



BULLETIN

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Subject: Human Trafficking

Often “hidden in plain sight,” millions of people are exploited for criminal profit every year. These people are victims of human trafficking, or modern-day slavery, which occurs across the globe and in all communities.¹ This Bulletin explains the nature of human trafficking; why it may occur on tribal land and to Native people; and the NIGC’s and tribal gaming commissions’ authorities and actions to combat it.

I. Human Trafficking

“Human Trafficking is a crime that involves exploiting a person for labor, services, or commercial sex.”² It is defined as:

“a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”³

¹ U.S. Dep’t of State, Trafficking in Persons Report (2018) at 2, <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>

² U.S. Department of Justice, Human Trafficking webpage, <https://www.justice.gov/humantrafficking>

³ *Id.*, citing 22 U.S.C. § 7102(9).

The scale of this crime is shocking. It is estimated that 24.9 million people are currently trafficked⁴, generating billions of dollars in illegal profits⁵ in “a multi-billion dollar industry,”⁶ that “has grown to the third largest criminal enterprise globally.”⁷ While victims may be of any gender, age, race, or socioeconomic background, traffickers target the most vulnerable members of society. The United States’ Trafficking in Persons Report identifies American Indians and Alaska Natives as particularly vulnerable.⁸ Since the colonial era, Indigenous people have been subjected to sale and exploitation.⁹ Policies such as the prohibition of traditional culture and language, assimilation, relocation, and removal of children further contributed to Native people’s continued trauma and exploitation. Native women still experience more physical and sexual violence than other racial and ethnic groups.¹⁰ The effects of historical trauma are deeply felt in Native communities, families, and individuals.¹¹ These and other factors — such as the complexity of jurisdictional law enforcement issues in Indian country¹² — contribute to the disproportionate impact of human trafficking on Native people.

II. NIGC’s Authority & Actions

A. NIGC’s awareness & prevention efforts

Confronting human trafficking takes a comprehensive and collaborative approach, starting with awareness of the problem. NIGC is working diligently to raise awareness of human trafficking and taking proactive prevention measures to equip the Indian gaming industry with

⁴ U.S. Dep’t of State, Trafficking in Persons Report, Message from the Secretary of State (2019).

⁵ Human Rights *First*, Human Trafficking by the Numbers (January 7, 2017) (“Human trafficking earns profits of roughly \$150 billion a year for traffickers”), <https://www.humanrightsfirst.org/resource/human-trafficking-numbers#:~:text=Human%20trafficking%20earns%20profits%20of,construction%2C%20manufacturing%2C%20mining%20and%20utilities>; International Labour Organization, *Economics of forced labour: ILO says forced labour generates annual profits of US \$150 billion* (May 20, 2014), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm

⁶ U.S. Dep’t of State, Trafficking in Persons Report (2017) at 1, <https://www.state.gov/wp-content/uploads/2019/02/271339.pdf>; U.S. Dep’t of State, Trafficking in Persons Report, Message from the Secretary of State (2016) (noting that the human trafficking industry is a \$150 billion dollar industry), <https://2009-2017.state.gov/documents/organization/258876.pdf>

⁷ *Human Trafficking: A Global Enterprise*, Free For Life International, <http://freeforlifeintl.org/resources/human-trafficking-a-global-enterprise/>

⁸ U.S. Dep’t of State, Trafficking in Persons Report (2016) at 388, <https://2009-2017.state.gov/documents/organization/258876.pdf>

⁹ Alexandra (Sandi) Pierce & Suzanne Koeplinger, National Online Resource Center on Violence Against Women, *New Language, Old Problem: Sex Trafficking of American Indian Women and Children* (2011), <http://www.vawnet.org> (last visited April 3, 2018).

¹⁰ Patricia Tjaden & Nancy Thoennes, National Institute of Justice, *Extent, Nature, and Consequences of Rape Victimization: Findings from the National Violence Against Women Survey* (2006), <https://www.ncjrs.gov/pdffiles1/nij/210346.pdf> (last visited April 3, 2018).

¹¹ T. Evans-Campbell, *Historical Trauma in American Indian/Native Alaska Communities: A Multi-level Framework for Exploring Impacts on Individuals, Families, and Communities*, *Journal of Interpersonal Violence* 23 (3) (2008).

