

# Restoration

OF NATIVE SOVEREIGNTY AND SAFETY FOR NATIVE WOMEN

Volume XVIII

**Avellaka Program**  
**La Jolla Band of Luiseño Indians**  
**Safety for Native Women**

**Purple Ribbon Gathering**  
**October 23, 2011**



*Tribal Consultation Issue*

December 2011, Albuquerque, New Mexico

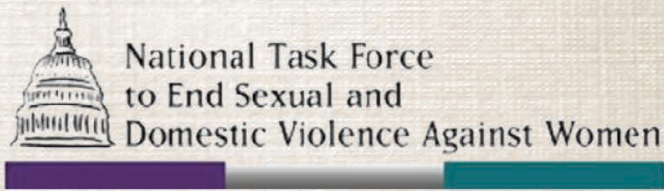


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*COVER: The first event of its kind on a Reservation in southern California, on the **La Jolla Indian Reservation**, over 80 La Jolla Reservation residents, along with supporters from neighboring tribes, helped to make a resounding statement that Native women have a right to safety both in and outside of their homes. By raising a 220-foot purple ribbon and stretching it across our baseball field at Poomacha on Sunday, Oct. 23rd, we are continuing to create awareness that domestic violence is not acceptable in our community. The event was organized by the **Avellaka Program, La Jolla Native Women's Advisory Committee and Strong Hearted Native Women's Coalition** in recognition of October as domestic violence awareness month nationally. The purple ribbon is used nationally to raise awareness of domestic violence. It is important to know that 80 community members actually represents generations of Native people, including those who have gone before us, those who were not able to participate, and those yet to come.*





Greetings!

We are excited to provide to the readers of the *Restoration of Safety and Sovereignty* Magazine another VAWA 2011 update to assist in this year's annual consultation as mandated under the VAWA 2005. There is a whirlwind of activity occurring on Capitol Hill right now and our goal is to keep tribal leaders, grassroots advocates, and tribal practitioners aware of the important tribal-specific proposals on the table for discussion. Since 2004, the *Restoration of Safety and Sovereignty* magazine has served as the information bridge to convey information concerning the safety of Native women, recognizing that tribal leaders and communities must be informed to interact with emerging issues.

We commend Senators Leahy and Crapo for their introduction of S.1925, the Violence Against Women Reauthorization Act of 2011. And Senators Akaka and Franken for introduction of S. 1763 the Stand Against Violence and Empower Native Women Act. If enacted, the current tribal-specific proposals for the 2011 reauthorization of VAWA will make a meaningful difference in the everyday lives of American Indian Women. These changes are not a grab bag of ideas but changes carefully identified and vetted over a two-year process launched in the fall of 2009 by the National Task Force to End Domestic and Sexual Violence Against Women to reach as many communities as possible to reauthorize the VAWA. The tribal working group was one of the twenty-one working groups. In the process of developing the proposed tribal amendments, we commend Attorney General Holder and the DOJ for working in partnership with Indian tribes. The final language is the result of on-going dialogue and consultation. The tribal working group involved advocates, tribal leaders, police, judges, prosecutors and health providers.

The NCAI Task Force has attended and helped prepare tribal leadership for every USDOJ consultation on violence against Indian women since the consultation mandate was established by the Violence Against Women Act (VAWA) 2005. This volume provides an overview of the proposed changes including the full text of the Stand Against Violence and Empower Native Women Act. It is our deepest prayer that each of you will read, understand and decide to play a role in this important process of reauthorizing VAWA in 2011.

Together we can increase the safety Native women!

Co-Chairs, NCAI Task Force on Violence Against Women

Juana Majel  
1st Vice President  
National Congress of American Indians

Terri Henry  
Tribal Council Member  
Eastern Band of Cherokee Indians



# LEAHY, CRAPO INTRODUCE BIPARTISAN BILL TO REAUTHORIZE LANDMARK VIOLENCE AGAINST WOMEN ACT

Nearly 20 years after the Violence Against Women Act was first signed into law, U.S. Senator Patrick Leahy (D-Vt.) introduced bipartisan legislation Wednesday to further strengthen and improve the programs authorized under the landmark law to assist victims and survivors of domestic violence, dating violence, sexual assault, and stalking. The legislation is cosponsored by Senator Mike Crapo (R-Idaho).

