

Restoration

OF NATIVE SOVEREIGNTY AND SAFETY FOR NATIVE WOMEN

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Also: Inter-American Commission On Human Rights
Sacred Circle:: National Indigenous Women's Resource Center

Restoration

of Native Sovereignty and Safety for Native Women

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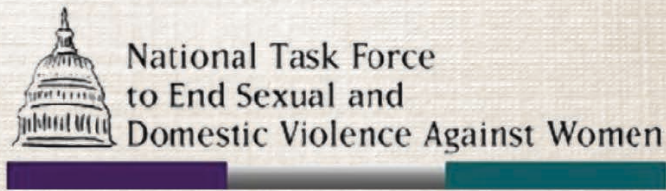
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Greetings!

We are excited to provide to the readers of the Restoration of Safety and Sovereignty Magazine another VAWA 2011 update. There is a whirlwind of activity occurring on Capitol Hill right now and our goal is to keep tribal leaders, grass roots advocates, and tribal practitioners aware of the important tribal-specific proposals on the table for discussion. Since 2004, the Restoration magazine has served as the information bridged to convey information concerning the safety of Native women recognizing that tribal leaders and communities must be informed to interact with emerging issues.

If enacted, the current tribal-specific proposals for the 2011 reauthorization of VAWA will make a meaningful difference in the everyday lives of American Indian Women. These changes are not a grab bag of ideas but changes carefully identified and vetted over a two-year process launched in the fall of 2009 by the National Task Force to End Domestic and Sexual Violence Against Women to reach as many communities as possible to reauthorize the VAWA. The tribal working group was one of the twenty-one working groups. The tribal working group involved advocates, tribal leaders, police, judges, prosecutors and health providers.

This volume provides an overview of the proposed changes including, where possible, both a summary of the proposed change and actual draft language. It is our deepest prayer that each of you will read, understand and decide to play a role in this important process of reauthorizing VAWA in 2011.

Together we can increase the safety Native women!

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



**Editorial by
Juana Majel-Dixon**

A CRITICAL TIME TO PROTECT NATIVE WOMEN AND ADVANCE TRIBAL JURISDICTION

Washington, DC can be a frustrating place - truly. Each time I meet with our federal partners or my Native brothers and sisters that reside there, I always tell them that I am praying for their sanity. As a traditional councilwoman for the Pauma Band of Mission Indians and as someone who knows the tangible impact that government leaders have on those they serve, half the time I just have to shake my head in disbelief at the legislative and policy decisions coming out of our nation's capital.

This is why the recent actions by the Department of Justice have been so refreshing and given me a sense of renewed faith in our leaders in Washington, DC - and those serving in the Obama Administration, in particular. Attorney General Holder and members of his team are trying to implement rational policies without giving in to political temptation and stay on moral high ground and they have managed, at least with respect to issues of public safety in Indian Country, to do the right thing. They have shown the courage to tackle the complicated issues and confront them with real solutions—even when those solutions may not yield political capital.

I am referring to the Department's recent efforts to combat violence against Native women; and in particular, its current consideration of a legislative proposal that would restore tribal authority to prosecute non-Indians who commit the most heinous of acts: crimes of violence against Indian women.

We all know the statistics: Indian women are 2 ½ times more likely to experience violence than other women in the United States; more than 1 in 3 Indian women will be raped in their lifetimes and nearly 40% will be subjected to domestic violence. Perhaps what is more shocking is that, according to Departmental data, non-Indians commit 88% of all violent crimes against Indian women. This violence threatens the lives of our women and the future of our people. While many issues need to be addressed to confront this human rights crisis, it is clear that limitations placed on tribal government jurisdiction by the United States are a key contributing factor, with non-Indian

perpetrators falling through the cracks in the system time and time again.

For more than thirty years, since the *Oliphant v. Suquamish Tribe* Supreme Court decision in 1978, Indian nations have been denied criminal jurisdiction over non-Indians who commit crimes on Indian lands. And when an Indian woman turns to the United States government (or the state government in Public Law 280 states) to investigate and prosecute her batterer or rapist, help is often too slow to respond or is denied outright. A recent GAO study found that between 2005-2009, U.S. Attorneys' Offices declined to prosecute 50 percent of the Indian country matters referred to them and 67 percent of those declined were sexual abuse and related matters. If the federal government declines prosecution, non-Indian rapists, batterers, and stalkers walk free and return to commit future crimes.

The DOJ in recognizing the importance of addressing the jurisdictional gaps impacting the safety of Native women have consulted with tribal leaders and proposed legislation. This process of consultation demonstrates that they truly understand the nature of the problem. With proper authority and adequate resources, tribes can make their communities safe again and help them heal from the violence, pain, and trauma they have endured over generations.

**I urge tribal leaders to rise to this
occasion and meet the challenge with
which we have been confronted.**

I am fully aware that none of this will happen overnight. It will take a lot of hard work, collaboration, and mutual trust between tribal leaders and federal officials. But the time is now. I commend the strong hearted women that have dedicated their lives to increasing the safety of tribal women to bring us to this juncture. Now we, as tribal leaders, must seize the moment that's been given to us. We have the vehicle – the reauthorization of the Violence Against Women Act -- and now all we need to do is articulate precisely what it is that will safeguard our



women and rid our communities of violence. We need to work in partnership with the DOJ to strengthen tribal sovereignty, further self-determination, and protect the wellbeing of our tribal citizens.

I urge tribal leaders to rise to this occasion and meet the challenge with which we have been confronted. Take the time to read the Department's "framing paper" and take the necessary steps within your tribe to support changes needed to increase the safety of Native women. (See, tloa.ncai.org.) Of course some may say that the proposal does not go far enough. I will be the first to admit that I share that concern. But now is not the time to let the perfect be the enemy of the good. We, as Indian nations, are faced with the real possibility of having authority to prosecute all perpetrators in our communities who beat our women, rape our daughters, and stalk our sisters—Indian and non-Indian alike. We must not let this opportunity slip away.

So, tonight as I go to sleep, I will once again pray for my brothers and sisters in Washington, DC. And I will pray that more of our federal partners follow in the footsteps of Attorney General Holder and, my dear friend, Associate Attorney General Tom Perrelli, and make the tough decisions necessary to effect real, positive changes within our Indian Nations. But tonight I will also say another prayer—I will pray for my Native brothers and sisters across this Nation. I will ask that Creator prepare them for the upcoming consultations with DOJ. I will ask that Creator give them the strength to take a stance in support of a limited jurisdictional fix, even when in their heart of hearts they know that a full fix is warranted. And I will ask that Creator give them the courage to join us on this lifelong journey to protect our Native women from violence.

Juana Majel Dixon is the 1st Vice President of the National Congress of American Indians and Co-Chair of the NCAI Task Force on Violence Against Women.

Women and children confronted with life-threatening violence cannot wait for legal and administrative reforms of an outdated system.

TRIBAL PRIORITIES FOR THE REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT

Despite the federal trust obligation to protect Indian communities, violence against Native women in the United States has reached epidemic proportions and greatly exceeds that of any other population of women in the United States: 34 percent of Native women will be raped in their lifetimes and 39 percent will be the victim of domestic violence. According to a 2010 GAO Study, U.S. Attorneys decline to prosecute 67 percent of sexual abuse and related matters that occur in Indian country. Since the 1st VAWA mandated DOJ consultation tribal leaders have spotlighted issues and made recommendation to address barriers and increase the safety of Native women. Based on five years of annual consultation and over a decade of on going dialogue Indian country strongly supports the inclusion of the following tribal specific provisions in the Violence Against Women Act 2011 reauthorization:

- **Restore tribal criminal jurisdiction.** Until 1978, it was settled doctrine that Indian tribes retained all sovereign powers not expressly abrogated by Congress, which included criminal jurisdiction over non-Indians. Yet, the U.S. Supreme Court's decision in *Oliphant v. Suquamish Tribe* changed that, and rejected decades of precedent in the process, when it stripped Indian nations of their authority to prosecute non-Indians that commit crimes on tribal lands. This decision—and the jurisdictional gap it has created—has had grave consequences for Indian women in that it has frequently left them without criminal recourse when their perpetrators are non-Indians. Congress should restore tribal criminal jurisdiction over non-Indian perpetrators of domestic violence, sexual assault, and related crimes that are committed within the exterior boundaries of the reservation. See page 9 for further information.
- **Create services program for Native women.** Given the inadequate law enforcement response to violence against Native women, Native victims often find themselves going days, weeks, months, and even years without justice. This population of victims “waiting to be served” can no longer be ignored. NCAI proposes creating an “above the cap” reserve in the Victims of Crime Act (VOCA), or alternatively, a 10% VOCA tribal set-aside, that would fund tribal government programs and non-profit, non-governmental tribal organizations that provide services to Native women victimized by domestic and/or sexual violence within the jurisdictional boundaries of an Indian reservation or Alaska Native Village. See page 11 for further information.
- **Establish comprehensive funding streams to support sexual assault services for Native women.** In 2005, Congress created the Sexual Assault Services Program (SASP) to provide services to victims of sexual assault. Unfortunately, the statute currently contains ambiguous language that has denied access to SASP funds to tribal sexual assault service providers. Congress should amend SASP: 1) to increase support for culturally appropriate services designed for Native women by tribal providers; and 2) clarify 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. See page 10 for further information.
- **Increase support for Indian tribes sharing concurrent state criminal jurisdiction.** In 1953, in violation of the federal trust responsibility and without consultation with Indian nations, the United States Congress passed Public Law 83-280 (PL 280), which delegates certain federal criminal jurisdiction over Indians on Indian lands to some states. While this delegation of authority did not alter the jurisdictional authority of Indian nations in those states, it has had a devastating impact on the development of tribal justice systems and the safety of Indian women. It has resulted in drastically decreased federal funding and support for tribal justice programs within PL 280 states. The upcoming VAWA reauthorization should clarify and enhance the ability of Indian tribes in PL 280 states (or states similarly situated) to respond to domestic and sexual violence by including new program guidelines and technical assistance programs to strengthen tribal law enforcement response, prosecution, courts, health, and advocacy services for Native women. See page 14 for further information.
- **Amend definition of “rural”.** American Indian tribes were considered eligible entities as under the OVW Rural Grant Program until the 2005 amendments to the definitions of “rural area” and “rural community.” The program was redesigned in a manner that bases eligibility upon the number of state counties served. Under the current definition, many tribes that once relied upon this critical source of funding are no longer eligible. The definition of “rural” needs to be amended to once again be inclusive of all American Indian and Alaska Native tribes.

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.



KATY JACKMAN

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.

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.

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.” 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.

...

2011 VAWA Discussion

- Authorize the Sexual Assault Services Program at \$80 million;
- Increase training standards on sexual assault for federal and state agencies;
- Funding to support development of tribal sexual assault codes;
- GAO study on DOJ not implementing VAWA 2005 mandate to establish a National Tribal Sex Offender Registry and the administration of the 5 million dollars appropriated in FY 07 – 11 for this purpose.

VAWA 2011 RESPONDING TO THE EPIDEMIC OF RAPE

The on-going findings of extremely high rates of sexual violence committed against American Indian and Alaska Native women in national research and surveys places all levels of government on notice that rape is viewed as an act without legal consequences. The lack of prosecution and conviction for sex crimes is serving as a green light for serial rapists and is unacceptable.

