



COMMISSION TO ELIMINATE CHILD ABUSE AND NEGLECT FATALITIES

TELECONFERENCE MINUTES

February 14, 2016, 12:00-4:00 p.m., EST

Commissioners Attending via Telephone: Chairman David Sanders, Amy Ayoub, the Hon. Bud Cramer, Theresa Covington, Susan Dreyfus, Dr. Wade Horn, the Hon. Patricia Martin, Michael Petit, and Dr. Cassie Statuto Bevan

Commissioners Absent: Jennifer Rodriguez and Dr. David Rubin

Designated Federal Officer: Amy Templeman, acting executive director, attended the meeting.

Conduct of the Meeting: In accordance with the provisions of Public Law 92-463, the Commission to Eliminate Child Abuse and Neglect Fatalities held a teleconference meeting that was open to the public on February 14, 2016, from 12:00 p.m. to 4:00 p.m., EST. The purpose of the meeting was to deliberate on the content of the Commission's final report.

Opening Remarks

Chairman Sanders opened the meeting by thanking staff for their work and by reviewing the agenda (<https://eliminatechildabusefatalities.sites.usa.gov/event/commissioner-deliberations-2-14-2016/>). He noted that the meeting will focus on the draft of the report dated February 12 that incorporated Commissioner comments and edits and included comments from Dr. Rubin, who provided his comments early since he was not able to be present for the discussion. The points in the draft text where there was disagreement among Commissioners will be the focus of the discussion. The discussion will begin with the chapters on American Indian/Alaska Native (AI/AN) children and disproportionality. That discussion will be followed by a discussion of chapter 2, especially Recommendation 2.1 on the surge.¹

Chairman Sanders stated that voting on the full report would be accomplished by email to him. Votes would be made public.

¹ The "surge" refers to a recommendation that evolved to mean a requirement for states to review child maltreatment fatalities from past years, identify characteristics associated with those fatalities, and use that information to identify children currently at high risk so that assessments could be made of their situations and safety decisions could be reevaluated.

AI/AN Chapter

Chairman Sanders opened the discussion by suggesting that the AI/AN and disproportionality chapters be moved up in the report so that they follow immediately after chapter 2. He also offered the opinion that a number of recommendations in the chapter do not relate to ending maltreatment fatalities. Therefore, he recommended that the chapter focus on data, jurisdiction, and leadership structure. Other Commissioners then weighed in with the following comments:

- Instead of appointing someone to handle Indian affairs within the new Office of Child Safety, it might make more sense to strengthen the current position of Special Assistant to the President for Native American Affairs.
- Moving these chapters to earlier in the report might help them relate better to the surge recommendation; right now, they feel disjointed and separate from the rest of the report.
- Many of the recommendations in the AI/AN chapter go beyond the scope of the report and of what the Commission was asked to do. Also, some of the recommendations assigned to Congress are not within their purview.
- The surge in Indian Country could be managed by the Bureau of Indian Affairs (BIA).
- Relying on the position of Special Assistant to the President for Native American Affairs to be the lead on child safety for AI/AN children would mean that whoever is president at the time would have a lot of say about whether that position has influence or not. It might be better to have someone in the new Office of Child Safety be the lead on AI/AN children.
- The authority for the safety of AI/AN children needs to be in one office, and the Commission just needs to decide how that recommendation should be phrased.
- Tribes would respond better to someone in the White House than to someone in the [HHS] bureaucracy.
- The Domestic Policy Council is generally the group that gathers consensus and makes proposals to the president.
- The Commission could propose to strengthen the Special Assistant position so that it could convene other agencies with AI/AN responsibilities, and the Office of Child Safety would work with that Special Assistant.

It was proposed that the report include a recommendation for a concentrated effort across all Indian-serving agencies to develop a plan to improve the counting of child fatalities and for multidisciplinary groups to work closely with the office within the White House. There was no disagreement on this from Commissioners when asked by Chairman Sanders.

Chairman Sanders then proposed that the Commissioners go through the recommendations and delete any that did not relate to jurisdiction, data, or leadership structure. Discussion followed on the content of the AI/AN chapter. It was decided that much of the background information on Indian children could go into the background chapter (chapter 1) of the report. The AI/AN chapter, which would be moved up to be the new chapter 3, would focus on the recommendations relevant to jurisdiction, data, and structure. Some of the other recommendations would fit into other chapters, and the remainder would go into an appendix

at the back of the report. These last recommendations would be labeled as coming from stakeholders, rather than from the Commission. Commissioner Martin volunteered to work with staff offline to look at the other recommendations and make suggestions about where those ideas could be interspersed throughout the rest of the report. Commissioner Martin also agreed to work with staff to ensure that all necessary citations and references were supplied.

Disproportionality Chapter

As a member of the Disproportionality Subcommittee, Commissioner Martin opened the discussion on the disproportionality chapter by noting that some revisions were made in response to Commissioner comments:

- The language about the penalty for social workers who override structured decision making was revised.
- The chapter's title was changed.
- There were comments on the recommendation about clergy as mandated reporters, and that can be discussed.

