

Vol. XV. February 2011

NCAI Executive Winter Session - Washington, DC

Restoration

OF NATIVE SOVEREIGNTY AND SAFETY FOR NATIVE WOMEN



**VAWA 2011
Reauthorization**

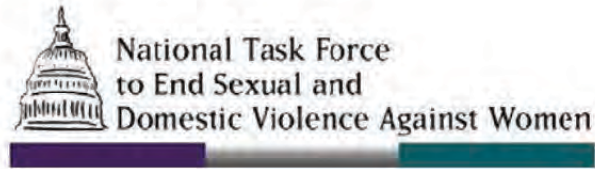
**UN Special Rapporteur
Investigates Violence
Against Native Women**

**Attorney General Launches
Task Force on Prosecution**

**April 2011: Sexual Assault
Awareness Month**



Restoration of Safety for Native Women



Dear Friends,

Welcome to the National Congress of American Indians Executive Session! Each winter we gather in Washington, DC, to discuss urgent issues impacting Indian nations and in the context of the NCAI Task Force those specific issues impacting the safety of Native women.

This year is particularly important because of the urgent need to reauthorize the Violence Against Women Act (VAWA). Efforts have been underway for over a year to identify pressing issues that must be addressed in the reauthorized Act. In 2003, advocates across the United States joined to form a grassroots national movement to successfully reauthorize the Violence Against Women Act and create the Safety for Indian Women Title. In doing so, Congress clarified that the “legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.”

This year we must once again rally together to discuss the outstanding unmet needs and develop the solutions to resolve these issues. This task is particularly important in light of the tremendous gains made this last year under the leadership of President Obama and Vice-President Joe Biden. The successful implementation of the recently enacted Tribal Law and Order Act (TLOA) and the reauthorization of the Family Violence Prevention and Services Act (FVPSA) will remove important barriers that must be addressed to increase the safety of Native women. The national efforts that achieved these gains have also sparked global concern and a visit by the UN Special Rapporteur on Violence Against Women. We cannot forget that violence against Native women occurs at more than double the rate of any other population of women.

To assist tribal leaders, advocates, and community members in preparing for this Executive Session we have gathered the most pressing issues requiring your attention within this volume of the Sovereignty & Safety Magazine. We hope this information will assist you in your discussions over this coming week.

It is our ardent belief that together we can strengthen the sovereignty of Indian Nations to protect women and hold all perpetrators accountable for their violent crimes!

Co-Chairs, NCAI Task Force on Violence Against Women



Juana Majel
1st Vice President
National Congress of
American Indians



Terri Henry
Tribal Council
Member
Eastern Band of
Cherokee Indians



United Nations Special Rapporteur on Violence Against Women, Rashida Manjoo with Cherokee Royalty Kaley Locust (Junior Miss Cherokee), Aliyah Bigmeat (Little Miss Cherokee), and Andrea Cedillo (Teen Miss Cherokee).

In This Issue

In the News

4 April 2011: Sexual Assault Awareness Month Activities

6 Conference: Children Who Disclose Sexual Abuse

7 Attorney General Launches Prosecution Task Force

8 US Endorses UN Declaration on the Rights of Indigenous Peoples

From the Courts

10 Constitutionality of the Domestic Assault by a Habitual Offender Statute

14 Protect Native Women by Removing Jurisdictional Barriers to Safety

Legislative Update

16 VAWA 2011 Reauthorization

18 VAWA Budget Overview

20 Family Violence Prevention Service Act 2010

21 Commentary: President Obama Signs FVPSA

22 Tribal Law & Order Act 2010: Overview and Implementation

27 Reviewing the Adam Walsh Act

International Efforts

28 UN Special Rapporteur Investigates Violence Against Indian Women

30 Eastern Band of Cherokee Indians Official Welcome

32 Commentary: Restoring Respect for the First Women of This Land

2010 VAWA Consultation

35 NCAI Task Force: Written Comments Prepared for the DOJ Annual Consultation

Cover Photo: On January 28, 2011, Andrea Cedillo, Teen Miss Cherokee, participated in the Eastern Band of Cherokee Indians official welcome of the UN Special Rapporteur on Violence Against Women to Cherokee, NC. Andrea is from the Birdtown Community and is the 14-year-old daughter of Faye McCoy.

In the News

April 2011 Sexual Assault Awareness Month

“As resources to Indian Nations and tribal communities have increased, tribal participation in the annual Sexual Assault Awareness Month have also increased,”

Tillie Black Bear,
National Spokesperson,
Sacred Circle

The month of April has been designated Sexual Assault Awareness Month (SAAM) in the United States. The goal of SAAM is to raise public awareness about sexual violence and to educate communities and individuals on how to prevent sexual violence. By working together during the month of April, tribal communities can highlight sexual violence as a major concern within the United States. SAAM activities can serve as a bridge for increasing awareness of sexual assault as a public health, human rights and social justice issue and reinforce the need for prevention efforts.

History of Sexual Assault of Awareness Month

Internationally women have organized protests against violence since the late 1970s in England with Take Back the Night marches. These women-only protests emerged in direct response to the violence that women encountered as they walked the streets at night. These activities became more coordinated and soon developed into a movement that extended to the United States and, in 1978, the first Take Back the Night events in the U.S. were held in San Francisco and New York City. Over time, sexual assault awareness activities expanded to include the issue of sexual violence against men and men’s participation in ending sexual violence.

By the early 1980s, there was increased interest in coordinating activities to raise awareness of violence against women. As a result, time was set aside during October to raise awareness of violence against women issues. Over time, October became the principle focus of domestic violence awareness activities. Sexual assault advocates looked for a separate time to focus attention on sexual assault issues. In the late 1980s, the National Coalition Against Sexual Assault (NCASA) informally polled state sexual assault coalitions to determine when to have a national Sexual Assault Awareness Week. A week in April was selected. In the late 1990s, many advocates began coordinating activities throughout the month of April on a regular basis, promoting an idea for a nationally recognized month for sexual violence awareness activities.

From 2000-2001, the Resource Sharing Project (RSP) and the National Sexual Violence Resource Center (NSVRC) polled state, territory, and tribal coalitions and found that the color teal was the preferred color for sexual assault awareness and prevention and that April was the preferred month to coordinate national sexual assault awareness activities. As a result, Sexual Assault Awareness Month (SAAM) was first observed nationally in April 2001.



Local Activities

April 7 & 8

Hopi/Tewa Women's Coalition to End Abuse, **Reservation-Wide Sexual Assault Conference.**

Contact: Kena Chavez
928-737-9000

April 10 at 9am

Sexual Assault Awareness, Walk for Honor, Walk for Justice, La Jolla Band of Luiseno Indians, Avellaka Program, La Jolla Indian Reservation, CA.

Contact: Wendy Schlater
760-685-4736

April 16 at 12pm

Alaska Native Women's Coalition, Sexual Assault Awareness Walk, Fairbanks, AK.

Contact: Tamra Jerue
907-388-4686

April 26 at 6pm

The St. Croix Domestic Violence/Sexual Assault Program will have a **Women's Round Dance** at the St. Croix Tribal Center in Hertel, WI.

Contact: Daphne Churchill
daphnec@stcroixtribalcenter.com

April 28 & 29

Minnesota Indian Women's Sexual Assault Coalition, **Fifth Annual Conference, Restoring the Sacred Trails of Our Grandmothers: Returning to Our Traditions to End Sexual Violence,** Black Bear Resort Casino Resort, Carlton, MN.

Contact: Nicole Matthews
651-646-4800

LA JOLLA BAND OF LUISENO INDIANS
AVELLAKA PROGRAM
LA JOLLA NATIVE WOMEN'S ADVISORY COMMITTEE



Come walk with us!
Sunday, April 10 @ 9 am

"It is unacceptable that girls within our community are being prepared for what to do WHEN they are raped and not IF they are raped,"

Lisa Brunner,
Executive Director,
Sacred Spirits
First Nations Coalition

For more info on SAAM, go to nsrvc.org.

Statistics on Sexual Assault of Native Women

- More than 1 of 3 American Indian Women will be sexually assaulted in their lifetime.
- More likely to suffer a sexual assault by multiple perpetrators.
- More likely to be sexually assaulted in a public place.
- More likely to suffer serious injuries during the sexual assault.
- Nearly 4 of 5 Indian victims of sexual assault described the offender as white.

(Source: ojp.usdoj.gov/bjs)

Honoring Our Sacred Trust: Protecting Native Children Who Disclose Sexual Abuse During Custody Disputes

The Minnesota Indian Women's Sexual Assault Coalition has organized a national conference to identify and strengthen coordinated, culturally appropriate, systems responses for children who disclose sexual abuse during custody disputes.

Attorneys, Guardians ad Litem, Court Appointed Special Advocates, and others handling custody cases may or may not understand the short and long term impacts of sexual abuse on a child when making recommendations to the court. This conference provides an opportunity to expand their knowledge and work together to develop effective systems responses that emphasizes the safety and wellness of children while keeping family, community, and tribal sovereignty a priority. Training will be included on topics such as child sexual abuse, tribal and family dynamics with regard to sex offenders, and developing effective tribal child sexual abuse protocols.

The conference seeks to eliminate the chance of a child who has been or is currently sexually abused by a parent from forced visitation with the abusive parent. Further, the conference will provide critical information on the impact to the child, the non-abusive parent, and the community when the abusing parent is given custody.

Gaining education on the dynamics of sexual abuse, including identifying true and false claims of abuse, traits of an abuser, the impact of domestic violence, historical trauma, and the difference between a civil custody dispute, a criminal matter, and/or a child protection/ICWA matter, will enhance the overall response to violence against American Indian and Alaska Native children at the tribal, federal, and state level.

A second conference will be held in the Southwest later this year.

For further information please contact:
Minnesota Indian Woman's Sexual Assault Coalition
Phone: 651-646-4800
www.miwsac.org

Statistics on Child Sexual Abuse Within Custody Disputes

- According to 1997 BIA statistics, 4,567 incidents of child sexual abuse were reported.
- The Indian Health Service and Office for Victims of Crime in their Child Abuse Project estimated that 1 in 4 girls and 1 in 7 boys will be sexually abused in Indian Country.
- Native women are 2.5 times more likely to be victims of domestic violence. In families where the father assaults the mother, daughters are at risk of sexual abuse 6.51 times greater than girls in non-abusive families.
- The issue of child sexual abuse is raised in approximately 2 % of all custody disputes.

(Bowker, Arbitell and McFerron, 1988)



Cristine Davidson
Business and Development Specialist
Minnesota Indian Women
Sexual Assault Coalition

Conference Date
March 1-2, 2011
Mystic Lake Event Center
Shakopee Mdewakanton
Sioux Reservation
Shakopee, MN

Attorney General Holder Announces Violence Against Women Federal and Tribal Prosecution Task Force

Attorney General Eric Holder today announced the formation and inaugural meeting of the Violence Against Women Federal and Tribal Prosecution Task Force. The creation of the Prosecution Task Force fulfills a pledge made by Attorney General Holder at the department's Tribal Nations Listening Session in October 2009.

"We know too well that tribal communities face unique law enforcement challenges and are struggling to reverse unacceptable rates of violence against women and children," said Attorney General Holder. "The creation of the Violence Against Women Tribal Prosecution Task Force has been a priority for me since my visit with tribal leaders last year, and I believe it is a critical step in our work to improve public safety and strengthen coordination and collaboration concerning prosecution strategies with tribal communities."



Within a year of convening, the Task Force is directed to produce a trial practice manual on the federal prosecution of violence against women offenses in Indian Country. In the short term, the Task Force will explore current issues raised by professionals in the field, and recommend "best practices" in prosecution strategies involving domestic violence, sexual assault and stalking. Violence against American Indian women occurs at epidemic rates. In 2005, Congress found that one in three American Indian women are raped during their lifetimes, and American Indian women are nearly three times more likely to be battered in their lifetimes than Caucasian women.

"We know too well that tribal communities face unique law enforcement challenges and are struggling to reverse unacceptable rates of violence against women and children."

The launch of the Task Force marks another step in the Justice Department's ongoing initiative to increase engagement, coordination and action on public safety in tribal communities. This effort is driven largely by input gathered from the department's 2009 Tribal Nations Listening Session on Public Safety and Law Enforcement, the department's annual tribal consultation on violence against women, and from written comments submitted by tribal governments, groups and organizations to the Justice Department.

Violence Against Women Prosecution Task Force Members

U.S. Attorney **Deborah R. Gilg**, District of Nebraska, Chairperson; Tribal Prosecutor **Diane S. Cabrera**, Crow Tribe (MT); Assistant U.S. Attorney **Glynette R. Carson McNabb**, District of New Mexico; Assistant U.S. Attorney **Gregg S. Peterman**, District of South Dakota; Assistant U.S. Attorney **Susan Roe**, Western District of Washington; Assistant U.S. Attorney **Trina A. Higgins**, District of Utah; Assistant U.S. Attorney **Marcia Hurd**, District of Montana; DOJ's National Indian Country Training Coordinator **Leslie A. Hagen**; Deputy Attorney General **M. Brent Leonhard**, Confederated Tribes of the Umatilla Indian Reservation (OR); Chief Judge **Theresa M. Pouley**, Tulalip Tribal Court (WA); Chief Prosecutor **Sheri Freemont**, Salt River Pima Maricopa Indian (AZ); Tribal Attorney **Michelle Rivard Parks**, Spirit Lake Tribe (ND); Staff Attorney **Joshua Breedlove**, Mississippi Choctow (MS).

US Endorses UN Declaration on the Rights of Indigenous Peoples

On December 16, 2010, President Obama announced the United States' support for the UN Declaration on the Rights of Indigenous Peoples. The Declaration provides guidance to governments about how to treat indigenous peoples and their rights, and it includes specific recognition of the rights of Native women.

Women form the backbone of Indian and Alaska Native nations. Protection of the rights of Native women is key to the survival of indigenous communities. The Declaration protects the rights of Native women as individuals and as members of indigenous communities. The strong protections for women's rights in the Declaration will help end violence against Native women and improve the social and economic status of Indian and Alaska Native nations.