“Mothers preparing daughters for what to do when they are raped is an outrageous reality that must end. The epidemic of sexual assault is a national crisis that we must make a national priority.” -Terri Henry, Tribal Council Member, Eastern Band of Cherokee Indians.

While a long list can be made for the reasons for this reality the focus of discussion must center on the federal government. Why? Four federal departments are charged with the primary responsibility of responding to sex crimes committed in Indian country. The Federal Bureau of Investigation is responsible for investigation. The United States Attorneys’ Offices are charged with responsibility for felony prosecution. The Bureau of Indian Affairs Office of Law Enforcement Services in certain tribal jurisdictions for law enforcement response and / or investigation. And perhaps most importantly, the Indian Health Service for providing rape trauma services and forensic examinations. The current administration, while sending a strong message that sexual assault is a serious crime, must do more. The result of DOJ not further increasing the response to sex crimes can be gauged in the physical, mental, and spiritual well-being of Native women and girls.

And any reforms must also address the needs of Native women living in PL 280 or similar state jurisdictions. Often times no law enforcement response or rape crisis services exist within tribal communities in Alaska, California, Minnesota, Wisconsin, and other states where Indian tribes share concurrent jurisdiction with a state.

“It is disturbing that 76% of the adult sexual assault crimes referred to federal prosecutors are declined,” stated Juana Majel, Co-Chair of the NCAI Task Force to End Violence Against Native Women. “NCAI has adopted a formal resolution on the urgency for escalating the response to sex crimes by these federal agencies. It is a war on women and DOJ must respond to war not a problem.”

SEXUAL ASSAULT SERVICES PROGRAM: SUPPORT FOR COMPREHENSIVE SERVICES FOR SEXUAL ASSAULT VICTIMS

Sexual assault of Indian women has reached the level of a national crisis. It is well documented that American Indian and Alaska Native women suffer a rate of sexual violence at least 2-3 times higher than any other group of women in the United States.

Tribal governments face numerous challenges in responding to sexual violence. Jurisdictional restrictions, limited resources, and the widespread public perception that nothing will be done to hold perpetrators accountable have created a reality in which rape is accepted as an everyday occurrence. Due to the inaction of government authorities, many survivors have expressed a feeling of helplessness in the aftermath of a sexual assault. In addition, lack of adequate investigation and prosecution of these crimes sends a message to perpetrators that Indian women are easy prey. Given this shocking reality, the immediate availability of services specifically designed for Native women survivors of rape and sexual assault are essential to the health and wellbeing of Native women.

“It is shocking how any official can turn their head the other way to the reality of Indian women and girls being raped. If it were their mother, daughters, sisters being tortured the response would surely be different. Yet, state officials, county sheriffs, state prosecutors turn their heads and ignore our reality.” -Juana Majel.

In 2005, Congress created the Sexual Assault Services Program (SASP) to provide services to victims of sexual assault. Specifically, SASP provided the first dedicated federal funding stream to rape crisis centers, tribes, and state, territorial and tribal sexual assault coalitions. SASP contains a specific 10 percent set-aside to support the operation of tribal sexual assault programs to assist those victimized by sexual assault. In addition, SASP contains a second set-aside for Tribal Sexual Assault Coalitions to provide technical assistance, training, and public awareness on sexual assault to such programs.

VAWA 2011 proposals: In order for SASP programs to more fully meet the needs of tribal women, the 2005 SASP statute should be amended to:

- Ensure usage of grant funds on culturally appropriate, tribal specific services designed for Native women by tribal providers;
- Broaden the list of permitted topics on which technical assistance may be provided by tribal coalitions to tribal providers of services for sexual assault survivors;
- Ensure 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 to provide rape crisis services; and
- Clarify that tribal coalitions programs are eligible to partner with and receive funds from the state sexual assault coalitions.

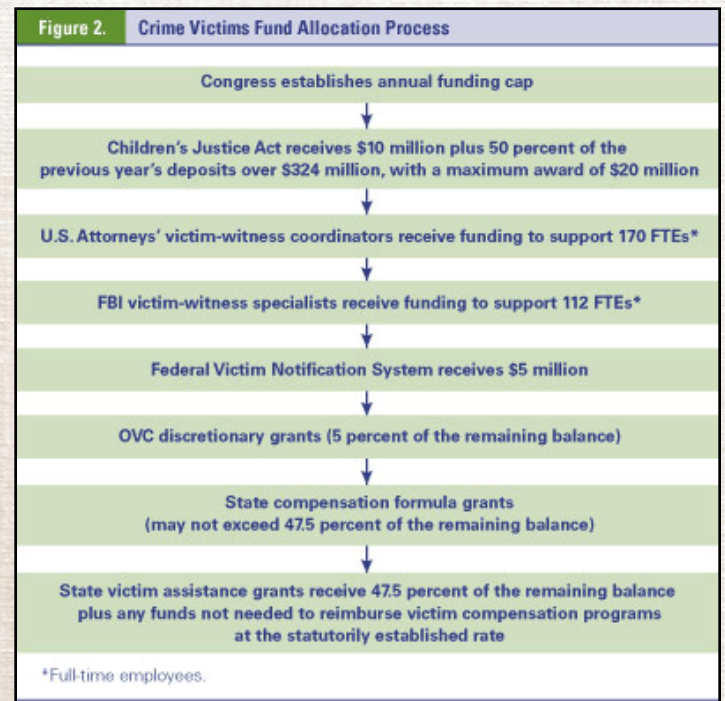
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“Predators attack the unprotected. The failure to prosecute sex crimes against American Indian women is an invitation to prey with impunity.” -Dr. David Lisak, Ph.D., University of Massachusetts, Boston

EMERGENCY SERVICES FOR NATIVE WOMEN

Given the inadequate law enforcement response to violence against Native women, victims of domestic and sexual assault often find themselves waiting days, weeks, and months for the appropriate justice officials to answer their calls for justice, and for many, those calls go unanswered entirely. The need for reform of federal, tribal, and state systems that are flawed with jurisdictional gaps, under resourced, and in some instances, completely ineffective complicates the ability of Native women to access emergency services, such as shelter programs and rape crisis services, on a daily basis. Women and children confronted with life-threatening violence cannot wait for legal and administrative reforms of an outdated system.

Women and children confronted with life-threatening violence cannot wait for legal and administrative reforms of an outdated system.



*Chart source: ojp.usdoj.gov/ovc/publications/factshts/cvf2010/intro.html#fsv

Victims of Crime Act

Rebuilding Lives through Assistance and Compensation

*Chart source: ovc.ncjrs.gov/ncvrv2009/pdf/VOCA_Chart_hr.pdf



Proposal: This population of victims “waiting to be served” can no longer be ignored. The NCAI Task Force on Violence Against Women is proposing the immediate creation of a grant program to develop and maintain emergency services for Native women victimized by domestic and sexual violence. The program would fund tribal government programs and non-profit, non-governmental tribal organizations, located within the jurisdictional boundaries of an Indian reservation or Alaska Native Village, that provide services to Native women victimized by domestic and/or sexual violence.

Funding: In the current economy, securing federal funding for any new programs is a difficult task, but given the urgency of the situation, creation of such services cannot wait. Proposed options for funding these services include creation of an “above the cap” reserve in the Victims of Crime Act (VOCA), or alternatively, a 10% VOCA tribal set-aside. The Crime Victims Fund (“the Fund”) was established under the 1984 Victims of Crime Act to help victims cope with the trauma and aftermath of violent crime. Rather than being funded by taxpayer dollars, the Fund is entirely funded by monies paid by federal offenders for fines and other penalties, including such fines and penalties imposed on federal offenders committing offenses on tribal lands. Congress sets an annual limit or “cap” on the amount to be released from the Fund. The cap for FY 2010 was \$705 million. This

“above the cap” set aside would not alter funding to current VOCA grantees. This funding option is viable given the deposits into the Fund are consistently high. The opening balance for the Crime Victims Fund in 2012 is projected to be \$5.8 billion.

Disparity: Currently, no tribal set-aside is provided under the VOCA for services to victims within Indian tribes. This lack of funding to Indian tribes is unacceptable given the levels of violence and lack of services for victims. The USDOJ statistics document the well known fact that violence against Indian women is more than double that of any other population of women while services are lacking or do not exist in many tribal communities. While states and territories receive an annual formula amount from the VOCA Fund, the reality is that Indian tribes do not receive such an allocation. The two small discretionary programs administered by OVC on a competitive basis (Children's Justice Act Partnerships for Indian Communities Grant Program and Tribal Victim Assistance) cannot be compared to the current state formula program. An above the cap amount for tribes or a 10% tribal set-aside would balance the current disparity in the allocation of VOCA funds. Releasing more of the VOCA Fund to create the domestic and sexual assault services program for tribal victims will provide life-saving services for Native women and their children.



Tribal representatives listen to Juana Majel, NCAI Task Force Co-Chair, at the kick-off of the 2010 Sexual Assault Awareness Walk. Pictured left to right are then Soboba Tribal Chairwoman Rosemary Murillo, Della Gutierrez holding Barona Band of Mission Indians flag, Adele Rodriguez holding the Southern California Tribal Chairman's Association flag.

VIOLENCE AGAINST NATIVE WOMEN WITHIN TRIBAL – STATE CONCURRENT JURISDICTIONS

The tremendous strides toward the implementation of VAWA nationally are reasons to celebrate! These life-saving reforms however have not reached all communities across the United States. Outstanding issues and severe unmet needs of American Indian and Alaska Native women within PL 280 and similar jurisdiction remain unresolved. State law enforcement, prosecutors and judicial authorities often do not respond to Native women seeking safety from rapist, batterers, and those committing crimes under VAWA. Further many Native women seeking health services or other services are turned away.

During each of the annual USDOJ VAWA consultations (2006 – 2010) tribal leaders have presented concerns regarding the lack of state cooperation and failed response to sexual assault, domestic violence and murder of Native women. Tribal leaders and advocates have also raised these issues at numerous USDOJ focus groups, workshops, national conferences, and meetings.

The VAWA - PL 280 Saga

Tribal leaders and advocates for the safety of Native women have raised continuously the urgent and compelling needs of American Indian and Alaska Native women that seek safety from brutal physical and sexual assaults. While the tribal participants in these conversations have remained steady the federal representatives have frequently changed. Upon the changing of federal personnel the conversation has a pattern of returning to the starting point. New federal representatives ask for more time to understand the law, specifics regarding the impact of the law, and yet again soliciting tribal recommendations. This is a frustrating cycle that fails to address the urgent issues threatening the daily lives of Native women.

The recommendations listed below are a compilation of prior recommendations to address the lack of justice services to Native women within PL 280 jurisdiction. They are offered once again with the intent of advancing the safety of women, creating systems adequate to deter future violence, and developing tribal justice systems capable of managing such violent crimes. This list contains some but not all of the concerns and recommendations presented during the past consultations. It is imperative that the DOJ assist Indian tribes in their efforts to hold state governments accountable for the felony prosecution of rapist and batterers.