The Violence Against Women Act (VAWA) was first enacted in 1994 and has been the centerpiece of the federal government's efforts to stamp out domestic and sexual violence. Critical programs authorized under VAWA include support for victim services, transitional housing, and legal assistance. Leahy worked to secure reauthorization of the law in 2000 and in 2005.

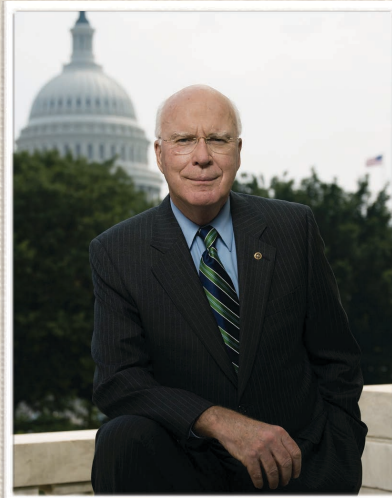
"As a prosecutor in Vermont, I saw firsthand the destruction caused by domestic and sexual violence," said Leahy. "Those were the days before VAWA, when too often people dismissed these serious crimes with a joke, and there were few, if any, services for victims. We have come a long way since then, but there is much more we must do."

"These dollars go directly to woman and children who have been victimized by domestic violence," Crapo said. "The reauthorization of VAWA provides critical services to these victims of violent crime, as well as agencies and organizations who provide important aid to those individuals. I have been a strong supporter of prevention and elimination of domestic abuse since coming to Congress, and I intend to continue to fight to keep these funds intact for women and children."

Leahy chairs the Senate Judiciary Committee, which has held a number of hearings in recent years focusing on the ongoing need for assistance for domestic and sexual violence victims and survivors, particularly at a time of

economic downturn. As chairman, Leahy invited testimony from representatives from Vermont's Women Helping Battered Women and the Vermont Network Against Domestic and Sexual Violence. In Vermont,

VAWA funding helped the Vermont Network Against Domestic and Sexual Violence provide services to more than 7,000 adults and nearly 1,400 children in the last year alone, by providing shelter, transitional housing, counseling, and legal assistance.



The Violence Against Women Reauthorization Act includes important all-state minimum funding formulas for key grant programs, to ensure that small, rural states like Vermont have access to the victim services grants authorized under VAWA, including STOP grants, grants under the Sexual Assault Services Program, the Rural Program, Rape Prevention Education grants, and transitional housing grants, and includes important definitions to ensure that Vermont remains an eligible state under the definition of a rural jurisdiction. Leahy has long championed all-state minimum funding formulas for a variety of federal grant assistance programs.



"The Violence Against Women Reauthorization Act reflects Congress's ongoing commitment to end domestic and sexual violence," said Leahy. "It seeks to expand the law's focus on sexual assault and to ensure access to services for all victims of domestic and sexual violence. The Violence Against Women Act has been successful because it has consistently had strong bipartisan support for nearly two

decades. I am honored to work now with Senator Crapo to build on that foundation. I hope that Senators from both parties will support this bill, which will provide safety and security for victims across America."

The Violence Against Women Reauthorization Act contains several updates and improvements to the law,





# NATIONAL CONGRESS OF AMERICAN INDIANS

December 5, 2011

The Honorable Patrick J. Leahy  
437 Russell Senate Office Building  
United States Senate  
Washington, DC 20510

The Honorable Michael D. Crapo  
239 Dirksen Senate Office Building  
United States Senate  
Washington, DC 20510

RE: Reauthorization of the Violence Against Women Act

Dear Senators Leahy and Crapo,

On behalf of the National Congress of American Indians (NCAI), the nation's oldest, largest, and most representative organization of American Indian and Alaska Native tribal governments, I write to express our sincere gratitude for your recent introduction of S.1925, the Violence Against Women Reauthorization Act of 2011. In particular, I thank you for the inclusion of several amendments to Title IX that, once enacted, will greatly enhance the safety of Native women.