As the United States Department of State recently recognized in its Universal Periodic Report to the UN Human Rights Council, violence against Indian and Alaska Native women is one of the most pressing human rights issues facing the United States. U.S. Department of Justice statistics show that one in three Native women will be raped in her lifetime and that three in five will be the victim of a violent assault. The per capita rate of violence against Native women exceeds that of any other group in the United States.

While the recent passage of the Tribal Law and Order Act is a step towards the eradication of violence against Native women, endorsement of the Declaration will hasten an end to this epidemic. The Declaration establishes the rights of Native women both as individuals and as members of indigenous communities. The Declaration recognizes many of the most important individual rights for Indian and Alaska Native women within the United States, including the rights to gender equality, security of the person, and access to justice.

The Declaration extends the principle of equality for all, a fundamental principle under United States law, to indigenous peoples in *Article 2*.

Article 2. Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 44 broadly recognizes the equal rights of Native women, including their rights, inter alia, to political participation, education, and employment.

Article 44. All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

This explicit statement about the rights of Native women is consistent with the United States' commitment to gender equality and will help improve the situation of Native women generally and in the country as a whole.

The UN Declaration also states the rights of Native women and



Kirsten Matoy Carlson
Director, Safe Women
Strong Nation Program
Staff Attorney, Indian Law
Resource Center



Haudenosaunee Delegation: Chief Stuart Patterson, Chief Darwin Hill, and Chief Sid Hill



Kimberly Teehee, Senior Policy Advisor for Native American Affairs, White House Domestic Policy Council chaired the consultations.



Lucy Simpson
Senior Staff Attorney
Indian Law Resource Center

children to live lives free from violence and discrimination. Article 22(2) specifically addresses the epidemic of violence against Native women and children.

Article 22(2) States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination. This language is consistent with the United States' obligations under Title 9 of the Violence Against Women Act of 2005 to consult and collaborate with Indian and Alaska Native governments to end violence against Native women. Endorsement of the UN Declaration strengthens the United States government's commitment to collaborating with Indian and Alaska Native nations to deter violence against Native women.

The Declaration also helps Native women by providing a fuller right of self-determination to Indian and Alaska Native Nations. A key aspect of the right of self-determination under the Declaration is the right of indigenous peoples to develop, promote, and maintain their institutional structures, including their juridical systems and their public safety and law enforcement systems. The promotion and maintenance of tribal institutional structures will help tribal governments to increase public safety and deter violence in their communities. This aspect of the right of self-determination enhances the United States' commitment, as evidenced by the increased tribal sentencing authority in the Tribal Law and Order Act, to ensuring that Indian and Alaska Native nations can exercise their self-determination to protect women within their communities from violence.

With the recent endorsement of the Declaration, we hope the U.S. government will do more to encourage effective recognition of the rights of Indian and Alaska Native peoples, especially the rights of Native women, and thus, contribute to the eradication of the poverty, marginalization, and violence afflicting many Native communities in the United States.

From the Courts

U.S. v. Cavanaugh: Constitutionality of the Domestic Assault by a Habitual Offender Statute



Jacqueline Agtuca
Public Policy Director
Clan Star, Inc.

How does a society correct the behavior of a serial rapist? How does a community protect its citizens from a repeat domestic violence perpetrator? Should these types of convicted criminals be allowed to continue committing acts of sexual and physical violence without increased penalties? Everyday common sense would lead us to answer, “*repeat bad behavior requires increased consequences.*” This logic underlies the enhanced penalties for many state and federal criminal laws? Unfortunately, once again the intersection of federal Indian law and tribal law may leave Native women seeking safety on the side of the road while perpetrators drive away through the green lights created by jurisdictional loop-holes.

Congress recognizing the epidemic of violence committed against Native women responded by enacting a new federal felony, Domestic Assault by a Habitual Offender, within the 2005 Violence Against Women Act. The Court in dismissing the federal indictment against Roman

The Court stated in its conclusion, “the use of prior uncounseled tribal court convictions as substantive evidence to prove an essential element of the crime violates the Constitution.”

Cavanaugh for violation of this Act described the need for the Habitual Offender statute stating the “*legislative history indicates the federal offense was created, in part, to prevent serious injury or death of American Indian women and to allow tribal court convictions to count for purposes of a federal prosecution,*

particularly because the Indian Major Crimes Act does not allow federal prosecutors to prosecute domestic violence assaults unless they rise to the level of serious bodily injury or death.” Why the Court granted Cavanaugh’s motion to dismiss must be a major concern to all that understand that domestic violence is an on-going pattern of abuse that threatens the lives of Native women and their entire community.

Dates in the Cavanaugh Case

- March 21, 2005 Domestic Abuse Conviction, Spirit Lake Tribal Court.
- April 6th, 2005 Two counts of Domestic Abuse Conviction, Spirit Lake Tribal Court.
- January 14th, 2008 Domestic Abuse Conviction, Spirit Lake Tribal Court.
- July 7th, 2008 Alleged additional act of domestic abuse.
- January 14th, 2009 Roman Cavanaugh indicted in the District of North Dakota.
- December 18, 2009 The District Court dismissed the federal indictment.
- October 19, 2010 US v. Roman Cavanaugh, Jr., US Court of Appeals, Eighth Circuit.

The Domestic Abuse is Undisputed

Roman Cavanaugh was convicted of Domestic Abuse in the Spirit Lake Tribal Court on three prior occasions for domestic abuse. On July 7, 2008 he committed an additional act of domestic assault that resulted in serious bodily injury against his domestic partner with whom he shared a child in common. He committed this assault where he lives within the exterior boundary of the Spirit Lake Indian Reservation. He was charged and convicted under the federal Domestic Assault by a Habitual Offender. Cavanaugh's violence and tribal court convictions for domestic abuse are not at issue in the case before the Eight Circuit Court of Appeals.

The U.S. Constitution, Sixth Amendment Right to Counsel

The United States District Court dismissed Cavanaugh's federal indictment as a domestic violence habitual offender ruling that the statute violates his Sixth Amendment right to counsel under the United States Constitution. This ruling highlights the illogic of federal Indian law and the institutional barriers confronting Indian tribes and Native women. Indian tribes were not involved in the drafting of the Constitution and are not bound by it. Indian tribes existed hundreds of years on this continent before the drafting of the US Constitution. While Cavanaugh as a citizen of the United States is protected by the Constitution it does not govern Indian tribes or matters before tribal courts. The Indian Civil Rights Act (ICRA) and tribal law govern tribal courts proceedings.

Unlike the Constitution the ICRA does not require a tribe to provide counsel but states that no tribe shall "deny to any person in a criminal case the right ... at his own expense to have the assistance of counsel." So while Indian tribes can choose to provide an indigent defendant a court appointed attorney it is not required to do so by the ICRA. The tribal court convictions of Cavanaugh met the requirements of ICRA and the Spirit Lake Nation Law and Order Code. The Spirit Lake Tribal Court informed Cavanaugh, as required by ICRA and its Law and Order Code, that he had the right to an attorney at his own expense. Recognizing that tribal courts are not required to provide indigent offenders court appointed attorneys Congress did not include this requirement under the habitual offender statute.

The US District Court for the North Dakota Northeastern Division, while acknowledging the Spirit Lake Nation was not required by the US Constitution or the ICRA to provide indigent counsel to Cavanaugh, dismissed the federal indictment. The Court stated in its conclusion, "the use of prior uncounseled tribal court convictions as substantive evidence to prove an essential element of the crime violates the Constitution." Although, Cavanaugh was informed of his right to obtain counsel the Court deemed this to not be a waiver of the right to counsel because he could not waive something he did not have.

Domestic Assault by Habitual Offender

Enhanced penalties for domestic violence are utilized in the hope of preventing future violence from occurring. Experts acknowledge that domestic violence is typically a pattern of violence that occurs over time. It is also recognized that the violence committed by an abuser can increase in severity and frequency if not addressed.

"The dismissal of the Cavanaugh indictment is an excellent example of the legal barriers Native women face in accessing justice and living free of violence. The dismissal of the indictment illustrates that federal Indian law is not logical."

Terri Henry,
NCAI Task Force on
Violence Against Women
Co-Chair



Domestic Assault by a Habitual Offender

Title 18, United States Code, Section 117 provides:

(a) In general.--Any person who commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country and who has a final conviction on at least 2 separate prior occasions in Federal, State, or Indian tribal court proceedings for offenses that would be, if subject to Federal jurisdiction--

(1) any assault, sexual abuse, or serious violent felony against a spouse or intimate partner; or

(2) an offense under chapter 110A,...

(b) Domestic assault defined.--In this section, the term "domestic assault" means an assault committed by a current or former spouse, parent, child, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child, or guardian of the victim.

"As tribes we have welcomed other people to live amongst us, if they choose to do so it is only reasonable that they respect women and obey our laws."

Juana Majel,
NCAI Task Force on
Violence Against Women
Co-Chair

Roman Cavanaugh was convicted three times in tribal court for domestic abuse. All three times it appears the level of violence did not rise to the standard of a federal felony to fall within the jurisdiction of the US Attorneys office. How does a victim within tribal jurisdiction access adequate justice remedies for the pattern of on-going violence that never rises to the level of a felony indictment? Under the logic of the Cavanaugh dismissal, a victim within

tribal court will not have a remedy to address this violence. Further, such victims within tribal court will not have a remedy available to address the pattern of domestic abuse available to such victims under federal and state law.

Recognizing the importance of responding to repeat offenders and the pattern of violence, Indian tribes and advocates celebrated passage of the Domestic Assault by a Habitual Offender. It was intended to address and establish appropriate legal consequences for those offenders that continue their violence despite two prior convictions. It provided hope for those women that relied on the justice system and worked with the system despite all the difficulties of obtaining one successful prosecution, let alone two.

Tribal courts must be allowed to appropriately respond to domestic abuse, rape and the violence committed against Native women. The legal barriers preventing Indian tribes from appropriately responding to these crimes is what many believe to be the reasons that the level of

violence committed against Native women is more than double that of any other population of women. Such loop-holes embedded in federal Indian law is the answer to the question, "Why do so many Native women not report the beatings, the rapes, the on-going threats of violence occurring in their everyday lives?" The Cavanaugh dismissal is a green light for violent offenders terrorizing and battering women over years.





produced by
SACRED CIRCLE
National Resource Center to End Violence
Against Native Women



UNNATURAL LIFEWAY

Sexualizing & Objectifying Women
Male Entitlement And Privilege

Society / Institution

- Sexual violence normalized
- Divide & conquer
- Women restricted/learful
- GLBT-bashing
- Reproductive health as political weapon
- Loss of culture/language
- On going colonization

Individual Behavior

- Murder
- Rape
- Sex trafficking
- Incest, molestation
- Sexual harassment
- Prostitution
- Forced sterilization and pregnancy
- Womanizing
- Divides women

BRANCHES OUTGROWTH

NATURAL LIFEWAY

Women's Sovereignty - Equality

Society/Institution

- Spiritual foundation
- Honor women's culture
- Severe sanctions for violence
- Revitalizing culture
- Sexual autonomy
- Access to healthcare
- Unrestricted reproductive health options

Individual Character

- Respect women
- Balance
- No fear/safety for women
- Responsible & safe sex
- Respect for choices
- Trust & compassion
- Honor sexual orientation
- Good health

TRUNK

UNNATURAL LIFEWAY

Victim-blaming

- Rape as weapon of war
- Rape tactic of genocide & colonization
- Boarding/mission schools
- Pornography
- Alcohol/other drugs

- Linking sex and violence
- Gender & racial stereotyping
- Gender-based socialization
- Confusing emotions with behavior (anger vs. violence)

CONTRIBUTORS

NATURAL LIFEWAY

Offender and Community Accountability

- Respectful images, thoughts, language
- Open, respectful discussion about sexuality, relationships
- Respect boundaries

- Honor personal choices
- Understand & honor our bodies
- Honor individuality and diversity

ROOT CAUSE OF

VIOLENCE IS THE BELIEF SYSTEM

- Misogyny (women-hating)
- Male privilege, entitlement & superiority
- Sexism, racism, "oppressions" justified/connected
- Female spirituality inferior/non-existent
- Women & children as property of men
- Sexual objectification of women
- Sex as a male right & entitlement
- Sex as "dirty," physical act
- Rape excusable act of sex

NON-VIOLENCE IS THE BELIEF SYSTEM

- Women are sacred, autonomous & spiritually powerful
- Equality, interdependence and freedom
- Sex as spiritual connection & experience
- Physical intimacy is spiritually powerful
- If one person is hurt, all are harmed
- People are spirits in physical bodies on individual life paths
- Rape inexcusable act of violence

ENDING *Sexual* VIOLENCE AGAINST NATIVE WOMEN FROM THE ROOTS UP

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Protect Native Women by Removing Jurisdictional Barriers to Safety

There are 565 federally recognized Indian nations in the United States, including more than 200 Alaska Native villages, that retain sovereign authority over their lands and peoples. Each tribal nation is responsible for the safety of its citizens, which includes protection of tribal women from violence. However, the limitations that the United States has placed on the inherent jurisdictional authority of tribal governments have aided in the creation and perpetuation of the disproportionate levels of violence against Indian women. The United States has imposed a jurisdictional maze on Indian nations that leaves Indian women without recourse for the violence committed against them.

Criminal jurisdiction in Indian country is divided among federal, tribal, and state governments, depending on the location of the crime, the type of crime, the race of the perpetrator, and the race of the victim. The rules of jurisdiction were created over 200 years of congressional legislation and Supreme Court decisions, and they effectively strip Indian nations of the ability to provide a meaningful remedy for women seeking safety in Indian country and Alaska Native villages.

