

VAWA 2005 REVIEW

TRIBAL CONSULTATION  
RECOMMENDATIONS

CITIZENS RELAY FOR  
PASSAGE OF VIOLENCE  
AGAINST WOMEN ACT

OKLAHOMA TRIBAL  
EFFORTS

Special Edition:  
Tribal Consultation  
October 2012  
Tulsa, Oklahoma



*Restoration*  
OF NATIVE SOVEREIGNTY AND SAFETY FOR NATIVE WOMEN



**Cover:** On May 10, 2012, Cherrah Ridge—a tribal citizen and a former elected tribal council member of the Muscogee (Creek) Nation—participated in a Congressional briefing sponsored by the Congressional Native American Caucus. The briefing consisted of two panels: one made up of tribal victims and one made up of Department of Justice officials who support the tribal VAWA jurisdictional amendments. Cherrah Ridge is from the Thlikatchka (Broken Arrow Tribal Town) and of the Fuswv (Bird Clan).

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Tribal Consultation Special Edition

*Restoration*  
OF NATIVE SOVEREIGNTY AND SAFETY FOR NATIVE WOMEN

RESTORATION OF SOVEREIGNTY & SAFETY MAGAZINE, 2003-2012

Nine 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 *Restoration of Sovereignty & Safety* magazine emerged to fulfill this task.

The *Restoration of 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, *Restoration of 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, the National Indigenous Women's Resource Center, and Clan Star, Inc. It is produced and made available during national NCAI conventions and the annual USDOJ - Tribal VAWA Consultation.

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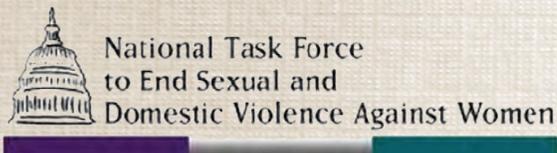
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Dear Friends,

Welcome to the seventh annual VAWA Consultation with Indian nations! The Safety for Indian Women Title mandates that the U.S. Department of Justice (USDOJ) conduct an annual consultation with Indian nations on issues concerning the safety of Indian women. Consultation is a safeguard on the implementation of VAWA to strengthen the ability of tribal governments to increase the safety of women. A national consultation is the highest level of policy discussion between the United States and Indian nations as governments. This interaction on a nation-to-nation basis allows the governments to discuss critical issues that at the broadest level impact the safety of Indian women. It allows for those issues that impact all Indian nations in providing safety for women to be addressed.

During the annual consultation, it is mandated by VAWA 2005 that the Attorney General of the USDOJ and Secretary of Health and Human Services (HHS) solicit recommendations on three specific areas:

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

In preparation for each of the annual consultations since 2006, the NCAI Task Force and staff have coordinated a preparatory caucus for tribal leaders. During these caucuses, tribal leaders receive a briefing and review outstanding issues concerning the safety of Indian women. The caucus develops a list of recommendations each year regarding implementation of the Safety for Indian Women Title. This list is provided to the USDOJ and the White House. While the consultation process has substantially improved under the leadership of the Obama administration and Attorney General Eric Holder, the issue of the establishment of the national tribal registries for orders of protection and sex offenders continues to be a major concern given the nature of violence an order of protection is intended to prevent.

This special edition of the *Restoration* magazine is designed to assist tribal leaders in the consultation process. It provides a review of the tribal provisions contained in the Tribal Title and previous recommendations made to the USDOJ addressing the three areas mandated by the statute. Lastly, additional recommendations are provided to the USDOJ that could significantly increase the capacity of Indian tribes to assist victims of domestic violence, dating violence, and sexual assault.

We hope this information will assist you in preparing for the 2012 annual consultation. Together we can end violence against American Indian and Alaska Native women!



Juana Majel  
1st Vice President  
National Congress of  
American Indians



Terri Henry  
Tribal Council Member  
Eastern Band of  
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# Seven Years Later: General Review of Implementation of Title IX. Safety for Indian Women by the USDOJ

In 2005 Congress, recognizing the devastating violence occurring against American Indian and Alaska Native women, took a historic step to enhance the safety of Native women by including a Tribal Title within the Violence Against Women Act. Passage of the Safety for Indian Women Title (Title IX) represented a critical turning point in the recognition of the severity of violence committed against Indian women.

In addition, it reaffirmed the legal relationship and commitment that the United States has to Indian tribes. VAWA '05 clarified that the unique legal relationship between the United States and Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women. VAWA '05 included language that strengthens the capacity of Indian tribes to exercise their sovereign authority to respond to violent crimes against Indian women.

Each provision of the Tribal Title for which there are outstanding concerns and recommendations is reviewed in detail later in the magazine, but a general summary of key components is provided below according to the following four categories:

## **Government-to-Government Relations**

To assure proper governmental relations between the United States and Indian nations regarding implementation of VAWA '05, Title IX statutorily established the Deputy Director for Tribal Affairs. Further, it explicitly required that the Department of Justice (USDOJ) and Department of Health and Human Services (HHS) conduct annual consultations with Indian tribes on statutorily defined categories.

*Annual Consultation Mandate.* This mandate was intended to provide a forum at a government-to-government level where tribal leaders could meet annually with the United States to raise concerns and make recommendations to enhance the safety of Native women. Specifically, the Tribal Title mandated that the USDOJ Attorney General and Secretary of HHS conduct the consultation. In 2013, seven years later, the consultation is now institutionalized and provides a successful forum for review of tribal concerns and recommendations for enhancing the safety of Indian women. *In this regard, the USDOJ receives commendation for their consultation efforts.*

*Position of OVW Deputy Director for Tribal Affairs.* The Deputy, under the guidance of the Director, holds the authority to conduct broad intergovernmental policy work to implement VAWA amendments and tribal enhancements. The establishment of this position is based upon the longstanding policy of a government-to-government relationship between Indian tribes and the United States. During past consultations, concern has been raised regarding the actual authority granted to the Deputy Director to implement the statutory mandate of the position. Further, Indian tribes have continuously



raised concerns about the lack of support staff for the tribal deputy and also the understaffing of the tribal unit. *In this regard, the USDOJ must better support the Deputy Director in the exercise of authority on a daily basis and increase staffing for the tribal unit.*

### Federal Code Amendments

The Tribal Title made several code amendments including: the Firearms Possession Prohibitions of VAWA 2000 to include tribal court convictions; the Indian Law Enforcement Reform Act to include misdemeanor arrest authority; the federal code to create a Domestic Assault by an Habitual Offender; and the Federal Criminal Information Databases to provide Indian nations access to enter and obtain information. *In this regard the USDOJ has taken steps to implement each provision and is commended for its efforts.*

### Research and Information Access

The Tribal Title provides for a national baseline study on rates of violence against Indian women by the National Institute of Justice (NIJ) and a Centers for Disease Control and Prevention (CDC) study on the costs of injury to Indian women due to violence. *In this regard, the NIJ is highly commended for its efforts to fully implement this provision. Unfortunately, Congress has yet to fund the CDC study.*

In addition, the Tribal Title authorized the USDOJ to develop and maintain a national tribal sex offender and protection order registry to enhance the ability of tribal governments and law enforcement agencies to deal with violence against Indian women on tribal lands. *In this*

*regard, the USDOJ has taken limited steps to implement the tribal registries mandate. The lack of action is unacceptable given the strong support of Congress for implementation, as demonstrated by its repeated annual appropriations of the full amount authorized.*

### Increased Resources

The Tribal Title created the Grants to Indian Tribal Governments Program (GITGP), which lifted programmatic restrictions to allow Indian tribes to determine the appropriate governmental strategies according to their respective forms of governance. The title clarified that Indian tribes are not required to provide a match for the federal funds. *In this regard, the USDOJ has acted to implement and improve the administration of the GITGP and, while ongoing concerns and recommendations exist, the USDOJ is commended for its actions.*

The Tribal Title required that technical assistance to Indian tribes and organizations be provided by entities having expertise in tribal law, customary practices, and federal Indian law. The Office on Violence Against Women (OVW) entities providing technical assistance to the tribal grant programs are generally tribal experts. Some concern has been raised as to whether all such entities fulfill the second requirement of having the additional expertise of violence against American Indian and Alaska Native women. It is also unclear if funds removed for OVW-wide initiatives fulfill this requirement and benefit Indian tribes in their efforts to increase the safety of Native women.

*Many important enhancements for Indian tribes, organizations, and tribal coalitions run throughout the Act, but the heart of VAWA '05 is Title IX. Safety for Indian Women.*

### Annual VAWA Consultations 2006–2011

Date	Location	Highest DOJ Official	Annual Report
2006	Shakopee, Mdewakanton Sioux Community, MN	OVW Director Diane Stewart	No
September 19, 2007	Sandia Pueblo, NM	Acting OVW Director Mary Beth Buchanan	Yes
December 10, 2008	Agua Caliente Band of Cahuilla Indians Palm Springs, CA	OVW Director Cindy Dyer	Yes
October 30, 2009	St. Paul, MN	Associate Attorney General Tom Perrelli	Yes
October 4, 2010	Kalispel Indian Reservation Spokane, WA	Associate Attorney General Tom Perrelli	Yes
December 15, 2011	Santa Ana Pueblo, NM	OVW Director Susan Carbon	Yes

# Citizens Relay for Passage of Violence Against Women Act

By: Rebecca Landsberry / Sterling Cosper

OKMULGEE — Muscogee (Creek) Nation (MCN) citizens and employees participated in a relay run to carry TR 12-090 in support of the Reauthorization of the Violence Against Women Act (VAWA) from the tribe's capitol complex to the Tulsa District office of U.S. Rep. John Sullivan July 2, 2012.

Citizens of other tribal nations joined the MCN in the relay run, which kicked off at 7 a.m., in Okmulgee and commenced at Sullivan's office located at 5727 S. Lewis Avenue, Suite 520 in Tulsa, Okla., at 2 p.m.

The event was organized in coordination with the National Task Force to End Domestic and Sexual Violence Against Women's "10 Days of Action to Reauthorize the Violence Against Women Act." As part of this effort, Muscogee (Creek) Nation Director of Community Services Cherrah Ridge and Family Violence Prevention Program Manager Shawn Partridge organized the event for tribal members.

MCN National Council Speaker Sam Alexander ran two miles of the relay and said the event came together quickly.

