

VAWA 2005 IMPLEMENTATION ISSUES | TRIBAL CONSULTATION RECOMMENDATIONS
CITIZENS RELAY FOR PASSAGE OF VIOLENCE AGAINST WOMEN ACT
VAWA 2012 REAUTHORIZATION: WHERE DO WE STAND?



October 2012
Sacramento, California

Restoration

OF NATIVE SOVEREIGNTY AND SAFETY FOR NATIVE WOMEN



Cover: June 26, 2012, National Day of Action in Support of VAWA Reauthorization: Terri Henry, Council Member, Eastern Band of Cherokee Indians, speaks to participants at national rally in support of VAWA reauthorization.

Volume 9, Issue 4, October 2012

Restoration
OF NATIVE SOVEREIGNTY AND SAFETY FOR NATIVE WOMEN

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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.

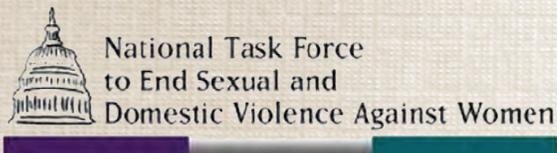
The *Restoration of Sovereignty & Safety* magazine is a publication dedicated to informing tribal leadership and communities of emerging issues impacting the safety of American Indian and Alaska Native women. The name of the magazine, *Restoration of Sovereignty & Safety*, reflects the grassroots strategy 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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Dear Friends,

Welcome to the 69th annual convention of the National Congress of American Indian!

At every national meeting since 2003, *Restoration* magazine has provided tribal leaders, advocates, and attendees with an update on emerging issues impacting the safety of American Indian and Alaska Native women. This volume highlights two critical issues: first, the status of the reauthorization of the Violence Against Women Act; and second, a report from the seventh annual VAWA-mandated government consultation on the safety of American Indian women.

Over the last year, the NCAI Task Force on Violence Against has worked diligently with our national partners to ensure passage of a victim centered VAWA reauthorization bill in the Senate inclusive of lifesaving amendments to federal law. The historic amendments contained in S. 1925 met strong opposition from members of the House of Representatives. This opposition prevented reauthorization of VAWA thus far and a full update of plans for the remainder of 2012 are provided below. In the efforts to reauthorize the Act, tribal leaders, advocates, and community members played pivotal roles across the United States. In particular, elected tribal women leaders traveled from their homelands to Washington, DC, to inform and educate members of the House.

On October 2, 2012, the seventh annual VAWA consultation was held in Tulsa, OK. 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. We provide the recommendations made by tribal leadership to the Department of Justice for your review.

We hope this information will assist you in understanding where we stand in our efforts to increase the safety of Native women in the United States.

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
Cherokee Indians



VAWA 2012 Reauthorization: Where Do We Stand?

Tribal efforts over the last year ensured that the Senate passed a bipartisan, tribal-inclusive Violence Against Women Reauthorization Act (VAWA). These efforts also kept Congress and the national media focused on the epidemic of violence committed against of American Indian and Alaska Native women. For the first time in the history of the United States, violence against Native women held the spotlight and was the focus of heated floor debate in both the House and Senate. Despite all these efforts, VAWA has become a victim of election-year politics. While VAWA has enjoyed bipartisan support and was enacted during past reauthorizations by unanimous consent of both the House and Senate, this year it is locked in a stalemate.

Senate VAWA, S.1925

On April 26, 2012, the Senate passed S.1925 on a 68 to 31 vote. This was an historic vote because it is the first time since the Supreme Court's decision in *Oliphant v. Suquamish Tribe* that either chamber of Congress has voted to restore tribal criminal jurisdiction over non-Indians in any form. Every woman Senator voted for S.1925.

Tribal leaders, coalitions, communities, and advocates for ending domestic and sexual violence have worked hard for the passage of a victim-centered VAWA. The Senate VAWA version, S.1925, was drafted over a two-year period based on dialogue with grassroots advocates and practitioners working to eliminate domestic and sexual violence. NCAI Task Force members rolled up their sleeves and joined in this process alongside tribal coalitions and service providers.

House VAWA, H.R. 4970

Unfortunately, the day following Senate passage of S.1925, Representative Sandy Adams (R-FL) introduced her own version of the VAWA reauthorization bill, H.R. 4970. The bill does not include any of the key tribal jurisdictional provisions of S.1925 and also stripped the proposed protections included in S.1925 for immigrant and LGBTQ victims.

Rep. Darrell Issa (R-CA) tried to offer an amendment to H.R. 4970 during the House Judiciary Committee markup of the bill on May 8, 2012, that would have restored a slightly amended version of the tribal criminal jurisdiction

Key Tribal Provision of Senate Bill, S.1925

S.1925 proposes key improvements to Title IX of VAWA, the Safety for Indian Women title, that attempt to bridge the gaps in the current system that leave Native women vulnerable to violent crimes of domestic violence and sexual assault. Four major provisions include:

- *Tribal Criminal Jurisdiction*: Restoration of concurrent criminal jurisdiction to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses, intimate partners, or dating partners, or who violate protection orders in Indian country.
- *Tribal Civil Jurisdiction*: Clarification that tribal courts have full civil jurisdiction to issue and enforce certain protection orders involving any persons, Indian or non-Indian. This provision includes Alaska Native Villages and those Indian tribes located in Public Law 280 or similar jurisdictions.
- *Federal Criminal Offenses*: Amendment of federal assault statutes so that certain crimes often committed by abusers in Indian country can be punished with sentences on par with those handed out under state statutes.
- *Tribal Domestic Violence and Sexual Assault Coalition Grant Program*: Amendment of the grant program to operate on a formula similar to that of the state coalition program; provides a funding increase and includes other provisions to stabilize the tribal coalitions.

provision found in Section 904 of S.1925. Unfortunately, he withdrew it before a vote was taken because the Committee Chairman, Lamar Smith (R-TX), threatened to rule it out of order for lack of germaneness.

H.R. 4970 passed the House after a grueling daylong floor fight by a very narrow margin, 222 to 205. Almost every Democrat and 23 Republicans voted against H.R. 4970 viewing it as a dangerous roll backward in time.

VAWA Reauthorization Standstill

Now, VAWA has come to an apparent standstill in Congress. The competing bills have not gone to conference because there is a problematic revenue provision tucked into some of the immigration-related provisions of the Senate bill. Under the Constitution's Origination Clause, all revenue language must originate in the House. Speaker of the House, Rep. Boehner, has said that the Senate must either remove the controversial provision and pass its bill (S.1925) again, or take up the House-passed version (H.R. 4970) of the reauthorization and move to conference on that. So far, Senate leadership has been unwilling to budge on their version of the bill and to remove amendments to increase protections for Native, immigrant, or LGTBQ victims. It appears that VAWA is at a stalemate with no clear path forward.