¹² Kathryn Ford, *Tribal Justice and Sex Trafficking*, Human Trafficking and the State Courts Collaborative, Center for Court Innovation at 137-138, http://www.htcourts.org/wp-content/uploads/Ch-8_140425_NACM_Guide_OnlineV_v04.pdf

deterrence resources. The NIGC is in regular contact with other federal agencies¹³ and non-government organizations to help raise awareness of this issue and share resources with Tribes. In past years, NIGC hosted nationally, human trafficking training as part of its annual regional training courses. NIGC has transitioned to providing combatting human trafficking training online through webinars which are now available via livestream and on the agency's website.¹⁴ Armed with knowledge and tools, the NIGC, other federal agencies, non-government organizations, and Tribes – can work to help victims and stop this horrific crime.

B. NIGC's authority

In addition to awareness and training efforts, NIGC possesses civil enforcement authority to address public safety situations when circumstances require. Congress enacted the Indian Gaming Regulatory Act (IGRA), in part, “to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences . . .,” underscoring that the NIGC, an “independent Federal regulatory authority,” and federal standards for gaming on Indian lands “are necessary to meet congressional concerns regarding gaming . . .”¹⁵ The statute endows the NIGC Chair with enforcement authority to address violations of it, NIGC regulations, and approved tribal gaming ordinances.¹⁶

IGRA's public health and safety directive is contained within the statute itself and statutorily required in all approved tribal gaming ordinances. Thus every ordinance contains a pledge that “the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects . . . public health and safety.”¹⁷ NIGC regulations reiterate this requirement for both Class II and III ordinances.¹⁸

Moreover, under NIGC regulations, it is a substantial violation when a gaming facility is “constructed, maintained, or operated in a manner that threatens . . . public health and safety, in violation of a tribal ordinance . . . approved by the Chair.”¹⁹ If a situation creates imminent jeopardy – a real and immediate threat to human health and well-being, which, if uncorrected, could result in serious illness or death, the NIGC Chair may immediately issue a notice of violation and a temporary closure order of a gaming operation.²⁰ Such enforcement actions may

¹³ Beyond the U.S. Department of Justice, the following federal agencies are working diligently to prevent human trafficking and/or provide victim services: U.S. Department of the Interior, Bureau of Indian Affairs (DOI BIA); U.S. Department of Health & Human Services (HHS); U.S. Department of Homeland Security (DHS); and U.S. Department of Labor (DOL). These agencies, among others, are on The President's Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF), which “addresses all aspects of human trafficking— enforcement of criminal and labor law, victim identification and protection, education and public awareness, international trade and development, enhanced partnerships and research opportunities, and international engagement and diplomacy.” See <https://www.dhs.gov/blue-campaign/about-blue-campaign> and <https://www.state.gov/agencies-of-the-presidents-interagency-task-force-to-monitor-and-combat-trafficking-in-persons/>.

¹⁴ <https://www.nigc.gov/>

¹⁵ 25 U.S.C. § 2702(2) and (3).

¹⁶ See 25 U.S.C. § 2713.

¹⁷ 25 U.S.C. § 2710(b)(2)(E).

¹⁸ See 25 C.F.R. §§ 522.4(b)(7); 522.6(b).

¹⁹ 25 C.F.R. § 573.4(a)(12).

²⁰ NIGC Interpretative Rule, *Environment, Public Health and Safety*, 67 FR 46109-01 (July 12, 2002).

be issued to a tribe, a tribal gaming operator, and a management contractor or an unapproved management contractor, if they are involved in the public health and safety situation.²¹ And, if the NIGC discovers involvement by tribal key employees or primary management officials, it may notify the Tribe that it must suspend the employees' licenses.²² Then the Tribe must decide whether to revoke the employees' licenses.²³ These actions by the NIGC and/or the Tribe may serve as future grounds for denying these employees' gaming licenses with other Tribes.²⁴

C. NIGC's referral mandate

IGRA also mandates that the NIGC refer violations of other laws to the appropriate law enforcement officials.²⁵ Since circumstances of labor or sex trafficking occurring within NIGC's jurisdiction may also violate tribal, state, and/or other federal law, the NIGC must refer them to tribal or Bureau of Indian Affairs law enforcement, if tribal laws are implicated; state police, if it is a Public Law 280 state having criminal jurisdiction over the tribal land at issue; and to the U.S. Department of Justice (DOJ), which enforces federal anti-trafficking laws. DOJ components investigating and prosecuting human trafficking violations include: the F.B.I.; the U.S. Attorney's Office in the state in which the violation took place; and the DOJ Civil Rights Human Trafficking Prosecution Unit or the DOJ Criminal Division Child Exploitation & Obscenity Section, depending upon whether the violation involves adults or minors – or both, if it involves both. If the violation occurs in a Public Law 280 state having criminal jurisdiction over the tribal land at issue, some of the federal anti-trafficking laws still may be implicated due to the violation's effect on interstate commerce²⁶; therefore, referrals are provided to both state and federal law enforcement officials.