"What a wonderful example of what can be done in a small amount of time. It seems like, as Indian people, we're pretty good at that," Alexander said.

More than 30 participants ran the 36-mile journey, each running one-mile legs, while carrying the tribal resolution in hand.

The relay culminated in a rally held outside of Sullivan's office at 2 p.m.

Partridge said the event aimed to raise awareness about the importance of retaining the tribal

provisions in the House version of the VAWA.

"We traveled 36 miles, had 40 plus runners that came here today to deliver a tribal resolution in support of the reauthorization of the Violence Against Women Act. We're doing this because we want our legislators to know that the safety of Native women is important and urging them to make sure that the tribal provisions are included in that law," Partridge said.

The U.S. Senate passed S. 1925, a bipartisan bill that included special protections for Native women; however, the House's version, H.R. 4970, failed to include these tribal provisions, which could

solve the long-standing problem of unprosecuted sexual violence against native women by non-Native offenders on tribal lands.

Currently, only the federal government has jurisdiction over these cases. State and local courts have no authority on tribal reservations since they are considered sovereign territory and tribes cannot hear cases involving non-Natives because they are considered outside the jurisdiction of tribal courts.



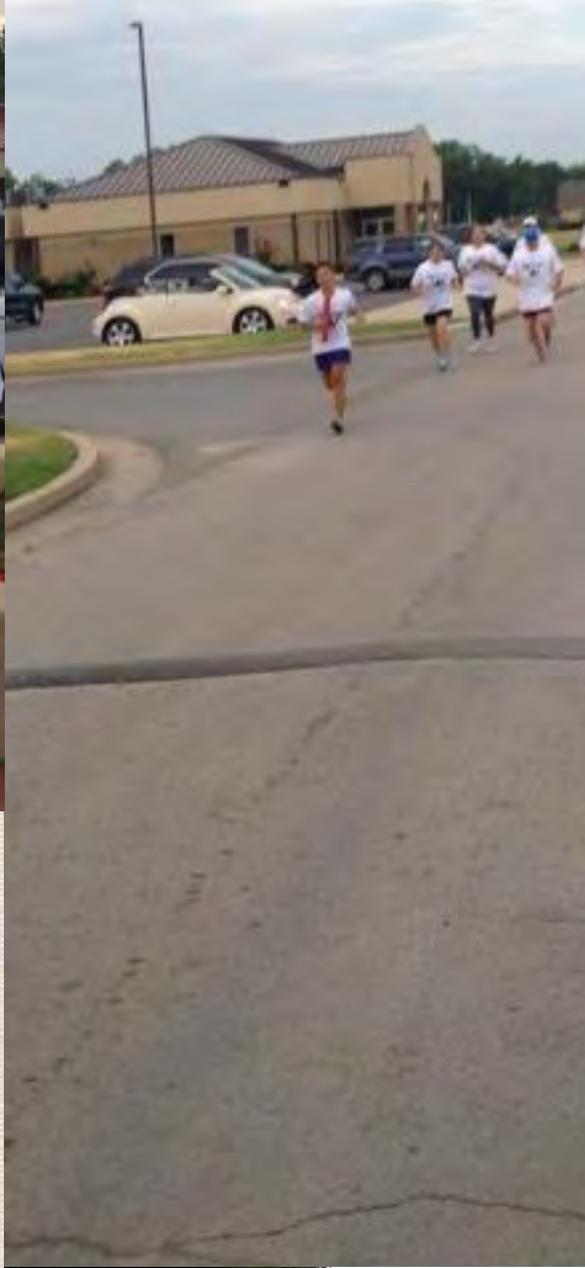


National Task Force  
to End Sexual and  
Domestic Violence Against Women

# SAVE VAWA

10 DAYS OF ACTION  
to reauthorize the  
**Violence Against Women Act**





Muscogee (Creek) Nation Principal Chief George Tiger noted that the protection and safety of the tribe's women is important.

"It's our tradition and our culture that we take care of one another. Violence against women has no part of our traditions. It's very important that we make our voices heard to those members of Congress," Tiger said.

As reported by Sterling Cospser in the May 15 edition of the Muscogee Nation News, Department of Justice statistics indicate that 34 percent of American Indian and Alaskan Native women will be raped in their lifetimes,

and 39 percent will experience domestic violence. A regional survey done by the University of Oklahoma showed that nearly three out of five (60%) Native American women have been assaulted by their spouses or intimate partners.

An analysis funded by the National Institute of Justice (NIJ) found that, on some reservations, native women are murdered at 10 times the national average. A nationwide survey done by the NIJ found that one in three American Indian women will be raped in her lifetime.

Ridge said the passage of VAWA is critical for justice in Indian Country.

"For us to not do anything is just allowing one more victim, one more woman to be a victim of domestic violence and that's not going to be tolerated. We have to let Congress know about it each and every day," Ridge said.





Relay Photos by Mvsokke Media, Rebecca Landsberry, and Gary Fife.



# VAWA 2005 Implementation Issues: Summary of Title IX. Safety for Native Women

## §901. Findings.

It has now been almost seven years since the VAWA 2005 was signed into law on January 5, 2006. In passage of the Safety for Indian Women contained in VAWA 2005, Congress relied on several hearings conducted by the Senate Committee on Indian Affairs. During these hearings, the statistics listed in the Findings sections of the statute were brought to light for the Committee, Congress, and the nation. Since passage in 2005, additional statistics have been revealed that reaffirm the urgent need for immediate reform of the justice system to enhance the safety of Native women.

### Statutory Language

#### §901. Findings.

Congress finds that—

- (1) 1 out of every 3 Indian (including Alaska Native) women are raped in their lifetimes;
- (2) Indian women experience 7 sexual assaults per 1,000, compared with 4 per 1,000 among Black Americans, 3 per 1,000 among Caucasians, 2 per 1,000 among Hispanic women, and 1 per 1,000 among Asian women;
- (3) Indian women experience the violent crime of battering at a rate of 23.2 per 1,000, compared with 8 per 1,000 among Caucasian women;
- (4) during the period 1979 through 1992, homicide was the third leading cause of death of Indian females aged 15 to 34, and 75 percent were killed by family members or acquaintances;
- (5) Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and
- (6) 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.

## §901 COMMENTARY:

Section 901 provided the justification for creation of Title IX. and amendments to the Violence Against Women Acts of 1994 and 2000. Findings 1–4 are statistics from federal research that highlight the nature and extent of violence against Indian women. Finding 5 is a conclusion reported by the U.S. Civil Rights Commission in its report “A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country.” Finding 6 articulates the legal responsibility of the United States to Indian tribes in safeguarding the lives of Indian women.

## §902. Purposes.

Congress clearly established three purpose areas for the provisions contained in the Safety for Indian Women Title. The inclusion of language recognizing the “sovereign authority to respond to violent crimes committed against Indian women” is extremely significant to self-governance. The concurrent authority of Indian tribes and the United States under the Major Crimes Act has created confusion in justice agencies responding to violent crimes against Indian women. Particularly, in crimes of sexual assault, an inaccurate interpretation has resulted in a public myth that Indian tribes do not have the jurisdictional authority to respond to the crime of rape. This language and other language contained in the VAWA ‘05 clarified this confusion. Further, it set forth the proper relationship of the USDOJ to Indian tribes in the implementation of the provisions and administration of the programs contained in the Title.

### Statutory Language

#### §902. Purposes.

The purposes of this title are:

- (1) to decrease the incidence of violent crimes against Indian women;
- (2) to strengthen the capacity of Indian tribes to exercise their sovereign authority to respond to violent crimes committed against Indian women; and
- (3) to ensure that perpetrators of violent crimes committed against Indian women are held accountable for their criminal behavior.



## §902 COMMENTARY:

Section 902 is a statement of the Congressional purposes for the enactment of Title IX. Safety for Indian Women. It provides an overview of the ultimate goals intended by Congress to be accomplished by Title IX. The three purpose areas also provide clarity for the implementation of the Act. It links the decrease of violence against Indian women to the increased capacity of Indian tribes to exercise their sovereign authority to protect Indian women and hold perpetrators accountable for their crimes.

## §903. Tribal Consultation Mandate.

The provision mandating that the Attorney General conduct an annual consultation is found in Title IX. Safety for Indian Women, §903. It specifically directs the Attorney General to conduct an annual consultation with Indian tribal governments concerning the federal administration of tribal funds and programs established under the Violence Against Women Acts of 1994 and 2000. It requires that, during such consultations, the Attorney General and Secretary of Health and Human Services (HHS) solicit recommendations from Indian tribes concerning three specific areas:

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

During the past six annual consultations, tribal leaders have attended, raised their concerns, and presented the recommendations of their respective governments and communities. Since 2009 the consultation process, the development of the report, and the update on the status of the USDOJ to the recommendations received from tribal leaders have dramatically improved. Advance notice of the consultation, access to the summary report, and access to the status of previous recommendations of tribal leaders are of concern. These concerns cannot be fully addressed until the Tribal Deputy Director is adequately staffed to fulfill the broad statutory duties mandated by the statute.

## Consultation Process Outstanding Concerns and Recommendations:

- Advance notice of the date and location of the annual consultation. The ability of tribal leaders to prepare and schedule their attendance of the consultation requires adequate notice. Tribal leaders have continually recommended no less than 60 days' notice. While advance notice has improved, it still falls short of the required length of time needed for tribal leaders to prepare and arrange their schedules. The importance of advance planning by the USDOJ is only increased given the USDOJ conference approval process that delayed the announcement of this year's consultation. Given that the consultation is mandated to occur annually, advance planning should begin prior to the year it is scheduled to occur. The VAWA 2012 reauthorization bills currently pending in Congress contain language requiring 120 days' notice to Indian tribes of the date, time, and location of consultation.

- Consultation reports summarizing the specific recommendations of tribal leaders. Each year since 2008 the consultation reports have improved. All reports except the first (from 2006) are available online at the OVW website, [www.ovwtribalconsultation.com](http://www.ovwtribalconsultation.com), but not through any other OVW / USDOJ website. Access to the reports should be available on the OVW and Office of Tribal Justice webpages. The VAWA 2012 reauthorization bills currently pending in Congress contain language mandating that a consultation report containing the concerns and recommendations be an official record of the Department and sent to Congress on an annual basis.