Looking Ahead

After a relatively quiet summer, the efforts of tribal leaders during the Tribal Unity Impact Week that occurred in mid-September in Washington, D.C. began to rebuild momentum around VAWA. The tribal leaders, advocates, and grassroots community members who led

the organizing and education work in support of VAWA over the years must rally once again. Only through a national grassroots movement will VAWA once again be reauthorized.

Right now, Congressmen Tom Cole (R-OK) and Darrell Issa (R-CA) are working together on a stand-alone House bill that would contain solely a provision to restore tribal criminal jurisdiction over non-Indians for crimes of domestic violence and dating violence that occur on the reservation. This bill will likely be a modified version of S.1925's Section 904, similar to the one Rep. Issa offered in committee markup. As soon as this stand-alone bill is introduced, the NCAI Task Force urges Indian tribes and the grassroots movement to help get as many co-sponsors as possible to endorse it. This will send a strong message to House leadership that tribal jurisdiction over non-Indians is not a political issue, it is a safety issue—and it has broad support on both sides of the aisle, as well as in both chambers of Congress.

In the weeks ahead, the NCAI Task Force urges tribes to capitalize on the momentum of Unity week and call on members of Congress to pass a final reauthorization bill that improves VAWA's lifesaving programs and protects Native victims of violence. If this bill is going to pass this year, tribes must make VAWA an election issue and a priority for every legislator during the lame duck session in Congress.

NCAI will continue to work in a bipartisan fashion with both chambers of Congress to urge immediate passage of a final VAWA bill that keeps the key tribal jurisdiction provisions intact.

Citizens Relay for Passage of Violence Against Women Act

By Rebecca Landsberry / Sterling Cospers

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.



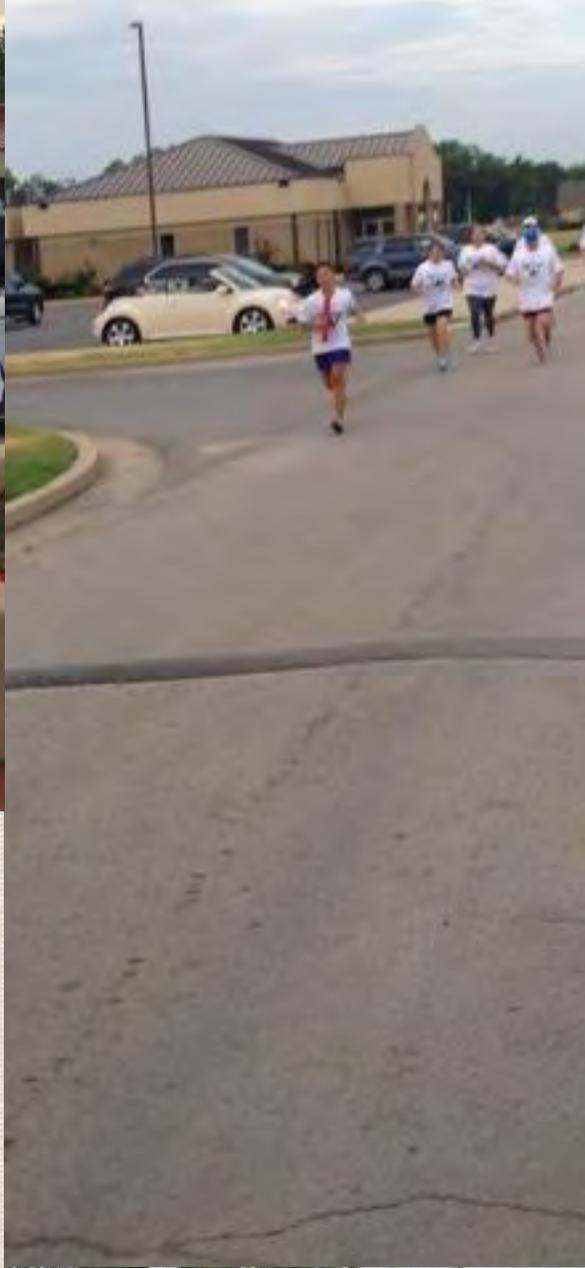


National Task Force
to End Sexual and
Domestic Violence Against Women

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% of American Indian and Alaskan Native women will be raped in their lifetimes, and 39% 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.



Lummi Rally to Support VAWA

By John Stark — The Bellingham Herald

LUMMI RESERVATION - Native American women who live on a reservation can't always get the legal protection they need if a non-Native spouse or partner becomes abusive, tribal officials said on June 26, 2012 during a rally and march here.

The rally attracted about 30 participants who marched to support changes in the federal Violence Against Women Act that are meant to curb violence against women on Indian reservations.

"We do have a lot of women who are in relationships with non-Indians," said Nikki Finkbonner, coordinator of the Lummi Victims of Crime program.

In those cases, tribal police cannot arrest non-Indian perpetrators of violence against Lummi women, and protection orders from tribal courts can't always be enforced by non-Indian law enforcement.

In April 2012, the Democratic-controlled U.S. Senate passed a new version of the Violence Against Women Act that contained provisions to change that. Among other things, the Senate bill would give tribal courts the authority to issue and enforce civil protection orders over anyone, while also expanding criminal jurisdiction over non-Indians accused of domestic violence crimes on reservations.

But the Republican-controlled House of Representatives passed its own version of the bill in May 2012 that does not include those provisions. Republican critics of the Senate bill said the tribal provisions would represent an unprecedented expansion of tribal legal power over non-Indians.

Charlene Casimir-George, housing advocate with Lummi Victims of Crime, helps find emergency shelter for women who have been abused by the men in their lives. She agreed that the legal changes in the Senate bill would provide faster legal protection for tribal women with non-Indian spouses and partners.

"We want safety for all of our women, we want safety for all of our children," Casimir-George told the people who gathered at the edge of the Silver Reef Casino parking lot off Haxton Way. "We're going to tell our daughters that they deserve to be respected and honored as women."

Whatcom County Sheriff Bill Elfo acknowledged that jurisdiction is an issue when his deputies respond to domestic violence cases or other crimes on the reservation. Lummi officers have the court-affirmed legal

authority to detain non-Indians if they have sufficient evidence that the person has committed a crime on the reservation, Elfo said. But they cannot arrest non-Indians and take them to Whatcom County Jail. Tribal officers must wait for a county sheriff's deputy to arrive.

Elfo said he hasn't had a chance to review the implications of the proposed changes in federal law.

"Everywhere in Whatcom County, domestic violence is a serious problem," Elfo said. "I'm certainly for working with tribal police to try to prevent it and hold people accountable."