Until 1978, it was settled doctrine that Indian tribes retained all sovereign powers not expressly abrogated by Congress, which included tribal court criminal jurisdiction over non-Indians. Yet, the U.S. Supreme Court's decision in *Oliphant v. Suquamish Tribe* changed that, rejecting decades of precedent in the process, and ruled that Indian nations have no criminal jurisdiction over non-Indians and may not prosecute or punish non-Indians committing crimes on their lands. This decision has had grave consequences for Indian women in that it has

frequently left them without criminal recourse when abused by non-Indians.

It has been more than 30 years since the Oliphant decision, and one of its most tragic results has been to shield non-Indian perpetrators from accountability at the expense of the safety of Indian women.


When it comes to violence against Native women, United States Department of Justice reports reflect a high number of inter-racial crimes,

with white or black offenders committing 88% of all violent victimizations of Indian women from 1992 to 2001. Nearly 4 of 5 Indian victims of sexual assault described the offender as white. Three out of 4 Indian victims of intimate violence identified the offender as a person of a different race. These numbers evidence the severe jurisdictional gap that has resulted from the *Oliphant* decision. Non-Indian perpetrators deliberately enter and leave tribal jurisdictions, often with the intent of committing acts of violence against Indian women and knowing they will unlikely be held accountable.

Moreover, many of these crimes are the result of a pattern of violent victimization due to domestic violence. Non-Indians often marry and enter into consensual relationships with Indian women, and as a result of these intimate consensual relationships, non-Indians live, work, father children, and use medical and other services within the jurisdiction of Indian nations. Offenders of this type are acutely aware of the lack of tribal jurisdiction and the vulnerability of Indian women.



Katy Jackman
Staff Attorney
National Congress
of American Indians



Either the United States, or—in cases where the United States has delegated this authority to the state—the relevant state government has the authority to prosecute non-Indian offenders committing crimes on Indian lands. As the United States Civil Rights Commission pointed out, the problem is that the *Oliphant* decision did not place any responsibility on the United States government (or state governments) to prosecute non-Indian offenders on Indian lands. In the words of the Commission, “[T]he decision only dealt with limitations to tribal power, not the federal responsibility to compensate for those limitations based on the trust relationship. The Court did not *require* the federal government to protect tribes or prosecute non-Indian offenders who commit crimes on tribal lands.” Even though the United States has a trust responsibility to prosecute offenders on Indian lands, it does not have a legal obligation to do so and cannot be held legally accountable for not doing so. If the United States or the state government does not prosecute the non-Indian offender, then the offender goes free without facing any legal consequences for his actions, and the Indian woman is denied any criminal recourse against her abuser.

The only available recourse to tribes is to banish or exclude the non-Indian from reservation or trust lands. Several tribes will bring such actions as a last ditch effort to rid the Indian community of non-enrolled persons who pose a threat to the welfare of their enrolled member citizens. The hearings are time consuming as the non-enrolled person is offered full due process protection by receiving notice of the hearings, the right to be represented by legal counsel and the right to call witnesses. In this scenario, many, if not most, of the enrolled member victims feel that more protection is given to the non-enrolled perpetrator than to themselves. With tribal law enforcement powerless in the face of non-Indian offenders and inaction by state and federal courts, the Indian victim is left with no recourse but to plead her case in a public forum before the Tribal Council and hope that the perpetrator will abide by the issued order.

Congress is acutely aware of the epidemic of violence against Indian women and enacted Title IX of the Violence Against Women Act, which specifically addresses Safety for Indian Women, in response to this national crisis in 2005. In Title IX, Congress made a specific finding that “Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and the unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.”⁸ These findings highlight a systemic contradiction of federal Indian law that prevents Indian tribes from responding to violence committed against Indian women: Tribal governments are directly responsible for holding perpetrators of violence in Indian country accountable, yet they do not have jurisdictional authority to do so when the offender is non-Indian.

It has been more than 30 years since the *Oliphant* decision, and one of its most tragic results has been to shield non-Indian perpetrators from accountability at the expense of the safety of Indian women. The power to reverse this disastrous trend and restore safety in tribal communities lies with Congress, whether they have the courage to do so remains to be seen.

“Predators attack the unprotected. The failure to prosecute sex crimes against American Indian women is an invitation to prey with impunity.”

*Dr. David Lisak, Ph.D.,
University of
Massachusetts, Boston.*

If the United States or the state government does not prosecute the non-Indian offender, then the offender goes free without facing any legal consequences for his actions, and the Indian woman is denied any criminal recourse against her abuser.

VAWA 2011 Reauthorization Update

VAWA is scheduled to sunset at the end of 2011 and efforts are underway to reauthorize this life-saving act! As in the past a large coalition of organizations under the umbrella of the National Task Force to End Sexual and Domestic Violence Against Women are actively working to support the reauthorization of VAWA. These efforts are anchored by many of the women that worked tirelessly and successfully enacted VAWA in 1995 and reauthorized VAWA in 2000 and 2006. Included among the many involved at the heart of the reauthorization process are former National Task Force Chairperson Lisa Lynn Jacobs, Rob Valente, Rita Smith, Luz Marquez, Anne Menard, Juley Fulcher and many others. Longtime allies that have stood with their Native sisters for more than a decade.

Tribal VAWA 2011 Working Group

The NCAI Task Force to End Violence Against Native Women formed a working committee on Native women a year ago to discuss and provide recommendations on concerns relating to violence against American Indian and Alaska Native women. The Committee was comprised of members of the National Congress of American Indians Task Force on Violence Against Women, elected tribal leaders, tribal coalitions, tribal advocates and practitioners. The Committee developed a list of 2011 VAWA recommendations intended to inform and assist the national effort and concerned members of Congress. As a result of conference calls, meetings, and regular communication over the last year efforts are moving forward to make the recommendations a reality in the lives of Native women.

Central Tribal Concerns

Since 2003, the NCAI has identified central concerns underlying the epidemic of violence against Native Women. Understanding these concerns can assist members of Congress and the public in understanding the outstanding needs that must be addressed to increase the safety of Native women

- American Indian and Alaska Native Women are battered, raped, and stalked at far greater rates than any other population of women in the United States; and
- It is estimated by the Department of Justice that more than 1 of 3 American Indian and Alaska Native women will be raped in their lifetime, that more than 6 of 10 will be physically assaulted, and that Indian women are stalked at more than twice the rate of any other population of women; and
- The United States has felony jurisdiction over crimes by or against Indians, including homicide, rape, and aggravated assault; however, perpetrators of such violent crimes against Native women are rarely, if at all, prosecuted; and
- The response of the United States to this violence is inadequate as demonstrated statistically in that 76% of adult sexual assault crimes referred to Federal prosecutors are declined; and
- The unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women; and
- Indian tribes require essential resources to respond to violence perpetrated against American Indian and Alaska Native women; and
- Non-profit, non-governmental service providers such as shelter programs and rape crisis centers require essential resources to provide services to women seeking assistance within tribal communities to live free of violence and the threat of violence; and

- The future of American Indian and Alaska Native Nations rests in their capacity to preserve the safety, integrity, and well being of their members, including the right of women to live in a world free of violence.

Tribal Recommendations

The tribal recommendations require amendments to VAWA to enhance the safety of American Indian and Alaska Native women. Listed below are key recommendations and updates on the development of VAWA 2011 provisions to remove barriers to the safety of Native women. A tribal VAWA legal team is regularly meeting to work effectively with concerned members of Congress on these important amendments.



- *Restoration of criminal authority to Indian tribes over all persons committing crimes of domestic and sexual violence.* Each person that lives, works or conducts regular activities within the jurisdictional boundaries of an Indian tribe utilizes the services and resources of the respective Indian nation. Such persons committing acts of domestic and sexual violence must be held accountable by the tribal government where the crime is committed. This amendment recognizes that the violence of perpetrators endangers the safety of the Native women and the entire tribal community attacking the fundamental integrity and belief in respect for women.
- *Creation of a grant program dedicated to services for Native women.* A new program dedicated to providing services to Native women seeking safety from physical and/or sexual violence that is designed to specifically address the Native women to be served. Services to be supported under the program include shelter and related services, rape crisis and related services, culturally based services requested by women seeking safety from violence, renovation of structures providing such services, and other services needed. These services will be provided within the jurisdictional boundaries of an Indian tribe or Alaska Native Village.
- *Establishing comprehensive funding streams to support services to enhance the response to sexual assault.* Amendments to the Sexual Assault Services Program (SASP) to increase support for services designed for Native women by tribal providers from state and federal resources. This important clarification establishes that tribal service providers outside of and within the jurisdiction of an Indian tribe are eligible to apply to state entities administering SASP formula funding from USDOJ.
- *Increased support for Indian tribes sharing concurrent state criminal jurisdiction.* Amendments under VAWA 2011 to clarify and enhance the ability of Indian tribes sharing concurrent criminal jurisdictional authority with state governments over crimes of domestic and sexual violence. In developing program guidelines and technical assistance programs of VAWA provisions must be included for strengthening the response of such Indian tribes to domestic and sexual violence including tribal law enforcement, prosecution, courts, health and advocacy services for Native women.

FY 2011 APPROPRIATIONS BRIEFING BOOK

The National Task Force to End Sexual and Domestic Violence Against Women has prepared a FY 2011 Appropriations Briefing Book. It contains a complete overview of the Campaign for Full Funding of VAWA, FVPSA, and VOCA. A copy of the Briefing Book is available at <http://www.nnedv.org/docs/Policy/fy11briefingbook.pdf>

Campaign for Funding to End Domestic and Sexual Violence

VAWA APPROPRIATIONS FOR FISCAL YEARS '09, '10 AND '11

All numbers are expressed in millions. FY stands for Fiscal Year. Revised 5/24/10.

Name of Grant Program	FY '09 Budget	FY '10 Budget	FY '11 President's Proposed Budget	Senate CJS	House CJS	Authorization
COMMERCE, JUSTICE, SCIENCE APPROPRIATIONS						
STOP Grants*	\$169.7 *	\$189.0 *	\$187.5 ‡	\$207.0*	-	\$225.0 *
Transitional Housing (OVW)*	\$18.0 *	\$18.0 *	\$25.0 ‡	\$40.0*	-	\$40.0 *
National Institute of Justice (NIJ)¶				\$2.0***	-	
Grants to Encourage Arrest Policies	\$60.0	\$60.0	\$47.5	\$50.0	-	\$75.0
Court Training and Improvements	\$3.0	\$3.0	\$4.0	\$3.0	-	\$5.0
Privacy Protections for Victims	\$0.0	\$0.0	\$0.0	\$0.0	-	\$5.0
Research on Violence Against Indian Women**	\$1.0	\$1.0	\$3.0 #	\$2.0	-	\$3.0
National Tribal Sex Offender Registry	\$1.0	\$1.0	\$1.0	\$1.0	-	\$1.0
Stalker Reduction Database**	\$3.0	\$3.0	\$3.0	\$3.0	-	\$3.0
National Clearinghouse on Sexual Assault of American Indian and Alaska Native Women≈	-	-	\$0.5 ≈	\$0.5	-	\$0.5 ≈
Regional Summits on Violence Against Women in Indian Country≈	-	-	\$0.5 ≈	\$0.5	-	\$0.5 ≈
Sexual Assault Services Program (SASP)	\$12.0	\$15.0	\$30.0	\$25.0	-	\$50.0
Services for Rural Victims	\$41.0	\$41.0	\$41.0	\$37.0	-	\$55.0
Civil Legal Assistance for Victims	\$37.0	\$41.0	\$50.0	\$50.0	-	\$65.0
Elder Abuse Grant Program	\$4.3	\$4.25	\$4.25	\$4.25	-	\$10.0
Protections and Services for Disabled Victims	\$6.8	\$6.75	\$6.75	\$6.75	-	\$10.0
Combating Abuse in Public Housing	\$0.0	\$0.0	\$0.0	\$0.0	-	\$10.0
National Resource Center on Workplace Responses	\$1.0	\$1.0	\$1.0	\$1.0	-	\$1.0
Advocates for Youth/Services for Youth Victims (STARY)	\$3.5	\$3.5	\$3.5	\$3.5	-	\$15.0
Training for Schools (STEP)	\$0.0	\$2.5	\$0.0	\$3.0	-	\$5.0
Access to Justice for Youth	\$0.0	\$0.0	\$0.0	\$0.0	-	\$5.0
Violence on College Campuses (Campus Grants)	\$9.5	\$9.5	\$9.5	\$9.5	-	\$15.0
Safe Havens Project (Supervised Visitation)	\$14.0	\$14.0	\$14.0	\$14.0	-	\$20.0
Services for Children/Youth Exposed to Violence	\$3.0	\$3.0	\$3.0	\$3.0	-	\$20.0
Engaging Men and Youth in Prevention	\$3.0	\$3.0	\$3.0	\$3.0	-	\$10.0
Home Visitation Projects	\$0.0	\$0.0	\$0.0	\$0.0	-	\$7.0
Outreach to Underserved Populations	\$0.0	\$0.0	\$0.0	\$0.0	-	\$2.0
CJS Total	\$394.3	\$423.0†	\$441.5‡	\$468.0	\$442.0	\$663.0

PLEASE NOTE: This chart will continue to be updated throughout the FY 2011 Appropriations process.

Updates can be found at www.nnedv.org/funding.



Dear Advocates and Survivors,

Sacred Circle is inviting you to join us in our campaign to end violence against and create safety for Native women. For over 30 years battered women's advocates and survivors have created a groundswell to educate Congress that male acts of violence against women are crimes. This movement has begun to change the social reality for men, women and children throughout the United States and across tribal nations. We have participated and witnessed 15 years since the passage of the Violence Against Women Act in 1994 and 5 years since the passage of the 2005 VAWA Title IX Safety for Native Women.

Thanks to many advocates and survivors, change has occurred and the justice system has received the attention needed to increase and train personnel and create a coordinated community response system better able to hold offenders accountable. Advocates and survivors must now take the opportunity to regroup and focus on the future direction of this powerful grassroots movement that must continue to increase the safety of Native women at all levels of society.