- Update on the status of previous consultation recommendations. Similarly since 2008, the USDOJ has provided an update on the status of the recommendations during the following year's consultation. Unfortunately, these updates are also not available online. Typically they are distributed during the actual consultation. The VAWA 2012 reauthorization bills currently pending in Congress propose language for an annual update on the status of action taken to address recommendations made by tribal leaders at consultation.



• Attendance of the Department of Interior (DOI). Given the importance of the role of the DOI, specifically the Bureau of Indian Affairs (BIA), tribal leaders have recommended over several years that the DOI and BIA attend the annual consultation. The VAWA 2012 reauthorization bills currently pending in Congress propose language requiring the Secretary of Interior to attend the annual consultation.

• Adequate staffing of the Tribal Deputy Director. VAWA 2005 enumerated nine duties of the Tribal Deputy Director that are critically related and logically intersect with the process of annual consultation. In particular the coordination of the complicated number of statutory mandates and policy implications required to respond to the concerns and implement recommendations made during the consultation is undermined by the lack of any legal or policy staff to the Tribal Deputy Director. It is recommended that the Tribal Deputy Director be properly staffed with a legal or policy position to implement the broad statutory duties of the position and assist in the ongoing efforts of the annual consultation process.

#### Statutory Language

### §903. Consultation.

(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 this Act, the Violence Against Women Act of 1994 (Title IV of Public Law 103-322; 108 Stat. 1902), and the Violence Against Women Act of 2000 (division B of Public Law 106-386; 114 Stat. 1491).

(b) Recommendations—During consultations under subsection (a), the Secretary of the Department of Health and Human Services 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, and stalking; and

(3) strengthening the federal response to such violent crimes.

### §903 COMMENTARY:

Section 903 directs the Attorney General and Secretary of Health and Human Services to each conduct annual consultations with Indian tribal governments concerning the federal administration of tribal funds and programs established under the Violence Against Women Acts of 1994 and 2000. This requires the Attorney General, during such consultations, to 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, and stalking; and (3) strengthening the federal response to such violent crimes.

### §904. Analysis and Research on Violence Against Indian Women.

Section 904(a) mandates that the National Institute of Justice (NIJ), in consultation with the Office on Violence Against Women (OVW), conduct a national baseline study on violence against American Indian and Alaska Native women living in tribal communities. This section was 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 NIJ in partnership with OVW has steadily implemented this important statute.

NIJ under Section (a) of the statute has developed a program of research to fully implement the goals of the statute. The purpose of the research program is to: examine violence against Native women (including domestic violence, dating violence, sexual assault, stalking, and murder) and identify factors that place Native women at risk for victimization; evaluate the effectiveness of federal, state, tribal, and local responses to violence against Native women; and propose recommendations to improve effectiveness of these responses.



NIJ's program of research on violence against Indian women is designed to: (1) provide for the first time an accurate reporting of violence against American Indian and Alaska Native women in tribal communities, (2) provide reliable valid estimates of the scope of the problem, and (3) identify problems and possible solutions in dealing with these issues that may lead to public policies and prevention strategies designed to decrease the incidence of violent crimes committed against Native women. Results from these studies are expected to help establish and enhance justice systems that successfully restore victim safety and promote healing.

Under Section (b), NIJ is currently working in close partnership with the second Task Force established under Section (b) of the statute to assist in the development and implementation of the study and program of research. The 904(b) Task Force functions under a Charter signed by Attorney General Eric Holder and will meet on October 30–31, 2012, in Washington, D.C.

The NIJ staff is highly commended for their efforts to implement the statute and work with members of the Task Force.

**Analysis and Research Continued Recommendations:**

- NIJ is encouraged to continue working in close partnership with the National Task Force established under §904.
- NIJ is encouraged to continue providing updates regarding the progress of the program of research to the NCAI Task Force on Violence Against Women and other national tribal partners.

**Statutory Language**

**§904. Analysis and Research on Violence Against Indian Women.**

- (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.
  - (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; and
- (v) murder.
- (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—
  - (A) In General—The Attorney General, acting through the Director of the Office on Violence Against Women, shall establish a task force to assist in the development and implementation of the study under paragraph (1) and guide implementation of the recommendation in paragraph (2)(C).
  - (B) Members—The Director shall appoint to the task force representatives from—
    - (i) national tribal domestic violence and sexual assault nonprofit organizations;
    - (ii) tribal governments; and
    - (iii) the national tribal organizations.
  - (4) Report—Not later than 2 years after the date of enactment of this Act, 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.

**§904(a) COMMENTARY:**

Section 904(a) directs the Attorney General, acting through the National Institute of Justice, in consultation with the Director of the Office on Violence Against Women, to conduct a national baseline study to: (1) examine violence against Indian women; and (2)



evaluate the effectiveness of federal, state, tribal, and local responses to offenses against Indian women. Authorizes appropriations of \$1,000,000 for FY2007 and FY2008. Congress in strong support of the importance of §904(a) has continued to appropriate one million annually until the present.

## §905(a). Access to Federal Databases.

Section 905(a) requires the Attorney General to permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from, federal criminal information databases. The federal amendment to permit Indian law enforcement agencies' access to enter and obtain information from the federal crime data systems was a tremendous step forward in creating safety for Indian women. In 2010, the Tribal Law and Order Act (TLOA) also included a provision stating that the Attorney General shall ensure that tribal law enforcement meeting statutory requirements be granted access to enter and obtain information from the National Crime Information Center (NCIC) databases.

In response to concerns raised about the lack of implementation of §905(a) during previous annual consultations, the USDOJ reviewed the lack of access issue. Based on its finding that certain Indian tribes wanted and did not have access to the NCIC, a pilot project was launched to assist tribes. Under the pilot project, 22 of the tribes were identified as lacking NCIC access, and the USDOJ installed the necessary equipment to obtain access. Where the state government would not grant Indian tribes access through the state system, the USDOJ provided access through the federal system called Justlink.

The Sycuan Band of the Kumeyaay Nation, located in San Diego County, California, was one of the 22 Indian tribes that gained NCIC access with the assistance of the USDOJ. Bill Denke, Chief of the Sycuan Tribal



Police Department provided the following testimony before the Indian Law and Order Commission: "The California Attorney General's Office has opined that tribal law enforcement agencies in California do not qualify for access into the state's system, the California Law Enforcement Telecommunications System (CLETS) under California's Government Code. The hangup is the requirement for the law enforcement agency to be defined as a public agency. In California CLETS is the gateway to national databases through the NCIC. As a workaround to this problem, in 2010 under the direction of Attorney General Holder and facilitated by the Office of Tribal Justice, FBI-vetted tribal agencies were sponsored by the Justice Department for connectivity to NCIC and the National Law Enforcement Telecommunications System (NLETS). NLETS provides the interstate sharing of law enforcement information; however, not all CLETS information can be accessed through NLETS. Examples of inaccessible state information, include: parole and probations status, local warrants, photographs, detailed motor vehicle information, firearms files, and be-on-the-lookout information. Although, the tribal law enforcement agencies that currently have access to NCIC and NLETS initially hit a snag with accessing state information via NLETS, California Attorney General Kamala Harris' staff along with the BIA Office of Justice Services Deputy Bureau Director Cruzan's staff have collaborated to fix it, thus allowing Justice Department's sponsored tribal law enforcement agencies with SLEC officers access. It is very important to note though, until vetted tribal law enforcement officers have full access to CLETS, there will remain a huge officer safety issue in California's Indian country. With that being said, I strongly encourage the collaboration between the California Attorney General's Office and the BIA Office of Justice Services to continue in an effort to find resolve. And for the local sheriffs who are assisting with this, I commend."

### Tribal NCIC Access Outstanding Concerns and Recommendations:

- Identify which component of the USDOJ is responsible for implementation of §905(a) / TLOA, and provide Indian tribes contact information for the component.
- Develop USDOJ guidelines for the implementation of §905(a) and provide the guidelines to Indian tribes.
- Issue a statement to Indian tribes that under the TLOA the Attorney General will assist and ensure Indian tribes as they develop tribal law enforcement services to gain access to the NCIC the system under VAWA and the TLOA.



## Statutory Language

### §905(a) Access to Federal Databases.

(a) Access to Federal Criminal Information Databases—Section 534 of Title 28, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d) Indian Law Enforcement Agencies. The Attorney General shall permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into federal criminal information databases and to obtain information from the databases.”

### §905(a) COMMENTARY:

Section 905(a) amends the federal code to require the Attorney General to permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from, federal criminal information databases.

### §905(b). National Tribal Sex Offender and Order of Protection Registry.

Section 905(b) directs the Attorney General to contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain a national tribal sex offender registry and a tribal protection order registry. The creation of a National Tribal Registry was enacted by Congress to provide all federally recognized Indian tribes the ability to enter lifesaving information into a national registry. Currently, only the domestic violence protection orders of 12 tribes are being entered into the NCIC National Protection Order Registry.

The creation of a National Tribal Registry designed for Indian tribes to enter and access information regarding orders of protection and convicted sex offenders holds the potential to enhance the everyday safety of Indian women. All federally recognized Indian tribes opting to participate will have timely access to lifesaving information. The design of the registry will be unfettered by state- and nationally-based requirements, streamlining administration and cost of participating in registry. Such

barriers prevent full participation by Indian tribes within the existing national registries and thus also prevent access of law enforcement agencies to lifesaving critical information.

Five years ago in 2008, OVW hosted a focus group on developing the registries. Participants included a wide number of experts, including tribal law enforcement and advocates for tribal women and USDOJ agencies like the FBI and federal prosecutors. During the 2010 consultation, it was reported that OVW would issue the solicitation and contract with an interested entity to develop the National Tribal Order of Protection Registry. It appears that as a first step, a solicitation is being vetted and will soon be released for the development of the order of protection registry.

In terms of the tribal sex offender registry, OVW is exploring releasing that component at a later date pending discussions with the DOJ Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (the SMART Office). This is important given the intersection of the SMART Office’s work to implement the Adam Walsh Act.

The effectiveness of any database depends on the timely entry of information and the ability to keep that information current and correct. In the case of tribal entries into national registries, delayed entry or inaccuracies of information can place a Native woman at immediate risk. At the time of the passage of VAWA 2005, a separate tribal registry was necessary because administrative barriers delayed or prevented the inclusion



of tribal data on the National Order of Protection Registry and National Sex Offender Public Registry.