Elfo noted that there is a provision in state law that would allow Lummi officers to obtain full arrest powers over non-Indians. For that to happen, the tribe and the county would have to negotiate an agreement, after the tribe has submitted documentation showing that its officers have the required training and insurance coverage. Elfo said he would be receptive to such a deal, but the initiative should come from Lummi Nation.

"That's up to the tribe, whether they want to do that," Elfo said.

U.S. Rep. Rick Larsen, D-Everett, said Congress has yet to take the first step toward resolving the differences between the House and Senate bills: appointing a conference committee that would try to hammer out a law that can pass both houses. And more is at stake than tribal jurisdiction issues: The legislation also reauthorizes funding for federal programs to combat domestic violence and help victims.

Larsen supports the Senate version. Besides the added protections for women on Indian reservations, the Senate bill also contains language meant to protect lesbian, gay, bisexual and transsexual sex abuse victims, and to make it easier for women without legal immigrant status to report crimes against them.

Larsen said he's unimpressed with fears that the Senate bill might give tribal governments too much authority.

"Solutions should focus on protecting the victims rather than on the complaints of the abusers," Larsen said.

For complete article: <http://bit.ly/XggyBv>



Epidemic Levels of Violence Requires Increased Emergency Services for Native Women

Given the inadequate law enforcement response to violence against Native women, victims of domestic and sexual violence often find themselves waiting days, weeks, and months for justice officials to answer their calls for assistance, and for many, those calls go unanswered entirely. Federal, tribal, and state systems are flawed with jurisdictional gaps, under-resourced, and in some instances, completely ineffective, placing Native women at increased risk. This state of affairs complicates the ability of Native women to access emergency services. It is unusual to find services common to non-tribal communities, such as shelter programs and rape crisis services, available within tribal communities.

Women and children confronted with life-threatening violence cannot wait for legal and administrative reforms of the current outdated system. While such reforms are critically important, the passage of new laws and then implementation of such laws typically takes several years. The population of Native women “waiting to be served” can no longer be ignored. The epidemic of violence against American Indian women requires an immediate response.

Creation of a New Grant Program: The NCAI Task Force on Violence Against Women proposes the immediate creation of a new grant program to develop and maintain emergency services on tribal lands

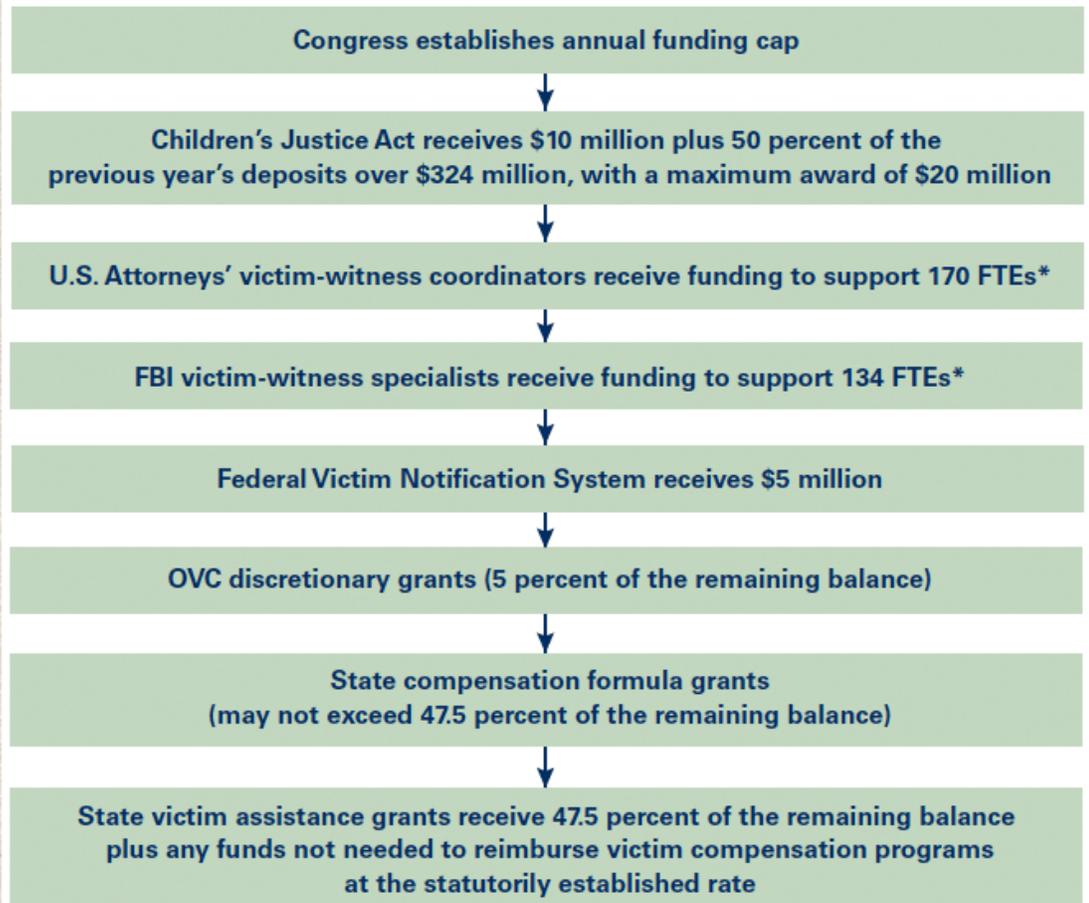
for Native women seeking safety from domestic and sexual violence. The program would fund tribal government programs and nonprofit, nongovernmental tribal organizations, located within the jurisdictional boundaries of an Indian reservation or within an Alaska Native Village, that provide services to Native women victimized by domestic and/or sexual violence.

Call for Tribal Set-Aside within VOCA: 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. Since 2003, the NCAI Task Force has recommended that Congress create a tribal set-aside within the Crime Victims Fund (“the Fund”) to develop and maintain services for Indian women victimized by domestic and

sexual violence. The total amount of deposits into the Crime Victims Fund for FY 2012 was a record amount, \$2,795,547,045. The next closest year was 2010 when \$2.3 billion was deposited. The Fund currently has a reserve balance of approximately \$8 billion. Given the crisis confronting American Indian women, the NCAI Task Force is now calling for the immediate creation of an “above the cap” tribal set-aside in the Victims of Crime Act (VOCA).

Background of the 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

Figure 2. Crime Victims Fund Allocation Process



*Full-time employees. Source: 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.

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.

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.

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

THE NATIONAL CENTER FOR
Victims of Crime
www.nvc.org-1-800-FYI-CALL

funded by fines and other 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 proposed “above the cap” tribal set-aside 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 stream is a viable given the deposits into the Fund are consistently high.

