threaten a minor's safety and well-being within four hours of the occurrence or staff becoming aware of the incident. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPA, as amended) requires federal, state, and local officials to notify HHS within 24 hours of discovering that an unaccompanied minor may be a victim of trafficking.<sup>68</sup> For incidents of a sexual nature, facilities must submit a Sexual Abuse Significant Incident Report for each of the

<sup>65</sup> Because these facilities are federally funded, federal criminal jurisdiction may exist over incidents involving or relating to sexual abuse, physical abuse, and neglect perpetrated by facility staff against these children in addition to the state and local criminal jurisdiction that exists over such incidents. *See, e.g.*, 18 U.S.C. §§ 242 and 2241-2244. *See also United States v. Pacheco*, 977 F.3d 764 (9th Cir. 2020) (Youth care worker employed at a facility that housed unaccompanied noncitizen children pursuant to a federal contract with ORR was properly convicted of federal offenses for sexually abusing minors at the facility between 2016-2017).

<sup>66</sup> Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children, Office of Refugee Resettlement, Department of Health and Human Services <https://www.acf.hhs.gov/orr/standards-prevent-uac-sexual-abuse>

<sup>67</sup> Significant incidents include medical emergencies, physical or verbal aggression between minors, self-harm, runaway attempts, and incidents of a sexual nature that occur or are reported while a minor is in ORR custody.

<sup>68</sup> 22 U.S.C. § 7105 (b); Foreign national minors in the United States, including unaccompanied children (UC), who have experienced a severe form of trafficking in persons (forced labor or commercial sex) are eligible for benefits and services under the Trafficking Victims Protection Act (TVPA) of 2000, as amended through the issuance of an Eligibility or Interim Assistance Letter from the HHS Office on Trafficking in Persons (OTIP). These benefits and services include access to trafficking-specific case management services, medical services, food assistance, cash assistance, health insurance, and other needs to the same extent as a refugee. Any person who has concerns that a foreign national minor in the United States may have experienced forced labor or commercial sex as a victim of a severe form of trafficking in persons may submit a Request for Assistance (RFA, OMB Control Number 0970-0362)

individuals involved and report all incidents that meet ORR’s definition of sexual abuse to ORR, state child protective services, and/or licensing agencies, local law enforcement, FBI, and HHS’s Office of the Inspector General (OIG).<sup>69</sup>

In June 2020, HHS OIG published a report titled, *The Office of Refugee Resettlement’s Incident Reporting System Is Not Effectively Capturing Data To Assist Its Efforts To Ensure the Safety of Minors in HHS Custody*.<sup>70</sup> The report identified challenges in ORR’s incident reporting process and found that ORR’s incident reporting system lacked designated fields to capture key information about incidents that ORR can use to oversee facilities and to protect the minors in ORR care. Important information about efficient identification of issues that required a care provider’s immediate action is not systematically collected to help ORR determine whether care providers responded appropriately and analyze concerning trends. Finally, the report described challenges with staffing youth care workers – who are essential to preventing, detecting, and reporting incidents – and difficulties determining which incidents should be reported to ORR. The report offered four recommendations to assist ORR in addressing effective incident reporting.

Also, in June 2020, HHS OIG published an evaluation titled, *Unaccompanied Alien Children Program Care Provider Facilities Do Not Include All Required Security Measures in Their Checklists*.<sup>71</sup> The report examined facility security checklists required by ORR and ORR’s oversight of facilities’ use of these checklists to identify and address safety risks. Proactive safety and security planning at facilities can help prevent potential child safety incidents, and proper implementation and function of physical security measures are necessary for possible early detection of a threat while a child is in ORR care. In September 2022, OIG published a report on one of fourteen Emergency Intake Sites established by ACF’s ORR, which were operationalized to provide care to the historically high number of unaccompanied children who arrived at the U.S. southern border in early 2021.<sup>72</sup>

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through Shepherd. In accordance with the TVPA of 2000, as amended, federal, state, and local officials with information about foreign national minors who may have experienced human trafficking must refer cases to OTIP for assessment within 24 hours. OTIP will accept case referrals even after the initial 24-hour period. For questions about the process, to discuss a potential case, or to submit a PDF version of the RFA, individuals can contact the OTIP Child Protection Specialist team at [childtrafficking@acf.hhs.gov](mailto:childtrafficking@acf.hhs.gov) or 202-205-4582.

<sup>69</sup> For ORR related reporting policies for trafficking, see here: [3.3.3 Screening for Child Trafficking and Services for Victims](#).

<sup>70</sup> The Office of Refugee Resettlement’s Incident Reporting System Is Not Effectively Capturing Data To Assist Its Efforts To Ensure the Safety of Minors in HHS Custody, Office of the Inspector General, Department of Health and Human Services, OEI-09-18-00430, June 2020 <https://oig.hhs.gov/oei/reports/oei-09-18-00430.pdf>

<sup>71</sup> OIG Final Issue Brief: *Unaccompanied Alien Children Program Care Provider Facilities Do Not Include All Required Security Measures in Their Checklists*, OEI-05-19-00210, June 2020 (<https://oig.hhs.gov/oei/reports/oei-05-19-00210.asp>).