Since passage of the Tribal Registry provision, the Adam Walsh Act has become law, further complicating participation of Indian tribes in a national sex offender registry. All Indian tribes located in states having been granted concurrent jurisdiction with Indian tribes under PL 280 or similar jurisdiction cannot operate a sex offender registry under the Sex Offender Registration and Notification Act (SORNA), a key component of the Adam Walsh Act. Currently, many of these state governments are not in compliance with SORNA, and thus all of the Indian tribes located in these states cannot register sex offenders under SORNA. The most ironic aspect of this system is that while 33 Indian tribes are in compliance with SORNA, only 15 states are in compliance. Missing from the list of states in compliance are the vast majority of states where Indian tribes are located.

**Outstanding Concerns and Recommendations Regarding Development of Tribal Registries:**

- The Director of OVW should comply with the statute, release the solicitation, and award a contract for the creation of the national tribal registries.
- The Director should provide an update on the status of this statute at the next annual consultation.
- Funding Appropriated by Congress for Creation of National Tribal Registries

Under VAWA 2005, Congress authorized \$1 million per year to develop and maintain the national tribal sex offender registry and protection order registry. Each year since 2008, Congress has also appropriated this amount. It is unfortunate and unacceptable that OVW has not acted to implement this lifesaving project. The statute contains language that prevents usage of these funds for any other purpose and also requires that such funds remain available until expended for the development of the tribal registries.

Fiscal Year	Amount Appropriated
2008	\$940,000
2009	\$1 million
2010	\$1 million
2011	\$1 million

It is important to note the Tribal Registry did not receive an appropriation for FY2012 and is not in the President's budget for FY2013. Given the fiscal crisis it is difficult to justify continuing to fund the Tribal Registry when OVW has failed to implement and obligate the Congressional appropriation funding for the last four fiscal years.

**A National Tribal Registry Is Needed Due to the Following Barriers to Participation within the National Order of Protection Registry:**

- Entry of tribal orders for protection into the national registry can currently be accomplished only by entry of order for protection information through state-administered criminal information links to the NCIC.
- Although every law enforcement agency and court of record in the country has been assigned an ORI (originating agency identifier) number for accessing NCIC, individual states assign and limit the number of active ORIs authorized to access national registries through the state's criminal information system, and often give tribal law enforcement low priority for access or exclude tribes altogether.
- Without an active ORI and direct link to NCIC, tribes cannot enter, update, or access orders for protection in the national registry except through an already active link, usually county law enforcement and/or courts.
- County law enforcement and courts often do not have the resources to prioritize the entry and updating of their own orders for protection, let alone those forwarded to them by tribal courts.
- Tribal orders are often considered suspect and not enforced by law enforcement outside of the issuing jurisdiction when the enforcing agency cannot readily verify an order from an individual tribe through the national registry and NCIC.



*The ability of Indian tribes to access the national registry would enable tribes to protect their communities from transient habitual perpetrators who prey on Indian women.*



## Statutory Language

### **§905(b). National Tribal Sex Offender and Order of Protection Registry.**

(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 an authorized appropriation to carry out this section of \$1,000,000 for each of fiscal years 2007 through 2011, to remain available until expended.

### **§905(b) COMMENTARY:**

Section 905(b) directs the Attorney General to contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain a national tribal sex offender registry and a tribal protection order registry. This authorizes appropriations of \$1,000,000 for each year beginning in FY2007–FY2011. A separate tribal registry is required because administrative barriers currently delay and/or prevent the inclusion of tribal data on the National Sex Offender Public Registry and also the National Order of Protection Registry. Such barriers prevent full participation of Indian tribes within the registries and thus also prevent access of law enforcement agencies to life saving critical information. The effectiveness and credibility of any database depends on the timely entry of information and the ability to keep that information current and correct. In the case of tribal entries into national registries, delayed entry or inaccuracies of information can place a Native woman at immediate risk. The administrative barriers preventing Indian tribes from entering and accessing information are based on the design of the national registries.

### **§906. Grants to Indian Tribal Governments Program.**

VAWA 2005 statutorily combined tribal set-asides from seven grant programs into a single program called the

Grants to Indian Tribal Governments Program (GITGP). Since fiscal year 2007, OVW has issued a GITGP solicitation streamlining the application process and funding to Indian tribes. The creation of the GITGP was established with the goal of enhancing the ability of Indian tribes to access funding to address domestic violence, sexual assault, dating violence, and stalking. The establishment of this program was an important step forward in streamlining Indian tribes' access to critical funding.

Since the establishment of the GITGP, progress has been made to respond to a number of concerns and recommendations raised during the annual consultation, including:

- Removing the ban on children attending OVW-funded events;
- Removing the conditions that Indian tribes could only apply every other year to allowing tribes to apply annually;
- Removal of the population cap restricting the amount for which an Indian tribe could apply; and
- Providing pre-solicitation workshops for Indian tribes needing assistance in completing the application process.

The attention and responsiveness of OVW to the above concerns and recommendations of tribal leaders during the annual consultation are commendable.

The following concerns and recommendations are unfortunately not new issues but ongoing issues that tribal leaders have raised since the first consultation in 2006. As stated in the 2007 summary of the VAWA tribal consultation, tribal leaders expressed the following concern and recommendation: “Start funding cycles sooner—lapses in funding cycles may cause layoffs of employees working on critical programs.” This recommendation is critical due to the lack of adequate resources available to tribal governments.



Indian tribes lack the resources to maintain programs during gaps in funding. Start-up and shut-down of tribal programs due to administrative issues are a tragic result of tribal programs not being prioritized by OVW. Administrative changes are urgently needed to create an award process that expedites tribal grants under this program. Violence against American Indian women is a nationally and internationally recognized crisis, and the response of OVW is not appropriate to the human crisis occurring on a daily basis. Indian tribes receive funding from numerous other federal departments without the administrative difficulties that are a pattern at OVW.

**Outstanding Concerns and Recommendations Regarding Grants to Indian Tribal Governments Program:**

1. All funds appropriated by Congress for the GITGP should be awarded in the same fiscal year. Given the rates of violence committed against Native women, it is unacceptable that funds are not fully expended on an annual basis as intended by Congress.
2. All funds under the GITGP should be awarded as required by the statute to Indian tribal governments or their designees. The only exception should be funds required for administration and technical assistance. Creation of this grant program was intended to increase access of Indian tribal governments to these lifesaving funds to develop programs designed to specifically serve Native women within their respective communities. Setting aside dollars under this program for pilot or other OVW-wide projects is unacceptable. Funding of special projects should be identified from other funding streams.
3. The award date and access to funds should occur at the same time. OVW has developed a practice of awarding grants at the end of the fiscal year but not providing final clearance of the budgets and access to funds often until the end of the next fiscal year or in some cases later. This pattern is unacceptable because it causes Indian tribes to terminate or furlough grant-funded staff without pay. It also causes gaps in lifesaving services as programs are forced to shut down and reopen. Further, it creates the appearance that the failure to implement grant projects is caused by the tribe and not the ongoing inability on the part of OVW to award, review budgets, and approve access to grant funds within a reasonable period of time. It is strongly recommended that OVW Acting Director Bea Hanson prioritize this issue and assign staff as needed to correct the system of processing tribal awards. While the grant award process is reported to be an office-wide problem,

the tribal government program serves poverty-stricken communities. For women in these communities, often there is literally no place to go or assistance available to stop the violence. Lastly, GITGP should receive the highest priority in the OVW schedule for grant making and award schedule because of the unique legal relationship of the USDOJ to Indian tribes and Native women.

4. OVW should award grants under the GITGP within 90 days of receiving the Congressional appropriation.
5. All training and technical assistance awards should be made to organizations having expertise in working with Indian tribal governments and also expertise in addressing violence against Indian women, specifically domestic violence, sexual assault, stalking and dating violence as required under VAWA.
6. Recognition of the urgent need of Alaska Native women and increased attention to assist Alaska Native Villages in accessing funding and developing programs designed to specifically serve women within their specific communities are in order.

**Grants to Indian Tribal Governments Program Funding 2005–2011**

Fiscal Year	Number of Tribes	Amount Awarded
2005	58	\$20,000,000
2006	62	\$25,500,000
2007	82*	\$31,649,599
2008	65	\$29,449,369
2009	62	\$33,337,280
2010	60	\$34,191,324
2011	61	\$36,326,664

*\*The increase in the number of awards to Indian tribes was due to smaller awards based upon OVW imposing a population cap upon the GTGP. At the 2007 consultation, Indian tribes strongly recommended that the population cap be removed. During the following year (2008) awards started at \$450,000 and went to \$900,000.*



**§906. Grants to Indian Tribal Governments.**

(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, 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, and stalking;

(5) work in cooperation with the community to develop education and prevention strategies directed toward issues of domestic violence, dating violence, and stalking programs and to address the needs of children exposed to domestic violence;

(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, 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, or stalking to locate and secure permanent housing and integrate into a community; and

(8) provide legal assistance necessary to provide effective aid to victims of domestic violence, dating violence, stalking, 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.

(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.

Ten percent of the following are combined to create the Grants to Indian Tribal Government Program:

- 1) Grants to Combat Violent Crimes Against Women
- 2) Grants to Encourage State Policies and Enforcement of Protection Orders Program
- 3) Rural Domestic Violence and Child Abuse Enforcement Assistance Grants
- 4) Safe Havens for Children Program
- 5) Transitional Housing Assistance Grants for Child Victims of Domestic Violence, Stalking, or Sexual Assault Program
- 6) Court Training and Improvements Program, and
- 7) Seven percent of funds from the Legal Assistance for Victims Improvements Program

**§906 COMMENTARY:**

VAWA '05 contains new and old grant programs that statutorily define eligible applicants to receive funds under the respective programs. Throughout VAWA '05 exists grant programs that require that a portion of the funds be allocated to Indian tribes. Section 906 directs the Attorney General to combine funds from seven of the VAWA '05 grant programs to create the Grants to Indian



Tribal Governments Program. The statute explicitly states that the original requirements of the seven programs that are combined to create this new program “shall not apply to funds allocated for the program.”

