



National Indigenous Women's Resource Center

**Testimony of the
National Indigenous Women's Resource Center
Senate Judiciary Committee
Hearing on the Need to Reauthorize the Violence Against Women Act
March 20, 2018**

The National Indigenous Women's Resource Center (NIWRC), is pleased to provide testimony to the Senate Judiciary Committee on the need to reauthorize the Violence Against Women Act (VAWA). NIWRC is a Native nonprofit organization that was created specifically to serve as the National Indian Resource Center (NIRC) Addressing Domestic Violence and Safety for Indian Women. The NIWRC is dedicated to reclaiming the sovereignty of Native nations and safeguarding Native women and their children. Through public awareness and resource development, training and technical assistance, policy development, and research activities, we provide leadership across the Nation to show that offenders can and should be held accountable and that Native women and their children are entitled to: 1) safety from violence within their homes and in their community; 2) justice both on and off tribal lands; and 3) access to services designed by and for Native women based on their tribal beliefs and practices.

The National Institute of Justice (NIJ) through the USDOJ released an alarming study in May 2016.ⁱ This study found American Indian and Alaska Native women have experienced severe rates of violence in their lifetimes, including:

56.1% who have experienced sexual violence;
55.5% who have experienced physical violence by an intimate partner;
48.4% who have experienced stalking; and
66.4% who have experienced psychological aggression by an intimate partner.ⁱⁱ

These are not just statistics. These numbers represent the lived experiences of many Native women. Continued systemic change is needed if we are to address this violence in a meaningful and sustainable way for American Indian and Alaska Native women. It is in these numbers that we see the effect of the devastatingly complex legal framework and various intersections that Native survivors of this violence must confront. It is also in these numbers that we are able to fully grasp the failure of the federal government to completely fulfill its Trust Responsibility to tribes and to Native people. The federal government is obliged under the doctrine of trust responsibility to tribal Nations – where it, “has charged itself with moral obligations of the highest responsibility and trust,... to the fulfillment of which **the national honor has been committed.**”ⁱⁱⁱ (*emphasis*

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added). This trust relationship originates from the near 400 treaties that the United States government signed with tribal Nations.^{iv} This responsibility applies to the response to gender-based violence in tribal communities. VAWA's section 901 includes findings that affirm this:

“Congress finds that...the unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.”^v

Yet, Native women continue to face barriers to safety that non-Native women simply do not face.

NIWRC, in partnership with the National Congress of American Indians as well as with numerous grassroots advocates, has been involved in past reauthorizations of the Violence Against Women Act (VAWA). With each reauthorization, steps have been made to reaffirm tribal sovereignty and to thereby strengthen the response to gender-based violence in tribal communities. NIWRC submits the following recommendations for consideration with regards to the upcoming reauthorization:

1. Address the remaining additional jurisdictional gaps with respect to the Special Domestic Violence Criminal Jurisdiction provisions in VAWA;
2. Improve the response to cases of missing or disappeared and murdered Native women and girls;
3. Address the unique challenges of Alaska; and
4. Address the resource disparity affecting Native victims of abuse.

Address the Remaining Jurisdictional Gaps in VAWA

In *Oliphant v. Suquamish*, 435 U.S. 191 (1978), the United States Supreme Court stripped tribes of their inherent authority to prosecute non-Natives for crimes committed on tribal land.^{vi} This case, coupled with other existing federal laws (the Major Crimes Act/Public Law 280) has had a devastating effect in tribal communities. With *Oliphant*, a perception was created: *if a perpetrator commits a crime in Indian Country, no one will prosecute it*. A perception on the part of Native women was created as well: *if a Native woman is abused or harmed, no one will protect her*. The legal system was not created to protect Native women; it was in fact created to fail them.

Thankfully, Congress set forth essential steps to address these barriers through the enactment of Title IX, the Safety For Indian Women Title contained within the VAWA 2005. Furthermore, in VAWA 2013, Congress legislated a partial *Oliphant Fix*. Under VAWA 2013, Congress recognized tribes' inherent authority to prosecute certain non-Natives with ties to tribal communities for specific crimes committed on tribal land. The scope was limited to Indian Country and applied to dating violence, domestic violence and criminal violations of a protection order.^{vii} Still, the VAWA 2013 was a historic amendment affirming tribal sovereignty and reaffirming the Federal Government's commitment to addressing violence in tribal communities in doing so.