Since the establishment of the NCAI Task Force on Violence Against Women in 2003, enhancing the safety of Indian women has been one of the highest priorities of the NCAI. Over the last eight years, NCAI has provided updates and briefing sessions during each of its national conferences (which occur three times each year) to review emerging issues, inform membership, and establish action plans to engage our national organization in efforts to create the necessary changes essential to the safety of Indian women. Further, the NCAI Task Force has attended and helped prepare tribal leadership for every USDOJ consultation on violence against Indian women since this consultation mandate was established by the Violence Against Women Act (VAWA) 2005. Although some specifics have changed over this period of time, the fundamental barriers that prevent Indian tribes from safeguarding the lives of their women have not.

S.1925 takes historic steps to overcome the aforementioned barriers, and NCAI commends you for these efforts. This bill would help address some of the critical shortcomings in tribal justice systems and help protect our Native mothers, daughters, and sisters. I greatly appreciate your leadership on this issue and look forward to working with you to ensure prompt passage of this legislation.

Sincerely,

Jacqueline Johnson Pata  
Executive Director

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### EXECUTIVE DIRECTOR

**Jacqueline Johnson Pata**  
*Tlinait*



including:

- An emphasis on the need to effectively respond to sexual assault crime by adding new purpose areas and a 25 percent set-aside in the STOP state formula grant program and the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program, to ensure continued intensive response to domestic violence and other offenses;
- Improvements in tools to prevent domestic violence homicides by training law enforcement, victim service providers, and court personnel on identifying and managing high risk offenders and connecting high risk victims to crisis intervention services;
- Improvements in responses to the high rate of violence against women in tribal communities by strengthening concurrent tribal criminal jurisdiction over perpetrators who assault Indian spouses and dating partners in Indian country;

- Measures to strengthen housing protections for victims by applying existing housing protections to nine additional federal housing programs;
- Measures to promote accountability to ensure that federal funds are used for their intended purposes;
- Consolidation of programs and reductions in authorizations levels to address fiscal concerns, and renewed focus on programs that have been most successful;
- Technical corrections to updates definitions throughout the law to provide uniformity and continuity throughout the law.

The Violence Against Women Act was reauthorized in 2000 and again in 2005, each time with bipartisan support. The law expired in September. The Violence Against Women Reauthorization Act will provide a five year authorization for VAWA programs, and reduce authorized funding levels by more than \$144 million, or 19 percent, from the law's 2005 authorization.

To download the text of the Violence Against Women Reauthorization Act of 2011, use the following url:  
<http://tinyurl.com/7ag3opr>

For a Section-By-Section Analysis of the Violence Against Women Reauthorization Act of 2011, use the following url:  
<http://tinyurl.com/6pl82tl>

## A CRITICAL TIME TO PROTECT NATIVE WOMEN AND ADVANCE TRIBAL JURISDICTION

**Editorial by Juana Majel-Dixon**

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

This is why the recent actions by the Department of Justice have been so refreshing and given me a sense of renewed faith in our leaders in Washington, DC - and those serving in the Obama Administration, in particular. Attorney General Holder and members of his team are trying to implement rational policies without giving in to political temptation and stay on moral high ground and they have managed, at least with respect to issues of public safety in Indian Country, to do the right thing. They

have shown the courage to tackle the complicated issues and confront them with real solutions—even when those solutions may not yield political capital.

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

We all know the statistics: Indian women are 2 ½ times more likely to experience violence than other women in the United States; more than 1 in 3 Indian women will be raped in their lifetimes and nearly 40% will be subjected to domestic violence. Perhaps what is more shocking is that, according to Departmental data, non-Indians commit 88%



of all violent crimes against Indian women. This violence threatens the lives of our women and the future of our people. While many issues need to be addressed to confront this human rights crisis, it is clear that limitations placed on tribal government jurisdiction by the United States are a key contributing factor, with non-Indian perpetrators falling through the cracks in the system time and time again.

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



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

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

Against Women Act -- and now all we need to do is articulate precisely what it is that will safeguard our women and rid our communities of violence. We need to work in partnership with the DOJ to strengthen tribal sovereignty, further self-determination, and protect the wellbeing of our tribal citizens.