Recommendations to USDOJ to Increase Safety of Native Women:

Support Indian tribes requesting USDOJ reassume felony jurisdiction under the Tribal Law and Order Act;

Assist in developing state-tribal law enforcement compacts that support tribal sovereignty and safety for Indian women and provide online access to such compacts.

Provide tribal, federal and state cross training on implementation of Tribal Law and Order Act specific to tribal-state concurrent jurisdictions.

Develop training on TLOA provisions for requesting federal / state / tribal concurrent jurisdiction.

Develop in consultation with Indian tribes a protocol for referring VAWA crimes to the FBI and US Attorneys

Provide training for tribal, state and federal justice personnel on enforcement of VAWA statutes including the Domestic Assault by an Habitual Offender, Firearms Prohibitions Violations, Inter-jurisdictional Violations of Orders of Protection.

Report on implementation of recommendations made during the OVW sponsored Focus Group on Public Law 280 and the Sexual Assault of Native Women held December 31, 2007.

VAWA 2011 Recommendations for Discussion:

Clarification that Indian tribes sharing concurrent jurisdiction with state governments are provided appropriate training and technical assistance.

Clarification that VAWA federal offenses occurring within Indian tribes located in PL 280 jurisdictions are investigated and prosecuted by the USDOJ, such as the Habitual Offender, Firearms Prohibition and Interstate VAWA Offenses.

TITLE IX—SAFETY FOR INDIAN WOMEN

Note: Introductory text summarizes the proposed changes and rationale behind them. **Italicized text** throughout are proposed amendments and/or additions. The plain black text is current statutory language.

SEC. 3. UNIVERSAL DEFINITIONS AND GRANT PROVISIONS

In discussing the shift from a competitive to non-competitive grant program, the tribal coalition working group agreed that it is important to define for purposes of eligibility “tribal coalition” under the VAWA GCVC statute. The group examined the Family Violence Prevention and Services Act (FVPSA) definition of “state coalition” in developing a definition of “tribal coalition.” To guide the administration of the OVW Tribal Domestic and Sexual Assault Coalition Program (TDVSAC), the working group developed the following definition of “tribal coalition.”

Amend 42 U.S.C. § 13925 (Definitions and grant provisions) to read as follows:

(37) Tribal coalition. — The term “tribal coalition” means an established American Indian non-governmental nonprofit private organization established to provide services on a statewide, regional, or customary territory basis, that—

- (A) has as its purpose to provide education, support, and technical assistance to American Indian service providers to enable the providers to establish and maintain culturally appropriate services designed to assist Indian women and their dependents victimized by perpetrators of domestic violence, dating violence, sexual assault, and stalking, including shelter and rape crisis services; and*
- (B) has Board and General membership that is representative of primary-purpose American Indian domestic violence and sexual assault service providers, and which include representatives (individuals or*

- organizations) of the tribal communities in which the services are being provided; and*
- (C) serves as an information clearing house and resource center for American Indian programs addressing domestic violence and sexual assault and supports the development of legislation, policies, protocols, procedures, and guidance to enhance the domestic violence and sexual assault intervention and prevention efforts within Indian tribes and communities to be served; and*
- (D) has expertise in the development of American Indian community-based, linguistically and culturally specific outreach and intervention services for the specific Indian communities to be served.*

TITLE IX SAFETY FOR INDIAN WOMEN SEC. 901. GRANTS TO INDIAN TRIBAL GOVERNMENTS.

As the most impoverished group in the United States, Tribes often lack the resources to adequately address violence against Indian women. Coupled with the highest rates of violence against women in the nation, tribal programs are acutely underfunded and cannot cover gaps in funding. The following amendments expand the GITGP purpose areas to include response to sex trafficking, youth victim services, and policy development.

Amend 42 U.S.C. § 3796gg–10 (Grants to Indian tribal governments) to read as follows:

(a) Grants. The Attorney General may make grants to Indian tribal governments or authorized designees of Indian tribal governments to—

- (1) develop and enhance effective governmental strategies to curtail violent crimes against and increase the safety of Indian women consistent with tribal law and custom;
- (2) increase tribal capacity to respond to domestic violence, dating violence, sexual

- assault, *sex trafficking*, and stalking crimes against Indian women;
- (3) strengthen tribal justice interventions including tribal law enforcement, prosecution, courts, probation, correctional facilities;
 - (4) enhance services to Indian women victimized by domestic violence, dating violence, sexual assault, *sex trafficking*, and stalking;
 - (5) work in cooperation with the community to develop education and prevention strategies directed toward issues of domestic violence, dating violence, *sexual assault, sex trafficking*, and stalking;
 - (6) provide programs for supervised visitation and safe visitation exchange of children in situations involving domestic violence, sexual assault, or stalking committed by one parent against the other with appropriate security measures, policies, and procedures to protect the safety of victims and their children;
 - (7) provide transitional housing for victims of domestic violence, dating violence, sexual assault, *sex trafficking*, or stalking, including rental or utilities payments assistance and assistance with related expenses such as security deposits and other costs incidental to relocation to transitional housing, and support services to enable a victim of domestic violence, dating violence, sexual assault, *sex trafficking*, or stalking to locate and secure permanent housing and integrate into a community;
 - (8) provide legal assistance necessary to provide effective aid to victims of domestic violence, dating violence, stalking, *sex trafficking*, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence, at minimal or no cost to the victims;
 - (9) *provide services to address the needs of youth who are victims of domestic violence, dating violence, sexual assault, sex trafficking, and stalking and for children exposed to domestic violence, dating violence, sexual assault, or stalking, including support for the nonabusing parent or the child's caretaker; and*

(10) develop and promote State, local, or tribal legislation and policies that enhance best practices for responding to violent crimes against Indian women, including the crimes of domestic violence, dating violence, sexual assault, sex trafficking, and stalking.

(b) Collaboration. All applicants under this section shall demonstrate their proposal was developed in consultation with a nonprofit, nongovernmental Indian victim services program, including sexual assault and domestic violence victim services providers in the tribal or local community, or a nonprofit tribal domestic violence and sexual assault coalition to the extent that they exist. In the absence of such a demonstration, the applicant may meet the requirement of this subsection through consultation with women in the community to be served.

SEC. 902. GRANTS TO INDIAN TRIBAL COALITIONS.

The tribal coalition working group has identified the following concerns with regards to the current funding structure of tribal coalitions that need to be addressed immediately: 1) funding instability; 2) inadequate funding; 3) inadequate funding to support new tribal coalitions; and 4) more rigorous administrative mandates for tribal coalitions when compare to those of their state counterparts. The following language tries to address these problems by shifting the tribal coalition program from a competitive to non-competitive grant program and amending the allocation structure.

Amend 42 U.S.C. § 3796gg(d) (Tribal coalition grants) to read as follows:

(d) Tribal coalition grants

(1) Purpose. The Attorney General shall award grants to each established tribal domestic violence and sexual assault coalitions for purposes of—

(A) increasing awareness of domestic violence and sexual assault against

American Indian and Alaska Native women;

(B) enhancing the response to violence against American Indian and Alaska Native women at the tribal, Federal, and State levels;

(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to American

Indian women victimized by domestic and sexual violence, including sex trafficking.; and
(D) assisting Indian tribes and Alaska Native Villages in developing and promoting legislation and policies that enhance best practices for responding to violent crimes against Indian women, including the crimes of domestic violence, dating violence, sexual assault, and stalking, and sex trafficking.

(2) Grants to tribal coalitions. The Attorney General shall award grants on an annual basis under paragraph (1) to—

- (a) each established nonprofit, nongovernmental tribal coalitions that—
 1. meets the definition of such a coalition under this Act;
 2. is recognized by the Office on Violence Against Women under VAWA 2000, 2005 or this Act; and
 3. is providing services to American Indian tribes and Alaska Native Villages.
- (b) organizations that propose to incorporate and operate a tribal coalition as defined under this Act in areas where Indian tribes are located and no coalition exists which planning grants will be used to support the development of tribal coalitions under this subsection for the years 2013 – 2017; provided that any funds not used to support such planning grants shall be distributed the following fiscal year to established tribal coalitions.

(3) Amounts. Of the amounts appropriated for the purposes of this subsection—

- (a) Ten percent shall be available under this subsection as planning grants for the years FY 2013 to FY 2017 for organizations that propose to incorporate a tribal coalition as defined under this Act.
- (b) 90 percent shall be available for grants for established tribal coalitions as defined under (xxx) with each receiving an equal amount of the total funding made available under this paragraph for each fiscal year.

(4) Duration. Grants made under this section shall be for an award period of 12 months.

(5) Eligibility for other grants. Receipt of an award under this subsection by tribal domestic violence and sexual assault coalitions shall not preclude the coalition from receiving additional grants under this chapter to carry out the purposes described in paragraph 1 of this section.

(6) Multiple purpose applications. Nothing in this section shall prohibit any applicant from applying for funding to address sexual assault or domestic violence in the same application.

SEC. 903. CONSULTATION.

In recent years, government-to-government consultation between tribal nations and the United States has proven extremely helpful in identifying tribal concerns about the safety of American Indian and Alaska Native women (Indian women). The proposed amendments to Section 903 would increase the advance notice provided to tribes as to the date and location of the consultation, thereby allowing tribal leaders more time to make the arrangements necessary to attend, including securing tribal approval to attend on behalf of the tribe, making travel arrangements, and preparing polished written statements. The proposed changes would also require the Secretary of the Interior to participate in the annual OVW consultation, in addition to the Secretary of Health and Human Services and the Attorney General. The Attorney General would also be required, for the first time, to submit an annual report to assist Congress in systematically assessing the recommendations made by federally recognized tribes and Alaska Native entities (Tribes) and the actions taken by the federal government to address those recommendations.

Amend section 903 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 to read as follows:

(a) In general.—The Attorney General shall conduct annual consultations with Indian tribal governments concerning the Federal administration of tribal funds and programs established under the Violence Against Women Act of 1994 (title IV of Public Law 103–322; 108 Stat. 1902), the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491), *the Violence Against Women and Department of Justice Reauthorization Act of 2005 (titles I through IX of Public Law 109-162; 119 Stat. 3080)*, and *the Violence Against Women Reauthorization Act of 2011.*

(b) Recommendations.—During consultations under subsection (a), the Secretary of the Department of Health and Human Services, *the Secretary of the Department of the Interior*, and the Attorney General shall solicit recommendations from Indian tribes concerning—

- (1) administering tribal funds and programs;
- (2) enhancing the safety of Indian women from domestic violence, dating violence, sexual assault, stalking, *and sex trafficking*; and
- (3) strengthening the Federal response to such violent crimes.

(c) The Attorney General shall submit an annual report to Congress on the annual consultations mandated by subsection (a) that contains —

- (1) the recommendations made under subsection (b) by Indian tribes;*
- (2) actions taken within the past year to respond to current or prior recommendations made under subsection (b); and*
- (3) plans to continue working in coordination and collaboration with Indian tribes and the Departments of Health and Human Services and Interior to address the recommendations made under subsection (b).*

(d) Notice. — The Attorney General shall notify tribal leaders of the date, time, and location of the consultation mandated by subsection (a) no less than 120 days prior to the consultation.

SEC. 904. TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC VIOLENCE.