The first comprehensive federal law against human trafficking, *Trafficking Victims Protection Act* (TVPA), was enacted in 2000.²⁷ Since the initial statute, Congress has reauthorized the TVPA four times. Through some of the reauthorizations and the Justice for Victims of Trafficking Act of 2015, Congress strengthened prosecution and punishment of traffickers by increasing fines and terms of imprisonment as well as broadening the scope of offenses against traffickers and those who aide them. These laws include²⁸:

- Peonage²⁹ – 18 U.S.C. § 1581, which “makes it unlawful to hold a person in ‘debt servitude’ . . . [and] prohibits using force, the threat of force, or the threat of legal

²¹ *Id.*; See 25 U.S.C. § 2713; 25 C.F.R. part 573; 25 C.F.R. part 575.

²² See 25 C.F.R. § 558.4 (a) & (b).

²³ See 25 C.F.R. § 558.4 (e).

²⁴ See 25 C.F.R. § 558.2.

²⁵ 25 U.S.C. § 2716(b).

²⁶ See, e.g., 18 U.S.C. § 1591.

²⁷ *Victims of Trafficking and Violence Protection Act of 2000*, P.L. 106–386 (Oct. 28, 2000) 114 Stat 1464; 22 U.S.C. §§ 7101-7114.

²⁸ The primary anti-trafficking laws contained within Title 18, Chapter 77 of the U.S. Code are discussed here, not all federal laws touching upon involuntary servitude or slavery.

²⁹ *Peonage* is defined as “the use of laborers bound in servitude because of debt.” See Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/peonage>

coercion to compel a person to work against his/her will. [] The victim's involuntary servitude must be tied to the payment of a debt."³⁰

- Involuntary Servitude - 18 U.S.C. § 1584, which makes it unlawful to hold a person in a condition of slavery, meaning, a condition of compulsory service or labor against his/her will as well as to interfere or obstruct the law's enforcement, including any attempts to obstruct enforcement.
- Forced Labor - 18 U.S.C. § 1589, which makes it unlawful to provide or obtain the labor or services of a person through one of four prohibited means or by a combination of them. And it subjects to punishment those who knowingly benefit, financially or by receiving anything of value, from participating in a venture by any of the four prohibited means either knowingly or in reckless disregard of the fact that the venture did so.
- Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor - 18 U.S.C. § 1590, which "makes it unlawful to recruit, harbor, transport, or broker persons for labor or services under conditions which violate any of the offenses contained in Chapter 77 of Title 18."³¹ In addition, it is unlawful to obstruct, attempt to obstruct, or interfere with the enforcement of this law.
- Sex trafficking of children or by force, fraud, or coercion - 18 U.S.C. § 1591. This law "criminalizes sex trafficking, which is defined as causing a person to engage in a commercial sex act under certain statutorily enumerated conditions. A commercial sex act means any sex act, on account of which anything of value is given to or received by any person."³² In 2015, Congress "[a]dd[ed] 'patronizes' and 'solicits' to 18 U.S.C. § 1591(a) to facilitate prosecution of customers of sex trafficking victims [and] [a]dd[ed] 'advertises' to the modes of commission of an offense under 18 U.S.C. § 1591 when there is proof that the defendant knew the victim being advertised was a minor or that force, fraud, or coercion would be used."³³ Also, in 18 U.S.C. § 1591(d), there are "serious penalties on those who obstruct or attempt to obstruct the investigation and prosecution of trafficking crimes."³⁴
- Benefitting financially from peonage, slavery, and trafficking in persons - 18 U.S.C. § 1593A. Under this law, individuals who knowingly benefit financially from participating in a venture that engaged in labor or sex trafficking crimes are penalized.
- General provisions - 18 U.S.C. § 1594. Congress broadened the scope of crimes to include those who attempt the crime of involuntary servitude, forced labor, or trafficking