Other Commissioners then offered the following comments:

- The language in recommendation 7.1 regarding a “systematic scheme” should be removed because it implies intention. There was no testimony to back up that language.
- The language around all of the recommendations under 7.1 should be amended to say that HHS or the Children's Bureau should provide guidance; these are not tasks that should fall to Congress or the executive branch.

Chairman Sanders suggested that there should be two main recommendations in the disproportionality chapter: (1) setting up the place-based court initiative as a demonstration or pilot project and (2) giving the Office of Child Safety the authority to set policy on needed practice changes and including some of the practice changes that are now presented as sub-recommendations.

There was discussion that followed regarding which branch of government would be best placed to implement the recommendations made by the Commission. There was also some discussion about how the Commission's recommendations would be received, approved, and then enacted or implemented by the government. There was some concern that assigning responsibility for many of the Commission's recommendations to a newly created Office of Child Safety within HHS might place those recommendations in jeopardy in the event that the Office of Child Safety was never created.

The discussion then returned to the disproportionality chapter. Commissioners made the following points:

- The report should not use the word “minority” to refer to people of color.
- The disproportionality chapter needs to better connect to the rest of the report's language on the 21st century child welfare system.
- The language around the courts initiating the war on poverty seems to be an overreach.

- Disproportionality is not always racial but can also be economic.
- The Commission should not worry about being controversial with any of its recommendations but should be bold.
- There is a difference between recommendations that are bold and those that are inflammatory. Also, all recommendations need to be backed up with citations or other background information.

Chairman Sanders, after conferring with the acting executive director, agreed with the request from several of the Commissioners to have a yes/no vote on the recommendations in the AI/AN and disproportionality chapters (then chapters 6 and 7). The majority would rule in each case. The voting results on these recommendations follow:

- 6.1a— Congress and the administration should mandate that the Bureau of Indian Affairs (BIA), at a minimum, immediately implement the practice of distinguishing child and adult homicide victims when reporting fatalities in Indian Country. Remove “at a minimum.” **Keep.**
- 6.1b—Congress and the executive branch should mandate that the FBI identify key data that tribes could track and that the BIA could collect. At a minimum, the FBI should ask BIA to use the National Incident-Based Reporting System (NIBRS) or request that BIA provide more detailed child-specific information. BIA and FBI data collection about AI/AN children and child fatalities should be coordinated to be complementary and comprehensive. **Keep.**
- 6.1c—Moreover, to generate accurate crime reports for Indian Country, especially in tribal areas subject to P.L. 280, Congress should amend the FBI reporting requirements for state and local law enforcement agencies’ crime data as follows: 1) to include information about the location at which a crime occurred and victims’ and offenders’ Indian status; and 2) to require reservation-level victimization data in its annual reports to Congress on Indian Country crime. **Keep the recommendation, but delete the clause** “especially in ... 280.”
- 6.1d—Congress should mandate that death certificates indicate if the child is an AI/AN child and tribal affiliation. **Agreed to change this wording** to the following: The National Association of State Registrars should work collaboratively to incorporate tribal affiliation on all state death certificates.
- 6.1e—Ensure the accuracy of data/information and ensure that tribes have the capacity and tools to provide that data/information. **Keep.**
- 6.2—Mandate, with equal responsibility, information sharing between the federal government, state governments, and tribal governments. **Keep the recommendation and add the following wording** at the end: with regard to fatalities and/or serious injuries of children due to child abuse and neglect.
- 6.2a—Mandate the appointment or strengthen an existing role of a staff person within the Administration with oversight over every federal department concerning Indian affairs. This person should be looking at tribal policy in each department and reporting to someone in the White House with the authority to convene federal departments and hold them accountable. **Keep.**
- 6.2b—Congress should mandate that tribal data on AI/AN child abuse and neglect and AI/AN child abuse and neglect fatalities be reported in NCANDS. **Keep.**

- 6.2c—Link data between tribal child welfare and tribal law enforcement. **Keep.**
- 6.2d—Increase reporting upfront to the Bureau of Indian Affairs (BIA) on tribal and state child welfare cases involving AI/AN children. **Delete.**
- 6.2e—Congress should mandate the provision of training and technical assistance for tribes around collecting data and building data systems. **Decision postponed.**
- 6.2f—Create a pilot program to support the coordinated collection of child welfare criminal justice data related to child abuse and neglect fatalities in select tribal communities and states. **Keep.**
- 6.3a—The federal government should mandate the recognition of tribal criminal jurisdiction in Indian Country in cases of child abuse and neglect, regardless of the perpetrator’s race. **Delete.**
- 6.3b—The federal government should require that there be a jurisdictional committee composed of both state and tribal leaders to determine jurisdictional issues in criminal matters associated with child abuse and neglect fatalities. **Keep.**
- 6.3c—Federal policy should provide incentives for states and tribes to increase participation and deputation agreements and other recognition agreements between state and federal law enforcement agencies. **Delete.**
- 6.3d—Coordination between and among jurisdictions should be mandated, facilitated, and incentivized. **Delete.**
- 6.3e—Congress should end all grant-based and competitive Indian Country criminal justice funding in the Department of Justice and instead pool these monies to establish a permanent recurring funding system for tribal law enforcement and justice services. **Amend.** There was discussion about amending the language to reflect the fact that competitive grants can be unfair to small tribes. The new recommendation should include “fair opportunity for access to the same funds” in its language.
- 6.3f—Congress and the administration should bring funding for tribal criminal and civil justice systems and child protection systems into parity with the rest of the United States. **Decision postponed.**
- 6.3g—The federal government should release an RFP for demonstration projects using a multidisciplinary approach to address the needs of AI/AN children and their families that requires tribal, federal, and state partnerships. **Keep.**