Ending the Disparity: Currently, no tribal set-aside is provided under the VOCA for services to victims within Indian tribes. This lack of funding to Indian tribes is unacceptable given the levels of violence and lack of services for victims. The USDOJ statistics document the well-known fact that violence against Indian women is more than double that of any other population of women; 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.

Cherokee Tribes Come Together for Tri-Council

History was made at the Chief Joyce Dugan Cultural Arts Center on July 13, 2012. For the first time, the three federally recognized Cherokee tribes came together for an official meeting.

“Completing the Circle of Fire” was the theme for Friday’s historic Tri-Council meeting.

“The Removal in 1838 separated our people,” said EBCI tribal member Shawn Crowe who served as emcee for the event. Today is a historic event as all three now come together.”

He continued, “It means a lot to see our people come together as one. We are not three separate entities anymore. We are now one.”

The chiefs of the three tribes addressed the crowd to open the event.

United Keetoowah Band Principal Chief George Wickliffe commented, “Our elders have always said we will come together again one of these days and the time has come, so let’s make it count.”

Cherokee Nation Principal Chief Bill John Baker said, “This is a great day. It has been a dream...we don’t see what makes us different. We see what makes us the same.”

Principal Chief Michell Hicks stated, “The ire is within us...I know we’re not always going to agree on everything, but there is a time to set things aside.”

Many dignitaries, tribal elders, and tribal leaders were in attendance such as: former Principal Chief Robert Youngdeer, former Principal Chief Ed Taylor, former Principal Chief Joyce Dugan, former EBCI Council Chairman Bob Blankenship, and former EBCI Council Chairman Dan McCoy.

Even with the air of a family reunion, Friday’s event was still a business meeting and the Tri-Council did take on several tough issues passing resolutions in favor of the reauthorization of the tribal amendments in the Violence Against Women Act (VAWA), authorizing the incorporation of Cherokee Syllabary into the U.S. Library of Congress Romanization Tables, resolving to continue work to retain the Cherokee language and traditions, and approving a “consortium method” to fight diseases affecting Cherokee people such as diabetes.

Several other issues were discussed including the Intellectual Property Rights of Cherokee people, the Emissaries of Peace 250th Anniversary, and a report was given from the Trail of Tears Association.

One major decision made during the meeting was to have a Tri-Council meeting each year with the hosting



duties rotating yearly. Cherokee Nation agreed to host the 2013 meeting and the United Keetowah Band is slated to host in 2014. The meeting will come back to Cherokee in 2015.

Yellowhill Rep. B. Ensley summed up the overall feeling and intent of the meeting, "We've got to work together and become stronger as a nation."

"We're all the same," Big Cove Rep. Perry Shell said at the end of the meeting. "Hopefully, we can go from here with that same spirit."

Photos: The Cherokee One Feather.



California Indian Tribes Work to Increase Safety for Native Women

While research and statistics specific to violence against Native women in California are lacking, many would agree that these life-threatening crimes occur at the epidemic rates consistent with national statistics. The USDOJ reports that within the United States more than 1 of 3 Native women will be raped and 6 of 10 women physically assaulted in their lifetime. Many believe that rates may be higher for California Indian women given the lack of resources made available to Indian tribes by federal or state funding. The reality is that few tribes in California have applied for and received funding to respond to violence against Native women in their communities.

The lack of advocacy services and often a tribal justice system response provides few legal options for Indian women. California Indian women and other Native women in these communities often have nowhere to turn for help. Less than 20 tribes operate tribal law enforcement departments and about 20 have a tribal court operating or under development. The historic mistrust of California Indian tribes and Native peoples of state law enforcement and social service agencies further complicates these challenges. This among other factors lead to the reality that many victims of domestic or sexual violence do not report the violence.

California is home to 110 federally recognized Indian tribes and many more that were terminated in the 1950s and 1960s. In addition, the 2000 Census reported California with the highest American Indian population of any state in the nation.

Photos: La Jolla Band of Luiseno Indians Avellaka Program, Rincon, Pauma and Pala Band of Luiseno Indian's Tribal community and Southern California Tribal Chairman's Association.





Flags in ribbon represent all San Diego County tribes and Chemeuvi.

VAWA Not Reaching California Indian Tribes

Given the epidemic rates of violence against Native women, it is disheartening that more California tribes and Native women's advocates have not benefitted from available federal resources under the Violence Against Women Act or the Family Violence Prevention and Services (FVPSA). Of the 110 tribes, there are about 45 tribal communities funded under FVPSA for shelter and supportive services, and about a dozen currently funded under VAWA through the Office on Violence Against Women. Available resources through the state of California to increase the safety of Native women and support the development of tribal responses are even more limited.

Minimal Services Available Despite Everyday Challenges

In the face of these ongoing challenges, Native women's advocates and tribal governments strive to provide services and a response to Native women seeking safety from domestic violence and sexual assault, and a system of accountability for offenders. While the list of such tribal programs is short, the commitment to increasing the safety of Native women by the following tribal organizations is steadfast:

- Round Valley Indian Tribes operates the only Native women's shelter in California largely by a foundation grant.
- The Inter-Tribal Council of California has provided training, support, and advocacy services to tribal communities on violence against women for close to two decades.

Join California Tribal Advocates December 5th to Increase the Safety of California Indian Women

Since October 2011, the National Indigenous Women's Resource Center (NIWRC) has organized discussions with advocates and Indian tribes across California about tribal efforts, challenges, and needs in responding to violence against women. We are currently organizing a one-day meeting on December 5, 2012, in Palm Springs, California. The meeting is designed to discuss how to increase efforts within California tribal communities, build relations, and collaborate across communities to increase the safety of Native women. For more information contact Paula Julian, NIWRC Program Specialist at pjulian@niwrc.org.

- Strong Hearted Native Women’s Coalition (SHNWC) operates in the San Diego County area and is dedicated to educating and raising awareness to effect change in nine tribal communities in the county.
- Kiicha (meaning *home* or *house* in Luiseno), a working group of advocates, tribes, and SHNWC in the counties of San Diego, Riverside, and San Bernardino, has had discussions since January 2012, about developing a Native women’s shelter.
- Volunteer efforts from the Northern Tribal Healing Coalition and Inter-Tribal Women’s Advocacy Network in Northern California over the last five plus years have resulted in annual training conferences and strengthened coordination across tribal and county and nonprofit agencies.

These tribal efforts while inspirational are needed tenfold to address the services needed given the current epidemic of violence.

ORGANIZING FOR SOCIAL CHANGE, RESTORATION OF TRIBAL SOVEREIGNTY AND SAFETY OF NATIVE WOMEN!