The purpose of the single grant program is to enhance the response of Indian tribal governments to address domestic violence, sexual assault, dating violence, and stalking. The GITGP program goals were intended to: 1) streamline access to tribal funds by combining the set-asides from seven programs into one grant program; 2) allow tribal governments to design tribally based responses to crimes of domestic violence, dating violence, sexual assault, and stalking reflective of their respective systems of governance, customs, and practices; and lift programmatic restrictions not applicable to Indian tribes; and 3) not require a match.

## **§907. Tribal Deputy in the Office on Violence Against Women.**

Congress, recognizing the epidemic of violence against Native women and the complicated nature of implementing the legal reforms and services to respond to the violence, mandated that a position of Deputy Director for Tribal Affairs be created within the OVW. Congress enumerated the duties and the authority of the Tribal Deputy Director clearly within the statute. At the first consultation in 2006, and at every subsequent one since, tribal leaders have expressed concerns regarding the recognition and resources needed for this position to fulfill the statutory duties.

Of all the provisions enacted under the Tribal Title of VAWA, the position of the Tribal Deputy Director is of utmost importance. It is the safety latch for the successful implementation of the Tribal Title and VAWA provisions. It is designed to be one of the central points of coordination of USDOJ responsibilities and programs to increase the safety of Native women and support the efforts of Indian tribes. For these reasons, it is alarming that the concerns and recommendations regarding this position remain unaddressed by the USDOJ.

During the consultation in 2007, Juana Majel, Co-Chair NCAI Task Force on Violence Against Women, stated “Lorraine Edmo will need to champion the tribal cause including policy. She will need an assistant for this to work. Need direct authority reporting to the Attorney General. Have a standing Indian Country Advisory Committee to advise the Attorney General and DOJ on the needs and issues, with a permanent seat with the U.S. Attorneys.” Concerns regarding the necessary support for the new Tribal Deputy Director were expressed based on the understanding of the difficulty of the duties of the position. It was further stated that inadequate staffing will be the downfall and stage for failure the Tribal Deputy Director and tribal unit. Unfortunately, none of these recommendations were taken seriously or addressed by OVW.

While it is recognized that the OVW has been and is inadequately staffed, it is unacceptable that no additional legal/policy support has ever been provided to the Tribal Deputy Director. It is further unacceptable that the staffing of the tribal unit has caused the Tribal Deputy to manage over 100 grants at different points of time. The position has numerous duties set forth by Congress that must be recognized and supported.

The duties of the Tribal Deputy Director fall within four broad areas of responsibility mandated by statute:

1. Coordination of the ongoing intergovernmental activities required to conduct annual consultations with Indian tribes;
2. Serve as the point of coordination with various federal agencies and within the USDOJ on the implementation of the amended federal statutes contained in VAWA '05 by providing expertise in federal Indian law and policy;
3. Guide implementation of the research projects resulting from close coordination with the Research Task Force and direct the development of the tribal registries; and
4. Oversee administration of the Grants to Indian Tribal Governments Program and other tribal grants, contracts, and technical assistance programming.

### **Outstanding Concerns and Recommendations Regarding the OVW Tribal Deputy Director:**

It is of grave concern that Section 907 has not been fully implemented in relation to the duties created by Congress. It is recommended that the Attorney General



review the responsibilities of the position and provide for full implementation of the Tribal Deputy Director position by:

- Providing the necessary staff support, including legal and policy support staff;
- Adequately staffing the tribal unit to manage and oversee the tribal grant programs; and
- Directing and ensuring all components are directed to coordinate initiatives with the Tribal Deputy as the OVW point of contact on tribal affairs.

#### Statutory Language

### **§907. Tribal Deputy in the Office on Violence Against Women.**

- (a) Establishment—There is established in the Office on Violence Against Women a Deputy Director for Tribal Affairs.
- (b) Duties—
- (1) In General—The Deputy Director shall under the guidance and authority of the Director of the Office on Violence Against Women—
- (A) Grants. Contracts. Oversee and manage the administration of grants to and contracts with Indian tribes, tribal courts, tribal organizations, or tribal nonprofit organizations;
- (B) ensure that, if a grant under this Act or a contract pursuant to such a grant is made to an organization to perform services that benefit more than one Indian tribe, the approval of each Indian tribe to be benefited shall be a prerequisite to the making of the grant or letting of the contract;
- (C) coordinate development of federal policy, protocols, and guidelines on matters relating to violence against Indian women;
- (D) advise the Director of the Office on Violence Against Women concerning policies, legislation, implementation of laws, and other issues relating to violence against Indian women;
- (E) represent the Office on Violence Against Women in the annual consultations under Section 903;
- (F) provide technical assistance, coordination, and support to other offices and bureaus in the Department of Justice to develop policy and to enforce federal laws relating to violence against Indian women, including through litigation of civil

- and criminal actions relating to those laws;
- (G) maintain a liaison with the judicial branches of federal, state, and tribal governments on matters relating to violence against Indian women;
- (H) support enforcement of tribal protection orders and implementation of full faith and credit educational projects and comity agreements between Indian tribes and States; and
- (I) ensure that adequate tribal technical assistance is made available to Indian tribes, tribal courts, tribal organizations, and tribal nonprofit organizations for all programs relating to violence against Indian women.

(c) Authority—

(1) In General—The Deputy Director shall ensure that a portion of the tribal set-aside funds from any grant awarded under this Act, the Violence Against Women Act of 1994 (Title IV of Public Law 103-322; 108 Stat. 1902), or the Violence Against Women Act of 2000 (division B of Public Law 106-386; 114 Stat. 1491) is used to enhance the capacity of Indian tribes to address the safety of Indian women.

- (2) Accountability—The Deputy Director shall ensure that some portion of the tribal set-aside funds from any grant made under this part is used to hold offenders accountable through—
- (A) enhancement of the response of Indian tribes to crimes of domestic violence, dating violence, sexual assault, and stalking against Indian women, including legal services for victims and Indian-specific offender programs;
- (B) development and maintenance of tribal domestic violence shelters or programs for battered Indian women, including sexual assault services, that are based upon the unique circumstances of the Indian women to be served;
- (C) development of tribal educational awareness programs and materials;
- (D) support for customary tribal activities to strengthen the intolerance of an Indian tribe to violence against Indian women; and
- (E) development, implementation, and maintenance of tribal electronic databases for tribal protection order registries.

### **§907 COMMENTARY:**

Section 907 established a statutorily mandated Deputy Director for Tribal Affairs in the Office on Violence Against Women. This mandate was the culmination of a 10-year process by the Department of Justice to create policies



*Domestic violence is a pattern of violence that escalates over time in severity and frequency. To prevent future violence and end the pattern, perpetrators must be held accountable immediately. Too often, habitual offenders are not identified.*

and programs to support Indian tribes in addressing the safety of Indian women. The position was intended to safeguard the successful implementation of the Safety for Indian Women Title. The only statutorily created positions for OVW are that of the Director and the Deputy Director for Tribal Affairs.

### **§908(a). Firearms Possession Prohibition.**

VAWA 2005 created a new federal crime that prohibits offenders convicted of a domestic violence crime in tribal court from possessing firearms. The USDOJ Indian country training coordinator has offered training on this provision of VAWA and has also conducted cross training. Ongoing efforts are needed given turnover of personnel at the tribal and federal levels.

It is a crime for a person convicted of domestic violence or who is the subject of protection order to transport, receive, or possess firearms or ammunition which have come across state or federal borders. Prior to passage of §908(a), tribal convictions were not included in this prohibition. Thus, tribal victims of domestic violence did not receive the added protection of the firearms prohibition. Section 908(a) expanded the Firearms Possession Prohibition to include tribal law conviction by amending the federal criminal code to include under the term “misdemeanor crime of domestic violence” any offense that is a misdemeanor under tribal law. An “order” is a “legal document to restrain one human being from committing an act of violence against another human being.” It can be an injunction, protection order, restraining order, anti-harassment order, or even a stalking order.

Firearms are extremely lethal and utilization of this statute holds the potential to prevent the serious injury

or murder of Native women. The Firearms Prohibition is a federal law and thus only federal prosecutors can charge perpetrators with this crime. It is for this reason that training and coordination on the implementation of §908(a) are essential for the successful implementation of this lifesaving statute within Indian nations. It is extremely important that U.S. Attorneys in location where state-tribal concurrent jurisdiction exist are trained and directed to utilize this statute. This statute applies to firearm prohibitions committed on tribal lands with PL 280 or similar jurisdiction such as in California.

### **Outstanding Concerns and Recommendations Regarding Firearms Possession Prohibition:**

- Develop and issue, in consultation with Indian tribes, guidelines for the implementation of the firearms provision.
- Continue cross training of Assistant U.S. Attorneys and tribal prosecutors for the investigation, charging and prosecution of cases under the firearms provision.
- The Attorney General should issue a memorandum to District Offices located in Public Law 280 and similar jurisdictions stating that firearm offenses are a federal offense and violators should be charged by these district offices.

#### Statutory Language

### **§908(a). Firearms Possession Prohibition.**

- (a) Firearms Possession Prohibitions—Section 921(33)(A)(i) of Title 18, United States Code, is amended to read: “(i) is a misdemeanor under federal, state, or tribal law”; and
- (b) Law Enforcement Authority—Section 4(3) of the Indian Law Enforcement Reform Act, 25 U.S.C. §2803(3) is amended—
- (1) in subparagraph (A), by striking “or”;
  - (2) in subparagraph (B), by striking the semicolon and inserting “, or”;
  - (3) by adding at the end the following:



“(C) the offense is a misdemeanor crime of domestic violence, dating violence, stalking, or violation of a protection order and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim, and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing the crime.”

### §908(a) COMMENTARY:

Section 908(a) expands the Firearms Possession Prohibition to include tribal law convictions by amending the federal criminal code to include under the term “misdemeanor crime of domestic violence” any offense that is a misdemeanor under tribal law. Section 908(b) amends the Indian Law Enforcement Reform Act to provide misdemeanor arrest authority for federal officers and tribal specialized officers with reasonable grounds to believe that the person to be arrested has committed or is committing domestic violence, dating violence, stalking, or violation of a protection order and has as an element of the use or attempted use of physical force, or the threatened use of a deadly weapon.