<sup>72</sup> Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children, Office of the Inspector General, Department of Health and Human Services, OEI-07-21-00251, Sept. 2022 <https://oig.hhs.gov/oei/reports/oei-07-21-00251.pdf>

**Table 2: Requests for Assistance (RFAs)<sup>73</sup> Received by OTIP by type of potential trafficking reported, FY 2016 – FY 2021**

Type of Potential Trafficking	FY16	FY17	FY18	FY19	FY20	FY21	Total Number of Requests Received
None	371	509	464	517	165	0	2026
Labor	318	311	369	604	478	1683	3763
Sex	90	89	138	251	122	470	1160
Sex and Labor	23	30	36	25	39	2	155
Not Reported	3	0	1	21	103	23	151
<b>Total Number of RFAs Received</b>	<b>805</b>	<b>939</b>	<b>1008</b>	<b>1418</b>	<b>907</b>	<b>2178</b>	<b>7255</b>

**Table 3. Eligibility Letters Issued by OTIP by type of trafficking experienced<sup>74</sup>, FY 2016 – 2021**

Type of Trafficking Experienced	FY15	FY16	FY17	FY18	FY19	FY20	Total Number of Eligibility Letters Issued
Sex	72	105	124	251	135	787	1474
Labor	244	367	312	614	500	287	2324
Sex and Labor	19	34	30	27	38	69	217
<b>Total Number of Eligibility Letters Issued</b>	<b>335</b>	<b>506</b>	<b>466</b>	<b>892</b>	<b>673</b>	<b>1143</b>	<b>4015</b>

Unaccompanied noncitizen minors are at risk of experiencing human trafficking before entering and after exiting ORR care. Noncitizen minors in the United States who have or may have been subjected to a severe form of trafficking are eligible for certain benefits and services under the

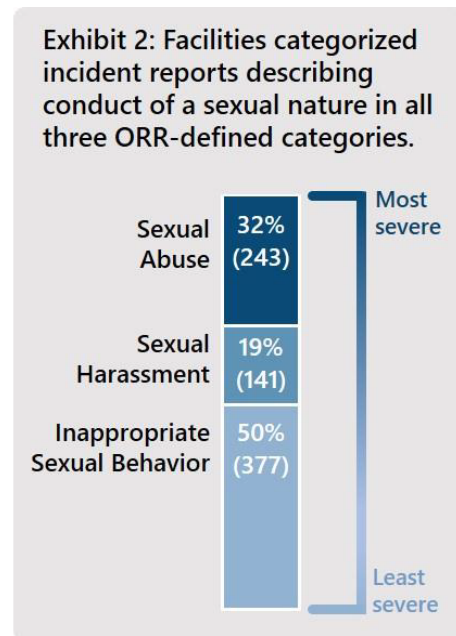
<sup>73</sup> Case managers, attorneys, law enforcement officers, child welfare workers, and other representatives, including ORR grantees' workers and staff can submit an RFA to OTIP on behalf of a foreign national minor child who may have experienced a severe form of trafficking in persons. The figures here reflect all RFAs received by OTIP, not solely RFAs received, though the majority of RFAs received are submitted on behalf of unaccompanied minors in ORR care. Further data cleansing and validation is necessary to disaggregate RFAs received by requester type (or referral source).

<sup>74</sup> Foreign national minors who receive Eligibility Letters from OTIP may have experienced a severe form of trafficking in persons in their countries of origin, in another country, during their journey to the United States, or within the United States/within United States government facilities. Further data cleansing and validation is necessary to disaggregate by location of exploitation.

William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.<sup>75</sup> The majority of RFAs received by OTIP are submitted on behalf of unaccompanied minors in ORR care. The following two tables provide the volume of requests for assistance received by OTIP on behalf of foreign national minors and the type of trafficking experienced by those minors determined eligible by OTIP to receive benefits and services in the United States to the same extent as a refugee.

Like other minors involved in the U.S. child welfare system, unaccompanied noncitizen minors are at risk of experiencing exploitation, including sexual abuse and human trafficking, while in congregate care settings or after discharge. Moreover, these minors may also have experienced sexual exploitation in their home country or during their migration journey which may not be reported until a child discloses to staff at ORR facilities, who are then required to report the incident following relevant protocols and statutes.<sup>76</sup>

As outlined by the HHS OIG in their June 2020 report regarding incident reporting, ORR policies and procedures require program staff working at ORR-funded facilities to report all incidents involving conduct of a sexual nature and categorize the allegation by severity (e.g., inappropriate sexual behavior, sexual harassment, or sexual abuse). Facilities send ORR incident reports that describe conduct of a sexual nature, along with other forms of conduct that may pose risks to children, in ORR’s significant incident reporting system. As shown in Exhibit 2, reproduced from the HHS OIG report, facilities categorized half of the 761 incidents as Inappropriate Sexual Behavior, which includes conduct that does not meet the definition of the more severe categories of Sexual Abuse and Sexual Harassment. The report analyzed information on incidents reported to ORR by 45 care provider facilities between January 1, 2018 and July 31, 2018. The facilities cared for approximately 72 percent of the children in ORR care.