Tribal–State Concurrent Jurisdictions: Concerns and Recommendations

Tribal leaders from California Indian tribes have participated and made recommendations concerning the impact of Public Law 280 at each of the annual USDOJ consultations since 2006. These concerns have also been raised at various national meeting and conferences. The concerns mirror those of other Indian tribes impacted by federal legislation that transferred limited federal authority to a state government.

Outstanding Concerns Regarding the Response of State and County Agencies:

- Slow, inappropriate, or no response to emergency calls from tribal communities;
- Refusal to provide county law enforcement assistance;
- Misinformation on concurrent tribal-state jurisdiction;
- Failure to recognize and enforce tribal orders of protections across the state; and,
- Failure to prosecute felony domestic and sexual assault crimes committed against Native women on tribal lands.

Recommendations for USDOJ to Increase the Safety of Native Women within California:

- Support any California Indian tribe requesting that the USDOJ reassume felony jurisdiction under the Tribal Law and Order Act (TLOA);
- Issue a memorandum to federal, tribal, and state agencies that VAWA federal offenses occurring within Indian tribes located in California will be investigated and prosecuted by the USDOJ, such as the Domestic Assault by an Habitual Offender, Firearms Prohibitions Violations, and Interstate VAWA Offenses;
- Develop a protocol in conjunction with California Indian tribes requesting federal prosecution of VAWA crimes for referring VAWA crimes to the FBI and U.S. Attorneys;
- Provide training for California 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;
- Work closely with the California state agency administering STOP Violence Against Women Formula funds to ensure compliance with the full faith and credit provisions of VAWA and TLOA by all police and sheriffs departments within the next year; and,
- Coordinate with the U.S. Department of the Interior’s Bureau of Indian Affairs to conduct consultations with California Indian tribes to ensure that federal funding is available to support the development and maintenance of adequate tribal law enforcement and tribal justice systems in California.

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 2006–2012

Date	Location	Highest DOJ Official
2006	Shakopee, Mdewakanton Sioux Community, MN	OVW Director Diane Stewart
September 19, 2007	Sandia Pueblo, NM	Acting OVW Director Mary Beth Buchanan
December 10, 2008	Agua Caliente Band of Cahuilla Indians Palm Springs, CA	OVW Director Cindy Dyer
October 30, 2009	St. Paul, MN	Associate Attorney General Tom Perrelli
October 4, 2010	Kalispel Indian Reservation Spokane, WA	Associate Attorney General Tom Perrelli
December 15, 2011	Santa Ana Pueblo. NM	OVW Director Susan Carbon
October 2, 2012	Tulsa, OK	Acting OVW Director Bea Hanson

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

§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, 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.

§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.**

§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.**

§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. During the 2012 Tulsa Consultation Acting Director Bea Hanson announced that a solicitation would be released soon. On October 15, 2012 the announcement for the tribal registry solicitation was released.

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 and award contracts for the creation of 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 for years FY2007-2011 to develop and maintain the national tribal sex offender registry and protection order registry. 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.

<u>Fiscal Year</u>	<u>Amount Appropriated</u>
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.

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.

OVW To Fund National Tribal Protection Order Registry

The Office on Violence Against Women (OVW) will fund the development of a national tribal protection order registry that will provide data to tribal governments on individuals who are subject to a criminal or civil protection order that a tribal court has issued. This grant is open to federally recognized tribes, tribal organizations, and tribal nonprofit organizations. A maximum of \$2.5 million in grants is available.

<http://www.ovw.usdoj.gov/docs/ntpori.pdf>

Applications are due by 11:59 p.m. EDT on December 18, 2012.

Resources:

View eligibility details and additional information about this grant: <http://www.ovw.usdoj.gov/docs/ntpori.pdf>.

Learn how to register with Grants.gov.

<http://www.ovw.usdoj.gov/docs/resource-guidebook.pdf>

- 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.

§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

Grants to Indian Tribal Governments Program Funding 2005–2012

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
2012	54	\$32,264,073

**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.*

- 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.**

§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.**

§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 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.**

§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 was released and made available at the 2012 Tulsa consultation.

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 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.

NCAI's TJSW/OVW Consultation Comments

On behalf of the National Congress of American Indians, the nation's oldest, largest, and most representative national organization made up of American Indian and Alaska Native tribal governments, I submit the following comments for the record at the 2012 annual Department of Justice (DOJ) consultation on violence against women issues and DOJ grant funding.

Commending DOJ's Commitment to Indian Country

Before diving into our comments, we would like to first thank Attorney General Eric Holder and his team—particularly you and former Associate Attorney General Tom Perrelli—for your steadfast commitment to improving public safety in Indian Country. The efforts of the Department of Justice (DOJ) in recent years have had a significant, positive impact on Indian reservations across the country, and we look forward to continued collaboration and coordination on these efforts.

Along similar lines, we would like to commend DOJ for their issuance last year of a draft Tribal Consultation Policy, and we urge the Department to finalize that policy as soon as possible (in a manner that addresses the concerns stated in our December 20, 2011 letter), so that the government-to-government relationship between the Administration and tribes can be strengthened moving forward. Recent engagement with tribes on complex

issues of public safety and cultural/religious protection demonstrate what can be accomplished through proper and effective consultation, and we encourage the Department to continue that type of dialogue and to increase its outreach to and training in tribal nations across the country right away.

Violence Against Native Women

The primary purpose of the October 2, 2012 consultation is for the DOJ to consult with tribes on three topics related to violence against women, as mandated by the Violence Against Women Act of 2005. We address each of those three topics in detail below.

1) Enhancing the safety of American Indian and Alaska Native women from domestic violence, dating violence, sexual assault, and stalking

The Department of Justice's July 2011 issuance of and formal support for a legislative proposal that would recognize the inherent tribal criminal jurisdiction over all persons (non-Indians included) who commit dating violence, domestic violence, and violations of protection orders in Indian country was historic, and it answered the many cries of tribal leaders, advocates, and survivors in recent years to take meaningful action to enhance the safety of Native women. The importance of DOJ's

support of restoration of tribal criminal authority over non-Indians in this context cannot be overstated. **NCAI recommends that DOJ continue its formal support for inclusion of the expanded tribal criminal jurisdiction proposal in any final Violence Against Women Reauthorization Act that passes Congress.**

In addition to the tribal criminal jurisdiction provisions, the DOJ's formal legislative proposal issued last summer contained important provisions that would: 1) clarify tribal civil jurisdiction to issue and enforce protection orders, and 2) provide federal prosecutors with additional tools to more effectively prosecute violent crimes in Indian country. **NCAI recommends that DOJ continue its formal support for provisions that clarify tribal civil authority to issue and enforce protection orders against all persons and provisions that would better arm federal prosecutors with the tools they need to effectively prosecute Indian country crime.**