### §909. Domestic Assault by an Habitual Offender.

VAWA 2005 created a new federal crime for anyone who has two prior domestic violence convictions in federal, state, or tribal court, and commits domestic assault within Indian country. This provision was intended to give the federal government authority to intervene in repeat cases of domestic violence committed by tribal members that might not otherwise rise to the level of a felony. Since this statute can be prosecuted by the USDOJ in PL 280 and similar jurisdictions, it can be extremely useful where the state fails to prosecute domestic violence cases committed on tribal lands.

Section 909 amends the federal criminal code to impose enhanced criminal penalties upon repeat offenders who: (1) commits a domestic assault within the special maritime and territorial jurisdiction of the United States

or Indian country; and (2) has a final conviction on at least two separate prior occasions in federal, state, or tribal court for offenses that would be, if subject to federal jurisdiction, an assault, sexual abuse, or serious violent felony against a spouse or intimate partner, or a domestic violence offense. Section 909 allows federal prosecutors to charge repeat offenders from a wider spectrum of crimes—that is combining convictions from state, tribal, and federal courts.

For three years from the time of passage, implementation of this statute was uneven and underutilized. Since 2010, the Department has increased efforts to ensure that federal law enforcement officers and U.S. Attorneys and state authorities use this provision to increase accountability of perpetrators of domestic violence on tribal lands. Included in the USDOJ efforts is the development of a video training curriculum that will soon be available for tribal justice and USDOJ personnel.

### Outstanding Concerns and Recommendations Regarding Domestic Assault by an Habitual Offender:

- Develop, in consultation with Indian tribes, guidelines for the implementation of the habitual offender provision;
- Continue cross training of Assistant U.S. Attorneys and tribal prosecutors for the investigation, charging, and prosecution of cases under the habitual offender provision;
- Provide train-the-trainer sessions for Indian tribes on the usage of the OVC Habitual Offender video curriculum; and
- Provide guidelines for Indian tribes and United States Attorneys for charging and prosecution of Habitual Offender crimes in PL 280 and similar jurisdictions.



**§909. Domestic Assault by an Habitual Offender.**

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

(1) any assault, sexual abuse, or serious violent felony against a spouse or intimate partner; or  
(2) an offense under chapter 110A, shall be fined under this title, imprisoned for a term of not more than 5 years, or both, except that if substantial bodily injury results from violation under this section, the offender shall be imprisoned for a term of not more than 10 years.

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

**§909 COMMENTARY:**

Section 909 amends the federal criminal code to impose enhanced criminal penalties upon a repeat offender who: (1) commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country; and (2) has a final conviction on at least two separate prior occasions in federal, state, or tribal court for offenses that would be, if subject to federal jurisdiction, an assault, sexual abuse, or serious violent felony against a spouse or intimate partner, or a domestic violence offense.

“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, 1<sup>st</sup> Vice-President, NCAI.



# Lessons of the NCAI Task Force on Violence Against Women



The lessons of the NCAI Task Force are numerous and have special 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 that we hope will assist tribal leaders in preparing for the 2012 annual VAWA-mandated tribal consultation.

**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 tribal sovereignty in the lower 48 United States, as well as that of 227 federally recognized Indian tribes in Alaska. During past consultations, tribal leaders from Alaska Native Villages have made specific concerns and recommendations that are presented again in the pages that follow.

**Addressing State Concurrent Jurisdictional Issues:** In 1953, during the Termination Era, Congress enacted what is known as PL 280. This Act transferred federal

criminal jurisdiction on tribal lands to particular state governments. The Department of the Interior, as a policy interpretation, denied access of federal funds to Indian tribes located within those states to develop their respective tribal justice systems. Often when a woman is raped on tribal lands 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 a different woman. PL 83-280 impacts over one-half of all federally recognized Indian tribes. In addition other similar federal legislation that created concurrent state jurisdiction impacts many other Indian tribes. Efforts of the Task Force have included addressing safety for women living within both a federal-tribal and state-tribal concurrent jurisdiction. Outstanding recommendations by tribal leaders from Indian tribes located in PL-280 and similar jurisdiction are also presented and reviewed below.

## **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 system's 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. At past consultations, many tribal leaders from Indian tribes that base their respective justice system in traditional tribal system have raised concerns and recommendations that such systems are recognized and supported by VAWA and other federal legislation.

**Broad Communication:** Since its creation, the NCAI Task Force 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. Since the first VAWA-mandated consultation in 2006 the magazine has served as an information bridge for the tribal leaders and community members to understand and participate in the government-to-government consultation process to enhance the systemic response to violence against American Indian and Alaska Native women.



# Urgent Need to Address Violence Against Alaska Native Women

While Alaska Native Villages and nonprofits are eligible for 19 of the 21 grant programs administered by the OVW, the reality is that very few of the 229 federally recognized Indian tribes in Alaska actually access funding under the Violence Against Women Act. This sad reality stands in stark contrast to the overwhelming need of Alaska Native women for safety.

While it is well known that one in three Indian women reports having been raped during her lifetime, less is known about violence against Alaska Native women. The unfortunate truth is that while this statistic is shocking we know that it is in reality far greater for Alaska Native women. Since the inception of the annual USDOJ consultations mandated by the VAWA Safety for Indian Women Title of 2005, we have raised concerns and believe now is the time that our concerns be addressed by law. The VAWA consultations have been in our experience very productive; however, for various reasons most of our concerns regarding Alaska Natives go unaddressed. It is essential therefore that these concerns be addressed by solutions that are institutionalized into the structure and culture of OVW.

## Meaningful Access to OVW Program and Administrative Staff

The establishment of the Deputy Director for Tribal Affairs and the tribal unit under the VAWA 2005 represented a tremendous step forward in changing the structure of OVW to recognize the distinct relationship of OVW to Indian tribes and Alaska Native Villages. Unfortunately, the four-hour time difference between Washington and Alaska creates restriction on the availability of OVW to Alaska Native grantees. The reality that OVW is only available for 50% of the day or week results in many issues that place Alaska grantees at a disparity from other grantees in the lower 48. These issues impact fundamental daily operations from guidance on submission of an application to closure of a grant. Further the OVW staff that administers the 21 various grant programs requires training on the complicated relationship between the federal government and Indian tribes; and this lack of training is exacerbated in relationship to Alaska Native Villages.

Lastly, we have raised many times at consultation the importance of full staffing of the tribal unit. Since the establishment of the unit, it has seldom operated with more than one-half the positions assigned to it, let alone the number required to adequately respond to tribal grantees. The lack of adequate staffing of the tribal unit jeopardizes the successful implementation of OVW projects by all tribal grantees. We applaud the tribal unit staff but recognize the current staffing level is the design for failure and demoralization. Given the unique and

complicated relations to Indian tribes, the unit must be supported in a meaningful way through adequate staffing.

## Outstanding Concerns and Recommendations Regarding Increased Access to Alaska Native Villages:

- **Recommendation:** A regional office should be established in Alaska staffed by personnel with demonstrated expertise in Alaska Native Villages and addressing violence against Alaska Native women.
- **Recommendation:** All OVW staff should receive basic training on federal Indian law, current Presidential orders with regard to Indian tribes, and the application of VAWA federal crimes and grant programs to Indian tribes and Alaska Native Villages.
- **Recommendation:** A mandatory threshold should be established for the day-to-day staffing level of the tribal unit.

## Technical Assistance Specific to Alaska Native Villages

Currently no OVW technical assistance specifically designed to address the needs of Alaska Native Villages and women is provided or available. The technical assistance offered for the various grant programs for which Alaska Native Villages are eligible do not offer specific technical assistance for the Villages. Many times Alaska Native grantees are required to attend grant technical assistance training that frankly do not apply to the Village context. Further, technical assistance meetings are consistently



held in the lower 48, limiting the number of participants from Alaska grantees.

Increased technical assistance is needed to advance the capacity of Alaska Villages to enhance the safety of women living in their homes or other villages. Our governments and services are the first responders and long-term care providers for women living within the villages. Alaska Native Villages and women's organizations have worked for more than 20 years to increase safety for our Native women and are most appropriate to provide technical assistance on a regional level.

### Outstanding Concerns and Recommendations Regarding Technical Assistance to Alaska Native Villages:

- **Recommendation:** Technical assistance should be developed and offered to Alaska Native Villages to enhance the safety of women from domestic violence, sexual assault, and sex trafficking.

- **Recommendation:** Technical assistance should be offered in Alaska and an annual OVW technical assistance conference should be designed for Alaska Native Villages and women.

- **Recommendation:** Technical assistance should be provided by those with demonstrated expertise in assisting Alaska Native Villages in response to domestic violence and sexual assault and those with expertise in understanding violence against Alaska Native women.

### Increased Efforts to Address Sexual Assault of Alaska Native Women

Alaska has the highest rate of sexual assault in the country and the rate

of violence against Alaska Native women is more than double that of any other population of women. In this context, we highlight the stark absence of sexual assault services specific to Alaska Native women. Specifically the Sexual Assault Demonstration Initiative administered by OVW while having one tribal sexual assault project in Arizona does not address the safety issues and needs of Alaska Native women living in the Anchorage/Fairbanks areas or rural/remote villages. It is our opinion that given the rate and severity of sexual violence against Alaska Native women, it is essential that OVW launch an initiative to address this crisis. While sexual assault occurs in all communities, the stark reality is that the crisis facing Alaska Native women should not and cannot continue to be ignored.

### Outstanding Concerns and Recommendations Regarding Increased Access to Alaska Native Villages:

- **Recommendation:** Develop specific programming and technical assistance to assist Alaska Native Villages and service providers respond to sexual assault.

- **Recommendation:** Convene and launch an initiative to increase awareness and address sexual assault against Alaska Native women within Alaska.

### Outstanding Concerns and Recommendations Regarding Increased Access to Services by Addressing Language Accessibility:

Alaska Natives typically continue to speak our native

languages yet, unfortunately, oftentimes state employees and urban service providers do not have language interpreters for Alaska Native languages. The ability to speak to crisis intake and service providers in your own language is essential to a woman following a domestic or sexual assault.

- **Recommendation:** OVW should require that grantees in Alaska receiving VAWA funding have available staff that speaks the language of the population of Alaska Native women to be served.

Outstanding Concerns and Recommendations Regarding Usage of Telemedicine Services for Domestic and Sexual Violence  
Telemedicine in Alaska is essential giving the rural and remote geographic isolation of many Alaska Native Villages. Currently, Indian Health Services regional telemedicine program cannot be used for domestic and sexual violence incidents.