Sacred Circle will hold regional conference calls (see below) for Native women's advocates and survivors in the next couple of months to: 1) build upon the history of this movement to end violence against women by examining current challenges and successes facing advocates; 2) discuss the importance of advocates' continued leadership in the grassroots movement; and, 3) identify future opportunities for critical discussions about the role of advocates and the grassroots movement in our campaign to create safety for Native women. If you are unable to make the calls, please feel free to call us at our numbers (877-RED-ROAD / 605-341-2050) for discussion.

Region 1 (Alaska) – March 7, 2011, 9 a.m. (AKST)

Region 2 (ID, NV, OR, WA) – March 9, 2011, 9 a.m. (PST)

Region 3 (IA, KA, MI, MN, MT, NE, ND, SD, WI, WY) – March 14, 2011, 10:00 a.m. (CST)

Region 4 (CT, IL, IN, KY, ME, MD, MA, MO, NH, NJ, NY, OH, PA, RI, VT, VA, WV) – March 16, 2011, 10 a.m. (EST)

Region 5 (CA, HI) – March 21, 2011, 9 a.m. (PST)

Region 6 (AZ, CO, NM, TX, UT) – March 23, 2011, 9 a.m. (PST)

Region 7 (Oklahoma) – April 4, 2011, 10 a.m. (CST)

Region 8 (AL, AK, FL, GA, LA, MS, NC, SC, TN) – April 5, 2011, 10 a.m. (EST)

Check Sacred Circle's website for more detailed information.





FVPSA Ensures the Continuation of Critical Programs in Indian Country

"We are excited about the tremendous possibilities this new program offers for the over 200 Alaska Native Villages that call upon us for technical assistance,"

Tami Jerue,
Executive Director
Alaska Native Women's
Coalition

On December 20th, President Barack Obama signed the Family Violence Prevention and Service Act (FVPSA) into law. The FVPSA supports more than 200 tribal programs.

"Since 1984 these programs have been the heart of our nation's response to domestic violence and for the majority of Indian tribes the only source of federal support," said Juana Majel, NCAI First Vice President and Violence Against Women Task Force Co-Chair. "Passing FVPSA at this time indicates that both sides of the aisle understand domestic violence is a national priority."

First passed nearly 30 years ago, FVPSA is the oldest and only federal dedicated funding stream for domestic violence shelters and services programs in the country. The legislation mandates that "not less than 10 percent" of the annual appropriation shall be used to support Indian tribes to achieve the purposes of the Act. Programs supported by FVPSA include domestic violence shelters and services like the White Buffalo Calf Woman Society on the Rosebud Reservation. FVPSA also funds emergency shelter, crisis hotlines, counseling services, victim assistance initiatives and programs for underserved communities.

The 2010 FVPSA included major mandates to support increased emergency shelter and related services for victim of domestic violence within Indian nations and tribal communities. "One of the most significant changes for tribal communities is the statutory creation of a national tribal resource center, said Tillie Black Bear, Spokesperson for Sacred Circle. "The 2010 FVPSA specifically provides for the creation of a National Indian Resource Center Addressing Domestic Violence and the Safety of Indian Women."

The 2010 FVPSA also addresses the unique needs of Indian tribe within states and for the first time created the Resource Centers to Reduce Tribal Disparities grant program. These resource centers will be located within states "in which the population of Indians (including Alaska Natives) or Native Hawaiians exceeds 10 percent of the total population of the State. "We are excited about the tremendous possibilities this new program offers for the over 200 Alaska Native Villages that call upon us for technical assistance," said Tami Jerue, Executive Director of the Alaska Native Women's Coalition. "It is essential that technical assistance for the Villages be designed for our specific cultures and systems."

The FVPSA is an essential component of our nation's campaign to raise awareness about the cruel epidemic of domestic and sexual violence that destroys the lives of so many within our tribal communities.

Over the past 30 years tribal programs have grown to provide a spectrum of services, which include: shelter; safety planning; counseling; legal services; child care and services for children; career planning; life skills training; community education and public awareness; and other necessities such as clothing, food, and transportation. Yet, despite these advances funding and services still do not exist for over one-half of all Indian nations.

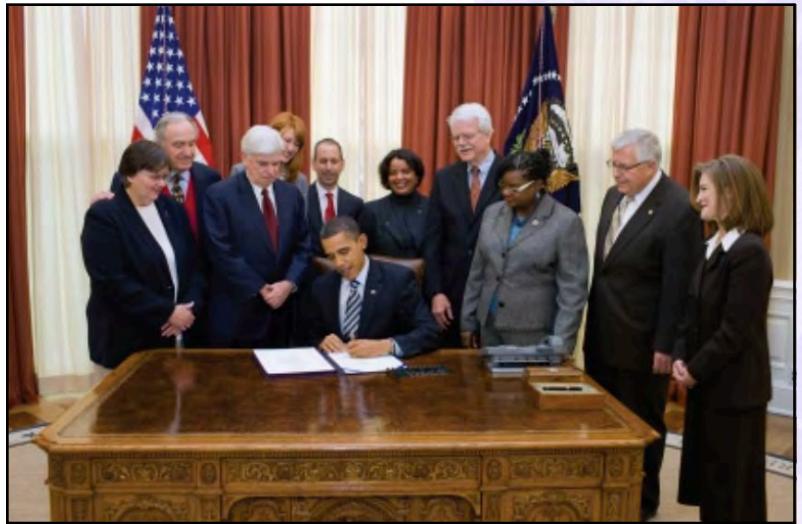
"We celebrate the reauthorization of FVPSA as an important step forward in our journey. One that we must continue until the violence ends and respect is restored to all Native women," commented Terri Henry, Co-Chair NCAI Task Force on Violence Against Women.

Commentary: President Obama Signs Critical Legislation to Prevent Child Abuse and Domestic Violence

In 2008, 772,000 children were victims of abuse and neglect. Nearly 2,000 of those children died. By providing states and local communities with new tools to identify and treat abuse and neglect, CAPTA-funded services will continue to protect children across the country. Prevention efforts will help parents by addressing high risk-factors like substance abuse, mental illness and domestic violence.

Domestic violence still affects 1 in 4 women in states and territories across the country. FVPSA funds nearly 1,700 shelters and service programs for victims of domestic violence and their children. It also supports the National Domestic Violence Hotline, whose staff and volunteers answer more than 22,000 calls for help each month and link victims with the resources they need to rebuild their lives.

I'd like to thank the members of Congress whose leadership was essential to CAPTA and FVPSA's passage: Senator Tom Harkin, Senator Mike Enzi, Senator Lamar Alexander, Representative George Miller, Representative John Kline, Representative Carolyn McCarthy, and Representative Todd Platts. I particularly want to thank Senator Chris Dodd and Representative Gwen Moore, who were the lead sponsors of FVPSA and who worked so hard to ensure the bill passed this year.



President Barack Obama signs S. 3817, the "CAPTA Reauthorization Act of 2010," (Child Abuse Prevention and Treatment Act) in the Oval Office.

Thanks to the bi-partisan work of members of Congress who were with us today, CAPTA and FVPSA will help end abuse, give hope to victims, and provide families with the help they need. As we gathered in the Oval Office, I was thinking of the many abuse survivors I have met over the years. Thanks to CAPTA and FVPSA, their future looks brighter.

Lynn Rosenthal is White House Advisor on Violence Against Women

FVPSA 2010 Reauthorization:

- House: H.R. 4116 passed under suspension of the rules by a unanimous voice vote on December 8th, 2010.
- Senate: S. 3817 passed by Unanimous Consent on December 10th, 2010.
- President Obama signs FVPSA into law on December 20th, 2010.
- FVPSA was first authorized in 1984 and expired in 2008.
- FVPSA reauthorized under 2010 Child Abuse Prevention and Treatment Act.



TLOA : Overview and Implementation Progress

The Tribal Law & Order Act (TLOA) addresses several concerns relevant to violence against Indian women that have been raised at prior United States Department of Justice (DOJ) consultations. By taking a comprehensive approach to improving public safety on Indian reservations and reforming the entire justice system in Indian country, the TLOA has the potential to greatly improve the safety of Indian women. Successful implementation, however, will require on-going coordination and consultation between various federal agencies and tribal governments. Provided below is a summary of some of the law's most important provisions, specifically those pertaining to the enhanced protection of Native women, as well as a brief update on their implementation.

Title I. Federal Accountability, §102. Disposition Reports – This title requires, among other things: 1) U.S. Attorneys and the FBI to coordinate with tribal justice officials on the use of evidence when declining to prosecute or refer a reservation crime; 2) U.S. Attorneys to maintain data on declinations and to publish an annual report on declinations by federal district, type of crime, and Indian status of defendant and victim; and 3) the DOJ to develop regulations to protect confidential information. Women often fear retaliation by the perpetrator



for reporting sexual assault or domestic violence. Often times when a woman reports a sexual assault to the authorities, months or years may pass with no one informing her of the status of the case. This lack of notice that the U.S. Attorney has declined to prosecute the case creates barriers to the safety of women. The woman, unaware the case was declined by the U.S. Attorney, may not take the appropriate steps to protect herself from future violence. Tribal justice personnel, uninformed that the U.S. Attorney has declined the case, may not take appropriate steps to charge the perpetrator in tribal court. This title provides mechanisms to help curb these problems, and it also mandates enhanced consultation and communication between the Bureau of Indian Affairs Office of Justice Services and tribal communities.

Title II. State Accountability, §201 –

This title provides a significant change to the current P.L. 280 (25 U.S.C. 1162) framework by allowing tribal governments in the six “mandatory” P.L. 280 states (Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin) to request that the federal government exercise concurrent jurisdiction over reservation crimes with consent by the Attorney General. In 1953, during the termination era, Congress enacted P.L. 280 to transfer Federal criminal justice authority to particular state governments. The Department of Interior, as a policy interpretation, denied access to Indian tribes located within those states to federal funds that would have allowed them to develop their respective tribal justice systems. As a result, when

a Native woman is raped in Indian country within a P.L. 280 state, no tribal criminal justice agency may be available to assist her or hold the rapist accountable. This often results in a gross injustice for the female victim, while the perpetrator is free to continue committing horrific violence against the same or a different woman. Unfortunately, the state government —due to lack of resources or other issues—often does not adequately respond to crimes within tribal communities in P.L. 280 states. This title attempts to remedy the problem of inadequate state response by bestowing concurrent jurisdiction upon federal officials, so long as the Attorney General has consented. This Title also establishes a program to provide technical and financial assistance to encourage tribal-state cooperative law enforcement agreements. *Implementation update: Since enactment, at least two tribes in mandatory P.L. 280 jurisdictions have requested that the federal government resume concurrent jurisdiction over their reservations. To our knowledge, the DOJ has not yet responded to those requests.*

Title III. Empowering Tribal Law Enforcement Agencies and Governments

§303. Access to National Criminal Information Databases – For decades, Indian tribes have been denied access to life-saving information contained in the national sex offender and order of protection registries. Indian women enter and leave tribal jurisdiction continuously to work, shop, and for many other reasons. A woman’s life may depend on her order of protection being granted full faith and credit by another jurisdiction. Currently, many tribal orders of protection and information regarding convicted sex offenders are not listed on the national registries. Title IX. Safety for Indian Women, §905(a) mandated that the Attorney General “permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking” to enter and access information from the national databases. Section 303 of the TLOA strengthens and clarifies this mandate. This title also enhances existing law to grant Special Law Enforcement Commissions (SLEC) to officers serving Indian lands to enforce violations of federal law. *Implementation update: NCAI is working with the National Criminal Justice Association to determine what legislative, regulatory, and/or informal policy changes must be made by states in order to comply with this section of the TLOA.*



§304. Tribal Court Sentencing Authority – This section: 1) acknowledges the ability of tribal courts to sentence offenders for up to three years imprisonment for any one offense of tribal criminal law, and 2) authorizes tribal courts to impose consecutive sentences for multiple crimes, but provides a cap at nine years for any one trial. According to a recent Government Accountability Office (GAO) study, between 2005 and 2009, federal prosecutors declined to prosecute 50 percent of the Indian country matters referred to their offices, which includes a declination to prosecute 67 percent of all sexual abuse and related matters that were referred to them during that time. Prior to enactment of the TLOA, if those rape cases declined by federal prosecutors were prosecuted by a tribal court, the maximum sentence for conviction was one year in prison, a \$5,000 fine, or both. In every other jurisdiction in the United States, rape is considered a felony offense with an average sentence of four years. Section 304 of the TLOA attempts to address this discrepancy by expanding the sentencing authority of tribal courts to three years, a \$15,000 fine, or both, but it limits the exercise of this enhanced authority to only those tribes who provide licensed counsel to any defendant subject to a total of more than one year in jail, have licensed and law trained tribal court judges, publish their criminal laws and rules of evidence and criminal procedure, and record the trial. This section also authorizes

TLOA: Overview and Implementation Progress Continued

creation of a four-year Bureau of Prisons (BOP) pilot program, under which the BOP will house up to 100 tribal prisoners who have been sentenced to serve more than two years by a tribal court. If successful, this pilot will allow tribal courts to appropriately sentence perpetrators without the restraint of not having a facility or the budget to contract for bed space for prisoners. *Implementation update: The BOP established the Tribal Prisoners Pilot Program by the November 26, 2010 deadline. The official 8-page program summary can be downloaded on the "Documents" page of the Tribal Law & Order Resource Center website at www.ncai.org/tloa.*



EBCI Tribal Judge Matthew Martin and Prosecutor Jason Smith with UN Special Rapporteur on Violence Against Women Rashida Manjoo.