One area that DOJ's July 2011 legislative proposal did not directly address that remains a grave concern for our membership is enhancing the safety of Alaska Native women. While Alaska Native Villages and nonprofit organizations are eligible for 20 of the 21 grant programs administered by the Office on Violence Against Women, the reality is that very few of the 229 federally recognized Indian tribes in Alaska actually access funding under the Violence Against Women Act, and because of the unique jurisdictional situation in Alaska, the proposed jurisdictional-based statutory amendments that DOJ has proposed would not affect Alaska Native Villages. This sad reality stands in stark contrast to the overwhelming need of Alaska Native Women for safety. As such, **NCAI recommends that DOJ make addressing violence against Native women in Alaska a top priority and consider new solutions that would: 1) ensure that Alaska Native victims have access to lifesaving services; and 2) provide additional resources and tools to Alaska Native Villages to address VAWA crimes at the local level.**

2) Strengthening the federal response to the crimes of domestic violence, dating violence, sexual assault, and stalking

The Tribal Law & Order Act of 2010 (TLOA) contains several provisions geared toward strengthening the federal response to crime in Indian Country, including crimes of domestic violence, dating violence, sexual assault, and stalking. As such, the law has the potential to greatly improve public safety for Indian women. Thus far, DOJ has done a great job implementing some of the Act's key components; however, outstanding items remain. **We recommend that DOJ take direct and immediate action to ensure full and effective implementation of all provisions of the TLOA,**

particularly those pertaining to disposition reports and reassumption of federal concurrent jurisdiction in Public Law 83-280 (PL 280) states.

One of the centerpieces of the TLOA, and key to strengthening the federal response to violence against Native women, is Section 212, which mandates that the Attorney General submit to Congress annual "disposition reports" that contain all relevant investigation and prosecution data regarding alleged violations of federal criminal law that occurred in Indian country that were referred for federal prosecution by law enforcement agencies. Sharing of this type of information is critical to keeping Indian women safe. Tribal officials need to be notified when a U.S. Attorney declines to prosecute sexual assault and domestic violence offenders so that, in the case of an Indian defendant, a tribe may decide the appropriate legal response according to tribal law. Unfortunately, despite the fact that these reports are statutorily required on an annual basis, DOJ has yet to produce its first disposition report. **NCAI recommends that DOJ release its disposition reports immediately and ensure timely delivery of them on an annual basis moving forward.**

NATIONAL CONGRESS OF AMERICAN INDIANS

September 28, 2012

The Honorable Tony West
Associate Attorney General (Acting)
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

RE: NCAI's TJSW/OVW Consultation Comments

Dear Associate Attorney General West,

On behalf of the National Congress of American Indians, the nation's oldest, largest, and most representative national organization made up of American Indian and Alaska Native tribal governments, I submit the following comments for the record of the 2012 annual Department of Justice (DOJ) consultation on violence against women issues and DOJ grant funding.

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against native women... Congress annual "disposition reports" that contain all relevant investigation and prosecution data regarding alleged violations of Federal criminal law that occurred in Indian country

Jacqueline Johnson
Executive Director

Another TLOA provision that is meant to strengthen the federal response to VAWA crimes against Native women is Section 221, which makes a significant amendment to PL 280 to allow tribal governments in the PL 280 states to request that the federal government exercise concurrent jurisdiction over reservation crimes, with consent by the Attorney General. The purpose of this change is to address long-standing concerns that some states and local governments have not fully addressed reservation crime—including sexual assault, domestic violence, and rape—under PL 280. On December 6, 2011, the Department of Justice published its final rule on Assumption of Concurrent Federal Jurisdiction on PL 280 Reservations, which establishes the procedures for an Indian tribe whose Indian country is subject to State criminal jurisdiction under PL 280 to request that the United States accept concurrent criminal jurisdiction within the tribe’s Indian country, and for the Attorney General to decide whether to consent to such a request. We understand that a number of tribes have already submitted requests to the DOJ under its new regulations, but more than nine months after publication of the final rule, no formal decisions about reassumption of concurrent jurisdiction have been

made. **NCAI recommends that DOJ act on pending requests for reassumption of concurrent jurisdiction as soon as possible.**

3) Administering funds appropriated for tribal governments and programs created to benefit tribal governments

Overall, the Office on Violence Against Women deserves to be commended for its successful administration of the Grants to Indian Tribal Governments Program (GITGP), created by VAWA 2005, and its efforts to ensure that tribal service providers receive the training and technical assistance they need. However, there is one funding-related issue, outlined below, that is of great concern to tribal leaders.

Section 905(b) of VAWA 2005 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 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. However, despite repeated congressional

appropriations for development and maintenance of a national tribal registry, OVW has not yet implemented this lifesaving project. **NCAI recommends that the Director of OVW immediately carry out her statutorily-mandated responsibilities to release the solicitation and award a contract for the creation of the national tribal registry.**

*We are mindful of the intersection of the VAWA 2005 national tribal registry mandate and the Sex Offender Registration and Notification Act (within the Adam Walsh Act), but this intersection should not impede creation of the national tribal registry—a potentially lifesaving development for tribes in PL280 states that are ineligible for participation under SORNA.

Department of Justice Grant Funding

NCAI is appreciative of DOJ’s attempts to streamline its tribal funding in recent years. Specifically, we commend DOJ for its implementation and continued refinement of the Coordinated Tribal Assistance Solicitation (CTAS) and for its continued support for congressional authorization of a 7% tribal set-aside from all discretionary Office of Justice Programs (OJP) programs in the Commerce, Justice, Science Appropriations Bill. That being said, we feel strongly that—given the levels of violence in Indian Country and the widespread lack of services for victims—tribes should be eligible for additional funds from the Crime Victims Fund.

NCAI recommends immediate creation of an Office for Victims of Crime (OVC) discretionary grant program to provide emergency services to Native victims on tribal lands. The OVC program would fund tribal government programs and nonprofit, nongovernmental tribal organizations located within reservation boundaries or Alaska Native Villages that provide services to Natives victimized by crime. Proposed options for funding these services include either a 10% tribal set-aside within the Victims of Crime Act (VOCA) or, alternatively, a \$100 million “above the cap” reserve in VOCA. While states and territories receive an annual formula amount from the VOCA Fund, tribes do not receive such an allocation. The OVC competitive funding administered to tribes through two small discretionary programs (Children’s Justice Act Partnerships for Indian Communities Grant Program and Tribal Victim Assistance) does not compare to the amount administered under the state formula program. A new OVC program for tribes would help correct this disparity and would provide lifesaving services for Native women and their children.