There are 565 Tribes in the United States, including more than 200 Alaska Native villages, that retain sovereign authority over their lands and peoples. Each Tribe is responsible for the safety of its citizens, which includes protection of Indian women from violence. However, the ability of Tribes to ensure the safety of and provide a meaningful remedy to women in Indian country and Alaska Native villages is undermined by the limitations that the United States has placed on the inherent jurisdictional authority of tribal governments. Federal law prohibits Tribes from prosecuting non-Indian offenders committing crimes against Indians on Indian lands. This limitation on tribal court authority is particularly devastating to Indian women, who suffer from violence at a rate two and a half times greater than that of any other population in the United States.

This proposed language would restore safety in tribal communities by recognizing tribal authority over non-Indians who commit a finite set of domestic and sexual violence related crimes against Indians, however, it would not repeal, abrogate, or supersede existing federal law in any way. The provisions of the Indian Civil Rights Act safeguarding the rights of the accused would apply to this limited restoration of criminal jurisdiction over non-Indians, and, state courts would retain jurisdiction over crimes committed by non-Indians against non-Indians and victimless crimes.

Amend subchapter I of chapter 15 of title 25, United States Code (25 U.S.C. § 1301 et seq.) by adding at the end the following new section:

25 U.S.C. § 1304. Tribal jurisdiction over crimes of domestic violence

(a) Definitions. — In this section, the term—

- (1) “dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship;*
- (2) “domestic violence” means violence committed by a current or former spouse 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, or by a person similarly situated to a spouse of the victim under the domestic- or family- violence laws of an Indian tribe that has jurisdiction where the violence occurs;*
- (3) “Indian Civil Rights Act” means sections 1301 to 1303, as amended;*
- (4) “Indian country” has the meaning given that term in section 1151 of title 18, United States Code;*
- (5) “participating tribe” means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of such tribe;*
- (6) “protection order” means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition,*

or motion filed by or on behalf of a person seeking protection;

(7) “special domestic-violence criminal jurisdiction” means the criminal jurisdiction that a participating tribe can exercise pursuant to this section but could not otherwise exercise; and

(8) “spouse or intimate partner” has the meaning given that term in section 2266(7) of title 18, United States Code.

(b) *Nature of the criminal jurisdiction.* —

(1) Notwithstanding any other provision of law, in addition to all powers of self government recognized and affirmed by the Indian Civil Rights Act, the powers of self government of participating tribes include the inherent power of those tribes, hereby recognized and affirmed, to exercise special domestic-violence criminal jurisdiction over all persons.

(2) A participating tribe shall exercise special domestic-violence criminal jurisdiction concurrently, not exclusively.

(3) Nothing in this section creates or eliminates any Federal or State criminal jurisdiction or affects the authority of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.

(c) *Criminal conduct.* — A participating tribe may exercise special domestic-violence criminal jurisdiction over a defendant only for criminal conduct that falls into one or both of the following categories:

(1) *Domestic violence and dating violence.* — Any act of domestic violence or dating violence that is occurring or has occurred in the Indian country of the participating tribe.

(2) *Violations of protection orders.* — Any act that is occurring or has occurred in the Indian country of the participating tribe and that violates or violated the relevant portion of a protection order that was issued against the defendant, is enforceable by the participating tribe, and is consistent with section 2265(b) of title 18, United States Code. In this paragraph, the term “relevant portion of a protection order” means the portion of such order that prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person.

(d) *Dismissal of certain cases.* —

(1) In a criminal proceeding in which a participating tribe exercises special Domestic violence criminal jurisdiction, if the defendant files a pretrial motion to dismiss on the ground that the crime did not involve any Indian, the case shall be dismissed if the prosecuting tribe fails to prove that the defendant or an alleged victim, or both, is an Indian.

(2) In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, if the defendant files a pretrial motion to dismiss on the ground that the defendant and the alleged victim lack sufficient ties to the tribe, the case shall be dismissed if the prosecuting tribe fails to prove that the defendant or an alleged victim, or both, resides in the Indian country of the prosecuting tribe, is employed in the Indian country of the prosecuting tribe, or is a spouse or intimate partner of a member of the prosecuting tribe.

(3) A knowing and voluntary failure to file a pretrial motion under paragraph (1) or paragraph (2) shall be deemed a waiver.

(4) In any criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction based on a criminal violation of a protection order, the “victim” shall be deemed to be the person or persons specifically protected by the provision of the order that the defendant allegedly violated.

(e) *Rights of defendants.* — In a criminal proceeding in which a participating tribe exercises special domestic-violence criminal jurisdiction, the tribe shall provide to the defendant —

(1) all rights protected by the Indian Civil Rights Act;

(2) if a term of imprisonment of any length is imposed, all rights described in paragraphs (1) through (5) of section 1302(c); and

(3) all other rights whose protection is necessary under the United States Constitution in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise criminal jurisdiction over the defendant.

(f) *Petitions to stay detention.* — Any person who has filed a petition for a writ of habeas corpus in a court of the United States under section 1303 may petition that court to stay further execution of his tribal detention. The court shall grant the stay if it finds that there is a substantial likelihood that the habeas corpus petition will be granted and, after giving the alleged victim or

victims of the petitioner an opportunity to be heard, also finds by clear and convincing evidence that, under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or to the community if released.

(g) *Grants to tribal governments.* — The Attorney General may award grants to the governments of Indian tribes (or to authorized designees of those governments) to—

(1) strengthen tribal criminal-justice systems, including law enforcement (including the capacity to enter information into and obtain information from national crime information databases), prosecution, trial and appellate courts, probation, detention and correctional facilities, alternative rehabilitation centers, culturally appropriate services and assistance for victims and their families, criminal codes, and rules of criminal procedure, appellate procedure, and evidence, to assist tribes in exercising special domestic-violence criminal jurisdiction;

(2) provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to those defendants, in criminal proceedings in which a tribe is prosecuting a crime of domestic or dating violence or a criminal violation of a protection order;

(3) ensure that, in criminal proceedings in which a participating tribe exercises special domestic-violence criminal jurisdiction, jurors are summoned, selected, and instructed in a manner consistent with all legal requirements; and

(4) accord victims of domestic violence, dating violence, and protection-order violations a set of crime victims' rights similar to those described in section 3771(a) of title 18, United States Code, consistent with tribal law and custom.

(h) *Authorization of appropriations.* — There are authorized to be appropriated \$5,000,000 for each of fiscal years 2012 through 2016 for the grants described in subsection (g) and to provide training, technical assistance, data collection, and evaluation to improve the criminal-justice systems of participating tribes.

(i) *Nonsupplantation.* — Amounts made available under this subchapter shall be used to supplement and not supplant other Federal, State, tribal, and local funds expended to further the purposes of this subchapter.

(j) *General effective date.* — Except as provided in subsection (k), this new section shall take effect on the date of enactment of this Act.

(k) *Effective date for special domestic-violence criminal jurisdiction.* —

(1) *In general.* — Except as provided in paragraph (2), subsections (b), (c), (d), and (e) of section 1304 of title 25, United States Code, as added by subsection (e), shall take effect on the date 2 years after the date of enactment of this Act.

(2) *Pilot project.* —

(A) *In general.* — At any time within 2 years after the date of enactment of this Act, an Indian tribe may ask the Attorney General to designate the tribe as a participating tribe on an accelerated basis. The Attorney General (or his designee) may grant such a request after coordinating with the Secretary of the Interior (or his designee), consulting with Indian tribes, and concluding that the criminal justice system of the requesting tribe has adequate safeguards in place to protect defendants' rights, consistent with section 1304(e) of title 25, United States Code, as added by this section.

(B) *Effective dates for pilot-project tribes.* — An Indian tribe whose request is granted may commence exercising special domestic-violence criminal jurisdiction pursuant to subsections (b), (c), (d), and (e), as added by this section, on a date established by the Attorney General, after consultation with such tribe, but in no event later than the date 2 years after the date of enactment of this Act. The tribe may continue exercising such jurisdiction thereafter.

SEC. 905. TRIBAL PROTECTION ORDERS.

The 2008 *Martinez v. Martinez* decision, handed down by the U.S. District Court for the Western District of Washington, muddied the waters when it held that an Indian tribe lacked authority to enter a protection order for a nonmember Indian against a non-Indian residing on non-Indian fee land within the reservation. This section would clarify that every tribe has full civil jurisdiction to issue and enforce protection orders involving all persons, Indian and non-Indian alike.

Amend 18 U.S.C. § 2265 (Full faith and credit given to protection orders) to read as follows:

(a) Full Faith and Credit.— Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.

(b) Protection Order.— A protection order issued by a State, tribal, or territorial court is consistent with this subsection if—

(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) Cross or Counter Petition.— A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) Notification and Registration.—

(1) Notification.— A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) No prior registration or filing as prerequisite for enforcement.— Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

(3) Limits on internet publication of registration information.— A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

(e) For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any persons, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151 of title 18) or otherwise within the authority of the Indian tribe.

SEC. 906. AMENDMENTS TO THE FEDERAL ASSAULT STATUTE.

While the ideal scenario would be for tribes to be able to prosecute heinous crimes perpetrated against Native women on tribal lands, the reality is that the limitations placed on tribal sentencing authority by the Indian Civil Rights Act makes it impossible for tribes to adequately punish offenders. The language below would create a new, freestanding statute that would: 1) provide a five-year federal offense for assaulting a spouse, intimate partner, or dating partner, resulting in substantial bodily injury; and 2) provide a ten-year federal offense for assaulting a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate. This new statute would be analogous to 18 U.S.C. 117 in that it would apply to crimes committed throughout Indian country and within Public Law 280 jurisdictions and those similarly situated (such as some land claims settlement

states), regardless of the Indian or non-Indian status of the defendant or the victim.

Amend 18 U.S.C. § 113 (Assaults with maritime and territorial jurisdiction) to read as follows:

(a) Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows:

- (1) Assault with intent to commit murder *or a felony under chapter 109A*, by *a fine under this title or imprisonment for not more than twenty years, or both.*
- (2) Assault with intent to commit any felony, except murder or a felony under chapter 109A, by a fine under this title or imprisonment for not more than ten years, or both.
- (3) Assault with a dangerous weapon, with intent to do bodily harm by a fine under this title or imprisonment for not more than ten years, or both.
- (4) Assault by striking, beating, or wounding, by a fine under this title or imprisonment for not more than *1 year*, or both.
- (5) Simple assault, by a fine under this title or imprisonment for not more than six months, or both, or if the victim of the assault is an individual who has not attained the age of 16 years, by fine under this title or imprisonment for not more than 1 year, or both.
- (6) Assault resulting in serious bodily injury, by a fine under this title or imprisonment for not more than ten years, or both.
- (7) Assault resulting in substantial bodily injury to *a spouse or intimate partner, a dating partner, or* an individual who has not attained the age of 16 years, by *a* fine under this title or imprisonment for not more than 5 years, or both.
- (8) Assault upon a spouse or intimate partner or dating partner by strangling, suffocating, or attempting to strangle or suffocate, by a fine under this title or imprisonment for not more than ten years, or both.*

(b) As used in this *section*—

- (1) the term “substantial bodily injury” means bodily injury which involves—
 - (A) a temporary but substantial disfigurement; or
 - (B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty;
- (2) the term “serious bodily injury” has the meaning given that term in section 1365 of this title;
- (3) the term “dating partner” has the meaning given that term in section 2266(10);*

- (4) the term “spouse or intimate partner” has the meaning given that term in section 2266(7);*
- (5) the term “strangling” means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether such conduct results in any visible injury and regardless of whether there is any intent to kill or protractedly injure the victim; and*
- (6) the term “suffocating” means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether such conduct results in any visible injury and regardless of whether there is any intent to kill or protractedly injure the victim.*

Amend 18 U.S.C. § 1153(a) (Offenses committed within Indian country) to read as follows:

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, *a felony assault under section 113*, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

Amend 18 U.S.C. § 2265A (Repeat offenders) to read as follows:

(a) Maximum Term of Imprisonment.— The maximum term of imprisonment for a violation of this chapter after a prior domestic violence or stalking offense shall be twice the term otherwise provided under this chapter.