Note: Percentages do not add to up to 100 due to rounding.

Source: OIG analysis of SA SIRs reported to ORR between January 1, 2018, and July 31, 2018.

<sup>75</sup> *Eligibility Letters*, Office on Trafficking in Persons, Administration for Children and Families, Department of Health and Human Services, <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters/>

<sup>76</sup> Individuals working with foreign national minors, including unaccompanied children, can access various resources to support in their efforts in responding to concerns of human trafficking through the Trafficking Prevention and Protection Resources for Working with Unaccompanied Children website at <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters/resources>

In May 2021, to assist ORR in responding to a surge of unaccompanied noncitizen children, HHS OIG issued a document titled, *Insights from OIG’s Work on the Office of Refugee Resettlement’s Efforts To Care for Unaccompanied Children*:

OIG identified immediate actions that the Office of Refugee Resettlement (ORR)—the office within HHS’s Administration for Children and Families that administers the program—could take to ensure children’s health and safety including:

- Coordinating with local and Federal law enforcement agencies when opening new facilities that are not State licensed in order to identify the entities that will provide emergency response services
- Maintaining the significant incident reporting system and ensuring that facility staff have clear training on how to effectively report safety incidents
- Ensuring that facilities meet requirements for pre-employment background screenings, including conducting timely background checks for new employees
- Taking all reasonable steps to minimize the time that children remain in ORR custody by efficiently and effectively vetting potential sponsors.<sup>77</sup>

### **Other Areas of Federal Jurisdiction: Commercial Flights and Cruise Ships**

The FBI has investigative responsibility in the United States for child sexual assaults committed on commercial flights<sup>78</sup> and cruise ships.<sup>79</sup> The FBI’s Civil Aviation Security Program (CASP) supports 475 FBI Special Agents and Task Force Officers assigned as Airport Liaison Agents at the nation’s TSA regulated airports by providing operational support and training to the field, sharing intelligence, serving as a liaison to industry, and representing the FBI on aviation policy.

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<sup>77</sup> *Insights from OIG’s Work on the Office of Refugee Resettlement’s Efforts To Care for Unaccompanied Children*, OEI-09-21-00220, May 2021, <https://oig.hhs.gov/oei/reports/OEI-09-21-00220.asp>. The toolkit compiles insights, largely drawn from audits and evaluations conducted since 2008, including evaluations that were conducted following OIG’s analysis of SIRs submitted by 45 facilities during the 2018 increase in unaccompanied children referrals.

<sup>78</sup> See, generally, *Violent Crime Prosecutors’ Manual*, United States Department of Justice (2019), pp. 391-98 and 415-18 (discussing the special aircraft jurisdiction of the United States).

<sup>79</sup> *Id.* at pp. 99-109 (discussing extraterritorial maritime jurisdiction over sexual abuse on cruise ships).



## Commercial Flights



In April 2018, following a rise in sexual assaults on commercial flights, the FBI initiated a public awareness campaign.<sup>80</sup> Several months later, the FAA Reauthorization Act of 2018 was signed into law, requiring the Department of Transportation (DOT) to consider developing or addressing new passenger protections, including seating families with young children together and handling sexual assaults aboard commercial aircraft.<sup>81</sup> DOT subsequently formed the National In-Flight Sexual Misconduct Task Force.

In March 2020, the task force issued its report.<sup>82</sup> The report found that despite the vulnerability of children to sexual assaults on commercial flights, particularly children who are traveling alone, neither the Federal government nor the airline industry collect data on the number of incidents of in-flight sexual assaults of children.<sup>83</sup> The report also noted there are no federal regulations regarding children who are traveling alone with respect to seating assignments, or otherwise.<sup>84</sup> Airlines currently establish their own policies concerning children who are traveling alone.

DOT, however, does make available, on its website, a booklet titled *When Kids Fly Alone*, summarizing some of the most common airline policies designed to protect the well-being of unaccompanied children.<sup>85</sup> The task force recommended that airlines, airports, and appropriate Federal agencies engage in awareness campaigns to deter offenders and inform victims of available resources, including how to report incidents and the availability of victim support services.<sup>86</sup> Additionally, DOT leads the Blue Lightning Initiative (BLI), in partnership with DHS and CBP. The BLI trains aviation industry personnel to identify potential traffickers and human trafficking victims, and to report their suspicions to federal law enforcement.<sup>87</sup> To date, more than 200,000 personnel in the aviation industry have been trained through the BLI, and actionable tips continue to be reported to law enforcement.