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

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

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

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



# TRIBAL PRIORITIES FOR THE REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT

- **Since the 1<sup>st</sup> VAWA mandated DOJ consultation tribal leaders have spotlighted issues and made recommendation to address barriers and increase the safety of Native women.** Based on five years of annual consultation and over a decade of on going dialogue Indian country strongly supports the inclusion of the following tribal specific provisions in the Violence Against Women Act 2011 reauthorization:
  - **Restore tribal criminal jurisdiction.** Until 1978, it was settled doctrine that Indian tribes retained all sovereign powers not expressly abrogated by Congress, which included criminal jurisdiction over non-Indians. Yet, the U.S. Supreme Court's decision in *Oliphant v. Suquamish Tribe* changed that, and rejected decades of precedent in the process, when it stripped Indian nations of their authority to prosecute non-Indians that commit crimes on tribal lands. This decision—and the jurisdictional gap it has created—has had grave consequences for Indian women in that it has frequently left them without criminal recourse when their perpetrators are non-Indians. Congress should restore tribal criminal jurisdiction over non-Indian perpetrators of domestic violence, sexual assault, and related crimes that are committed within the exterior boundaries of the reservation.
  - **Create services program for Native women.** Given the inadequate law enforcement response to violence against Native women, Native victims often find themselves going days, weeks, months, and even years without justice. This population of victims “waiting to be served” can no longer be ignored. NCAI proposes creating an “above the cap” reserve in the Victims of Crime Act (VOCA), or alternatively, a 10% VOCA tribal set-aside, that would fund tribal government programs and non-profit, non-governmental tribal organizations that provide services to Native women victimized by domestic and/or sexual violence within the jurisdictional boundaries of an Indian reservation or Alaska Native Village.
  - **Establish comprehensive funding streams to support sexual assault services for Native women.** In 2005, Congress created the Sexual Assault Services Program (SASP) to provide services to victims of sexual assault. Unfortunately, the statute currently contains ambiguous language that has denied access to SASP funds to tribal sexual assault service providers. Congress should amend SASP: 1) to increase support for culturally appropriate services designed for Native women by tribal providers; and 2) clarify that tribal service providers outside of and within the jurisdiction of an Indian tribe are eligible to apply to state entities administering SASP formula funding from USDOJ.
- **Increase support for Indian tribes sharing concurrent state criminal jurisdiction.** In 1953, in violation of the federal trust responsibility and without consultation with Indian nations, the United States Congress passed Public Law 83-280 (PL 280), which delegates certain federal criminal jurisdiction over Indians on Indian lands to some states. While this delegation of authority did not alter the jurisdictional authority of Indian nations in those states, it has had a devastating impact on the development of tribal justice systems and the safety of Indian women. It has resulted in drastically decreased federal funding and support for tribal justice programs within PL 280 states. The upcoming VAWA reauthorization should clarify and enhance the ability of Indian tribes in PL 280 states (or states similarly situated) to respond to domestic and sexual violence by including new program guidelines and technical assistance programs to strengthen tribal law enforcement response, prosecution, courts, health, and advocacy services for Native women.
- **Amend definition of “rural”.** American Indian tribes were considered eligible entities as under the OVW Rural Grant Program until the 2005 amendments to the definitions of “rural area” and “rural community.” The program was redesigned in a manner that bases eligibility upon the number of state counties served. Under the current definition, many tribes that once relied upon this critical source of funding are no longer eligible. The definition of “rural” needs to be amended to once again be inclusive of all American Indian and Alaska Native tribes.
- **Support parity for tribal coalitions.** VAWA 2000 established for the first time funding for tribal coalitions to provide training and technical assistance on domestic violence and sexual assault to tribal communities they serve. Unlike their state counterparts tribal coalitions receive far less federal funding and must compete annually. Tribal coalitions provide invaluable expertise on a tribal and regional level that is not available from national providers. Provisions contained within the SAVE Act will stabilize funding and resolve the disparities between state and tribal coalition programs.