Title IV. Tribal Justice Systems – This title reauthorizes and amends existing justice programs to better serve tribal communities. The programs to be reauthorized include the BIA and DOJ tribal courts programs, the DOJ Jails Program, the Tribal Youth Program, and the Indian Alcohol and Substance Abuse Act. Importantly, this Title reauthorizes the DOJ Tribal Community Oriented Policing Services program to permit long term, and in some cases, permanent grants for the hiring of tribal police officers, computers, and other necessary equipment. All of these programs intersect the response of tribal justice systems to the spectrum of violence committed against Indian women. Adequately funded tribal courts and programs to address tribal jails, youth, and substance abuse are essential in creating a community response to violence against women. The prior reduction in the DOJ Tribal Community Oriented Policing Services program

jeopardized the lives of many Indian women, because it impacted the number of law enforcement officers available to receive emergency calls. *Implementation update: Congressional budget concerns may result in significant cuts to discretionary spending in FY 2011 and 2012, which will undoubtedly result in a serious decrease in funding for tribal programs. Effective implementation of the TLOA—and the safety of Indian women—is contingent upon adequate federal funding for TLOA authorized programs. Hopefully Congress will appropriate the full 7% set-aside of the Office of Justice Programs identified in the President's FY2011 budget to ensure that tribal justice systems are adequately and equitably funded to provide sufficient services to meet their obligations under the TLOA.*

Title V. Indian Country Crime Data – This title seeks to establish consistent collection of reservation crime data by Federal and tribal law enforcement officers responsible for investigating and enforcing crimes committed in Indian country.

Title VI. Domestic Violence and Sexual Assault Prosecution and Prevention – This title includes provisions to address the epidemic of domestic violence and sexual assault in Indian country.

§601. Prisoner Release and Reentry – This section requires the United States to notify tribal justice officials when a sex offender is released from federal custody into Indian country. Currently, every state and territory is required to provide notification when a sex offender is released and entering a community. However, many Indian women have no way of knowing when their rapist is released from federal prison. This realization comes only at the moment they see the offender in their grocery store, on their front porch, or when picking up their child

at the school gate. It is a horrifying realization. This provision requires the United States to provide notice to tribal jurisdictions and also requires the U.S. to register the offender with the appropriate law enforcement agency, including the tribal registry. Additionally, this section requires law enforcement officers and prosecutors to receive specialized family violence training to enhance the prosecution of crimes of sexual violence in Indian country.

§602. Domestic and Sexual Violence Assault Training – In an effort to increase the conviction rate for domestic and sexual violence offenses, this section provides training to tribal law enforcement agencies on how to properly interview victims of domestic and sexual violence and to collect, preserve, and present evidence to Federal and tribal prosecutors.

§603. Testimony by Federal Employees in Cases of Rape and Sexual Assault – This provision requires the Director of Justice Services and Indian Health Service (IHS) to approve or disapprove, in writing, any request or subpoena for a law enforcement officer, sexual assault nurse examiner, or other employee under their supervision to provide testimony in a deposition, trial, or other similar proceeding regarding information obtained in carrying out the official duties of the employee. The approval would be granted unless the testimony would violate the policy of the Department of Interior to maintain strict impartiality with respect to private causes of action. If the request is not responded to within 30 days of receipt it shall be considered approved. Currently, the successful prosecution of many sexual and domestic violence cases is jeopardized because of the failure to obtain testimony from federal doctors, nurse examiners, and law enforcement officers that handled the case. The primary justifications for federal employees not testifying in such cases are: 1) reassignment to a different reservation or service area; 2) inadequate staffing levels preventing the release of the employee from their duties to testify. These justifications have created an institutionalized barrier to the successful prosecution of cases of rape and domestic violence. The pattern of denial or delay in responding to such requests has resulted in an institutionalized barrier of refusal to cooperate in the prosecution of these violent crimes against women.

§604. Coordination of Federal Agencies – This section requires the Secretary of Health and Human Services in coordination with the Attorney General, federal, and tribal law enforcement agencies, the IHS, and domestic violence and sexual assault victim organizations to develop appropriate domestic and sexual assault victim services and advocate training programs to: 1) improve domestic violence and sexual abuse responses; 2) improve forensic examination and collection; 3) identify problems or obstacles in the prosecution of domestic violence or sexual abuse; and 4) meet other needs to carry out other activities required to prevent, treat, and improve prosecutions of domestic violence and sexual abuse. Two years after enactment, a report to Congress is required that describes: the improvements made and needed, problems or obstacles identified, and costs necessary to address the problems or obstacles, and any other recommendations. The lack of coordination of these federal agencies has institutionalized a bureaucratic maze resulting in an ineffective, unresponsive, and confusing federal response to violence against Indian women. The Office on Violence Against Women (OVW) has required and offered grant programs promoting a strategy of a coordinated community response. In tribal jurisdiction with concurrent federal criminal jurisdiction the



TLOA : Overview and Implementation Progress Continued

FBI and BIA serves as the investigators, the United States Attorneys the prosecutors, and federal courts the judicial system. The concept of a coordinated community response is incomplete without the coordination of these federal agencies. Such coordination must be between federal components and also with tribal justice agencies. The broader national strategy of creating a seamless criminal justice response to violence against women in the United States is difficult if not impossible without such coordination.

§605. Sexual Assault Protocol – This section requires the Director of Service of Indian Health Services to develop standardized policies and protocols on sexual assault for the facilities. The policies and protocols would be developed in coordination with the Director of the OVW in consultation with Indian tribes and tribal organizations, and in conference with urban Indian organizations. The policies and protocol would be based on the similar protocol that was established by the DOJ. In September 2004, OVW adopted the first National Protocol for Sexual Assault Medical Forensic Examinations. In the last 14 years since the implementation of the VAWA, it has been established that coordinated community efforts are the best way to stop violence against women and hold offenders accountable for their crimes. Understanding this lesson, DOJ developed the protocol as a guide for criminal justice and health care practitioners. It provides detailed guidelines for responding to the immediate needs of sexual assault victims. No such protocol has been developed or adopted by IHS, which is the primary health care provider for Indian tribes. Clearly, the standard established for responding to sexual assault of non-Indian women should also apply to that of Indian women.

§606. Study of IHS Sexual Assault and Domestic Violence Response Capabilities – This provision directs the Government Accountability Office (GAO) to study the capability of IHS to collect and secure evidence of domestic and sexual assaults in rural tribal and Alaska Native communities. GAO is required to publish its findings, as well as recommendations for improving IHS capabilities, in a report to be submitted to Congress by July 29, 2011 (i.e., one year after enactment). *Implementation update: On October 27, 2010, Senate Committee on Indian Affairs staff convened a conference call to hear thoughts and recommendations from the field about this study and the manner in which it should be undertaken so as to better prepare them for their future meeting with GAO representatives. There was broad participation on the call from the NCAI Violence Against Women Task Force membership, as well as congressional staff.*

QUICK FACTS

Native women experience violent victimization at a higher rate than any other U.S. population.

- 34.1%, more than 1 in 3, Indian women will be raped in their lifetime.
- 64%, more than 6 in 10, Indian women will be physically assaulted.
- Indian women are stalked at more than twice the rate of other women.



Reviewing the Adam Walsh Act

In 2006 Congress passed the Adam Walsh Child Protection and Safety Act, which included Indian tribes in the federal sex offender registration laws. The Adam Walsh Act (AWA) created two classes of tribes: 1) those subject to PL 280 jurisdiction in MN, WI, NE, OR, CA, and AK, and 2) all other tribes.

The AWA was written without any input from Indian tribes and represents a drastic departure from the way other criminal justice matters are handled on tribal lands. One of the stated purposes of the AWA is to create a seamless national sex offender tracking system. To achieve this goal Congress must address many of the outstanding concerns created by the AWA.

Indian tribes have identified the following critical issues that must be addressed for the successful implementation of the AWA.

Reaffirm tribal sovereignty. Section 113(a) of the Act, without further clarification, may require anyone who resides on a reservation to register with both a compliant tribe and with the state within which the tribe is located. Congress should amend AWA to remedy this absurd result immediately.

Permit mandatory PL 280 tribes to opt in under AWA. There is no reason to treat tribes in mandatory PL 280 states differently than other tribes if they choose to assert jurisdiction and meet the requirements of the Act. Congress needs to remove the arbitrary distinction made in Section 127 of the Act and allow all tribes to participate in the national sex offender registration system on an equal basis.

Extend the compliance deadline for tribes. With only two of the 192 SORNA tribal jurisdictions currently in compliance and the July 27, 2011 compliance deadline fast approaching, Congress should immediately pass legislation that would extend the deadline for tribal SORNA compliance for at least another five years.

Provide adequate funding for implementation. Section 126(d) should be amended to provide more money for tribal implementation over an extended period of time.

There is no reason to treat tribes in mandatory PL 280 states differently than other tribes if they choose to assert jurisdiction and meet the requirements of the Act.

SEC. 127(a). ELECTION BY INDIAN TRIBES.

- (1) In general.—A federally recognized Indian tribe may, by resolution or other enactment of the tribal council or comparable governmental body—
- (A) elect to carry out this subtitle as a jurisdiction subject to its provisions; or
 - (B) elect to delegate its functions under this subtitle to another jurisdiction or jurisdictions within which the territory of the tribe is located and to provide access to its territory and such other cooperation and assistance as may be needed to enable such other jurisdiction or jurisdictions to carry out and enforce the requirements of this subtitle.
- (2) Imputed election in certain cases.—A tribe shall be treated as if it had made the election described in paragraph (1)(B) if—
- (A) it is a tribe subject to the law enforcement jurisdiction of a State under section 1162 of title 18, United States Code;
 - (B) the tribe does not make an election under paragraph (1) within 1 year of the enactment of this Act or rescinds an election under paragraph (1)(A);

International Efforts

UN Expert Investigates Violence Against Indian Women



Ginny Underwood
Communications Consultant

At 64 years-old, Matilda Black Bear, better known as Tillie, refers to herself as a “classic case” in regards to her story of domestic violence. She was 26 years old when she entered into a relationship that turned violent. She knew after the first week that she had to get out, but it took her three years to leave.

“In the ’70s there were no services for victims, let alone any laws to hold perpetrators accountable,” recalls Tillie. “I went to the police and to the judges and they didn’t know what to do with me.”

According to U.S. Department of Justice Statistics, not much has changed in nearly 40 years. Tillie’s story is shared by thousands of Native women in the United States. One out of three Native women will be raped in her lifetime, and three out of four will be physically assaulted.

These staggering statistics were presented, along with a plea for help, to the United Nations Special Rapporteur on Violence Against Women, Ms. Rashida Manjoo. Manjoo visited the Eastern Band of Cherokee Indians in Cherokee, North Carolina on Jan. 28-29, 2011. Her purpose was to meet with tribal leaders, advocacy organizations, and Indian women survivors to learn more about the high rates of violence against Indian women and what the United States can do to safeguard the human rights of Indian women.

“They talk about ‘how I will survive my rape’ as opposed to not even thinking about it. We shouldn’t have to live our lives that way.”

“Young women on the reservation live their lives in anticipation of being raped,” said Juana Majel Dixon, First Vice President of the National Congress of American Indians and member of the Pauma-Yuima Band of Luiseno Indians. “They talk about ‘how I will survive my rape’ as opposed to not even thinking about it. We shouldn’t have to live our lives that way.”

Dixon says she discovered there was not a single woman in her generation, from her area that had not been raped.

Unlike all other local communities, Indian nations and Alaska Native villages are legally prohibited from prosecuting non-Indians, and the Indian Civil Rights Act limits the sentencing authority of tribal courts over Indian offenders committing acts of sexual and domestic violence on tribal lands.

Presenters from Clan Star, Inc. highlighted for the Special Rapporteur specific areas that need improvement in order for sovereign tribal nations to increase the safety of women. The recommendations included: restoring tribal criminal jurisdiction over non-Indians; increasing the sentencing authority of Indian tribes; increasing federal support to Indian tribes to enhance their response to violence against women; and creating a new funding stream that specifically provides services to Native survivors of domestic and sexual violence.

Advocates hope Manjoo will also hold the United States accountable under international human rights law, which has a higher standard for protecting women.

“What we need in Indian country is a transformation,” said Kirsten Matoy Carlson, Director of the Safe Women Strong Nation program at the Indian Law Resource Center. “International human rights law tells us that we can do better. We can better provide access to justice for Native women.”

As UN Special Rapporteur on Violence Against Women, Ms. Manjoo is required to gather information on and formulate recommendations for the prevention and remedy of violations on human rights. “The right to be safe and live free from violence is a human right that many in this country take for granted—but not Native women, who are beaten and raped at rates higher than any other population of women in the United States,” said Terri Henry, Councilwoman for the Eastern Band of Cherokee Indians and co-chair of the NCAI Task Force on Violence Against Women. “This is a human rights crisis that Indian country has been aware of for some time. We are glad that the rest of the world is finally beginning to take notice.”

The Eastern Band of Cherokee Indians (EBCI) is one of 565 federally recognized, sovereign Indian and Alaska Native nations in the United States. The land base of the EBCI, known as the Qualla Boundary, includes an area of 56,000 acres of land located in five western North Carolina counties. It is a rural, remote area that has six traditional Cherokee townships. The EBCI is responsible for the safety and protection of women within Qualla Boundary. EBCI tribal emergency medical personnel, law enforcement services, prosecutors, courts and services are charged with handling domestic violence and sexual assault cases. The EBCI is directly responsible for holding Indian perpetrators of such crimes accountable. Despite these responsibilities for responding to violent crimes against women, the EBCI and all other Indian tribes have no criminal authority over non-Indians and cannot prosecute non-Indians for committing crimes against tribal citizens on tribal lands. Nationally, non-Indians commit 88% of all violent crimes against Indian women.

The Special Rapporteur visited the EBCI tribal courts, the police department, and the Cherokee Hospital providing services to women.

Findings from her trip will be reported to the United Nation’s Council on Human Rights along with recommendations to the United States on how to better protect women’s human rights and to stop the violence.

“We hope Ms. Manjoo will give breath to these words and share our struggle with the world,” said Dixon.

The Special Rapporteur’s visit is hosted by the Eastern Band of Cherokee Indians, in partnership with the National Congress of American Indians, Clan Star, Inc., Indian Law Resource Center, and the Sacred Circle National Resource Center to End Violence Against Native Women.



Ms. Rashida Manjoo, United Nations Special Rapporteur on Violence Against Women, with Kirsten Matoy Carlson, Indian Law Resource Center Attorney and Director of the Center’s Safe Women, Strong Nations project.