Numerous obstacles exist to the effective investigation of sexual assaults committed against minors, and adult victims, on commercial flights. Airlines routinely maintain tight flight schedules for aircrafts, resulting in inadequate opportunities for the FBI to conduct a crime scene investigation or interview critical witnesses such as flight attendants and passengers. In cases

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<sup>80</sup> See, e.g., <https://www.fbi.gov/news/stories/raising-awareness-about-sexual-assault-aboard-aircraft-042618>; <https://www.fbi.gov/audio-repository/ftw-podcast-sexual-assault-aboard-aircraft-042618.mp3/view>; and <https://www.fbi.gov/file-repository/sexual-assault-aboard-aircraft-poster-042618.pdf/view>.

<sup>81</sup> Pub. L. No. 115-254, § 339A, 132 Stat. 3186, 3283 (2018).

<sup>82</sup> *A Report on Sexual Misconduct on Commercial Flights by the National In-Flight Sexual Misconduct Task Force*, Department of Transportation (March 16, 2020) at: <https://www.transportation.gov/individuals/aviation-consumer-protection/report-sexual-misconduct-commercial-flights-national>.

<sup>83</sup> *Id.* at p. 36.

<sup>84</sup> *Id.* at p. 36, n.74.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at p. 70.

<sup>87</sup> [transportation.gov/administrations/office-policy/blue-lightning-initiative](https://www.transportation.gov/administrations/office-policy/blue-lightning-initiative)

where a complaint is made after the flight has reached its destination, or even later, a cleaning crew may have already “turned the cabin over” destroying critical evidence and passengers, who may be witnesses, have likely disembarked, moved on to connecting flights or have left the airport. When the offender is unknown to the victim, offender identification can raise challenges. Flight manifests, however, can provide some guidance to investigators. Finally, if the subject is a foreign national, he or she may be difficult to track as they continue onward to their next destination or return to their country of origin. Engaging the cooperation and assistance of the airline industry is crucial to the ability of federal law enforcement to effectively investigate and prosecute offenses occurring on commercial flights.

Prosecutorial challenges include establishing U.S. federal jurisdiction over the assault and identifying the proper venue to indict an alleged offender in the United States. When venue is not immediately clear, confusion and delay may compromise an immediate response by either the FBI or a USAO. In cases in which the offender may be a foreign national who has returned to their country of origin, the need to seek extradition may complicate a prosecution.

### *Cruise Ships*

The Cruise Vessel Security and Safety Act (CVSSA),<sup>88</sup> enacted in July 2010, requires cruise lines operating ships that embark or disembark passengers in the United States to take certain actions related to passenger safety. Safety measures include, providing cabins equipped with security latches and time-sensitive key technology, limiting crew access to passenger cabins, maintaining a video surveillance system to assist in documenting crimes on the vessel and in providing evidence for the prosecution of such crimes, and employing qualified medical staff to help in the event of sexual assault.<sup>89</sup> Sexual assaults on cruise ships were the leading cruise vessel crimes reported to the FBI between 2010 and 2013.<sup>90</sup> Minors were the victim in a significant percentage of total alleged sexual assaults on cruise vessels, according to a July 2013 Congressional staff report.<sup>91</sup>

Many of the challenges that arise when investigating and prosecuting offenders who sexually assault minors on airlines also apply to cases wherein minors are sexually assaulted on cruise ships. Cruise ships also maintain relatively tight schedules, often in port for a limited time, frustrating investigators’ ability to conduct a comprehensive crime scene investigation. Cruise passengers may have disembarked and returned to locations both domestic and international making them difficult to identify and track for interviews. Cruise ship employees are particularly difficult to track down and maintain contact with because they are often foreign nationals. The assistance of the cruise line becomes critical to making and establishing contact with their employees and to encouraging those employees who may be witnesses to cooperate with United States law enforcement. Cooperation is paramount because the United States lacks subpoena power over foreign nationals.

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<sup>88</sup> Pub. L. No. 111-207, 124 Stat. 2243 (2010).

<sup>89</sup> GAO-14-13 at p.1 n.3.

<sup>90</sup> *Cruise Vessels: Most Required Security and Safety Measures Have Been Implemented, but Concerns Remain About Crime Reporting*, GAO-14-13 (December 2013) at p.25.

<sup>91</sup> *Cruise Ship Crime: Consumers Have Incomplete Access to Cruise Crime Data*, Senate Committee on Commerce, Science, and Transportation (July 24, 2013) at p.iii at <https://www.commerce.senate.gov/services/files/b6b046f1-eb82-404e-a0cc-9cd26a74117f>.

Many cruise ships have their own security personnel who may examine a crime scene or take statements of witnesses, the victim, or the offender before the FBI can engage. While these efforts are sometimes beneficial to law enforcement, it may also complicate a prosecution if ship security contaminated a crime scene or otherwise compromised evidence. Statements obtained by ship security personnel, who may not be experienced interviewers, may also later raise prosecutorial challenges if witness statements appear to be inconsistent. Finally, jurisdiction, venue, and extradition issues can create further prosecutorial challenges. Further complications arise when the alleged offenders are juveniles and perhaps even foreign national juveniles.