- **Recommendation:** Amend implementation plan so that Indian Health Services regional telemedicine services includes usage for public safety services responding to domestic and sexual violence.



enforcement presence at all. In these rural Alaska Native communities...  
often turn to their tribal courts to secure domestic violence...  
there is no one else that can provide...



May 7, 2012

The Honorable Don Young  
U.S. House of Representatives  
2314 Russell House Office Building  
Washington, D.C. 20515

Re: Reauthorization of the Violence Against Women Act (VAWA)  
Dear Rep. Young

On behalf of the Alaska Federation of Natives (AFN) and The Leadership Conference on Civil and Human Rights, we write to urge you to include provisions that will enable Tribal governments in Alaska to more effectively combat an epidemic of domestic violence against Native American and Alaska Native women, as you consider any Violence Against Women Act (VAWA) reauthorization.

Nationally, Native women are raped and assaulted at 2.5 times the national average. The U.S. Department of Justice has found the current system of justice "inadequate to stop the pattern of escalating violence against Native women." Tribal leaders, police officers, and prosecutors have all testified that violence that goes unaddressed—with hearing after hearing, each more severe than the last—all too often leads to death or severe physical injury.

Although Alaska Natives comprise only 15.2 percent of the population in Alaska, they comprise nearly 50 percent of the victims of domestic violence and 61 percent of the victims of sexual assault. See UAA Justice Center Report To The Council On Domestic Violence And Sexual Assault (May 13, 2010). According to one regional study, Native women in the Ahitna region are three times more likely to experience domestic violence than other women in the U.S., and 8-12 times more likely to experience physical assault. See Intimate Partner Violence Against Ahitna Women (August 2006). The statistics were even worse among Athabascan women, 64 percent of whom reported that they had experienced domestic violence. See Intimate Partner Violence Against Athabascan Women Residing in Interior Alaska (November 6, 2006). Approximately half of the perpetrators in these situations are also Alaska Native.

Unfortunately, the state of Alaska's public safety system does not effectively serve vast areas of the state where many remote Alaska Native villages are located, except in response to crimes that result in severe injury or death. The vast majority of Alaska Native communities have no formal law enforcement presence. As of 2011, there were Village Public Safety Officers (VPSOs) in only 74 of Alaska's rural communities, and Tribal Police Officers (TPOs), which are supervised by the Tribal governments, in 52 communities. More than 90 rural communities have no law

“Although Alaska Natives comprise only 15.2 percent of the population in Alaska, they comprise nearly 50 percent of the victims of domestic violence and 61 percent of the victims of sexual assault. See UAA Justice Center Report To The Council On Domestic Violence And Sexual Assault (May 13, 2010). According to one regional study, Native women in the Ahitna region are three times more likely to experience domestic violence than other women in the U.S., and 8-12 times more likely to experience physical assault. See Intimate Partner Violence against Ahitna Women (August 2006). The statistics were even worse among Athabascan women, 64 percent of whom reported that they had experienced domestic violence. See Intimate Partner Violence Against Athabascan Women Residing in Interior Alaska (November 6, 2006). Approximately half of the perpetrators in these situations are also Alaska Native.”

Julie Kitka, President,  
Alaska Federation of Natives

Wade Henderson, President  
Nancy Zirkin, Vice President

The Leadership Conference on Civil and Human Rights

## Violence Against Alaska Native Women

Alaska has one of the highest per capita rates of physical and sexual abuse in the nation. Keeping women and children safe in remote bush communities has unique challenges. Violence against women and children is being perpetuated in communities where there exists no form of law enforcement and no local infrastructure to address these incidents. A compilation of data from 1998–2004 paints a grim picture of the rate of violence against Alaska Native Women.

- According to the FBI's Uniform Crime Report in 1999, Alaska reported 83.5 rapes per 100,000 females compared to a U.S. average of 31.7 per 100,000 females.
- According to the 1999 Crime Report by the Anchorage Police Department, there were approximately 1,400 sexual assaults between 1995 and 1999. Six hundred, almost 42%, involved Alaska Native women.
- From 1989 to 1998, reported cases of domestic violence in Anchorage alone increased by 120%. The percentage of Alaska Native victims in the Anchorage area was 24%, which is extremely high; Alaska Natives comprise only 10% of the Anchorage population.
- Anchorage is expected to be ranked No. 1 in the nation per capita on sexual assault. Statistics show that there were 374 cases of reported sexual assaults in the first six months of 2003.
- Statistics such as these are unavailable for the rural communities in Alaska; however, in an informal poll



taken in some of these off road communities, 100% of the women reported, at some point in time, being a victim of domestic or sexual abuse.

### The following are some of the barriers that face Alaska Native women in their efforts to live free of violence:

- Alaska is home to 229 tribes. Of these 229 tribes, 165 are off road communities meaning that it is accessible by air only for the most part of the year. Ninety of these 165 off road communities also do not have any form of law enforcement.

- Alaska tribes fall within four state judicial districts and 229 tribal jurisdictions. Tribal and state jurisdiction overlap (PL 280) creating confusion as to who is ultimately responsible for responding to incidents of violence.

- Since the enactment of PL 280 in the early 1950s, jurisdictional confusion has created roadblocks for the safety of Native women. To many involved with the state judicial system, this meant that they were in charge of responding to these incidents. When conveyed to the tribal communities this message was specifically interpreted as limiting their role in the local responses to the violence. Consequently, the tribal communities began relying solely on the state law enforcement officials to respond.

## Tribal–State Concurrent Jurisdictions: Concerns and Recommendations

The tremendous strides toward full national implementation of VAWA are reasons to celebrate! However, these lifesaving reforms have not reached all communities across the United States. One outstanding area of concern are the issues and severe unmet needs of American Indian and Alaska Native women within PL 280 jurisdictions, and those similarly situated. State law enforcement, prosecutors, and judicial authorities often do not respond to Native women seeking safety from rapists, batterers, and those committing crimes under VAWA. Further, many Native women seeking health services or other victim services are turned away.

During each of the annual USDOJ VAWA consultations (2006–2011), tribal leaders have presented concerns regarding the lack of state cooperation and failed

- When and if a community reports an act of violence against a women or child, it can take the Alaska State Troopers anywhere from 1 to 10 days to respond. In some cases, it may take longer depending upon weather conditions, the urgency of the other matters they are dealing with in other villages, the apparent severity of the situation, and so forth. If they do respond, it is commonly after the 12-hour period for mandatory arrest, in which case an arrest is up to the discretion of the officer.

- These facts create the dangerous reality that frequently the only people standing between a woman in need of protection from a batterer or rapist is the local community. Consequently, the life of a woman depends largely on the local community’s ability to provide immediate assistance.

Given the extreme danger created by such abusers and the remote isolation of women, communities must develop their own village specific programs utilizing their existing local resources. The development of this local response is the only assurance that women and oftentimes their children in rural Alaska are provided with the very basic human right to safety.

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.



## Outstanding Tribal Issues Regarding the Response of State Governments:

- Slow or no response to emergency calls from tribal communities;
- Refusal to provide law enforcement assistance;
- Refusal to negotiate and amend law enforcement compacts;
- Misinformation on concurrent tribal-state jurisdiction;
- Failure to recognize and enforce tribal orders of protections; and
- Failure to prosecute felony domestic and sexual assault crimes.

### The VAWA–PL 280 Saga

Tribal leaders and advocates for the safety of Native women have consistently raised the urgent and compelling needs of American Indian and Alaska Native women who seek safety from brutal physical and sexual assaults. While the tribal participants in these conversations have remained steady, the federal representatives have consistently changed. Upon turnover 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—solicit 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 and similarly situated jurisdictions. 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 USDOJ assist Indian tribes in their efforts to hold state governments accountable for the felony prosecution of rapists and batterers.

### Outstanding recommendations addressing the safety of Native women with state-tribal concurrent jurisdictions, such as Indian tribes located in California and Alaska:

- Support Indian tribes requesting that the 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 the Tribal Law and Order Act specific to tribal-state concurrent jurisdictions;
- Develop training on TLOA provisions that permit tribes to request federal reassumption of concurrent jurisdiction within PL 280 states;
- In consultation with Indian tribes, develop a protocol for referring VAWA crimes to the FBI and U.S. 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, and 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 on December 31, 2007;
- Provide appropriate training and technical assistance for Indian tribes sharing concurrent jurisdiction with state governments; and
- 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.



# Victims of Crime Act and 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. This population of victims “waiting to be served” can no longer be ignored.

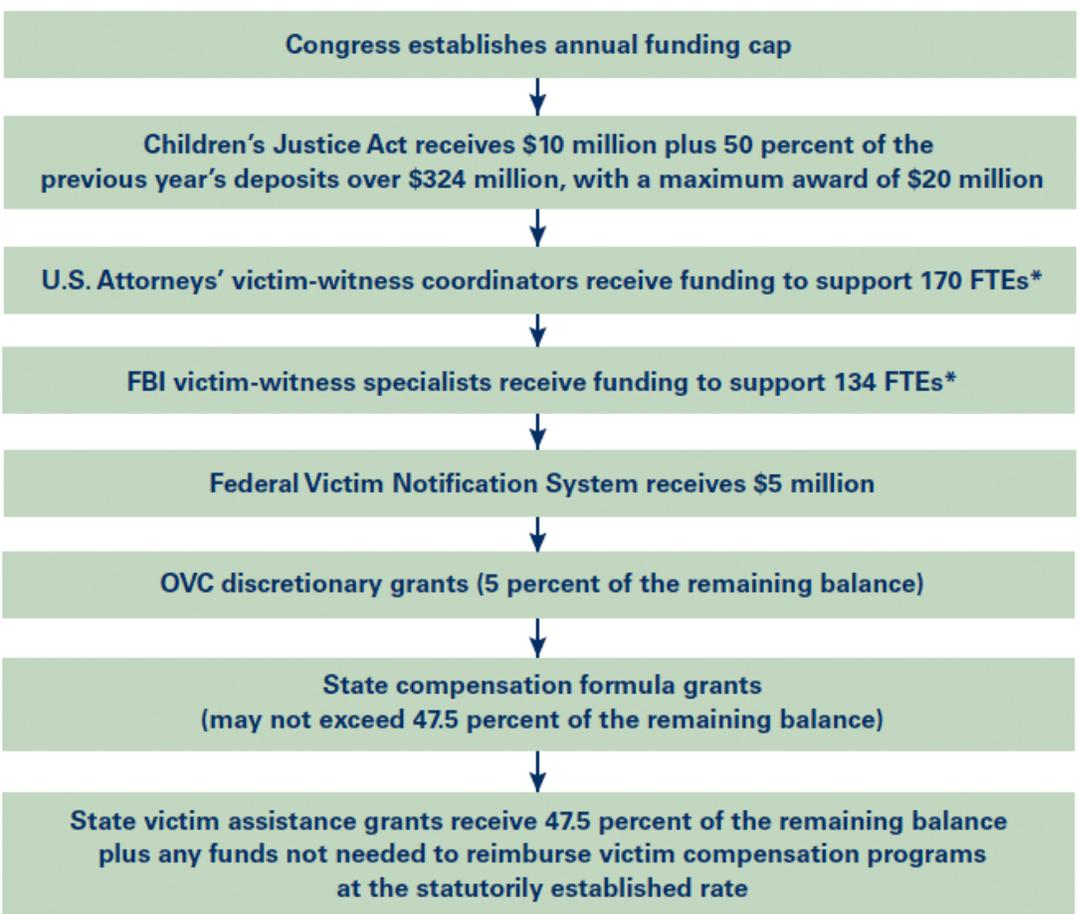
**Recommendation:** The NCAI Task Force on Violence Against Women is proposing the immediate creation of a grant program to develop and maintain emergency shelter services for Native women on tribal lands seeking safety from domestic and sexual violence. The program would fund tribal government programs and nonprofit, nongovernmental tribal organizations, located within the jurisdictional boundaries of an Indian reservation or within an 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 program 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) for a tribal set-aside.