However, special domestic violence criminal jurisdiction does not apply to instances of co-occurring child abuse, to instances of sexual assault/trafficking/and stalking outside of the context of an intimate partner relationship, nor to assaults on law enforcement or court personnel. Each of these instances represents a loophole with detrimental consequences for Native people.

Native children represent a serious vulnerability. 31% of children who witness intimate partner violence report being physically abused themselves.^{viii} Almost half of the children who witness intimate partner violence actively engage in some form of intervention: 49% yell for their abuser to stop, 43.9% try to escape, and 23.6% call out for help.^{ix} Furthermore, Native children experience compounding risk factors. Over a quarter of American Indian or Alaska Native children live in poverty, they are twice as likely than any other demographic to die before the age of 24, and they experience two times the rate of abuse and neglect. Violence, including intentional injuries, homicide and suicide, account for 75% of the deaths of American Indian and Alaska Native youth between the ages of 12-20. Alarmingly, Native children experience PTSD at rates that rival those of veterans returning from Afghanistan.^x Native children's experience of violence cannot be understated. Yet, tribes that are implementing special domestic violence criminal jurisdiction report that though they are able to charge a non-Native abuser for the abuse against their partner, implementing tribes cannot charge for crimes committed against the children.

The Native Youth and Tribal Officer and Protection Act^{xi}, introduced by Senator Udall and Senator Murkowski, would amend 25 USC 1304 to restore tribal jurisdiction over non-Natives who commit crimes against Native children on tribal land. Importantly, this legislation would also restore tribal jurisdiction over certain non-Native defendants for crimes they commit within the criminal justice process under special domestic violence criminal jurisdiction. The National Indigenous Women's Resource Center, along with tribes and other grassroots and National organizations, supports this much needed proposed legislation.

As referenced earlier, the NIJ study found that 56.1% of American Indian and Alaska Native Women experienced sexual assault.^{xii} Highlighting the need for a more robust *Oliphant Fix*, 96% of these victims reported that at least one of their perpetrators was non-Native.^{xiii} Because special domestic violence criminal jurisdiction applies only to acts of dating violence, domestic violence and criminal violations of protection orders committed by non-Natives with ties to tribal communities, many Native victims who are sexually assaulted by non-Native perpetrators have serious access to justice concerns.

In response to this jurisdictional barrier, Senator Murkowski introduced a bill entitled "Justice for Native Survivors of Sexual Violence."^{xiv} This bill would amend 25 USC 1304 so that special domestic violence criminal jurisdiction would include sexual assault, stalking, and trafficking crimes in its list of covered crimes. The National Indigenous Women's Resource Center, amongst other grassroots and National organizations, also supports this much needed proposed legislation.

Recommendation: Include provisions like those found in S.2233 and S.1986 in the reauthorization of the Violence Against Women Act.

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Improve the Response to Missing and Murdered Native Women and Girls

When a Native woman disappears and goes missing, so much of the “response” is based on more questions— which law enforcement agency has jurisdiction to take an initial report, who can respond, who can search, who can investigate...and ultimately, who can/will prosecute? The first 24 hours of any missing person case is a crucial time for law enforcement to organize and conduct an immediate search, but too often, questions of jurisdiction impede a timely law enforcement response. Most times, the response of law enforcement is non-existent. This can leave the responsibility of a search effort to the family members or tribal community. The pillars beneath the crisis of missing and murdered are the restrictions on tribal authority to prosecute non-Natives for crimes committed on tribal land and the severe resource disparity in Indian Country at large. The link to the evolution of Federal Indian Law and Policy cannot be denied. The current legal framework fails to respond to the disappearance and murder of Native women and girls because that same framework was born during an era of termination of Indian tribes. We often speak of a “broken system” or of legal reform, but the truth is that the legal framework that applies in Indian Country was not designed to protect Native women and girls. Rather, it seems intentionally built to fail them and to continue policies that resonate with colonization and genocide.