### Strategic Response

Short-Term Goals	Long-Term Goals
<b>Indian Country</b>	
<p><b>Increase number of Tribal SAUSA prosecuting child exploitation crimes:</b> Working with DOJ components like OVW and BJA, increase the number of Tribal SAUSAs skilled in prosecuting child sexual assault cases and failure to register as a sex offender cases in tribal and federal courts.</p>	<p><b>Expand training for Tribal SAUSAs on prosecuting child exploitation:</b> Ensure that a robust training curriculum is developed and maintained for Tribal SAUSA program to ensure Tribal SAUSAs have necessary skills to complete their mission.</p>
<p><b>Increase AUSAs in Oklahoma:</b> Increase the number of AUSAs in Oklahoma to address the increased number of child sexual assault case referrals to the USAOs due to the <i>McGirt v. Oklahoma (MvO)</i> Supreme Court decision in July of 2020, which changed the jurisdictional landscape of Indian country in Oklahoma.</p>	<p><b>Evaluate and adjust court staffing levels:</b> Continue to monitor, assess, and adjust staffing levels as state and federal courts issue opinions in a myriad of appellate cases involving the primary issue of jurisdiction of violent crime in Indian country. Work with DOJ grant making components to help tribes build capacity to investigate and prosecute these crimes and to fund prevention and recovery programs.</p>
<p><b>Offer forensic training for those serving Indian country:</b> The National Indian Country Training Initiative (NICTI) will host forensic interviewing training for federal, state, and tribal prosecutors, law enforcement, and social workers responding to cases of child sexual abuse. Training topics will include evidence collection, suspect interviews, trial strategies for prosecutors, forensic interviews, expert witness training for SANEs, and conducting a trauma-informed investigation and prosecution.</p>	<p><b>Offer child exploitation-related trainings to educators:</b> The NICTI should continue to develop their catalog of training options on issues connected to child sexual assault and expand to other relevant parties, including educators and school personnel.</p>

<p><b>Foster greater collaboration across various USAO roles addressing child sexual abuse in Indian country:</b> The NICTI should work with Department components to conduct training regarding overlapping child sexual abuse issues addressed by these different USAO positions: Tribal Liaisons, PSC Coordinators, Victim Witness Coordinators, and Human Trafficking Coordinators. The NICTI will work with DOJ components to ensure that these joint coordination trainings are held at least every other year.</p>	<p><b>Expand use of task force collaboration models in investigations:</b> Increase partnerships and collaboration between tribal law enforcement and non-tribal law enforcement (federal, state, and local), prosecutors, medical providers, school personnel, mental health professionals by using MDTs, SANE/SARTs and local ICACs where appropriate. MDTs should institute 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.</p>
<p><b>Review Chapter 109A:</b> Convene a working group to examine the effectiveness of the current federal sexual assault statutes found in Chapter 109A and, if necessary, propose legislative fixes.</p>	<p><b>Recommend and implement any necessary changes to Chapter 109A:</b> Work with relevant agencies to seek legislative changes to Chapter 109A and other statutes used to investigate and charge child sexual abuse.</p>
<p><b>Coordinate training efforts:</b> Create a process so that DOJ-funded training on child exploitation matters provided by Training and Technical Assistance Providers is reviewed and coordinated with the Department’s National Indian Country Training Initiative (NICTI).</p>	<p><b>Enhance training based on latest research:</b> Ensure that DOJ funded Training and Technical Assistance Providers are hosting training that supports DOJ priorities, is based on current research and science, and is delivered by competent experienced subject matter experts.</p>
<p><b>Expand TAP:</b> Continue to provide and expand the Department’s Tribal Access Program (TAP), including training and support to the tribes that are currently participating or have recently been accepted into TAP.</p>	<p><b>Provide adequate resources and staffing in Indian country:</b> Ensure access to all eligible tribal agencies whose staff have contact with or control over Indian children; civil agencies that investigate allegations of abuse, neglect, and exploitation of children; sex offender registration agencies; public housing agencies; child support enforcement agencies; Head Start programs; and civil courts that issue orders of protection, injunctions, restraining orders or other keep away orders.</p>