(b) Definition.— For purposes of this section—

- (1) the term “prior domestic violence or stalking offense” means a conviction for an offense—

- (A) under section 2261, 2261A, or 2262 of this chapter; or
 - (B) under State *or tribal* law for an offense consisting of conduct that would have been an offense under a section referred to in subparagraph (A) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States, or in interstate or foreign commerce; and
- (2) the term “State” means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

SEC. 907. ANALYSIS AND RESEARCH ON VIOLENCE AGAINST INDIAN WOMEN.

This section was initially enacted to address the lack of research on violence against Indian women and to develop a more detailed understanding of this violence and its effect on Indian women across the social spectrum and throughout their lifetimes. The proposed amendment to the baseline study mandated by Section 904 of VAWA 2005 would correct the inadvertent exclusion of Alaska Native villages in the study and would expand this research to include sex trafficking of Native women.

Amend section 904 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. § 3796gg-10 note) to read as follows:

- (a) National baseline study.—
 - (1) In general.—The National Institute of Justice, in consultation with the Office on Violence Against Women, shall conduct a national baseline study to examine violence against Indian women in Indian country *and Alaska Native Villages*.
 - (2) Scope.—
 - (A) In general.—The study shall examine violence committed against Indian women, including—
 - (i) domestic violence;
 - (ii) dating violence;
 - (iii) sexual assault;
 - (iv) stalking;
 - (v) murder; *and*
 - (vi) *sex trafficking*.
 - (B) Evaluation.—The study shall evaluate the effectiveness of Federal, State, tribal, and local responses to the violations described in subparagraph (A) committed against Indian women.
 - (C) Recommendations.—The study shall propose recommendations to improve the effectiveness of

Federal, State, tribal, and local responses to the violation described in subparagraph (A) committed against Indian women.

- (3) Task force.—
- (4) Report.—Not later than 2 years after the date of enactment of this Act [Jan. 5, 2006], the Attorney General shall submit to the Committee on Indian Affairs of the Senate, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report that describes the study.
- (5) Authorization of appropriations.—There is authorized to be appropriated to carry out this section [sic; probably should be ‘this subsection’, meaning this note] \$1,000,000 for each of fiscal years *2012 and 2013*, to remain available until expended.

Amend section 905(b) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 to read as follows:

- Sec. 905. Tracking of violence against Indian women.
- (b) Tribal registry.—
 - (1) Establishment.—The Attorney General shall contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain—
 - (A) a national tribal sex offender registry; and
 - (B) a tribal protection order registry containing civil and criminal orders of protection issued by Indian tribes and participating jurisdictions.
 - (2) Authorization of appropriations.—There is authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years *2012 through 2016*, to remain available until expended.

OTHER PROPOSED CHANGES IN VAWA 2011

Recodification

- Reorganize most VAWA programs so they are codified in Title 42, Chapter 136, Subchapter III (“Violence Against Women”)

Definitions and Grant Conditions

- New definitions to create enhanced gateways for victims of domestic violence, dating violence, sexual assault, and stalking receive services and protections
- Population-specific services: services provided through community-based programs.
- Underserved populations: adult, elder, and youth victims of domestic violence, dating violence, sexual assault and stalking and their children who face barriers in accessing and using national, Tribal, State, Territorial or local services due to one or more factors such as—
 - racial and ethnic minority status as defined in 42 U.S.C. 300u–6(g);
 - American Indian or Alaska Native status;
 - cultural, language, and literacy barriers, including being Deaf or hard of hearing;
 - immigration status;
 - sexual orientation or gender identity;
 - physical, sensory, or cognitive disabilities;
 - mental disabilities or other mental health needs;
 - age (including both older adults and youth);
 - geographical location, including those with a migratory or transitory lifestyle, such as migrant farmworkers and individuals who are homeless;
 - being an American Overseas;
 - faith, spirituality or religious practice, and
 - any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services, as appropriate.
- Grant Conditions protecting safety, confidentiality and autonomy of victims receiving services

Legal Assistance to Victims Summary

- custody representation for non-offending parents of child victims of sexual abuse
- Americans Overseas
- unique legal services needs of sexual assault victims
- criminal matters: "arising as a result of domestic violence, dating violence, sexual assault, or stalking (including directly related crimes committed by the same perpetrator against the victims' family, household members or animals)"

- services must be "accessible" and include "extended and holistic" services
- lawyers must have demonstrated VAW experience, or be supervised by someone who does
- pro bono assistance permitted, but not more than 10% of grant
- grant period: The Director shall award grants under this section for periods of either 36 or 60 months, depending on the election of the applicant, with the possibility of renewal funding for the same period. In every case, grantees shall be given a minimum of 12 months' notice of the termination or renewal of the grant.
- language accessibility as part of proposed budget
- Allows services for non-offending parents of child victims of sexual abuse.
- Adds language to support unique legal services needs of sexual assault victims.

Privacy and Technology Summary

- Changes to the definitions section and the universal grant conditions:
 - Strengthen the scope and depth of confidentiality and privacy protections for survivors of sexual assault, dating violence, domestic violence and stalking, particularly regarding communications between sexual assault, domestic violence, dating violence, and stalking victims and the service providers who work with those victims;
 - Clarify the release of information requirements that were established in VAWA 3, particularly regarding who may sign for a release of information;
 - Clarify the definition of *personally identifying information*, to, among other things, include immigration status, and to limit the types of data that may be/may not be collected about victims, and limitations on the use of any such data;
 - Add the development of confidentiality/privacy information planning and training requirements specific to confidentiality and data sharing and document/data retention issues.
- Clarify the existing exclusion of information about victims of sexual assault, domestic violence, dating violence, and stalking in computerized databases, including statewide databases.
- Increase technology capacity of grantees and implement privacy safety assessments as part any technology solutions funded by VAWA grants.
- Ensure security and privacy provisions around medical/health information of survivors, particularly regarding

Medicaid recipients

- Specify court records privacy for victims of domestic violence, dating violence, sexual assault and stalking, including in federal court processes, such as bankruptcy proceedings.
- Identify and respond to confidentiality issues throughout the proposed revisions.

Biden Bill Summary

- Fund national VAW pro bono directory & directory support
- Fund pro bono mentor attorneys at LAV grant sites
- TA for pro bono attorneys and mentors

Criminal Summary

- *Interstate DV*—
 - Add: enters, leaves, "or is within" tribal, territorial or maritime jurisdictions
 - Expand victim list to include "current or former" spouse, intimate partner or dating partner, and add "child in common"
 - Add: causing travel by " force, coercion, duress, or fraud"

Disabilities Summary

- Changed language to reflect people first language
- Including disabilities under the underserved section of definitions
- Added caregiver abuse
- Technical assistance to assist in modification of existing protocol, procedures, and policies was expanded to include disability service/advocacy organizations, law enforcement agencies, criminal and civil attorney offices, courts, and/or health care agencies
- Under eligible entities language was added to allow local programs to apply

Elder Abuse Summary

- Add permissible activities: public education, and training to non-core entities
- Add to list of trainees: civil lawyers, health care, faith
- Require grantee to be part of MDT
- Move new definition of elder abuse to grant section

Health Summary

- Clarify that the Grants to Foster Public Health Partnerships and Training and Education of Health Professionals will be administered by HHS Office of Women's Health instead of CDC and HRSA to reflect current funding
- Expand the assistance to improving the capacity of health programs to serve sexual assault victims

- Expand eligible entities under Training and Education of Health Professionals to go beyond medical schools to include other health professional schools, allied health training programs, and national health and trauma-related associations.

Housing Summary

- Expand all VAWA Housing protections to victims of sexual assault.
- Expand VAWA Housing protections to additional federal housing programs including the HOME Investment Partnerships, Rural housing Program, Low-income housing tax credit properties, McKinney-Vento Section 8 Assistance for SRO Dwellings, Shelter Care Plus Program, and Supportive Housing Program and Section 221(d)(3) Below Market Interest Rate (BMIR) Program and Section 236 Rental Program.
- Expand portability and transfer options for victims of domestic violence, sexual assault, dating violence and stalking in the previously and newly covered federal housing programs. The victim may request the transfer and the housing provider must provide, based upon local housing needs and availability, emergency temporary or permanent safe housing options.
- Create a Victim Rights Director at the U.S. Department of Housing and Urban Development to allow for improved implementation and enforceability of VAWA housing protections. VRD would be authorized to address the issues faced by victims proactively across all agencies programs and initiatives.
- Authorize HUD to investigate and resolve complaints of violations of VAWA housing protections.
- Clarify that when verifying income, public housing agency shall waive child support enforcement request that further jeopardize victims' safety.
- Combine two housing grant programs – Transitional Housing and Grants to Combat Violence in Public and Assisted Housing – to consolidate efforts and to secure funding to address the training needs of housing providers around these issues.

Immigration Summary

- Broaden and increase immigration remedies and protections for immigrant victims of DV and SA. Some specific examples include improving access to work authorization and inadmissibility waivers, expanding eligibility for VAWA self-petitioning – including to victims of same-sex relationships, and protecting victims from detention and removal.
- Broaden and expand confidentiality protections for immigrant victims imposed upon the Department of Homeland Security or local police acting as their agents.
- Improving access to victim services, training and funding for immigrant survivors.

- Addressing SA against Farmworker Women.
- Increasing regulation of International Marriage Brokers.
- Addressing family separation caused by immigration detention by seeking to protect the custody/parental rights of immigrant mothers in detention or removal proceedings.

Rape Prevention and Education Summary

- Creates baseline funding structure (contingent on increased appropriation)
- Creates coalition set-aside (contingent on increased appropriation) Clarifies entities eligible for funds

Sexual Assault Services Program Summary

- Prioritizes state sexual assault coalitions to administer SASP funds.
- Amends the distribution structure for the formula grant program including territories and states treated the same.
- Augments the tribal sexual assault sections including identifying tribal specific services.
- Increases allocation to \$80 million.

STOP

- Adds sexual assault specific language to purpose areas in STOP
- STOP grants language is also streamlined to reduce duplication
- Clarification of the roles and responsibilities of state administrators and the Office on Violence Against Women to make grant distribution process more efficient
- One new grant certification is added, requiring states to legislatively adopt the domestic violence protections of the model Uniform Child Custody Jurisdiction and Enforcement Act; this will improve enforcement of protection orders
- STOP funding to support legal assistance for victims
- Expanded areas of underserved populations to be served, including Lesbian Gay Bi-Sexual and Transgendered victims and Americans experiencing victimization from overseas.