³⁰ U.S. DOJ website, Civil Rights Division, *Involuntary Servitude, Forced Labor, and Sex Trafficking Statutes Enforced*, <https://www.justice.gov/crt/involuntary-servitude-forced-labor-and-sex-trafficking-statutes-enforced>

³¹ *Id.*

³² *Id.*

³³ U.S. DOJ website, describing the Justice for Victims Trafficking Act of 2015 at 3, <https://www.justice.gov/humantrafficking/key-legislation>

³⁴ U.S. DOJ website, describing the TVPA of 2008 at 2, <https://www.justice.gov/humantrafficking/key-legislation>

of forced labor or sex.³⁵ And in 2008, it “[i]ncreas[ed] the penalty for conspiring to commit trafficking-related crimes.”³⁶

III. Tribal Governments & Tribal Gaming Operations

Tribes across the country are also taking steps to prevent human trafficking from occurring on tribal lands or to tribal citizens, often through task forces and partnerships with law enforcement and victim services organizations. Several tribes have adopted laws against the crime of human trafficking.³⁷

Given the Indian gaming industry’s unique position – involving and engaging governmental entities, tribal communities, law enforcement, and the public - it too is poised to play a role in anti-trafficking efforts. Rather than ignoring the threat, a growing number of tribal gaming operations already provide anti-human trafficking trainings. Some have implemented employee guidance and protocols to better enable their teams to identify possible victims and alert authorities. Anti-human trafficking signs and posters³⁸, currently seen in airports, hotels, and hospitals, can similarly be displayed in gaming facilities, which welcome a diverse cross-section of the community. These initiatives create safeguards for tribal citizens, gaming facility patrons, and nearby communities.

Importantly, tribal gaming commissions possess civil regulatory authority over tribal gaming operations. A full discussion of the potential authorities of tribal gaming commissions is contained in a separate NIGC Bulletin. Suffice it to say that, as a general matter, most tribal gaming commissions are empowered to investigate and take enforcement actions against tribal gaming operators and management contractors if they are involved in a public health and safety situation, including human trafficking. Also, if other individuals or vendors who have no operational or management involvement in the gaming operation are conducting or involved in human trafficking at the location or activities associated therewith (e.g., recruitment, sales, use of forced labor), they may be banned from the gaming operation by tribal gaming commissions, who have established their own processes and databases for that purpose. Finally, if tribal gaming operation employees are involved, a tribal gaming commission may revoke their gaming licenses, providing notice to the NIGC if such employees are key or primary management officials. This action by tribal gaming commissions enables other Tribes and their commissions to deny future gaming licenses to such employees.³⁹

IV. Conclusion

³⁵ See 18 U.S.C. § 1594(a).

³⁶ U.S. DOJ website, describing the TVPA of 2008 at 2, <https://www.justice.gov/humantrafficking/key-legislation> See 18 U.S.C. § 1594(c).

³⁷ National Congress of American Indians Policy Research Center, *Human and Sex Trafficking: Trends and Responses across Indian Country* (Spring 2016), available at <http://www.ncai.org/policy-research-center/research-data/prc-publications/TraffickingBrief.pdf> (includes Tribal Code examples from Snoqualmie, Swinomish, Tulalip, and Eastern Band of Cherokee Indians); See, e.g., Snoq. Tribal Code 7.1, § 7.0, Offenses Of A Sexual Nature.

³⁸ Often these posters and signs reference the National Human Trafficking Hotline (1-888-373-7888, or text HELP or INFO to BeFree (233733)). Native Americans affected by domestic violence, intimate partner violence, sexual assault, or human trafficking may also call the StrongHearts Native Helpline at 1-800-799-7233.

³⁹ See 25 C.F.R. § 558.2.

As explained above, Indian gaming plays an important role in strengthening and protecting the well-being of tribal citizens as well as others in surrounding communities in regard to human trafficking. NIGC, Tribes, and tribal gaming commissions are well-positioned to undertake and support anti-trafficking deterrence. We commend the tribal communities and tribal gaming facilities who are taking efforts to spread awareness and education on the issue of combatting Human Trafficking. NIGC remains committed to continuing our efforts to be part of the solution to end Human Trafficking. The NIGC's Special Emphasis on combating Human Trafficking resource page has the NIGC's awareness and training undertakings as well as its engagement with federal and non-federal stakeholders trainings and tools which can be found at [Human Trafficking Resources | National Indian Gaming Commission \(nigc.gov\)](https://www.nigc.gov/human-trafficking-resources).