<b>Military</b>	
<p><b>PCA and PCA-Restriction Compliance:</b> Online investigations conducted by MCIOs should be required to uniformly comply with the PCA and PCA restrictions.</p>	<p><b>Training for Military Special Agents:</b> MCIOs should review the training provided to special agents regarding the PCA and PCA-like restrictions and provide augmented training as appropriate. MCIO offices should coordinate their online child exploitation investigations with the appropriate United States Attorney’s Office or DOJ’s Child Exploitation and Obscenity Section to help ensure PCA and PCA-like restrictions compliance.</p>
<p><b>Establish and Update MOAs and Retrocede Exclusive Federal Jurisdiction:</b> Military installations should be required to update or establish MOAs with their corresponding United States Attorney’s Office and local/state authorities for the referral of juvenile offenses to the state juvenile justice system. Military departments should establish concurrent jurisdiction with the respective states for offenses committed by juveniles in areas on military installations that are currently exclusive federal jurisdiction.</p>	<p><b>Full Access to State Juvenile Justice Systems:</b> Processes and standards should be put in place to ensure military children are no longer deprived of access to a state’s juvenile justice system when an incident occurs in exclusive federal jurisdiction, on any military installation, or overseas.</p>
<p><b>Child Advocacy Center Access:</b> Each military service should establish an MOU with the National Children’s Alliance that makes children’s advocacy center services available to all of the service’s installations.</p>	<p><b>Child Advocacy Center Access:</b> All child victims should have eligibility to receive services if they are within a children’s advocacy center’s service area.</p>
<p><b>Fix Legislative Gaps:</b> Enact legislation to confer jurisdiction to state juvenile justice systems for any juvenile offense committed in a “Federal Area”, including military installations, and those committed in a foreign country by juveniles accompanying the Armed Forces.</p>	<p><b>Unsafe Homes Overseas:</b> DOD and each military service should clarify guidance around when commanders may exercise their authority to remove a child from a potentially unsafe home on an overseas installation. The safety of children overseas should be ensured by consistent and timely removal from unsafe homes.</p>
<p><b>Comprehensive Information is Provided to Victims:</b> Following a report of child sexual abuse, procedures should be established dictating that victims’ families are comprehensively informed about how reported incidents of child abuse will be addressed following the report.</p>	<p><b>Pediatric Sexual Assault Forensic Examiners:</b> DOD should establish processes that ensure children who are sexually abused overseas have timely access to a certified pediatric sexual assault forensic examiner to conduct the examination.</p>

<b>Unaccompanied Noncitizen Minors</b>	
<b>Increase Staff Training:</b> Homeland Security Investigations should train relevant staff in ICE facilities about the forensic interviewing process, including how to identify and develop the facts that support cases of sexual abuse.	<b>Support Ongoing Training Needs:</b> OTIP will provide training on an ongoing basis to ICE and ORR staff on identifying, responding, and reporting trafficking concerns for foreign national minors.
ORR will work with facilities to address staffing shortages of youth care workers.	ORR will systematically collect key information about incidents that allows for efficient and effective oversight.
<b>Update Reporting Guidance:</b> ORR should improve its guidance to help facilities consistently identify and report significant incidents.	<b>Improve Tracking Mechanisms:</b> ORR should track and monitor trends in incident reports to identify opportunities to better safeguard minors.
<b>Commercial Flights &amp; Cruise Ships</b>	
<b>Awareness Campaigns &amp; Staff Training:</b> Awareness campaigns should be conducted to deter individuals from committing child sexual assault on commercial flights and cruise vessels, and to inform crime victims and witnesses on how to report such incidents and services available. Airlines and cruise lines should develop trainings to assist flight attendants and cruise line employees identify situations that create vulnerabilities or recognize conduct by a juvenile that might indicate distress	<b>Reporting Sexual Assaults:</b> Airlines or cruise lines should be encouraged to have routine/standard mechanisms in place that facilitate flight attendants' and employees' ability to capture critical information that may include: identity of employees on duty during the event; specific date and time of the event to establish the precise location of the carrier; identifying information (physical and biometric) if the offender can be readily determined; and the identity and basic contact information of possible witnesses.
	<b>Cruise Lines:</b> Cruise lines should establish video monitoring of areas frequented by minors including child-care facilities on the ship, engage in stringent vetting of employees that interact with minors regularly, and ensuring ship security routinely review video of those locations in which minors are consistently present (e.g., day care and child camps). <b>Airlines:</b> Airlines should be required by the FAA to adopt uniform policies involving minors traveling alone.

## **Training, Education and Coordination**

### *Indian Country*

Educators and school personnel on or near tribal communities must be knowledgeable about federal mandatory reporting of child abuse laws. Therefore, the National Indian Country Training Initiative (NICTI) will convene a working group of AUSAs and Bureau of Indian Education personnel to review current mandatory reporting laws and to develop a training that can be exported to the USAOs for tribal liaisons and AUSAs to deliver locally.

The NICTI will ensure that these training materials are continually updated and that all tribal liaisons in USAOs, federal law enforcement, and tribal law enforcement, child welfare workers and school personnel have an opportunity to receive an annual training on the topic of federal laws concerning mandatory reporting of child abuse.

### *Military*

To ensure online investigations conducted by MCIOs uniformly comply with the PCA and PCA restrictions, MCIOs should review the training provided to special agents and provide augmented training as appropriate. MCIO offices should also coordinate their online child exploitation investigations with the appropriate United States Attorney's Office or DOJ's Child Exploitation and Obscenity Section to help ensure PCA and PCA-like restrictions compliance.

Training should also be provided around problematic sexual behavior in children and youth, including topics like the limitations of military law enforcement agencies in many of these allegations. For most of these allegations, when there is a criminal element, the DOD does not have jurisdiction to open a criminal investigation. If the jurisdiction to open a criminal investigation is present, DOD law enforcement agencies usually lack a prosecutorial avenue (i.e., the children and youth are not subject to the UCMJ and there is no federal juvenile court system).