Eastern Band of Cherokee Indians Official Welcome

Tribal Council Chambers, Cherokee, NC

Terri Henry, Painttown Council Woman: Thank you Mr. Chairman. I want to



welcome everyone at this time. I would like to thank the Chairman and the Chiefs for being here today and for supporting the visit of Ms. Rashida Manjoo, the United Nations Special Rapporteur on Violence Against Women. Ms. Manjoo, we are very honored that you are here today! We also have some other special guests as well. We have Ms. Juana Majel-Dixon, 1st Vice President of the National Congress of American Indians, and, Ms. Tillie Black Bear, the National Spokesperson for Sacred Circle. I want to welcome you all and everybody who is here with you. Mr Chairman, I want to provide a brief overview about the violence against Indian women and the reasons why we are here today. Violence against American Indian and Alaska Native Women in the United States has reached epidemic proportions, and greatly exceeds that of any other population within the United States. This epidemic of violence is linked to

U.S. law and policy that obstructs American Indian & Alaska Native Nations from appropriately responding to violent crimes against Native Women. The legal barriers that prevent Indian Nations from protecting their female citizens differentiate tribal women from all other women in the United States. The purpose of this visit is to expand upon the four areas that Ms. Manjoo has expressed interest in. Those four areas are: legal barriers to access justice for Indian Women; prosecution rates and problems of impunity; tribal court proceedings, prosecution, and law enforcement; and finally repatriation and remedies. We have provided Ms. Manjoo, our community, and the stakeholders with a briefing paper and biographical information about our Council, government, and our tribe. We've planned for a very robust visit today among the tribal programs, in particular: law enforcement, health, court and prosecution. Today, the Eastern Band of Cherokee Indians is taking a stand for women across the United States. We are providing an example to show the United States that Indian nations can provide effective legal remedies for crimes of domestic and sexual violence if given the opportunity. In particular, I am speaking to the limitation upon tribes regarding criminal jurisdiction over non-Native perpetrators. Mr. Chairman, the presentation today will

be with Ms. Manjoo and our visit will be to make that case and also to provide her the opportunity to speak with some of our programs and our people.



Juana Majel, 1st Vice President, NCAI: (Speaks in Luiseno). In my language I said: Hello. I ask that Creator come and give me permission to give breath to the words in introducing myself to you. I am from the Bear Clan. As 1st Vice President of NCAI, I thank Terri and the Eastern Band of Cherokee Indians. You have given American Indians and Alaska Natives an opportunity to have this door opened with the Special Rapporteur. I don't think you have begun to see the breadth of what you have done, but I thank you humbly because we would

not have this window had it not been for the women, Terri and Jax, speaking to Gabriella and speaking of their issues and the work that's been done so far for us and the role I play as a national leader. I am fully aware of what you; the leadership of the Eastern Band of Cherokee Indians has done for your people. I am aware of your graciousness to open this door, this portal to affect change. I say that humbly, thank you very much.

Ms. Rashida Manjoo, UN Special Rapporteur: Thank you so much and thank you to all of the people involved in organizing these two days. My apologies, we could not control the weather. I'm really honored to be here, on this reservation in particular, but also to be part of a group that wants to share information on what the realities are. It is much nicer to come visit and hear from people what their realities are. What the context is and what the challenges are. I do know from the briefing that jurisdictional issues are one aspect of the challenges that you face in terms of accountability and impunity, but I'm sure that there are many other challenges and opportunities that we will be exposed to.

I would like to say that if the U.S. Government had not issued an invitation to me, I would not be here. So I am grateful the U.S. government is taking its international obligations seriously, but I'm also very grateful to Terri for bringing the international law system into this domain because I don't see that very often. The international law system seems far removed for many indigenous communities and for many tribal communities because it's out there. There are struggles and there are challenges with the states in which they live and try to survive. So I am very grateful that the international legal system has been brought in by Terri, by this invitation, but also the work that is going on by the roles played in this room, by looking at the international standards. The international standards, in terms of violence against women, include due diligence and obligations at all levels of government; to promote the right to be free from all forms of violence, both public and private; to look at the issues of prevention, protection, punishment, and compensation for victims of violence. My focus is women, and unfortunately throughout the world, I have to



The international standards, in terms of violence against women, include due diligence and obligations at all levels of government.

look at the issue of girls because girls are impacted also by the cycle of violence in their families, in their communities, or violence perpetuated or condoned by the state.

So my mandate goes broader than women. The goal of elimination of violence against women is a goal that I think all of us subscribes to, and eventually we will not require a position of this nature in the United Nations system. I am not a United Nations employee. I am not an employee of any government in the world. I am an independent expert who does this fact-finding, who does educative work, who does technical assistance work around the globe to the extent that I can. Resources, as you understand, being a barrier to doing this work more effectively. I try, at the end of the day, to understand the context and the realities, and I'm truly grateful that today I will have an opportunity to see a microcosm of that here. I am grateful for the opportunity to see a small slice of what are the facilities that are being provided in terms of services, in terms of legal aspects, and the challenges that are being faced. So, protection, prevention, punishment, provisions of reparations and compensation is part of a states' due diligence obligation. In terms of violence against women and the United States government, and through the sovereignty that you experience, you also have this due diligence obligation. So thank you once again. It's an honor to be here and I look forward to learning.

Commentary: Restoring Respect for the First Women of This Land

It was with great honor that my nation, the Eastern Band of Cherokee Indians, hosted the United Nations Special Rapporteur on Violence Against Women, Ms. Rashida Manjoo. Her visit to Cherokee was spurred by the concern that American Indian and Alaska Native women are victimized at more than double the rate of violence of any other population of women in the United States. Fortunately, there is a growing global awareness of the voices of Native women calling for safety and justice.

With great pride we welcomed Ms. Manjoo to the Qualla Boundary to listen to our community: people that respond to the medical needs, to the 911 calls, those that investigate and prosecute, and to the Cherokee Court where women seek justice in the hope that the violence will end. While Cherokee does not have a perfect response to these crimes we are outraged by the rape or beating of any woman, and we are committed to increasing the safety of all women who reside within our tribal community. Most importantly we understand Cherokee women have the right as citizens of the Eastern Band to the protection of their government.



Like all Indian tribes we face the daunting task of overcoming complex social barriers that allow violence against our women to continue. Yet unlike state and federal governments, we as a tribal government face legal barriers to the protection of women. Since 1978 our tribal government, like all Indian nations, has been stripped of the authority to prosecute rapists and abusers that are non-Indians. Further, federal law prevents our tribal court from adequately sentencing offenders to the same extent as state courts. No matter how heinous the crime, tribal courts can only impose a maximum sentence of one year per offense, unless certain conditions are met, in which case the maximum sentence is three years. Rape in the State of North Carolina carries a maximum penalty of 40 years, so for most tribal victims, a three year sentence is a far cry from equal justice under the law.



Terri Henry
Tribal Council Member
Eastern Band of
Cherokee Indians

Ms. Manjoo's visit provided the setting for our community to talk openly about our desire to ensure that women can live lives free from violence. We came together to look deeper at its roots, and we understand that we must work harder – despite the legal obstacles – to create safety for women. While the vast majority of Native women will never receive justice under the current laws of the United States we can offer women respect and acknowledge that violence is wrong and is antithetical to our tribal beliefs. Legal reform often takes years, even decades, to occur and Native women do not have the luxury of time. While the United States debates the law, more Native women are being victimized. We as Indian nations, as tribal relatives, must find additional ways to protect women and deal with the monsters amongst us.

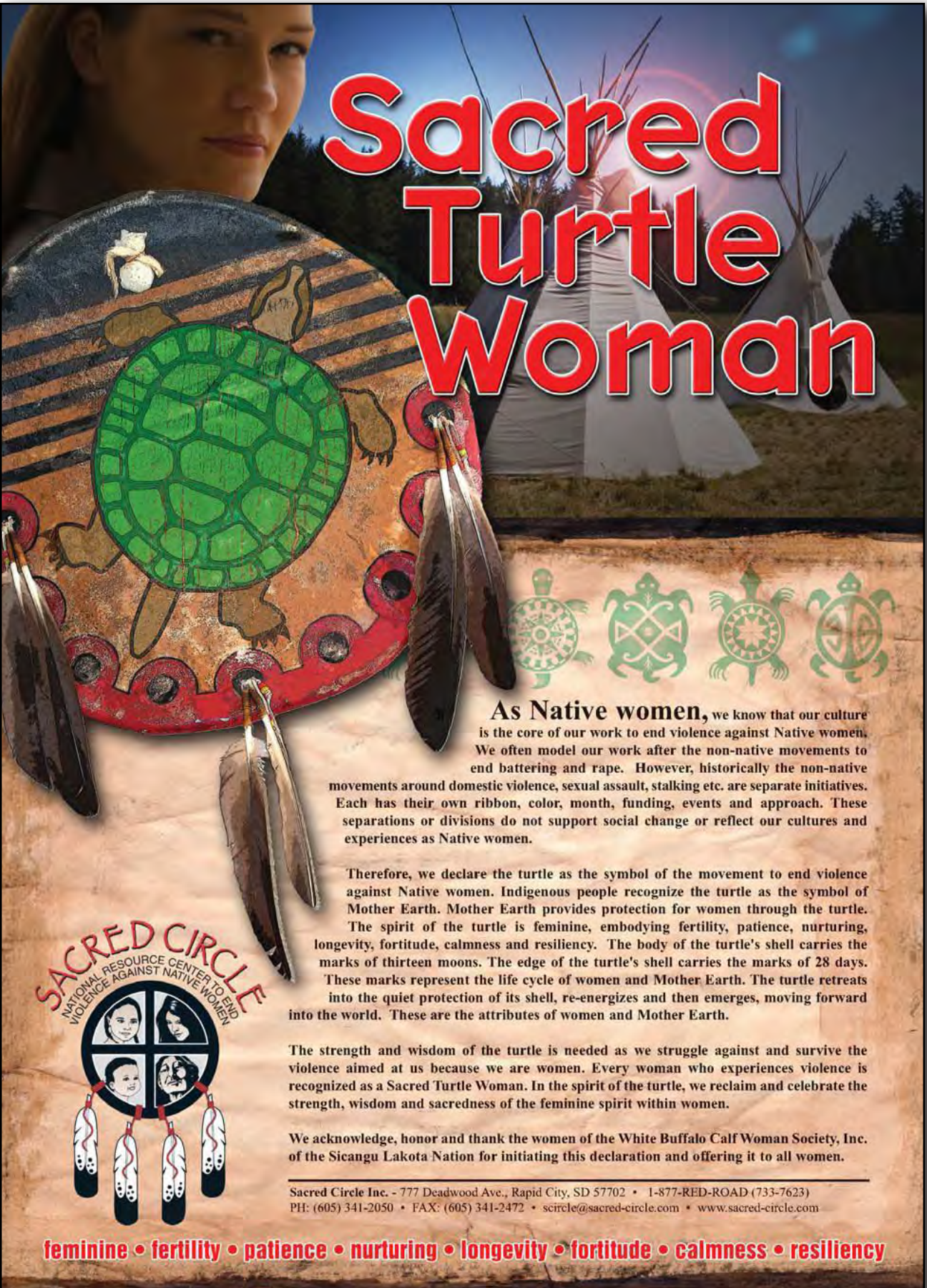


In 1838, the United States forcibly rounded up thousands of Cherokees and marched them in the dead of winter from our homelands here in the east to Oklahoma. Thousands died on the trail due to lack of food, clothing, shelter, and other horrific conditions endured during the march. Like other federal statutes and policies toward Indians, the Removal Act legalized the deaths of thousands of Cherokee children, women, and men. As Cherokee people, we experience federal law and Supreme Court rulings differently than all other Americans. As

It is upon us all to act and extend a hand to restore respect and safety for the first women of this land.

Indian nations and women, we also experience this epidemic of violence differently than all other Americans.

It is our hope that Ms. Manjoo's visit will shine a spot light on this crisis—one that compels the United States to not only acknowledge the cycle of violence against Native women but use its authority and resources to end it. While bad men commit these heinous acts, it is bad law that prevents good people from saving lives and stopping the violence. It is time for the United States to recognize that the violence will continue until it removes the legal barriers that tie the hands of tribal governments from protecting their women. Most importantly we call upon the good-hearted justice loving people of America to not be blind to the reality that 1 of 3 American Indian women will be raped in their lifetime and that 3 of 4 will be physically assaulted. It is upon us all to act and extend a hand to restore respect and safety for the first women of this land.



Sacred Turtle Woman

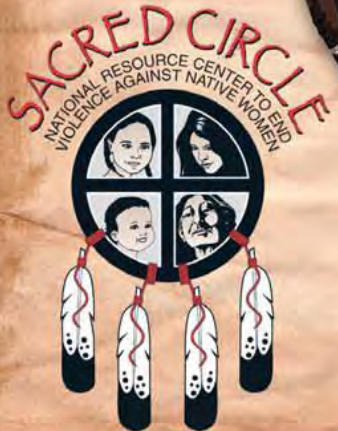


As Native women, we know that our culture is the core of our work to end violence against Native women. We often model our work after the non-native movements to end battering and rape. However, historically the non-native movements around domestic violence, sexual assault, stalking etc. are separate initiatives. Each has their own ribbon, color, month, funding, events and approach. These separations or divisions do not support social change or reflect our cultures and experiences as Native women.

Therefore, we declare the turtle as the symbol of the movement to end violence against Native women. Indigenous people recognize the turtle as the symbol of Mother Earth. Mother Earth provides protection for women through the turtle. The spirit of the turtle is feminine, embodying fertility, patience, nurturing, longevity, fortitude, calmness and resiliency. The body of the turtle's shell carries the marks of thirteen moons. The edge of the turtle's shell carries the marks of 28 days. These marks represent the life cycle of women and Mother Earth. The turtle retreats into the quiet protection of its shell, re-energizes and then emerges, moving forward into the world. These are the attributes of women and Mother Earth.