Conclusion

In closing, we recognize that while tremendous progress has been made to improve public safety in Indian Country in recent years, there is still a lot of work to

be done. There is a long history of federal neglect in tribal communities that has created numerous obstacles for tribal justice systems. These problems cannot be solved overnight, but NCAI looks forward to a continued partnership with DOJ to confront these and other issues in the future.

We thank you for the opportunity to submit these comments. If you have any questions or concerns regarding the contents of this letter, please contact John Dossett, jdossett@ncai.org, or Katy Tyndell, ktyndell@ncai.org.

Sincerely,

Jacqueline Johnson Pata
Executive Director

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.

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 expecting 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.
- When and if a community reports an act of violence against a woman 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.

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 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
- Clarify 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.



Special Rapporteur Report on Visit to the U.S.—Violence Against Native Women Shows Immediate Need for Law Reform

By Jana L. Walker, Staff Attorney, Indian Law Resource Center

On September 18, 2012, James Anaya, United Nations (UN) Special Rapporteur on the Rights of Indigenous Peoples (Special Rapporteur), presented his official report to the UN Human Rights Council on his mission to the United States. The purpose of his mission was to examine the concerns of indigenous peoples in the United States related to implementation of the UN Declaration on the Rights of Indigenous Peoples (Declaration). The Special Rapporteur joins other independent international human rights experts and bodies in calling on the United States to reform its laws to combat the alarming and disproportionately high rates of violence against Native women.

The Special Rapporteur is an independent expert appointed by the UN Human Rights Council, an inter-governmental body created within the UN system to promote and protect human rights around the world. The Special Rapporteur examines and reports on issues concerning the human rights of indigenous peoples in particular countries, with special attention paid to the human rights of indigenous women and children.

In April and May, Mr. Anaya traveled around the United States gathering information from tribal leaders, Native individuals, Native organizations, government officials, and others in Washington, D.C.; Tucson, Arizona; Anchorage and Dillingham, Alaska; Portland, Oregon; Rosebud, South Dakota; and Tulsa, Oklahoma. Many Native women's advocates and Indian leaders testified about violence against Native women, including the need to restore safety to them by strengthening the ability of Indian nations to address these crimes locally. The Declaration, supported by the United States and reflecting world consensus on the rights of indigenous peoples, is especially significant for Native women. Article 22 explicitly calls for particular attention to be paid to the "rights and special needs" of indigenous women in its implementation. It directs countries to

"take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection . . . against all forms of violence and discrimination."

The Indian Law Resource Center, NCAI Task Force on Violence Against Native Women, Clan Star, Inc., and National Indigenous Women's Resource Center jointly submitted a briefing paper to inform the Special Rapporteur about the epidemic levels of violence against American Indian and Alaska Native women and girls. The paper outlines how significant areas of U.S. law do not comport with standards of the Declaration, particularly those on protecting Native women and children from violence and ensuring nondiscrimination and equality under the law. The United States has restricted the ability of Indian nations to protect Native women from violence and to provide them with meaningful remedies by creating an unworkable, race-based system for administering justice in Native communities—a system that highlights this country's continuing failure to meet the standards of the Declaration. Especially devastating is the United States Supreme Court's stripping of criminal jurisdiction over non-Indians from tribal governments. This has an extremely harmful impact, as the overwhelming majority of these crimes are committed by non-Indians. The Census Bureau reports that, in 2010, some 77% of all people living in American Indian areas (Indian reservations and/or off-reservation trust lands) and 68% of all people living in Alaska Native villages did not identify as American Indian or Alaska Native. A dismal record of investigation, prosecution, and punishment of these crimes by federal and state governments allows criminals to act with impunity in Indian country, threatens Native women daily, and perpetuates a cycle of violence in Native communities.



While acknowledging that the United States has taken some important steps towards addressing violence against Native women, the briefing paper includes recommendations calling for the United States to restore the authority of Indian nations to prosecute non-Indians committing crimes in Indian country, particularly violent and sexual crimes against Native women, and to clarify that every tribe has full civil jurisdiction to issue and enforce protection orders involving all persons, Indian and non-Indian alike.

At the conclusion of his visit to the United States, Special Rapporteur Anaya stated:

“During my visit, I heard almost universal calls from indigenous nations and tribes across the country that the Government respect tribal sovereignty, that indigenous peoples’ ability to control their own affairs be strengthened, and that the many existing barriers to the effective exercise of self-determination be removed. It should be noted that the Violence Against Women Act, which is currently pending reauthorization before Congress, contains important provisions recognizing the jurisdiction of tribes to prosecute perpetrators of violence against Indian women and to hold them accountable for their crimes, which is a good step in the right direction to addressing this distressing problem.”

In his report to the UN Human Rights Council in September, the Special Rapporteur emphasized that indigenous self-determination contributes to successful outcomes—studies show that indigenous peoples who effectively manage their own affairs fare better

than those who do not. The Special Rapporteur recommended a number of measures to enhance indigenous self-determination to combat violence against women and girls including: (1) avoiding blanket limitations by countries on the jurisdiction of indigenous peoples’ authority, self-governance, and traditional judicial systems over cases of violence against women; (2) increasing the participation of indigenous peoples’ participation in the design, delivery, and oversight of programs related to preventing and punishing violence against women; and (3) strengthening indigenous peoples’ local governance capacity and justice institutions.

The report includes an addendum containing the Special Rapporteur’s assessment of his mission to the United States. Citing the alarmingly high rates of violence against Native women in the United States, the addendum adds that:

“Estimates are that nearly 80 per cent of the rapes of indigenous women are by non-indigenous men, many of who have made their way into indigenous communities but who are not presently subject to indigenous prosecutorial authority because of their non-indigenous status. Congress has yet to pass key reforms in the Violence Against Women Act that would bolster tribes’ ability to prosecute these cases.”

The addendum recommends that the United States Congress place an immediate priority on legislation [such as VAWA] that is being “advocated by indigenous peoples and proposed by the executive to extend protection for indigenous women against violence.”