Grants to Encourage Arrest and Enforce Protection Orders

- Adds sexual assault specific language to purpose areas.
- GTEAEP is renamed “Grants to Encourage Safety, Enforcement and Accountability” to reflect purpose area amendments that strengthen this program’s focus on a coordinated community response to domestic violence, dating violence, sexual assault, and stalking
- Grantees may work with a broader array of service programs
- Greater support for state and local efforts to improve information sharing in these cases without compromising victim safety
- Language is streamlined to reduce duplication.

Court Training and Improvements

- Provide funding for data collection about protection orders in the U.S.

Workplace/Economic Justice Summary

- Survivors are eligible for up to 30 days of unpaid leave annually to seek medical help, legal assistance, counseling, safety planning, and other assistance.
- Unemployment benefits will be extended to individuals who need to leave their jobs because of violence against themselves or a family member.
- Insurers may not deny coverage or charge higher premiums because a person is or suspected to be a victim of the 4 crimes. Insurers may not refuse to cover claims on the grounds that they result from abuse.
- Employers are barred from discriminating against survivors of the 4 crimes in employment status and in compensation. Employers may not refuse, without showing undue hardship, to implement a job-related modification that enhances the security of the employee.
- Eligibility for a share of a spouse’s social security benefits generally requires that the spouses have been married for 10 years. This requirement would be waived / lowered in cases of severe spousal abuse or abuse of a child in the family.

You can access descriptions of VAWA programs in the FY 11 Appropriations Briefing Book by going online at <http://www.nnedv.org/docs/Policy/fy11briefingbook.pdf>

A list of Violence Against Women Act 2011 reauthorization contacts can be found on page 34

LESSONS OF THE NCAI TASK FORCE ON VIOLENCE AGAINST WOMEN

The lessons of the NCAI Task Force are numerous and have increased significance to Indian Nations in the world in which we co-exist as sovereigns and indigenous peoples. Since 2003 many lessons exist but the following stand out as principles to guide future organizing efforts to increase the safety of Native women.

American Indian and Alaska Native: Recognition of the unique relationship of and distinction between American Indian tribes and Alaska Native Villages. This emphasis is of critical importance to the defense of sovereignty in the lower forty-eight United States as well as that of 227 federally recognized Indian tribes in Alaska.

Addressing Public Law 53-280: In 1953, during the termination era, Congress enacted what is known as PL 280. This Act transferred 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 to develop their respective tribal justice systems. Often when a woman is raped within an Indian tribe located within a PL 280 state no criminal justice agency may be available to assist her. As a result the perpetrator is free to continue committing horrific violence against the same or different woman. Efforts of the Task Force have included addressing safety for women living within both a federal-tribal and state-tribal concurrent jurisdiction.

“The NCAI Task Force represents the maturation of a grassroots movement across American Indian and Alaska Native communities to increase the safety of Native women.”

Juana Majel, 1st Vice-President, NCAI.



Balancing Western and Indigenous Justice Approaches: The strategic goal of the NCAI Task Force is to increase safety and restore the sacred status of American Indian and Alaska Native women. A dual approach to achieving this goal exists. One approach is to reform the western justice systems response to crimes of violence against Indian women. The other approach is to strengthen the tribal beliefs and practices that operate as protectors of women within tribal nations.

Broad Communication: Since the creation of the NCAI Task Force it has regularly published Sovereignty & Safety magazine to inform and share with tribal leadership, advocates, and tribal communities emerging issues impacting the safety of Native women. The magazine serves as an information bridge for the thousands of tribal leaders and community members to understand and participate in the movement to increase the safety of Indian women.

Inter-American Commission on Human Rights Grants Thematic Hearing on Violence Against Native Women

Jana L. Walker and Karla General
Indian Law Resource Center

On October 25, 2011, the Inter-American Commission on Human Rights (Commission) will hold a thematic hearing in Washington, D.C., titled "Violence Against Native Women in the United States." The purpose of the hearing is to inform the Commission about the extreme rates of violence against Native women and the role of United States law in creating and sustaining an epidemic of violence in Indian country.

The Commission is an autonomous organ of the Organization of American States, created by countries to protect human rights in the Americas. Charged with investigating and determining whether international human rights treaties, declarations, and other instruments have been violated by its 35 members, the Commission oversees thematic hearings that offer petitioners an important way to focus international attention on human rights violations in the Americas. The request for the thematic hearing was filed by the Indian Law Resource Center, on behalf of itself, the National Congress of American Indians Task Force on Violence Against Native Women, Clan Star, Inc., and the National Indigenous Women's Resource Center. This is the second time a request was filed. Participants in the hearing will include:

- Terri Henry, Co-Chair, National Congress of American Indians Task Force on Violence Against Native Women; Tribal Council Representative, Eastern Band of Cherokee Indians; and Principal Director, Clan Star
- Lisa Brunner, Executive Director, Sacred Spirits Native Coalition.
- Dorma Sahneyah, Vice Chairperson, National Indigenous Women's Resource Center and Executive Director, Hopi Tewa Women's Coalition to End Abuse.
- Jana L. Walker, Senior Attorney, Indian Law Resource Center.
- Jacqueline Agtuca, Director of Public Policy, Clan Star

They assert that the U.S. government's failure to respond to the epidemic of violence against Native women is a violation of its obligations under international human rights law. The hearing will serve to inform the Commission, and to engage it in exploring how international human rights law can help end the epidemic of violence against Native

women. The Commission can conduct site studies, prepare reports, and issue recommendations that may pressure the United States to take action to end violence against Native women. This may be particularly helpful in seeking critically needed reforms to federal law, including but not limited to restoring tribal criminal jurisdiction, creating services for Native women, establishing comprehensive funding streams to support culturally appropriate services for Native women, and increasing support for tribes sharing concurrent state criminal jurisdiction within P.L. 280 states.

The hearing is expected to be transmitted live via webcast and a video should be subsequently posted on the Commission website at:
http://www.oas.org/en/media_center/videos.asp.



Jessica Lenahan at the Inter-American Commission in 2007. From Columbia Law School Human Rights Clinic website.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ISSUES LANDMARK DECISION WITH MAJOR IMPLICATIONS FOR NATIVE WOMEN

On August 17, 2011, the Inter-American Commission on Human Rights issued a landmark decision in *Jessica Lenahan (Gonzales) v. United States*, finding that the

United States violated its obligations under international human rights law to use due diligence and reasonable measures to protect a woman and her three deceased children from violence. This marks the first human rights case brought by a domestic violence survivor before an international body against the United States.

The case stems from the deliberate failure of the Castle Rock, Colorado police to enforce a protection order against Ms. Lenahan's estranged husband, Simon Gonzales. Ms. Lenahan had repeatedly called the police for help after Mr. Gonzales kidnapped her three children in violation of the order. Ten hours after the first call by Ms. Lenahan, Mr. Gonzales drove to the police station, where he and the three children were killed in an exchange of gunfire.

Ms. Lenahan turned to the Inter-American Commission after U.S. federal courts failed her, including the U.S. Supreme Court, which held that women do not have a constitutional right to have civil protection orders enforced by the police, *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748 (2005).

Although the case did not occur in Indian country nor involve a tribal protection order, the decision has important implications for Native women who face the highest rates of sexual and physical assault of any group in the United States. In its ruling, the Commission acknowledged that domestic violence has a disproportionate impact on Native women and low income minority women, citing a 'friend-of-the-court' brief filed by the Indian Law Resource Center and Sacred Circle National Resource Center to End Violence Against Native Women, and on behalf of numerous organizations and tribal governments.

"We want our voices to be heard around this case, because the United States Supreme Court decision has vast implications for Native women and the enforcement of tribal protection orders by state law enforcement officials." – Terri Henry, Co-chair of the National Congress of American Indians Task Force on Violence Against Women, and Principal Director of Clan Star, Inc.

Because the U.S. has greatly limited tribal criminal jurisdiction, often the only recourse Native women have against their abusers is a civil protection order. However, these protection orders are only good if enforced.

"By allowing state law enforcement to choose not to enforce domestic violence protection orders, the United States Supreme Court decision in the Gonzales case greatly undermines the security of Native women, because no one else has the authority to enforce these orders outside of Indian

country. This decision gives Native nations and our communities an instrument to change and improve the lives of Native women." – Lucy Simpson, Executive Director, National Indigenous Women's Resource Center.

The Commission recommended a number of changes to U.S. law and policy pertaining to domestic violence issues: further investigation into the death of Ms. Lenahan's daughters; a review of systemic failures that took place regarding the protection order; full reparations to Ms. Lenahan; legislation reform to enforce protection orders to better protect children in the context of domestic violence; and policies and programs aimed at restructuring the stereotypes of domestic violence victims.

"The recommendations to the United States send a strong message that immediate action is needed to fix systemic failures in the way protection orders are enforced in the U.S. and to reform federal law to protect all women, including Native women, from violence. Such reforms reflect a broken justice system based in a history of colonization that is now recognized as failing to protect Native women." – Juana Majel Dixon, National Congress of American Indians First Vice President, and Co-chair of its Task Force on Violence Against Women.

Restoration of tribal criminal jurisdiction, effective enforcement of tribal protection orders, and meaningful access to justice will be absolutely critical in protecting Native women from violence within Indian country.

The UN Special Rapporteur on Violence Against Women, Rashida Manjoo, also took notice of the *Jessica Lenahan (Gonzales)* ruling, and called on the U.S. government to reexamine its policies, noting major shortcomings in U.S. law on the issue of domestic violence.

"I found a lack of substantive protective legislation for domestic violence victims in the United States, as well as inadequate implementation of certain laws, policies and programs. . . . [T]here is little in terms of legally binding federal provisions which provide substantive protection or prevention for acts of domestic violence against women." – Rashida Manjoo, UN Special Rapporteur on Violence Against Women.

Ms. Manjoo recently released her report on violence against women in the U.S., including specific findings and recommendations on violence against Native women. See Report of the UN Special Rapporteur on Violence Against Women, *infra*.

SENATE COMMITTEE ON INDIAN AFFAIRS HOLDS OVERSIGHT HEARING ON THE 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 on the treatment of indigenous peoples and their rights. It explicitly recognizes the rights of Native women not only as individuals, but also as members of their indigenous communities. Article 22(2) specifically speaks to the epidemic of violence against Native women and children, and Article 44 broadly recognizes that the rights and freedoms in the Declaration are equally guaranteed to Native women, including among other things, rights to political participation, education, and employment. The Declaration also helps Native women by promoting the development and maintenance of tribal institutions, including tribal law enforcement and courts. The Declaration and its protections specific to women's rights will improve the status of American Indian and Alaska Native nations and help end violence against Native women.