The strength and wisdom of the turtle is needed as we struggle against and survive the violence aimed at us because we are women. Every woman who experiences violence is recognized as a Sacred Turtle Woman. In the spirit of the turtle, we reclaim and celebrate the strength, wisdom and sacredness of the feminine spirit within women.

We acknowledge, honor and thank the women of the White Buffalo Calf Woman Society, Inc. of the Sicangu Lakota Nation for initiating this declaration and offering it to all women.



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DOJ ANNUAL CONSULTATION ON VIOLENCE AGAINST WOMEN ISSUES

The following comments were submitted by NCAI Task Force Co-Chairs Juana Majel and Terri Henry to the Office on Violence Against Women following the Fifth Annual USDOJ-Tribal Nations 2010 Consultation in Kalispel, Washington. The Task Force was formed in 2003 and represents a national movement of tribal members and organizations dedicated to the mission of enhancing the safety of American Indian and Alaska Native women.

In recent years, the members of the Task Force have participated in numerous formal consultations, informal dialogues, conference calls, meetings, and Congressional hearings on the subject of violence against women. The Task Force has submitted its comments and recommendations for improving the safety of Native women and increasing the state and federal accountability to prosecute sexual assault and domestic violence crimes on Indian lands on many occasions and in many forums. The recent passage of the Tribal Law & Order Act (TLOA) is proof that the Task Force's recommendations have not fallen on deaf ears. Congress and the Obama administration have heard the Task Force's concerns and attempted to address them in this new law. Which is why, first and foremost, the Task Force would like to commend the Obama administration for its firm commitment to public safety in Indian Country and its support in helping get the TLOA enacted. However, the real work, the work of implementation, has only just begun. It is this new framework from which these comments are submitted.

The Tribal Law & Order Act

The TLOA addresses several concerns relevant to violence against Indian women that have been raised at prior Department of Justice (DOJ) consultations. The law has the potential to greatly improve public safety on Indian lands and help protect Indian women. However, it is critical that the DOJ take direct and immediate action to ensure full and effective implementation of all provisions of the bill, particularly those pertaining to the following areas.

Federal Accountability. Section 201 of the Act requires U.S. Attorneys to coordinate with tribal justice officials on the use of evidence when declining to prosecute or refer a reservation crime. Sharing of this type of information is critical to keeping Indian women safe. Tribal officials need to be notified when a U.S. Attorney declines to prosecute sexual assault and domestic violence offenders so that, in the case of an Indian defendant, a tribe may decide the appropriate legal response according to tribal law. Separate from a decision to prosecute under tribal law, notification about the status of the case, advocacy services, and other related services must be given to the victim of the status of the case so that she may take the necessary steps to protect herself. *Recommendation: Hold U.S. Attorneys accountable for reporting duties and necessary coordination with tribal justice officials under the TLOA. The safety of Indian women depends upon it.*

State Accountability. Section 201 provides tribes in P.L.280 jurisdictions with the option to request that the federal government reassume concurrent jurisdiction over crimes on Indian lands, particularly in areas where the state is doing an inadequate job of fulfilling its prosecutorial responsibilities. This lack of an adequate state response is especially problematic when dealing with sexual assault and domestic violence crimes because if the state fails to prosecute, non-Indian perpetrators may continue to commit horrific acts of violence against the same or a different victim. *Recommendations: Work with tribes to*



Honorable Susan Carbon, Director of the US DOJ Office on Violence Against Women.

develop the process by which a tribe can request concurrent federal jurisdiction. DOJ should also conduct outreach and sponsor educational trainings thereafter to ensure that tribes are aware of this new right and of how to exercise it.

It is worth mentioning that federal and state accountability are especially important in places like Oklahoma, where tribes face unique issues in investigation and prosecution of crimes as a result of the state's complicated Indian land base. Since allotment in the early 1900's, former-existing reservations have been mingled with non-Indian land, creating a checkerboard pattern of Indian land that is interspersed with non-Indian land. Tribes need additional programming and resources to address the practical issues that arise when serving victims in jurisdictionally distinct areas of Indian country, since services often cross tribal and state jurisdictional lines.

Enhanced Tribal Sentencing Authority. Section 304 of the TLOA grants tribal courts the ability to sentence offenders for up to 3 years imprisonment for any one offense under tribal criminal law if certain protections are provided. This is a

significant improvement, although this maximum sentence still falls short of the average sentence of 4 years for rape in other jurisdictions. Crucial for our purposes, tribes must have the capacity to house the offender in detention facilities that meet federal standards, otherwise, the enhanced sentencing power is meaningless. *Recommendation: Ensure that the Bureau of Prisons Pilot Project—that is mandated to house up to 100 offenders referred by tribal courts—is established by the statutory deadline and that tribes are informed and have adequate time to comment on how the pilot project will be structured.*

Prisoner Release and Reentry. Section 601 of the TLOA requires the U.S. Bureau of Prisons to notify tribal justice officials when a sex offender is released from federal custody into Indian country. In a meeting with representatives of the BOP in late September, NCAI staff were informed that the standard procedure for BOP when a prisoner is released is to notify the jurisdiction that referred the perpetrator. In other words, if a tribal prosecutor was to refer an offender to federal custody under the soon-to-be established pilot project, that tribal official would be notified upon the prisoner's release. However, if it was a federal prosecution, and the U.S. Attorney made the referral, the U.S. Attorney's office would be the one receiving notification of the release. This latter scenario creates problems for tribes because it appears as though there is no direct communication with tribal justice officials, even when the prisoner may be returning to Indian country. *Recommendations: Ensure that tribal justice officials are notified of prisoner release and reentry on Indian lands, regardless of the process by which this occurs (i.e., whether the BOP Director gives notice directly to tribal justice officials or whether he gives notice to the U.S. Attorney and the U.S. Attorney is responsible for relaying that message to tribal justice officials). In all cases of the reentry of a federal prisoner, it is also recommended that BOP provide tribal law enforcement the pending date and terms/conditions of release of the prisoner so that the tribe can be fully informed of any potential dangers posed to the victim and community. Proper implementation of this provision is critical to the safety of Indian women.*

Establishment of the Office of Tribal Justice as a Permanent Office. The TLOA requires DOJ to establish the Office of Tribal Justice as a permanent component of the Department within 90 days of the date of enactment. OTJ is tribal nations' principal point of contact with

in DOJ and the Department's primary source of legal and policy advice on Indian issues, including those pertaining to violence against Indian women. It is imperative that tribes are given the opportunity to weigh in on the specific roles and responsibilities OTJ will play in the future, as well as what OTJ's elevated status within the Department will mean. *Recommendation: Host a consultation session at the Tribal Justice, Safety & Wellness Conference to take place in early December in Palm Springs, California on the new role and structure of OTJ as a permanent DOJ component.*

Full Access to Federal Databases. Section 905(a) of VAWA 2005 requires the Attorney General to permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into and obtain information from federal criminal information databases. Section 303 of the TLOA expands this authority to all crimes. In OVW's 2010 Update on the Status of Tribal Consultation Recommendations, OVW reports that only 28 tribal law enforcement agencies were identified that were unable to obtain NCIC access, about half of those now have access, and work is being done to ensure the remaining tribes obtain access. The Task Force congratulates DOJ on their efforts to ensure that all tribal law enforcement have NCIC access; however, the Task Force is worried that these numbers do not tell the whole story.

The Task Force has two central concerns. First, it fears that the DOJ's definition of "access" does not include the statutorily mandated right to enter data into the NCIC, only the right to obtain it. Thus tribal victims of domestic violence and sexual assault that have obtained a tribal order of protection may be denied full access to enforcement of the order by justice services nationally because the order is not entered into the National Order of Protection Registry.

Access to the protection order, sex offender, and missing person national registries is especially critical in the effort to increase the access to justice services and the safety of Native women.

While full faith and credit of a valid order is mandated under federal law, many instances continue to occur in which state law enforcement refuses to recognize or enforce a tribal order of protection.

Second, the Task Force suspects that even when tribal law enforcement agencies may have necessary training to obtain and enter data, the tribal judges who actually issue the orders of protection, do not.

Consequently, many tribal orders of protection are not entered into the NCIC Protection Order Registry because tribal court personnel may be unaware that they have access to the NCIC database, and moreover, they may lack the necessary training to properly enter data into the database. In the context of management of convicted domestic violence and/or sex offenders nationally, the ability of Indian tribes to enter information into the NCIC regarding tribal conviction may be the only source other tribal, federal, or state prosecutors have to prior convictions that are important considerations in the charging or enhancements to the sentencing of a defendant. *Recommendations: Ensure that all tribes have the ability to access federal databases not only for the purpose of obtaining criminal history information, but also for entering such information into the database as well. Access to the protection order, sex*



LaVonne Peck, Tribal Chair, La Jolla Band of Luiseno Indians and Ruth Jewell, Penobscot Nation, Board Member National Coalition Against Domestic Violence.



Lorraine Edmo, Deputy Director for Tribal Affairs
USDOJ Office on Violence Against Women.

offender, and missing person national registries is especially critical in the effort to increase the access to justice services and the safety of Native women. The Task Force also recommends that the DOJ host trainings for tribal judges and court personnel, as well as other law enforcement officials, to educate each about how to navigate federal databases and how to facilitate better coordination to ensure that life-saving protection orders get entered into the NCIC database. Finally, the Task Force recommends that DOJ create a task force to identify the outstanding barriers tribes face in acquiring full access to federal criminal history databases and to develop a plan of action to resolve these issues.

These are just some of the provisions within the TLOA that will help protect the safety of Native women. The NCAI Task Force on Violence Against Women encourages the Department of Justice to fully implement all facets of the new law and to

take measures to ensure that Congress adequately funds these and other critical public safety programs in Indian country.

Violence Against Women Act 2011 Reauthorization

The inclusion of a tribal title, the *Safety for Indian Women* title, within the Violence Against Women Act of 2005 was an historic achievement. VAWA 2005 clarified that the unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women. The NCAI Task Force

Restore tribal criminal jurisdiction over non-Indian perpetrators of domestic violence, sexual assault, dating violence, and stalking that commit said crimes within the exterior boundaries of the reservation.

women. The 1978 U.S. Supreme Court decision in *Oliphant v. Suquamish Tribe* stripped Indian tribes of their inherent criminal jurisdiction over non-Indians unless such jurisdiction is specifically authorized by Congress. As such, Indian women—4 out of 5 of whom describe their offenders as white—often have no criminal recourse against non-Indian offenders. These non-Indian perpetrators are well aware of the lack of tribal jurisdiction over them, the vulnerability of Indian women, and the unlikelihood of being prosecuted by the Federal Government (or state government in P.L. 280 states) for their actions. This jurisdictional gap feeds the epidemic of violence against Indian women and is at odds with the United States' recognition of tribal sovereignty and the policy of tribal self-determination. Further, it is in stark contrast to the purposes of the Violence Against Women Act that have guided our nation since its enactment over fifteen years ago. **Recommendation: Restore tribal criminal**

recommends that the Department of Justice—in order to better fulfill its mission to protect the safety of Indian women—address the following issues in the upcoming VAWA reauthorization.

Tribal Jurisdiction Over Non-Indian Offenders. The lack of tribal jurisdiction over non-Indian offenders on Indian lands may be the key reason for the creation and perpetuation of disproportionate violence against American Indian and Alaska Native

jurisdiction over non-Indian perpetrators of domestic violence, sexual assault, dating violence, and stalking that commit said crimes within the exterior boundaries of the reservation. Alternatively, establish a pilot project under which tribal criminal jurisdiction over non-Indian perpetrators of domestic violence, sexual assault, dating violence, and stalking is fully restored for a handful of select tribes. So long as tribes lack the legal authority to respond to crimes committed against Indian women, the violence will not cease.



*Samantha Thornsberry,
Tribal Councilwoman,
Cahuilla Band of Indians.*

Department of Interior Consultation with Tribes. Section 903 of VAWA 2005 requires the Attorney General to conduct annual consultations with Indian tribal governments concerning the Federal administration of VAWA funds and programs for tribes. Despite the primary role that the Bureau of Indian Affairs' plays in tribal law enforcement and investigation of crimes in Indian country, the Department of Interior is not mandated by VAWA to conduct annual consultations on issues related to violence against Native women. *Recommendation: Consider and support efforts to amend section 903 to require that the Bureau of Indian Affairs Office of Justice Services participate in the annual consultation with Indian tribes concerning sections 903(b)(2)-(3), "enhancing the safety of Indian women from domestic violence, dating violence, sexual assault, and stalking[,] and "strengthening the Federal response to such violence crimes."*

Inclusion of Alaska Natives in the VAWA §904 National Baseline Study. Due to its use of the phrase "Indian country," the current statutory language of section 904(a)(1) is ambiguous with regards to the 229 federally recognized Indian tribes located in Alaska. The end result of the baseline study will be a report to Congress containing recommendations to enhance the effectiveness of federal, state, tribal, and local responses to violence against Indian women. It is inconceivable that such a study can in any meaningful way fulfill this directive without the inclusion of Alaska Native Villages that comprise almost one-half of all federally recognized Indian tribes. *Recommendation: Amend section 904(a)(1) in a manner that ensures the inclusion of Alaska Native Villages in the national baseline study. This technical correction was included in the "VAWA Fix-It" bill (H.R. 3401), a bill introduced in July 2009 which, if passed, would clarify certain VAWA provisions and facilitate implementation of the law.*



Nikki Finkbonner, Coordinator, Lummi Nation, Victims of Crime Program.