After discussion on the sub-recommendations under 6.4, it was decided that these would be reworded to have a narrower focus and would then come back to the Commissioners for a final decision. This includes the following:

- 6.4a—Congress should specify that behavioral health dollars through Medicaid should be used to provide the kind of services that have traditionally been provided under title IV-B. Use those services and that money to increase home visiting and the availability of social workers to monitor and support while the child is in the home.

- 6.4b—Congress should mandate that Tribes be provided with adequate funding for child abuse and neglect reporting, investigations, child protective services, and prevention.
- 6.4c—Congress should mandate home visitation programs that include in-home parent/family coaching and programs that promote fatherhood engagement. Create consistent title IV E guidance for tribes.
- 6.4d—In consultation with tribes, the federal government should consider flexibilities in the title IV-E program that will help the tribes implement it and rethink direct tribal IV-E in the context of sovereignty, not same-as-states equivalency.
- 6.4e—Improve the timeliness of the title IV-E assistance and reviews for tribes.

Chairman Sanders suggested that 6.5a might fit into the other recommendations under 6.4:

- 6.5a—Congress and the Administration should address the ability within tribes to support child/family/tribal access to needed services, supports, early literacy services, home visiting, and education by, at a minimum, promoting access to services, supports and education outside of the standard 9 a.m. to 5 p.m. service hours.

Chairman Sanders proposed that the rest of the 6.5 sub-recommendations might fit elsewhere in the text of the report, rather than as specific recommendations. Commissioner Martin agreed to work with staff on this suggestion. This includes the following:

- 6.5b—Congress and the Administration should mandate the development and implementation of educational curricula connecting youth to their cultural traditions, particularly around native language renewal and positively presented Native American history, to be used at all levels of pre-collegiate education.
- 6.5c—Congress and the Administration should mandate the implementation of service approaches that prioritize keeping children within their tribes as a primary alternative to out-of-home placement.
- 6.5d—Congress and the Administration should mandate the development of a culturally accurate assessment of how to provide services optimally within tribes, being informed by tribes, particularly being informed by traditional medicine practitioners within tribes, in the context of federal funding opportunities and practice standards/requirements related to child and family well-being.
- 6.5e—Congress and the Administration should mandate the implementation of fatherhood initiatives in Indian Country as well as mandating improved drug abuse education programming.
- 6.5f—Conduct longitudinal research about the leading factors related to child abuse and neglect fatalities of AI/AN children, 18 and under. It may be possible to integrate a longitudinal research component in the Tiwahe Initiative (a partnership between HHS, DOJ, and DOI) currently being piloted in four tribes.
- 6.5g—The federal government should promote and facilitate peer-to-peer connections around examples of well-formed efforts focused on AI/AN children and families.
- 6.5h—Federal mandates on tribal child protection programs should be the minimum necessary to ensure accountability and children’s safety.

Dissent

Commissioner Bevan requested time to discuss her opposition to the report. She listed a number of reasons, including the following:

- The entire child protection system needs to be overhauled, and the Commission's recommendations thus far will not make a difference.
- The current services don't work, and this report is not offering anything new.
- There are 30 federal programs with a goal of protecting children, and this report is still calling for more agencies and more money.
- The report is ignoring some of the biggest issues.
- Some of the things the Commission should be doing include encouraging Congress to begin the Hatch-Wyden Act with infants, not teens; making the case for a child protection block grant to spend on services for children under age 5; and identifying all the different funding streams.

In discussing Commissioner Bevan's remarks, other Commissioners made the following observations:

- The report has not adequately acknowledged the fact that some states do a much better job than others at protecting children.
- The surge and other recommendations have the potential to be a roadmap for child welfare.
- Every Commissioner has some area where he or she disagrees with the report; the inclusion of letters of disagreement in the report may dilute the strength of it.

A discussion of voting on the recommendations and the report and including dissenting opinions then followed. It was agreed that the Commissioners would vote on the recommendations in chapters 7 (disproportionality) and 2 (the surge) at the February 15 meeting and would also discuss the topic of Commissioner letters and minority reports being included in the final report.

The teleconference adjourned at 4:49 p.m.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.



David Sanders, Chairman, Commission to Eliminate Child Abuse and Neglect Fatalities
3/14/2016