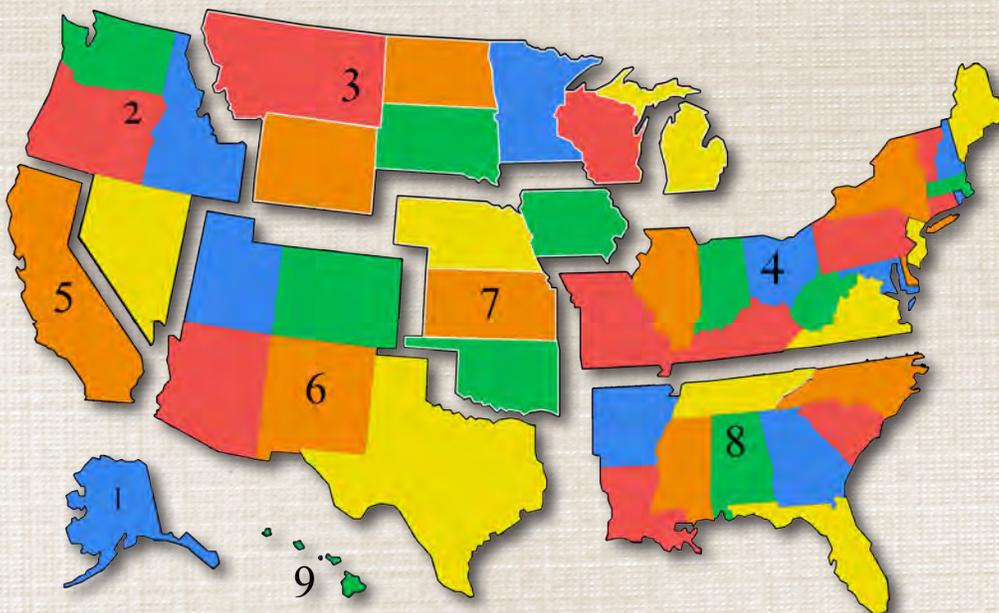
National Indigenous Women's Resource Center Regional Updates

The National Indigenous Women's Resource Center (NIWRC) has just completed its first year as the National Indian Resource Center (NIRC), mandated by the Family Violence Prevention and Services Act and funded by the Department of Health and Human Services, Family and Youth Services Bureau. We are excited to continue serving as the NIRC beginning October 1, 2012.

In the past year, with little time to spare, we immediately initiated a training calendar and completed 22 webinar sessions on a variety of topics related to violence against Native women and their children. These webinars proved to be an effective and efficient way of supporting learning. Most of the webinars were recorded and, along with all of our previous e-newsletter issues, are available at NIWRC.org. We are in the process of developing our 2013 webinar calendar, which will be available shortly on our website.

Some other activities we have engaged in include: peer-to-peer NIWRC mentoring in Regions 1 (Alaska) and 5 (California); regional conferences in Regions 7 (Oklahoma) and 4 (the Northeast); establishing collaborative partnerships/working relationships with organizations such as NCAI Task Force on Violence Against Native Women, National Center on Domestic Violence, Trauma & Mental Health, National Domestic Violence Hotline, IHS-Division of Behavior Health, Tribal Law & Policy Institute, Clan Star, Inc., Indian Law Resource Center, and others; onsite training to victim advocates, law enforcement officers, prosecutors, CPS workers, judges; technical assistance around organizing to some tribal coalitions; initiation of resource material development, completion of our first Native Women's Leadership Training, and assistance in policy analysis for tribal leaders and DV/SA advocates involving the reauthorization of the Violence Against Women Act.

Next year, NIWRC will again have its plate full with Conferences in Regions 2, 3, 4, 6, and 9 (tentative), webinar sessions, DV Institute for new advocates, Women Are Sacred Conference in April 2013, a variety of onsite trainings, development of new resource materials, collaboration with additional tribal coalitions, continued partnerships with federal and state organizations and tribes, an enhanced website, and the promotion of NIWRC and other organizational activities, promising practices, trainings, etc., through e-blasts, Facebook, and regular e-newsletters.



We invite your feedback and concerns on issues that may require focused attention. Our program specialists have large areas to cover and appreciate your understanding and patience as we work feverously to meet the vast existing need. Questions and/or requests for specific information, training, and technical assistance can be made by completing the contact form that is available on NIWRC's website.

Thanks, and we look forward to hearing from you!

Lessons of the NCAI Task Force on Violence Against Women

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

American Indian and Alaska Native: Recognition of the unique relationship of and distinction between American Indian tribes and Alaska Native Villages. This emphasis is of critical importance to the defense of sovereignty in the lower 48 United States as well as that of 227 federally recognized Indian tribes in Alaska.

Addressing Public Law 83-280: In 1953, during the termination era, Congress enacted what is known as PL 280. This Act transferred federal criminal justice authority to particular state governments. The Department of Interior, as a policy interpretation, denied access to Indian tribes located within those states to federal funds to develop their respective tribal justice systems. Often when a woman is raped within an Indian tribe located within a PL 280 state, no criminal justice agency may be available to assist her. As a result, the perpetrator is free to continue committing horrific violence against the same or different woman. Efforts of the Task Force have included addressing safety for women living within both a federal-tribal and state-tribal concurrent jurisdiction.

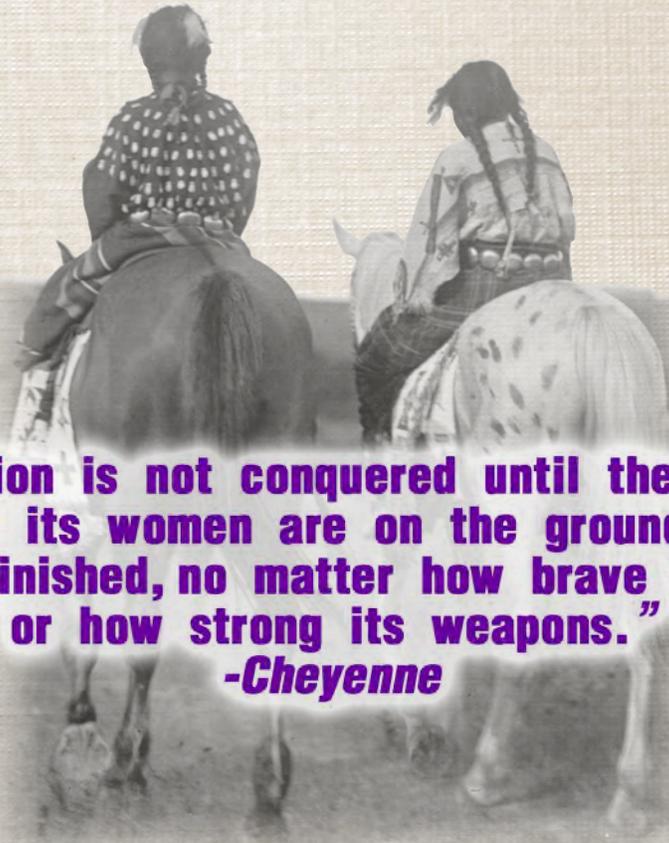
Balancing Western and Indigenous Justice Approaches: The strategic goal of the NCAI Task Force is to increase safety and restore the sacred status of American Indian and Alaska Native women. A dual approach to achieving this goal exists. One approach is to reform the Western justice systems response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

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



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

Juana Majel, 1st Vice-President, NCAI.



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

Violence Against Women Is Not Our Tradition



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