# PROTECT NATIVE WOMEN BY REMOVING JURISDICTIONAL BARRIERS TO SAFETY

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



**KATY JACKMAN**

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

Until 1978, it was settled doctrine that Indian tribes retained all sovereign powers not expressly abrogated by Congress, which included tribal court criminal jurisdiction over non-Indians. Yet, the U.S. Supreme Court's decision in *Oliphant v. Suquamish Tribe* changed that, rejecting decades of precedent in the process, and ruled that Indian nations have no criminal jurisdiction over non-Indians and may not prosecute or punish non-Indians committing crimes on their lands. This decision has had grave consequences for Indian women in that it has frequently left them without criminal recourse when abused by non-Indians.

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

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

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

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

The only available recourse to tribes is to banish or exclude the non-Indian from reservation or trust lands. Several tribes will bring such actions as a last ditch effort to rid the Indian community of non-enrolled persons who pose a threat to the welfare of their enrolled member citizens. The hearings are time consuming as the non-enrolled person is offered full due process protection by receiving notice of the hearings, the right to be represented by legal counsel and the right to call witnesses. In this scenario, many, if not most, of the



enrolled member victims feel that more protection is given to the non-enrolled perpetrator than to themselves. With tribal law enforcement powerless in the face of non-Indian offenders and inaction by state and federal courts, the Indian victim is left with no recourse but to plead her case in a public forum before the Tribal Council and hope that the perpetrator will abide by the issued order.

Congress is acutely aware of the epidemic of violence against Indian women and enacted Title IX of the Violence Against Women Act, which specifically addresses Safety for Indian Women, in response to this national crisis in 2005. In Title IX, Congress made a specific finding that “Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and the unique legal relationship of the United States to Indian tribes creates a federal trust responsibility

to assist tribal governments in safeguarding the lives of Indian women.” These findings highlight a systemic contradiction of federal Indian law that prevents Indian tribes from responding to violence committed against Indian women: Tribal governments are directly responsible for holding perpetrators of violence in Indian country accountable, yet they do not have jurisdictional authority to do so when the offender is non-Indian.

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

• • •

## EMERGENCY SERVICES FOR NATIVE WOMEN

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

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

reservation or Alaska Native Village, that provide services to Native women victimized by domestic and/or sexual violence.

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

balance for the Crime Victims Fund in 2012 is projected to be \$5.8 billion.

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



# VIOLENCE AGAINST NATIVE WOMEN WITHIN TRIBAL – STATE CONCURRENT JURISDICTIONS

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

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

## **The VAWA - PL 280 Saga**

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

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

## **Recommendations to USDOJ to Increase Safety of Native Women:**

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

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

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

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

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

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

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

## **VAWA 2011 Recommendations for Discussion:**

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

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



# SENATOR DANIEL K. AKAKA INTRODUCES BILL TO PROTECT NATIVE WOMEN AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT

## THE STAND AGAINST VIOLENCE AND EMPOWER NATIVE WOMEN (SAVE NATIVE WOMEN) ACT WOULD EMPOWER TRIBES TO PROSECUTE VIOLENT CRIMES AND IMPROVE PREVENTION PROGRAMS

U.S. Senate Indian Affairs Committee Chairman Daniel K. Akaka (D-Hawaii), on November 10, 2011 introduced S. 1763, the Stand Against Violence and Empower Native Women (SAVE Native Women) Act. The bill would provide Indian Country with jurisdiction over non-Indians who commit crimes on Indian lands, improve the Native programs under the Violence Against Women Act (VAWA), and improve data gathering programs to better understand and respond to sex trafficking of Native women.

Senators Al Franken (D-Minnesota), Tom Udall (D-New Mexico), Daniel K. Inouye (D-Hawaii), Mark Begich (D-Alaska), Patty Murray (D-Washington), Tim Johnson (D-South Dakota), Jeff Bingaman (D-New Mexico), Jon Tester (D-Montana) and Max Baucus (D-Montana) are cosponsors of the bill.