Native women experience homicide at a rate that is more than 10 times the national average. According to the Centers for Disease Control and Prevention (CDC), Native women are murdered at a rate of 4.3%, while their white counterparts experience homicide at a rate of 1.5%.^{xv} The CDC also confirmed long held beliefs by tribal domestic violence advocates: almost half of Native Victims were murdered by an intimate partner.^{xvi} The high rates of homicide, coupled with the lack of an adequate response from the various law enforcement agencies at work in Indian Country, illustrates the need for further reform.

In response to this crisis, Senator Heitkamp has introduced “Savanna’s Act,” which would address the number of missing and murdered Native women and girls in the United States. Heitkamp introduced the bill after Savanna LaFontaine-Greywind was murdered. Her killers removed her unborn child, cutting her from Savanna’s womb, while Savanna was still alive. Savanna’s child was found in the possession of her killers; Savanna herself was found in the Red River.

The bill would improve tribal access to federal crime information databases, such as the National Crime Information Center, and would create data fields relevant to the Native population. The bill also calls on law enforcement agencies to create standardized protocols across jurisdictions to address the issue of missing and murdered and requires an annual report to Congress. The bill has bipartisan support in the Senate Committee on Indian Affairs and there is an identical companion bill in the House (H.R. 4485), introduced by Representative Norma Torres. The National Indigenous Women’s Resource Center supports this legislation as a positive step towards increasing awareness and creating much needed access to federal criminal information databases for Indian tribes.

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Recommendation: Include provisions such as those found in “Savanna’s Act” into any reauthorization of VAWA.

The Unique Challenges of Alaska

Due to the decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1986), there is virtually no “Indian Country” in Alaska. The result is that Alaska Native women are exempted from the protections within many federal reforms intended to address violence against Native women. Without federal restoration of a land base for Alaska tribal governments, the public safety crisis and related disparities in Alaska Native villages will continue, if not worsen.

One possible solution is found in a report issued by the Tribal Law and Order Act Commission. The Tribal Law and Order Act Commission recommended a legislative fix for *Venetie*. The fix would amend the definitions of “Indian country” to include Alaska Native allotments and native-owned town sites; supporting land into trust applications by Alaska Native tribes; channeling more resources directly to Alaska Native tribal governments for governmental services; and supporting Alaska Native tribes and villages with the exercise of criminal jurisdiction within their communities. The reform needed also requires an amendment to the Alaska Native Claims Settlement Act’s definition of “Indian country” to include Alaska Native allotments and Native-owned town sites. The Indian Law and Order Commission’s Report stated that Congress should legislate a fix for *Venetie* by amending ANCSA to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.^{xvii}

Recommendation: The Department of Justice, the Department of the Interior and Health and Human Services should engage in government-to-government consultation with Alaska Native villages to ensure that provisions added will address the crisis of violence against Alaska Native women and enhance the response of village governments, specifically (but not limited to), consultation around possible legislative fixes like those found in the *ILOC Report’s Recommendations 2.1-2.3, 2.5*.

Address the Resource Disparity Affecting Native Victims of Abuse

As sovereign nations, tribes engage in a government-to-government relationship with the federal government and utilize their sovereignty to exercise care and control over their people and their lands. In exercising care and control in tribal communities, tribes must address gender-based violence in all forms. Yet necessary resources are scarce, and culturally appropriate resources are practically non-existent. Issues of tribal jurisdiction, gaps in culturally appropriate services and victim advocates, the availability of law enforcement as well as the availability of emergency shelters, transitional housing, and rape crisis services create barriers for Native survivors seeking support and safety. The Federal Indian Legal framework is devastatingly complex and one that Native victims must confront and navigate for safety and protection. Yet, when tribal sovereignty is respected and the federal trust relationship is upheld, those barriers to safety can be mitigated. When tribes and AI/ANs are able to develop, implement and sustain culturally appropriate