**Background:** The Crime Victims Fund (“the Fund”) was established under the 1984 VOCA 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

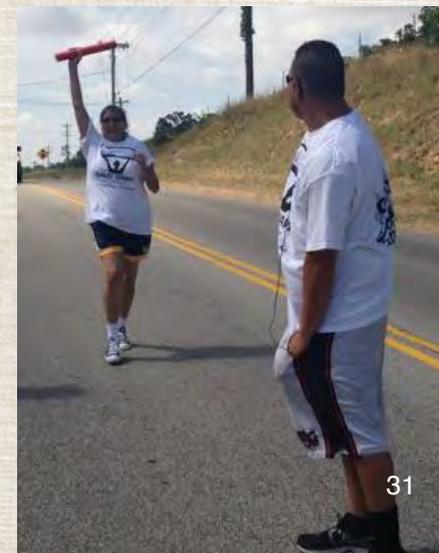
for fines and other penalties, including such fines and penalties imposed on federal offenders committing offenses on tribal lands. Congress sets an annual limit or “cap” on the amount to be released from the Fund. The “above the cap” approach would increase the amount released from the VOCA Fund to establish and fund the new domestic and sexual services program for Native women. 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.

**Figure 2. Crime Victims Fund Allocation Process**



\*Full-time employees.

Source: [www.ojp.usdoj.gov/ovc/pubs/crimevictimsfundfs](http://www.ojp.usdoj.gov/ovc/pubs/crimevictimsfundfs)



# Victims of Crime Act

## Rebuilding Lives through Assistance and Compensation

### Crime Victims

**Victim Assistance**  
VOCA and the Crime Victims Fund help victims rebuild their lives by supporting programs that provide services directly to victims, such as crisis intervention, emergency shelter, emergency transportation, counseling, and criminal justice advocacy.

**Victim Compensation**  
Victim compensation helps victims rebuild their lives by reimbursing victims for costs in the immediate aftermath of crime, such as crime-related medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. Victim compensation is used as a payment of last resort and is paid when other financial resources (e.g., private insurance and worker's compensation) do not cover the loss.

### Public and Private Organizations

**Victim Assistance**  
Organizations (called "sub-recipient programs") use the VOCA victim assistance funds to provide direct services—such as crisis intervention, emergency shelter, transportation, and criminal justice advocacy—to crime victims free of charge. Victim advocates in these programs inform victims about the eligibility requirements of compensation and assist victims with the required paperwork.

### States and Territories

VOCA administrators distribute VOCA victim assistance and compensation grants. All states and territories, including the Northern Mariana Islands, Guam, and American Samoa, receive annual VOCA victim assistance grants, which are awarded competitively to local community-based organizations that provide direct services to crime victims. Similarly, all states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico receive VOCA compensation grants after satisfying criteria set forth in VOCA and OVC program rules.

**Victim Compensation**  
State programs (sometimes called commissions or boards) distribute compensation directly to victims who must satisfy eligibility requirements.

### Office for Victims of Crime

VOCA is administered by the Office for Victims of Crime (OVC) within the Office of Justice Programs, U.S. Department of Justice. OVC distributes victim assistance and compensation funds to states and U.S. territories, in accordance with the Victims of Crime Act. OVC may also use funds for demonstration projects, program evaluation, compliance efforts, training and technical assistance services, and other related activities.

### Crime Victims Fund

The Crime Victims Fund (the Fund), established by the Victims of Crime Act of 1984 (VOCA), is a major funding source for victim services throughout the United States and its territories. Millions of dollars collected are deposited into the Fund annually and support the state victim assistance and compensation program efforts. Since 1986, \$4.8 billion in VOCA victim assistance funds and \$1.8 billion in compensation funds have been awarded.

### U.S. Attorneys

U.S. Attorneys' Offices, federal courts, and the Federal Bureau of Prisons collect criminal fines, forfeited bail bonds, penalties, and special assessments, which are deposited into the Crime Victims Fund.

COLLECTIONS > DEPOSITS > DISBURSEMENTS > STATE ADMINISTRATION > DIRECT SERVICES > REBUILT LIVES



Office for Victims of Crime  
**OVC**  
"Putting Victims First"

Source: [www.ojp.usdoj.gov/ovc/about/victimsfund.html](http://www.ojp.usdoj.gov/ovc/about/victimsfund.html)

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**Victims of Crime**  
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**Disparity:** Currently, no tribal set-aside is provided under 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; yet 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 the Office for Victims of Crime 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 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 lifesaving services for Native women and their children.



# Native Alliance Against Violence: Oklahoma's Tribal Domestic Violence and Sexual Assault Coalition

Founded in 2009, the Native Alliance Against Violence (NAAV) is Oklahoma's only tribal domestic violence and sexual assault coalition. The NAAV is centrally located in Oklahoma City and serves the federally recognized tribes in Oklahoma. Through the spirit of respect and cooperation, the Native Alliance Against Violence strives to unify tribal service programs throughout Oklahoma by providing culturally appropriate technical assistance, training, and support to eliminate domestic violence, sexual assault, stalking, and dating violence to restore balance and safety for Native communities. The NAAV is founded, led, and governed by Native women.

Having the second highest Native American population in the United States, Oklahoma is home to 38 federally recognized tribes, representing more than 8.9% of the state's total population. Each tribe is distinct in its culture, language, religion, and history. However, despite this vast cultural diversity, Oklahoma tribes do share intergovernmental similarities with each other that no other tribes in the nation experience. It is the pairing of these vast cultural differences with such close intergovernmental similarities that makes providing training and technical assistance so complex. The NAAV training and technical assistance seeks to meet the each individual tribe's needs and issues which vary depending on their infrastructure.

Current funding through the Office on Violence Against Women Tribal Coalitions Grant Program has allowed the Native Alliance Against Violence to provide services within the statewide service area, and expand its

capacity to work collaboratively in a culturally appropriate manner with partnering tribes by:

- Conducting annual Oklahoma Tribal Summits on Domestic Violence, Sexual Assault, and Stalking for Oklahoma tribal leaders, tribal agencies, and tribal victim service providers;
- Providing regional workshops tailored to the specific needs of member programs and tribal victim service providers; and



## Coalition Contact Information

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- Conducting site visits and individualized trainings and delivering technical assistance to individual member tribes and tribal victim service providers.

“We have excellent programs operating in Oklahoma Indian country and a great number of committed people working together in a common effort to end violence against Native women,” stated NAAV Executive Director Dawn Stover of the NAAV Tribal Summit on Domestic Violence, Sexual Assault, and Stalking conducted in Tulsa, Oklahoma, on April 25th & 26th. The annual NAAV Tribal Summits continue to be an overwhelming success with more than 60 individuals attending the 2012 Summit, representing 22 tribes/tribal programs. The Summits provided a forum for tribal leaders and program staff to meet and share the challenges, accomplishments, and best practices of their tribal victim service programs.

**Oklahoma Stats on Domestic Violence, Sexual Assault, Stalking, and Dating Violence**

Oklahoma has yet to move out of the top 20 in the number of women murdered by men and currently ranks 11th in the nation for the number of domestic violence–related homicides. Sexual assault is also an urgent issue in Oklahoma with the number of reported rapes rising more than 20% in the last five years, and an average of nearly 1,500 rapes being reported each year. Stalking is equally as troubling. The Oklahoma Fatality Review Board reported that stalking behavior by a perpetrator

was documented in 20% of the Oklahoma intimate partner homicides. Unfortunately, violence relationships are also being documented among our youth with 20% of Oklahoma teens reported being hit, slapped, or physically hurt by a boyfriend or girlfriend, compared to 9% of all students nationwide. In fact, the rate of dating violence for Oklahoma ninth graders is more than three times the national average, at a rate of 26% for Oklahoma freshman, compared to 8% nationwide.

Violence against our Native women has reached epidemic proportions. The latest data from the Bureau of Justice Statistics indicates that Native Americans are twice as likely to experience domestic violence as any other group. A 2002 Oklahoma report mirrored the Bureau of Justice Statistics indicating that Oklahoma Native Americans experienced the highest rates of stalking and harassment among all other ethnic groups. Seventeen percent (17%) of Native American women—at least twice that of other groups—are stalked each year.

Tribal governmental support is the cornerstone of coordinated tribal systemic response to domestic violence sexual assault and stalking in Oklahoma Indian country. Tribal governmental support of victim service providers sends a zero tolerance message to batterers in each tribal community. The NAAV is supported by the tribes in Oklahoma, and will continue to eagerly provide leadership for technical assistance, training, and support for tribal programs in the state.







*Violence Against Women is Not Our Tradition*



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