Because MOUs are needed to authorize services associated with a Family Advocacy Program referral, each military service should seek to develop a memorandum of understanding with the National Children's Alliance that makes children's advocacy center (CAC) services available to all the service's installations. Each military service should establish efforts to comprehensively inform victims' families about how reported incidents of child abuse will be addressed following the report. DOD should also establish processes that help ensure children who are sexually abused overseas have timely access to a certified pediatric sexual assault forensic examiner to conduct the examination. DOD and the military services should also clarify, in guidance, the circumstances under which commanders may exercise their authority to remove a child from a potentially unsafe home on an overseas installation.

### *Commercial Flights*

Efforts by FBI to re-initiate their prior awareness campaigns, coordinate closely with local law enforcement at airports within their respective Area of Responsibility (AOR), engage with commercial airline leadership, and streamline criminal referrals from the FAA may prove to be



fruitful avenues to address sexual assaults against children, as well as other crimes on board aircraft. In turn, the Department can provide necessary training to FBI counterparts, further engage on policy and other initiatives that strengthen FBI capacity, and promote aggressive prosecution of sexual offenses committed against children on commercial flights.

To that end, the Department (specifically the Human Rights and Special Prosecutions Section of the Criminal Division) has engaged on matters involving both domestic and extraterritorial criminal offenses occurring on board commercial airline flights. Such engagement has included coordination with FBI, EOUSA and the FAA on policy, legislation, and prosecutorial issues. In addition, in connection with HRSP's extraterritorial violent crime portfolio, HRSP provides training to FBI special agents on violent offenses committed on board aircraft at the FBI's yearly conference hosted by the Indian Country and Special Jurisdiction Unit (formerly the International Violent Crime Unit). HRSP also provides consultation and guidance to federal investigators and federal prosecutors as requested, maintains written materials and sample filings available to all federal prosecutors, and coordinates with EOUSA to communicate DOJ's priorities and resources to the USAO community.

### *Cruise Ships*

Efforts by FBI and the Coast Guard to initiate awareness campaigns, engage with commercial cruise companies, and strengthen resources and capacity in AORs that have a large cruise industry presence (e.g., Miami, Tampa, Seattle) may prove to be fruitful avenues to address sexual assaults against children, as well as other crimes on board cruise ships. In turn, the Department can provide necessary training to FBI and the Coast Guard, further engage on policy and other initiatives that strengthen FBI and Coast Guard's investigative capacity, and promote aggressive prosecutions of sexual offenses committed against children on cruise ships.

The Department through HRSP routinely provides guidance to law enforcement and others on violent criminal offenses occurring on cruise ships and other maritime vessels. In connection with HRSP's extraterritorial violent crime portfolio, HRSP provides training to FBI special agents on violent offenses committed on maritime vessels at the FBI's yearly conference hosted by the Indian Country and Special Jurisdiction Unit. HRSP also consults with and provides guidance to federal investigators and prosecutors, provides written materials and sample filings to AUSAs, and coordinates with EOUSA to communicate information to the USAO community.

## **Legislation**

### *Indian Country*

The Department will convene a working group to examine the effectiveness of the current federal sexual assault statutes found in Chapter 109A and, if necessary, propose legislative fixes. For example, current federal law does not provide an offense for when a person in a position of authority, like a teacher, engages in a sexual relationship with a student who is older than 16 and there is no force used by the teacher or fear experienced by the minor. This is a gap that should be reviewed by the working group to propose appropriate solutions.

## *Military*

Extraterritorial jurisdiction over offenses committed by retired military member or military reservists is subject to confusion and at times competing legal opinions as to MEJA's applicability. Legislative efforts are also necessary to clarify the scope of MEJA's applicability to "retired military members who remain subject to recall" and "military and national guard reservists who commit extraterritorial offenses while in an active status or executing orders, but then at the time of investigation and prosecution are no longer active, or, alternatively, commit the offense when they are not in an active status but their reserve commitment has not yet expired leaving them capable of being recalled by the military to active duty." Enacting legislation can fix existing jurisdictional gaps that might frustrate accountability for criminal offenses committed extraterritorially by these categories of individuals against children.

To ensure that military children are not deprived of access to a state's juvenile justice system, Congress should also enact legislation to expressly give states jurisdiction over juvenile offenses committed in areas of exclusive federal jurisdiction so that states' juvenile justice systems can intervene and exercise jurisdiction over an incident occurring on a military installation, so long as federal authorities choose not to exercise jurisdiction over the incident.

Additionally, the fact that there is no established process to issue a federal arrest warrant through the UCMJ should be addressed. The inability to obtain federal arrest warrants slows and often hinders the investigation and prosecution. There are several examples where the individual who is subject to UCMJ whereabouts are known however the DOD lacks the ability to obtain a federal arrest warrant. Legislative efforts to create processes for federal arrest warrants through the UCMJ is necessary to eliminate any gaps in coverage that might frustrate accountability for criminal offenses committed extraterritorially by these categories of individuals against children.