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resources, tribal sovereignty is respected and services become more responsive to Native survivor needs. In past reauthorizations of VAWA, Congress created grant programs for Indian Tribes. These programs have continued to make a difference in the lives on Native victims and should be reauthorized. However, the funding remains insufficient. Resources like the StrongHearts Native Helpline, a culturally appropriate, confidential service for Native Americans affected by domestic violence and dating violence, have found that there is a severe resource disparity that continues to plague tribal communities (*see Attachment A*). This resource disparity continues, in part, because tribes continue to be shut out of meaningful access to the Crime Victims Fund (CVF). Though the FY18 Omnibus Spending Bill includes a 3% set aside for tribal government, a permanent fix is needed. There must be a government-to-government funding stream legislatively established for tribal governments accessing the CVF. As the National Congress of American Indians noted in its testimony, a permanent fix to tribal VOCA funding may likely be outside of the scope of a VAWA reauthorization bill. However, the resource disparity in tribal communities is greatly contributing to the crisis of gender-based violence these same communities must address. Critical resources like the StrongHearts Native Helpline, Tribal Domestic Violence and Sexual Assault Coalitions, tribally-run or Native based shelter services, tribal Housing, Sexual Assault Response Teams, fatality reviews, basic health services, mental health services and other culturally appropriate programs and services are absolutely vital to any meaningful response to violence in tribal communities. The current funding available in Indian Country is inadequate to address these needs.

Recommendation: Reauthorize the VAWA grant programs to continue these lifesaving programs.

Conclusion

Previous VAWA amendments to federal law have highlighted an increasing awareness of the need to address violence against Native women and the critically important role of Indian nations in the full implementation of VAWA. The statistics among Native populations represent the ongoing negative impact that colonization has had on Indian people and nations. The federal Indian legal framework is devastatingly complex and one that Native victims must confront and navigate daily for safety and protection. However, resources are scarce, and culturally appropriate resources are practically non-existent. Many barriers and questions present themselves concerning tribal jurisdiction, law enforcement availability, lack of culturally appropriate services and victim advocates, and availability of emergency shelters and rape crisis services. In this context, while much remains to be done, VAWA is life-saving legislation that has over twenty years made steady gains in addressing the safety of Native women by operating within a government-to-government relationship with Indian tribes respectful of tribal sovereignty as demonstrated through the process of consultation for each reauthorization.

We thank the Members of the Senate Judiciary Committee for supporting the Violence Against Women Act and our testimony. We respectfully urge you to consider these recommendations.

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ⁱ DEPARTMENT OF JUSTICE, NAT'L INST. OF JUSTICE, VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN: 2010 FINDINGS FROM THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY 26 (May 2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

ⁱⁱ *Id.*

ⁱⁱⁱ *United States v. Jicarilla Apache Tribe*, 131 S. Ct. at 2324, citing *Seminole Nation v. United States*, 316, U.S. 286, 296-97 (1942) and *Heckman v. United States*, 224 U.S. 413, 437 (1912).

^{iv} *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), *Worcester v. Georgia*, 31 U.S. 515 (1832).

^v 2005 VAWA § 901 Findings

^{vi} *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978)

^{vii} 25 U.S.C. §1304

^{viii} The Facts on Children's Exposure to Intimate Partner Violence

<http://www.futureswithoutviolence.org/userfiles/file/Fact%20sheet%20on%20Children%20Exposed%20to%20IPV%202013.pdf>

^{ix} *Id.*

^x Sari Horwitz, The hard lives—and high suicide rate – of Native American children on reservations, Washington Post, (March 26, 2018 5:01pm) https://www.washingtonpost.com/world/national-security/the-hard-lives--and-high-suicide-rate--of-native-american-children/2014/03/09/6e0ad9b2-9f03-11e3-b8d8-94577ff66b28_story.html?utm_term=.cd99ba35d9cc

^{xi} S. 2233

^{xii} DEPARTMENT OF JUSTICE, NAT'L INST. OF JUSTICE, VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN: 2010 FINDINGS FROM THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY 26 (May 2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

^{xiii} *Id.*

^{xiv} S. 1986

^{xv} *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014*: Centers for Disease Control and Prevention (2017).

^{xvi} *Id.*

^{xvii} A Roadmap for Making Native America Safer: Report to the President and Congress of the United States (November 2013), available at <http://www.aisc.ucla.edu/iloc/report/>.