"According to a study by the Department of Justice, two-in-five women in Native communities will suffer domestic violence, and one-in-three will be sexually assaulted in their lifetime. To make matters worse, four out of five perpetrators of these crimes are non-Indian, and cannot be prosecuted by tribal governments. This has contributed to a growing sense of lawlessness on Indian reservations and a perpetuation of victimization of Native women," said Senator Akaka.

"American Indian women suffer disproportionately from domestic violence and sexual assault, and the Violence Against Women Act must be updated to more effectively address their unique needs," said Senator Franken.

"This legislation works to ensure services are available to survivors of assault in native communities, repair a fragmented criminal justice system, and give tribes more

power to prosecute those who are committing such heinous crimes against women," said Senator Udall.

"By strengthening tribal jurisdiction we are empowering our Native communities with the tools they need to fight back against instances of violence," said Senator Begich.



"We cannot let the next generation of young Native women grow up as their mothers have—in unbearable situations that threaten their security, stability, and even their lives," said Senator Akaka.

"With the introduction of this legislation, the sponsors are sending a clear message that Congress intends to build on the incredible momentum of VAWA to ensure that the epidemic of violence against Native women will end in our lifetime," said Sarah Deer, Amnesty International's Native American and Alaska Native Advisory Council Member.

"Senator Akaka's SAVE Native Women Act has the potential to restore safety and justice for American Indian and Alaska Native women. It offers American Indian tribes the opportunity to increase life-saving protections for women living within tribal jurisdiction," said Terri Henry, Co-chair of the National Congress of American Indians (NCAI) Task Force on Violence Against Women.

"This is an epidemic. It is unacceptable. And, we must stand against it," said Senator Akaka. "I am committed to working with the co-sponsors, tribal leaders, NCAI and others who diligently work to protect at-risk Native women, to pass this much needed legislation."



112TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To decrease the incidence of violent crimes against Indian women, to strengthen the capacity of Indian tribes to exercise the sovereign authority of Indian tribes to respond to violent crimes committed against Indian women, and to ensure that perpetrators of violent crimes committed against Indian women are held accountable for that criminal behavior, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. AKAKA (for himself and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To decrease the incidence of violent crimes against Indian women, to strengthen the capacity of Indian tribes to exercise the sovereign authority of Indian tribes to respond to violent crimes committed against Indian women, and to ensure that perpetrators of violent crimes committed against Indian women are held accountable for that criminal behavior, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*



1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Stand Against Violence and Empower Native Women  
4 Act” or the “SAVE Native Women Act”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for  
6 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—GRANT PROGRAMS**

- Sec. 101. Grants to Indian tribal governments.
- Sec. 102. Tribal coalition grants.
- Sec. 103. Consultation.
- Sec. 104. Analysis and research on violence against women.
- Sec. 105. Definitions.

**TITLE II—TRIBAL JURISDICTION AND CRIMINAL OFFENSES**

- Sec. 201. Tribal jurisdiction over crimes of domestic violence.
- Sec. 202. Tribal protection orders.
- Sec. 203. Amendments to the Federal assault statute.
- Sec. 204. Effective dates; pilot project.
- Sec. 205. Other amendments.

**TITLE III—INDIAN LAW AND ORDER COMMISSION**

- Sec. 301. Indian Law and Order Commission.

7 **TITLE I—GRANT PROGRAMS**

8 **SEC. 101. GRANTS TO INDIAN TRIBAL GOVERNMENTS.**

9 Section 2015(a) of title I of the Omnibus Crime Con-  
10 trol and Safe Streets Act of 1968 (42 U.S.C. 3796gg-  
11 10(a)) is amended—

12 (1) in paragraph (2), by inserting “sex traf-  
13 ficking,” after “sexual assault,”;

14 (2) in paragraph (4), by inserting “sex traf-  
15 ficking,” after “sexual assault,”;



1           (3) in paragraph (5), by inserting “sexual as-  
2           sault, sex trafficking,” after “dating violence,”;

3           (4) in paragraph (7)—

4                 (A) by inserting “sex trafficking,” after  
5           “sexual assault,” each place it appears; and

6                 (B) by striking “and” at the end;

7           (5) in paragraph (8)—

8                 (A) by inserting “sex trafficking,” after  
9           “stalking,”; and