Definition of "Rural Area" and "Rural Community." Since the enactment of VAWA in 1995, the unique responsibility of the United States to assist Indian tribes in creating safe communities and the urgent need to address epidemic levels of violence committed against Indian women have been recognized. Indian tribes were considered eligible entities under the OVW Rural Grant Program until the 2005 amendments to the definitions of "rural area" and "rural community," and the redesign of the funding for the program based upon the number of state counties served. Prior to the 2005 amendments, Indian tribes relied upon this specific program as an important resource. The amendments and redesign of the program made many federally recognized Indian tribes ineligible under this grant program. Previously, all federally

"We want to restore rights to sovereign Indian nations in order for better protection of Native people, especially women,"

Tim Coulter,
Executive Director,
Indian Law
Resource Center

recognized Indian tribes were eligible entities but now eligibility is determined by geographic location connected to state based populations. This unintended consequence was in part due to the lack of expertise concerning the rural nature of most Indian tribes—that while they may be adjacent to a major city such as Phoenix or San Diego—are still characteristically isolated from services contained in the metropolitan area. There are reservations which may be made up of some of the most rural and remote land in the country that may not qualify as a “rural area” or “rural community” under VAWA’s current definition because at least part of the respective reservation lies within a metropolitan statistical area. **Recommendation: Support amendments to the definition of “rural area” and “rural community” so that it is inclusive of all American Indian and Alaska Native tribes.**

Full Implementation of VAWA 2005

Habitual Offender Provision. VAWA contains a provision that makes it a federal crime for anyone who has two prior domestic violence convictions in federal, state, or tribal court to commit domestic assault within Indian Country. This provision is intended to give the federal government authority to intervene in repeat cases of domestic violence committed by tribal members that might not otherwise have risen to the level of a felony. To our knowledge, efforts to charge and prosecute offenders under this statute have been minimal and few steps have been taken to ensure that federal law enforcement officers, U.S. Attorneys, and state authorities make use of this provision where appropriate. **Recommendations: In consultation with Indian tribes, develop guidelines for the implementation of the habitual offender provision; conduct cross-training for Assistant United States Attorneys and tribal prosecutors for the investigation, charging and prosecution of cases under the habitual offender provision; and inform Indian tribes of the progress and steps made toward implementation of the habitual offender provision.**

Work with tribes to develop the process by which a tribe can request concurrent federal jurisdiction.

Firearms Provision. VAWA makes it a federal crime for those convicted of domestic violence in tribal court to possess firearms. To our knowledge, only minimal steps have been taken to ensure that federal law enforcement officers, U.S. Attorneys, and state authorities comply with this provision. Firearms are extremely lethal and proper implementation of this provision has the potential to prevent the serious injury and murder of Native women. Because this is a federal crime and can only be charged by federal prosecutors, it is extremely important that U.S. Attorneys are trained and directed to charge offenders under this provision where appropriate. **Recommendations: Consult with Indian tribes to develop guidelines for the implementation of the firearms provision; conduct cross-training for Assistant United States Attorneys and tribal prosecutors for the investigation, charging, and prosecution of cases under the firearms provision; and inform Indian tribes of the progress and steps made toward implementation of the firearms provision.**

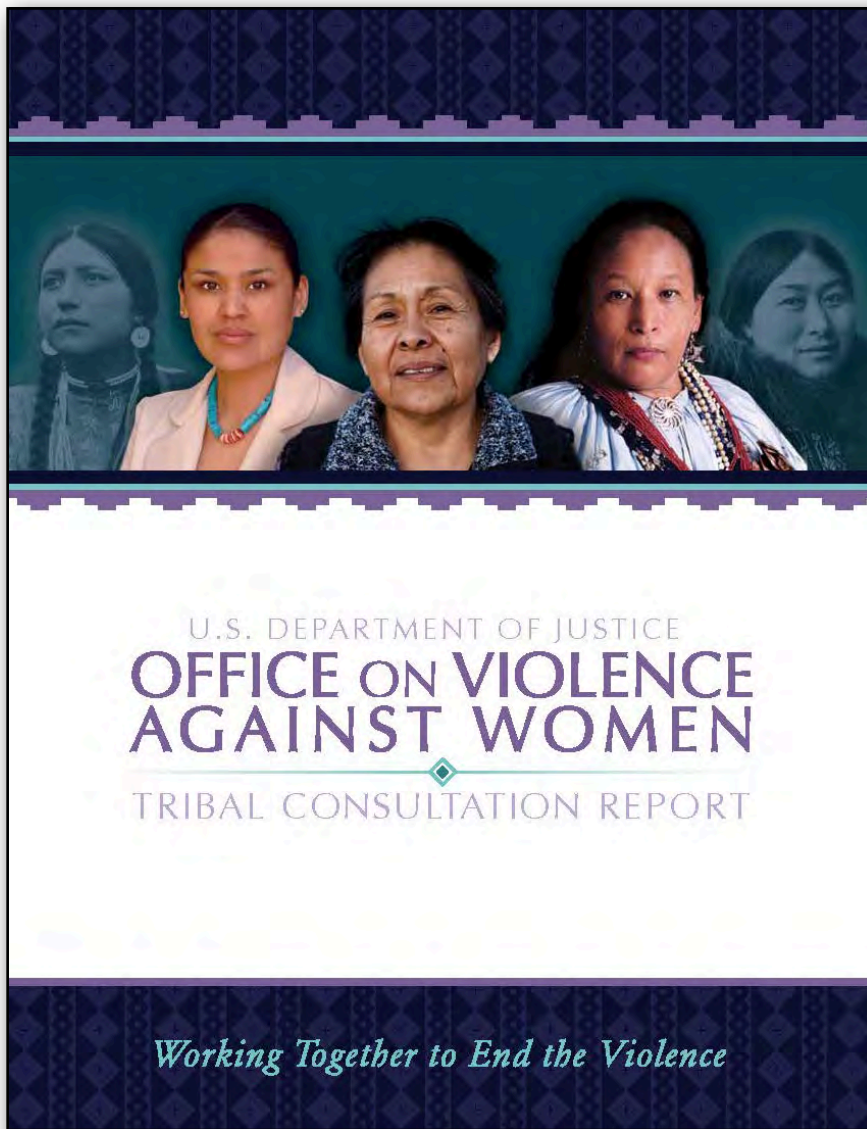
Tribal Registry. VAWA requires DOJ to establish a national tribal order of protection and sexual offender registry. This registry is extremely important because several Indian tribes cannot directly enter into or access information from the national protection order or sex offender registries, but instead are dependent upon state systems. Congress authorized and has appropriated almost four million dollars to establish this national tribal registry. VAWA mandates that the Director of OVW issue a solicitation and enter into a contract to create and maintain this national tribal registry. **Recommendations: Ensure that the Director of OVW carries out her statutorily-mandated responsibilities to release the solicitation and to award a contract for the creation of the national tribal registry. The Task Force also recommends**

that the Director provide an update on the status of this statute during the annual 2011 OVW tribal consultation.

Tribal Nations Leadership Council

Lastly, the Task Force urges the Department of Justice to follow through on the Attorney General’s commitment to establish a Tribal Nations Leadership Council within the Department to advise the Attorney General on justice issues that impact tribal nations. It has been almost a year since that commitment was made at the National Tribal Leaders Listening Session in Minneapolis, Minnesota last October. Despite a pledge to convene the first meeting of the TNLC in May 2010, the membership of this group has not yet been publicly announced and no meetings have been held. We ask that you hold true to your word and establish the TNLC with all deliberate speed.

Thank you for the opportunity to submit these comments. The NCAI Task Force on Violence Against Women looks forward to a continued partnership on these issues moving forward.



Reports can be obtained from <http://tribalpublicsafetyconsultation.com>

Contributors. Sacred Circle and the NCAI Task Force on Violence Against Women extend their gratitude to the dedication of the many volunteers that make publication of this magazine a reality. We want to specifically acknowledge the following contributors that dedicated endless hours from the beginning to the end in publishing this volume. Many Thanks!



Kirsten Matoy Carlson (Cherokee)
As the Director of the Safe Women/Strong Nation Project at the Indian Law Resource Center, Kirsten has collaborated with the NCAI Task Force on Violence Against Native Women to raise awareness of violence against Native women as an international human rights issue at the UN and Organization of American States.



Ginny Underwood (Comanche)
As the Communications Director at the Indian Law Resource Center, Ginny brings more than 15 years of experience in the field of communications to the national efforts to increase the safety of Native women.



Lucy Simpson (Navajo)
As the Senior Staff Attorney at the Indian Law Resource Center, Lucy is committed to bringing the Anglo world, from which she received her formal education and the traditional Navajo world from which she was raised together where they can exist with mutual respect and understanding.

SOVEREIGNTY & SAFETY MAGAZINE, 2003-2011

Eight years ago during the reauthorization process of the Violence Against Women Act, three national organizations came together to take a stand for the safety of Native women. Sacred Circle National Resource Center to End Violence Against Native Women, the National Congress of American Indians, and the National Task Force to End Sexual and Domestic Violence. It was recognized that to fully participate in the national movement to create the changes needed to increase safety for Native women broad communication was essential. The Sovereignty & Safety magazine emerged to fulfill this task.

The *Sovereignty & Safety* magazine is a publication dedicated to informing tribal leadership and communities of emerging issues impacting the safety of American Indian and Alaska Native women. The name of the magazine, *Sovereignty & Safety*, reflects the grassroots strategy of the Task Force that by strengthening the sovereignty of Indian Nations to hold perpetrators accountable the safety of Native women will be restored. The magazine is a joint project of the NCAI Task Force, Sacred Circle and Clan Star, Inc. It is produced and made available during national NCAI conventions.

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Sacred Circle Training Schedule 2011

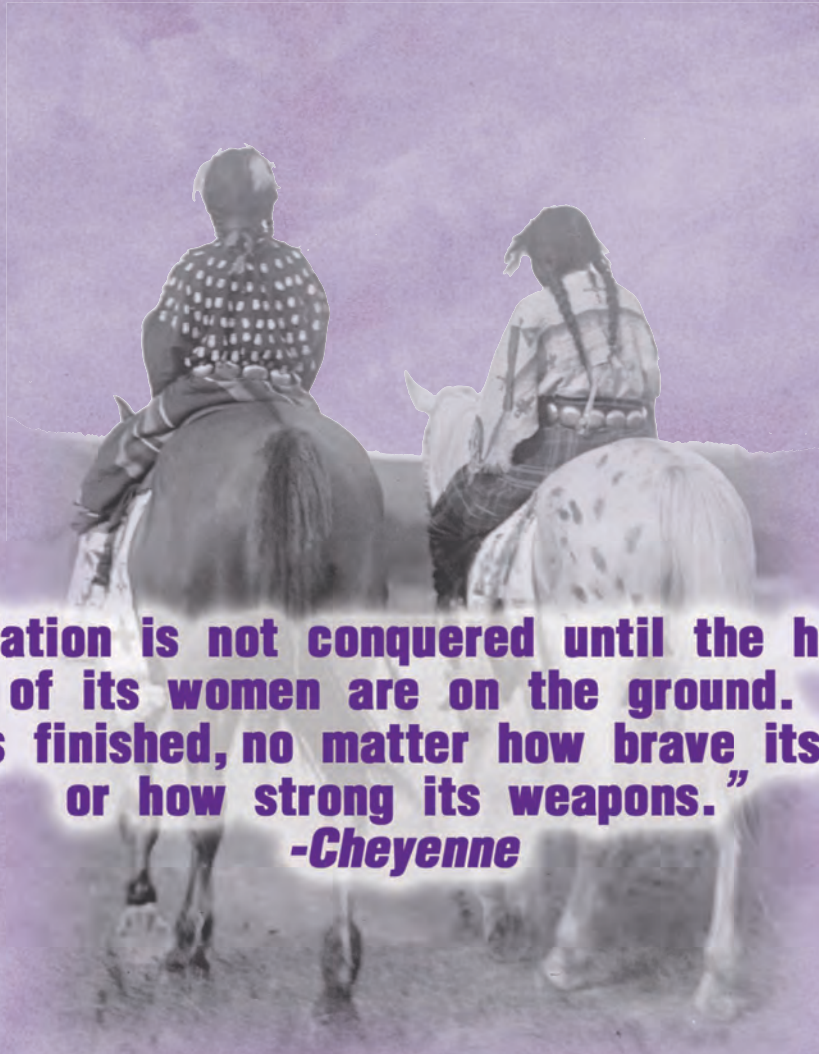
March 28 th – April 1 st Grand Gateway Hotel Rapid City, SD	Ending Violence Against Native Women Training Institute Workshops: Role of Advocates; Role of Batters' Program; Role of Coordinated Community Response; Sexual Violence in the Lives of Native Women; Advocates as Catalysts for Social Change	Registration Fee:	Early Bird \$350.00	After 3/10/11 \$450.00
April 18 th & 19 th Seneca Niagara Casino & Hotel Niagara Falls, NY	Sexual Assault Summit	Registration Fee:	Early Bird \$300.00	After 3/18/11 \$350.00
May 18 th - 19 th Chinook Winds Resort Lincoln City, OR	Exploring the Impact of Domestic Violence on Children	Registration Fee:	Early Bird \$300.00	After 4/18/11 \$350.00
June 1 st - 2 nd Sugar Lake Lodge Grand Rapids, MN	Tribal Women's Leadership & Mentorship Conference Mobilizing for Change	Registration Fee:	\$500.00 (includes lodging and meals)	
August 9 th -11 th TBA	Women Are Sacred Conference Working Together Across Generations to Increase Safety for Native Women	Registration Fee:	Early Bird \$350.00	After 5/15/11 \$450.00



Dedicated to Actions that Promote the Safety and Sovereignty of Women

*Violence Against Native Women
is NOT Traditional*

To register go to: www.sacred-circle.com, print, fill out and fax in registration form. Training question? Call Tara @ 877-redroad or 605-341-2050.



**“A Nation is not conquered until the hearts
of its women are on the ground.
Then it is finished, no matter how brave its warriors
or how strong its weapons.”
-Cheyenne**



Rooted in the Plains, the mission of Sacred Circle, National Resource Center to End Domestic Violence Against Native Women, a project of Cangleska, Inc. is to change individual and institutional beliefs that justify the oppression of Native women. The work to transform tribal families and communities into a circle of balance and harmony requires individual growth and systemic responsibility.

We are dedicated to Actions that promote the sovereignty and safety of women.

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Serving the Oglala Lakota People

Violence Against Women is Not Our Tradition