## **Funding & Resources**

### *Military*

More funding and resources should be allocated to address problematic sexual behavior in children and youth, including to remove barriers preventing military children from having access to state juvenile justice systems and rehabilitative programs and to establish concurrent jurisdiction, with the respective states, for offenses committed by juveniles in areas on military installations that are currently exclusive federal jurisdiction, through the existing statutory process of "retrocession."

## **Investigations & Operations**

### *Indian Country*

Many child sexual abuse victims report the offense weeks, months, or years after the crime. And some victims never disclose what happened to them. To ensure that cases with delayed disclosures are investigated with the same tenacity as a case with an immediate outcry, the NICTI and FBI Child Adolescent Forensic Interviewers will develop and deliver training for

tribal and federal law enforcement about the effects of trauma on the brain, the reasons for delayed reporting, and how to investigate and prosecute cases with delayed reporting.

The Department will work with federally recognized tribes to increase tribe's capacity to respond to these offenses. Specific examples include strengthening the community response, developing safe places for children to disclose abuse; increasing awareness among judiciary; and investing in Family Violence Programs, with a focus on prevention education and providing resources to families to understand DV, sexual violence, and historical trauma.

In some communities there are challenges coordinating federal, state, and tribal responses to child exploitation crimes occurring in tribal communities. This can be due to jurisdictional complexities present. One way to answer some of these questions before a crime occurs is through a robust MDT where issues like criminal jurisdiction can be discussed. Therefore, AUSAs will be reminded to fully engage with MDTs hosted by tribes in their districts. And, where an MDT is not currently in place, AUSAs will be encouraged to discuss with their tribal partnerships the benefits of starting an MDT.

Finally, turnover of tribal law enforcement and child welfare personnel in some tribal communities is a persistent problem. In the short term, relevant DOJ personnel should engage with DOI officials to be briefed on the "spending, staffing and unmet needs assessment" that BIA is obligated to report to Congress pursuant to the Tribal Law and Order Act. The Department should explore with the grant making components the availability of grant funds to support the hiring of criminal justice and child welfare professionals working in tribal communities. In addition, the NICTI together with the grant making components will work to ensure that new hires have training opportunities, and that technical assistance is available to the tribes so that tribal capacity to handle these crimes is strengthened.

### **Enforcement and Removal Operations for Serious Crimes Committed by Noncitizens**

A critical part of the law enforcement mission of U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) is the identification, arrest, and removal of noncitizens who are a threat to public safety. Those who have committed serious crimes, including sex offenses against children and human smuggling and trafficking, are a top priority for ERO. ERO enforces multiple statutes that are directly related to human trafficking and sexual exploitation of children, and works with law enforcement partners at the federal, state, and local level to combat these offenses. Under the Immigration and Naturalization Act (INA), key provisions include:

- INA § 101(a)(43)(A), 8 U.S.C. § 1101(a)(43)(A), Murder, Rape, or Sexual Abuse of a Minor
- INA § 101(a)(43)(F), 8 U.S.C. § 1101(a)(43)(F), Crimes of Violence
- INA § 101(a)(43)(I), 8 U.S.C. § 1101(a)(43)(I), Child Pornography
- INA § 101(a)(43)(K), 8 U.S.C. § 1101(a)(43)(K), Prostitution and Slavery Offenses

In FY 2022, ERO arrested 46,396 noncitizens with a criminal history, including 198,498 charges and convictions. These included charges or convictions for 8,164 sex offenses and sexual assaults, many of which involved underage victims.

ERO has the unique ability to remove those who have committed serious crimes, including child exploitation and human trafficking. During FY 2022, ERO removed 44,096 noncitizens with a criminal history. This totaled 183,251 charges and convictions, including 7,370 charges and convictions for sex offenses and sexual assault, many of which also involved underage victims.

### *ERO Arrest Mechanisms*

ERO relies on statutory law enforcement authority to identify and arrest noncitizens in the interior of the United States who may present a threat to national security or public safety, or who otherwise undermine the integrity of U.S. immigration laws. ERO utilizes targeted, intelligence-driven operations to prioritize its enforcement actions in a manner that helps protect communities nationwide. While ERO primarily conducts administrative arrests of noncitizens it has probable cause to believe are removable from the United States, it also has the authority to execute criminal arrest warrants and initiate prosecutions for criminal activity, including immigration-related crimes. As part of this process, ERO's Fugitive Operations teams identify and arrest foreign born criminals, including sex offenders, at-large within U.S. communities, while ERO's Criminal Apprehension Program identifies noncitizens in state and local jails who have been arrested for criminal activity. Additionally, ERO periodically runs operations targeting specific groups of serious criminals, such as Operation Sex Offender Arrest and Removal (SOAR).

### *Operation Sex Offender Arrest and Removal (SOAR)*

ERO's SOAR is a coordinated enforcement operation that specifically targets noncitizen sex offenders. It seeks to identify, arrest, and remove those who have committed sex crimes, including the exploitation of children, ensuring these individuals are removed from the community. During the latest version of SOAR, which occurred in late October and early November 2022, ERO administratively arrested 138 sex offenders with 403 charges and convictions associated with them – including at least 100 charges and convictions involving the sexual exploitation or abuse of minors.