Under the direction of President Obama, federal agencies and lawmakers are moving forward on how best to implement the principles of the Declaration. Towards that end, on June 9, 2011, the Senate Committee on Indian Affairs scheduled an oversight hearing on "Setting the Standard: Domestic Policy Implications of the UN Declaration on the Rights of Indigenous Peoples." Robert T. Coulter, Executive Director and Founder of the Indian Law Resource Center, appeared to present testimony at the invitation of Daniel K. Akaka, Chairman of the Committee on Indian Affairs. Mr. Coulter wrote the first draft of the Declaration in 1976, which, over 30 years later, was finally adopted by the UN General Assembly in 2007.

"As incredible as it may seem, the UN Declaration is the first time in human history that indigenous peoples' right to exist has been legally recognized."
– Robert T. Coulter, Executive Director, Indian Law Resource Center.

To learn more about the UN Declaration and how its implementation could help end violence against Native women and protect the rights of American Indian and Alaska Native nations and other indigenous peoples, visit the Indian Law Resource Center at www.indianlaw.org.

REPORT OF THE UN SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN

"Violence against Native American women is at epidemic levels exceeding that of any other

population in the United States and more than double that among all other American women. Yet, these victims and crimes lack the visibility to bring about badly needed changes in our laws and how they are enforced. I can't stress just how important it is that the Special Rapporteur, an independent expert in international human rights, not only took note of this crisis, but personally visited the Eastern Band of Cherokee Indians to meet with tribal leaders and Indian women. Equally significant is the fact that the Special Rapporteur has now moved the issue of violence against Native women to the global and domestic forefront by recognizing in her official report to the United Nations Human Rights Council that restoring criminal jurisdiction to tribes and removing jurisdictional barriers in existing federal laws is crucial to protecting our Native women and ensuring their access to justice." – Terri Henry, Council Member Eastern Band of Cherokee Indians, Co-Chair, NCAI Task Force on Violence Against Women, Board Member of the Indian Law Resource Center.

On June 3, 2011, Rashida Manjoo, the UN Special Rapporteur on Violence Against Women highlighted the epidemic of violence against Native women in a report to the United Nation's Council on Human Rights on how the United States could better protect women's human rights and stop violence against women. Her report strongly recommends the United States reconsider systemic legal barriers, including limitations on the criminal authority of tribal governments, to improve its protection of Native women.

Earlier this year, Ms. Manjoo conducted an in-depth investigation of violence against women in the United States. In response to staggering statistics of violence against Native women, the Special Rapporteur visited the Eastern Band of Cherokee Indians (EBCI) in Cherokee, North Carolina on January 28-29, 2011. The visit was hosted by the EBCI 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. Presenters spoke of various barriers that hamper tribes in making Native women safe. Most notably, American Indian and Alaska Native nations are legally prohibited from prosecuting non-Indians, and the Indian Civil Rights Act severely limits the authority of tribal courts to sentence Indian offenders committing sexual and domestic violence against women in Indian country.

On June 3, 2011, Ms. Manjoo reported to the UN's Council on Human Rights her findings, titled "Advance Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences." The Advance Report,

released on June 1, 2011, finds that the limitations placed on tribal criminal jurisdiction over Indians by federal law is a contributor to the extreme rates of violence against Native women. Additionally, the Advance Report emphasizes the particularly negative effect of the United States Supreme Court's denial of tribal criminal jurisdiction over non-Indians in the Oliphant case. The Advance Report also identifies the failure of federal and state authorities to police and prosecute violent crimes effectively, including declination rates by U.S. attorneys of fifty percent of all cases from Indian reservations from 2005-2009, as contributing to the epidemic of violence against Native women.

The Advance Report of the UN Special Rapporteur includes the following recommendations to the United States concerning how it should best prevent and remedy violence against Native women:

- (a) Prioritize public safety on Indian land by fully implementing and funding the Violence against Women and Tribal Law and Order Acts.
- (b) Assist tribal authorities in their efforts to respond to violence against women, including by allowing those law enforcement agencies to access federal criminal databases and by establishing, in consultation and cooperation with Indian nations, a national reporting system to investigate and prosecute cases of missing and murdered Native-American women.
- (c) Establish federal and state accountability for the investigation and prosecution of violent crimes against Native-women. The government should also ensure that state authorities recognize and effectively enforce tribal court protection orders.
- (d) Increase resource allocation to Indian tribes and tribal non-profit organizations providing services to women to develop comprehensive services for survivors of sexual and domestic violence.
- (e) Consider restoring, in consultation with Native-American tribes, tribal authority to enforce tribal law over all perpetrators, both native and non-native, who commit acts of sexual and domestic violence within their jurisdiction.

On October 10, 2011, Rapporteur Manjoo presented her full report to the United Nations General Assembly in New York. Following the presentation, Ms. Manjoo participated in a webinar to discuss her report and mission with respect to the United States. She also discussed violence against Native women and the critical need for law reform related to jurisdictional limitations placed on tribes by Congress and the courts. To view the webinar with the UN Special Rapporteur on Violence Against Women, go to <http://youtu.be/tjBAWt9h5n8>. For additional information about the UN Special Rapporteur on Violence Against Women

and her Report, please visit <http://www.indianlaw.org/content/un-special-rapporteur-violence-against-women-issues-her-report-violence-against-women-united>.

United States' Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination with Regard to Violence Against Indian Women

In 2008, the UN Committee on the Elimination of Racial Discrimination criticized the United States sharply for failing to meet its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) to prevent and punish violence against American Indian and Alaska Native women. The Committee expressly recommended that the U.S. increase its efforts to prevent and prosecute perpetrators of violence against Native women. The Committee further recommended that the United States use the UN Declaration on the Rights of Indigenous Peoples as guidance for interpreting its duties to indigenous peoples. The United States is required to submit another report on its compliance with the Convention in November, 2011.

On May 13, 2011, the National Congress of American Indians Task Force on Violence Against Women, Sacred Circle National Resource Center to End Violence Against Native Women, and the Indian Law Resource Center submitted comments to the State Department to provide information on violence against Native women for inclusion in its report to the Convention. This information reported statistics showing the epidemic levels of violence occurring against Native women, how federal laws contribute to this human rights crisis, and the response of the U.S. Finally, the submitted information included specific recommendations to improve the commitment of the U.S. to protect the human rights of Native women under the Convention, particularly to increase the criminal jurisdiction of Indian nations over non-Indian rapists and batterers. This information will assist the U.S. government in accurately reporting the progress made towards ending violence against Native women in the last few years.

SACRED CIRCLE DEDICATED TO ACTIONS THAT PROMOTE THE SAFETY AND SOVEREIGNTY OF NATIVE WOMEN

Sacred Circle, that National Resource Center to End Violence against Native Women was established in 1998 as the fifth member of the domestic violence resource network that was originally created in 1993 by the US Department of Health and Human Services.

As many of you are aware, Sacred Circle has completed its last year of operation as a national resource center. The significant, valuable and important work begun by Sacred Circle will be continued by the new center, the National Indigenous Women's Resource Center.

During the past thirteen years Sacred Circle has been the leader in developing culturally appropriate training and educational materials, providing quality and culturally appropriate training and technical assistance, engaging in policy development and advocacy at the national level, building tribal capacity to create safety for Indian women and increasing Tribal Nations' response to violence against Native women. Sacred Circle has played a major role in increasing public and community awareness and grassroots support to ending the violence against Indian women.

Through the years, Sacred Circle has become a prominent and recognized name, both nationally and internationally, for the tremendous amount of work that was undertaken in strengthening tribal sovereignty and creating safety for Indian women. During this time, Sacred Circle has had contact with almost every Tribal Nation and Alaska Native Village on this Turtle Island. And, thousands of women's advocates, tribal law enforcement, court personnel, tribal social service staff, behavioral health and health care providers, housing programs, and countless others, from all walks of life, have benefitted from the programs and services provided by Sacred Circle, either through our on-site training/technical assistance, training institutes, specialty trainings, website or 1-877 call in number.

It's also important to remember all the women and men who contributed to the success of Sacred Circle, Karen Artichoker, Wayne Weston, Brenda Hill, George Twiss, Marlin Mousseau, Catherine Grey Day, Donna Haukaas, Carla Rae Marshall, Ronnie Jeffries, Donna Lynn Schnieder, Eileen Briggs, Patty Wells-Evans, Sandra Keith, Lucy Simpson, Paula Julian, and Gwendolyn Packard. And a very special acknowledgement for Leslie Ferguson, Executive Director, and Tara Azure, Program Manager, who stepped in, stepped up and allowed Sacred Circle to go out in a good way!

In remembering the past, and looking to the future, we are truly honoring the Sacredness of the Circle. According to our spiritual leaders,

"the circle is the symbol of Indian people. The bodies of humans and animals have no corners. With us the circle stands for the togetherness of people who sit with one another around the campfire, relatives, friends united in peace while the pipe passes from hand to hand. The camp in which every tipi had its place was also in a circle. The tipi was a ring in which people sat in a circle and all the families in the village were in turn circles within a larger circle, part of the larger hoop which was the seven campfires of the Sioux, representing one Nation. The Nation was only a part of the universe, it itself circular and made from the earth, which is round, of the sun, which is round, of the stars, which are round. The moon, the horizon, the rainbow—circles within circles, with no beginning and no end. "

The sun and moon rise and set in a circle, and the seasons of the year also make a circle by changing and returning each year. Traditional Indian ceremonies and activities are conducted in a circle and it is believed that the power of the world works in a circle as well. The origin of strength for Indian people is working in a circle, and so it is within this circular fashion that what began as Sacred Circle now continues with the National Indigenous Women's Resource Center. After more than a decade of providing tribally specific programs and services, Sacred Circle has passed the baton to the National Indigenous Women's Resource Center effective October 1, 2011.

The National Indigenous Women's Resource Center, Inc. (NIWRC) was created as a separate Native non-profit organization to continue the work of Sacred Circle. Under the leadership of Lucy Simpson, Executive Director, the NIWRC is dedicated to reclaiming the sovereignty of Native women as key to promoting safety for Native women.

Many of Sacred Circle's staff will transfer to the new organization, to insure a smooth transition and continuation of important programs and services expected of the new national resource center. Important partnerships established by Sacred Circle, such as the National Congress of American Indians Task Force on Violence Against Women, Clan Star, the National Task Force to End Sexual and Domestic Violence Against Women, the Domestic Violence Resource Network and numerous Indian nations, national Indian organizations, tribal coalitions, other national organizations addressing violence against women, and Indian women's advocates will also continue with the NIWRC.

Another unique feature of the NIWRC is the national Board of Directors, including a representative from Hawaii. The NIWRC Board includes representatives from each region of the U.S. to ensure national Native women representation. The NIWRC Board consists of: Terri Henry, Cherokee, Chairwoman (Southeast); Dorma Sahneyah, Hopi/Tewa, Vice Chairwoman (Southwest); Wendy Schlater, LaJolla Band of Luiseno Indians, Secretary/Treasurer (California); Carmen O'Leary (the Great Plains and Montana); Ruth Jewell, Penobscot, (Northeast); Dee Koester, Klamath (Northwest); Valli Kanuha, Native Hawaiian, Hawaii; Lenora Hooch, Yup'ik (Alaska); and Sheila Harjo, Seminole (Oklahoma). NIWRC Board members have extensive and varied experiences as women's and youth advocates, tribal leaders, tribal prosecutors, and committed and passionate individuals who have substantial expertise addressing violence against Native women. The NIWRC Board will ensure that technical assistance and training remains true to supporting and upholding the work of grassroots advocacy to address violence against Indian or Native women.

In honoring the Sacredness of the Circle, please welcome the National Indigenous Women's Resource Center.



WELCOME TO THE NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER

Dear Friends and Colleagues,

I am excited to announce that the National Indigenous Women's Resource Center, Inc. (NIWRC) is the next National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women. Beginning October 1, 2011, through a grant from the U.S. Department of Health and Human Services under the Family Violence Prevention and Services Act, the NIWRC will begin providing technical assistance and training, policy development, public education, and materials and resource information for Indian and Alaska Native nations, Native Hawaiians, and Native non-profit organizations addressing safety for Native women. We are excited to help provide national leadership to end violence against Native women through important partnerships with the National Congress of American Indians Task Force on Violence Against Women, Clan Star, the National Task Force to End Sexual and Domestic Violence Against Women, the Domestic Violence Resource Network, numerous Indian nations, national Indian organizations, tribal coalitions, other national organizations addressing violence against women, and Native women's advocates.



**National Indigenous
Women's Resource Center**

Our staff has been working hard to develop its annual work plan that includes regional TA/trainings that will be responsive to the specific needs of different regions of the United States. We are also prepared to offer on-site trainings in different Native communities, upon request. In addition to TA/training, our staff will promote and implement national policy strategies designed to strengthen Indian sovereignty and restore safety to Native women. We will also be launching a national strategic communications effort commensurate with the national scope of the problem in order to heighten understanding about the challenges and solutions in Native communities, among law enforcement agencies, legislative, judicial, healthcare and other systems and the public at large. Please let us know how we may be able to support your efforts at enhancing safety of Native women in your communities.

We have a truly outstanding Board of Directors from across the nation to ensure that our work remains true to supporting and upholding Native grassroots advocacy and social change to address violence against Native women. On behalf of our Board of Directors and staff, I look forward to working with you and others as we begin our journey forward as the next National Indian Resource Center.

Sign up to receive email announcements with information regarding upcoming activities, including training, webinars, and technical assistance and resource material availability at our website: niwrc.org/signup



Ahéhee',

A handwritten signature in blue ink that reads "Lucy Simpson".

Lucy Simpson, Esq.
Executive Director
lsimpson@niwrc.org
www.niwrc.org

NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER BOARD OF DIRECTORS

On behalf of the Board of Directors for the National Indigenous Women's Resource Center, Inc. (NIWRC), it is my pleasure to say Nukwang'qatsi ("Welcome" in the Hopi language) to each of you. The NIWRC is the new National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women. Our Board and staff are truly committed to ensuring that the NIWRC is responsive to Indian tribal governments, Alaska Native villages, and Native Hawaiian and tribal organizations throughout the country.

Our national Board of Directors is comprised of Native women advocates and leaders, all of whom have extensive experience in the movement to end violence against Native women, from nine different regions across the United States. Terri Henry (Eastern Band of Cherokee Indians), Board Chairwoman, represents the Southeast Region. I serve as Board Vice Chairwoman and represent the Southwest Region. Wendy Schlater (La Jolla Band of Luiseno Indians), Secretary/Treasurer, represents California. Lenora "Lynn" Hootch (Yupik Eskimo) represents Alaska, and Ruth Jewell (Penobscot Indian Nation) represents the Northeast Region. Valli Kalei Kanuha (Native Hawaiian) represents Hawaii, and Dee Koester (Lower Elwha Klallam, Quileute, and Makah) represents the Northwest Region. Carmen O'Leary (Cheyenne River Sioux) represents the Great Plains and Montana Region. We currently have a vacancy for the Oklahoma Region.

Each member of the Board of Directors lives and works in her Native community, so we truly understand the problems associated with violence against Native women in Native communities. We are excited about traveling on this journey and working together with our sisters and brothers to create effective responses focused on the real needs of Native women and children, as we collectively strive toward ending violence against Native women in this country.



Asquali/Koo na ah,

Dorma L. Sahneyah

Dorma L. Sahneyah (Hopi/Tewa), Vice-Chairwoman
NIWRC Board of Directors

Executive Director, Hopi-Tewa Women's Coalition to End Abuse

VIOLENCE AGAINST WOMEN ACT 2011 REAUTHORIZATION CONTACTS



National Task Force
to End Sexual and
Domestic Violence Against Women

DEFINITIONS AND GRANT CONDITIONS

Rebecca Henry, American Bar Association
Commission on Domestic Violence
(Rebecca.Henry@americanbar.org)

COMMUNITIES OF COLOR

Luz Marquez, National Organization of Sisters of
Color Ending Sexual Assault
(marquez@sisterslead.org)
Condencia Brade, National Organization of Sisters
of Color Ending Sexual Assault
(brade@sisterslead.org)

UNDERSERVED

Tonya Lovelace, Women of Color Network
(tl@pcadv.org)

ADVOCACY CORPS

Juley Fulcher, Break the Cycle
(jfulcher@breakthecycle.org)
Paulette Sullivan Moore, National Network to End
Domestic Violence (psmoore@nnev.org)

SEXUAL ASSAULT

Terri Poore, National Alliance to End Sexual Assault
(tpoore@fcasv.org)

TITLE I – ENHANCING JUDICIAL AND LAW ENFORCEMENT TOOLS TO COMBAT VIOLENCE AGAINST WOMEN

Rob Valente, National Network to End Domestic
Violence (rvalente@nnev.org)
Terri Poore, National Alliance to End Sexual Assault
(tpoore@fcasv.org)

TITLE II – IMPROVING SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

Rob Valente, National Network to End Domestic
Violence (rvalente@nnev.org)
Terri Poore, National Alliance to End Sexual Assault
(tpoore@fcasv.org)

TITLE III – SERVICES AND PREVENTION FOR YOUNGER VICTIMS OF VIOLENCE

Juley Fulcher, Break the Cycle
(jfulcher@breakthecycle.org)
Kiersten Stewart, Futures Without Violence, formerly
Family Violence Prevention Fund
(kstewart@futureswithoutviolence.org)
Monika Johnson Hostler, National Alliance to End
Sexual Assault (monika@nccasa.org)

TITLE IV – MILITARY

Debby Tucker, National Center on Domestic and
Sexual Violence (dtucker@ncdsv.org)
Monika Johnson Hostler, National Alliance to End
Sexual Assault (monika@nccasa.org)

TITLE V – STRENGTHENING THE HEALTHCARE SYSTEM'S RESPONSE TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

Kiersten Stewart, Futures Without Violence, formerly
Family Violence Prevention Fund
(kstewart@futureswithoutviolence.org)
Sally Schaeffer, Futures Without Violence, formerly
Family Violence Prevention Fund
(sschaeffer@futureswithoutviolence.org)
Diane Moyer, Pennsylvania Coalition Against Rape
(dmoyer@pacar.org)

TITLE VI – HOUSING OPPORTUNITIES AND SAFETY FOR BATTERED WOMEN AND CHILDREN

Monica McLaughlin, National Network to End
Domestic Violence (mmclaughlin@nnev.org)

TITLE VII – PROVIDING ECONOMIC SECURITY FOR VICTIMS OF VIOLENCE

Lisalyn Jacobs, Legal Momentum
(ljacobs@legalmomentum.org)
Maya Raghu, Futures Without Violence, formerly
Family Violence Prevention Fund
(mraghu@futureswithoutviolence.org)

TITLE VIII – PROTECTION OF BATTERED AND TRAFFICKED IMMIGRANTS

Lesley Orloff, Legal Momentum
(lorloff@legalmomenum.org)

TITLE IX – SAFETY FOR INDIAN WOMEN

Jax Agtuca, National Congress of American Indians
Task Force (Jax.safety@mac.com)
Katy Jackman, National Congress of American
Indians (kjackman@ncai.org)
Lucy Simpson, National Indigenous Women's
Resource Center (lsimpson@niwrc.org)

*You can also access current descriptions of each
program in the FY 11 Appropriations Briefing Book
by going online at [http://www.nnev.org/docs/Policy/
fy11briefingbook.pdf](http://www.nnev.org/docs/Policy/fy11briefingbook.pdf)*

Native women experience violent victimization at a higher rate than any other population of women in the United States.

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.

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.

Editorial Content: Jacqueline “Jax” Agtuca, Director of Public Policy, Clan Star, Inc.

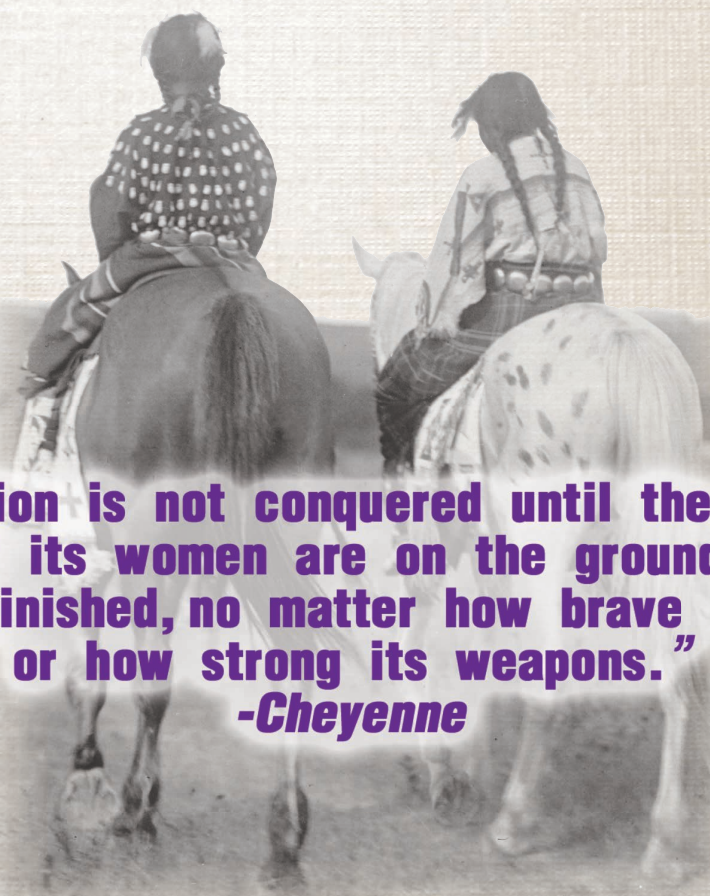
Contributors: Lucy Simpson, Acting Director, National Indigenous Women’s Resource Center; Jana Walker, Staff Attorney Indian Law Resource Center; Katy Jackman, Staff Attorney, National Congress of American Indians.

Photographs: Ginny Underwood, Communications Consultant.

Production: Tara Azure, Sacred Circle National, Resource Center to End Violence Against Native Women.

Design & Illustrator: Teresa Agtuca. **Design Editor:** Tang Cheam, Clan Star, Inc.





**“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.

777 Deadwood Ave • Rapid City, SD 57702
1-877-RED-ROAD (733-7623) 605-341-2050
scircle@sacred-circle.com • www.sacred-circle.com



A project of
CANGLESKA, INC
Serving the Oglala Lakota People

Violence Against Women is Not Our Tradition