10                (B) by striking the period at the end and  
11           inserting a semicolon; and

12           (6) by adding at the end the following:

13                “(9) provide services to address the needs of  
14           youth who are victims of domestic violence, dating  
15           violence, sexual assault, sex trafficking, or stalking  
16           and the needs of children exposed to domestic vio-  
17           lence, dating violence, sexual assault, sex trafficking,  
18           or stalking, including support for the nonabusing  
19           parent or the caretaker of the child; and

20                “(10) develop and promote legislation and poli-  
21           cies that enhance best practices for responding to  
22           violent crimes against Indian women, including the  
23           crimes of domestic violence, dating violence, sexual  
24           assault, sex trafficking, and stalking.”.



1 **SEC. 102. TRIBAL COALITION GRANTS.**

2 Section 2001 of title I of the Omnibus Crime Control  
3 and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is  
4 amended by striking subsection (d) and inserting the fol-  
5 lowing:

6 “(d) TRIBAL COALITION GRANTS.—

7 “(1) PURPOSE.—The Attorney General shall  
8 award a grant to each established tribal coalition for  
9 purposes of—

10 “(A) increasing awareness of domestic vio-  
11 lence and sexual assault against Indian women;

12 “(B) enhancing the response to violence  
13 against Indian women at the Federal, State,  
14 and tribal levels;

15 “(C) identifying and providing technical  
16 assistance to coalition membership and tribal  
17 communities to enhance access to essential serv-  
18 ices to Indian women victimized by domestic  
19 and sexual violence, including sex trafficking;  
20 and

21 “(D) assisting Indian tribes in developing  
22 and promoting legislation and policies that en-  
23 hance best practices for responding to violent  
24 crimes against Indian women, including the  
25 crimes of domestic violence, dating violence,  
26 sexual assault, sex trafficking, and stalking.



1           “(2) GRANTS.—

2                   “(A) IN GENERAL.—Subject to subpara-  
3 graph (B), the Attorney General shall award  
4 grants on annual basis under paragraph (1)  
5 to—

6                           “(i) each tribal coalition that—

7                                   “(I) meets the criteria of a tribal  
8 coalition under section 40002(a) of  
9 the Violence Against Women Act of  
10 1994 (42 U.S.C. 13925(a));

11                                   “(II) is recognized by the Office  
12 on Violence Against Women; and

13                                   “(III) provides services to Indian  
14 tribes; and

15                           “(ii) organizations that propose to in-  
16 corporate and operate a tribal coalition in  
17 areas where Indian tribes are located but  
18 no tribal coalition exists.

19                   “(B) RESTRICTION.—An organization de-  
20 scribed in subparagraph (A)(ii) shall use a  
21 grant under this subsection to support the plan-  
22 ning and development of a tribal coalition, sub-  
23 ject to the condition that any amounts provided  
24 to the organization under this subsection that  
25 remain unobligated on September 30 of each



1 fiscal year for which amounts are made avail-  
2 able under paragraph (3) shall be redistributed  
3 in the subsequent fiscal year by the Attorney  
4 General to tribal coalitions described in sub-  
5 paragraph (A)(i).

6 “(3) USE OF AMOUNTS.—For each of fiscal  
7 years 2013 through 2017, of the amounts appro-  
8 priated to carry out this subsection—

9 “(A) 10 percent shall be made available to  
10 organizations described in paragraph (2)(A)(ii);  
11 and

12 “(B) 90 percent shall be made available to  
13 tribal coalitions described in paragraph  
14 (2)(A)(i), which amounts shall be distributed  
15 equally among each eligible tribal coalition for  
16 the applicable fiscal year.

17 “(4) DURATION.—A grant under this sub-  
18 section shall be awarded for a period of 1 year.

19 “(5) ELIGIBILITY FOR OTHER GRANTS.—Re-  
20 ceipt of an award under this subsection by a tribal  
21 coalition shall not preclude the tribal coalition from  
22 receiving additional grants under this title to carry  
23 out the purposes described in paragraph (1).

24 “(6) MULTIPLE PURPOSE APPLICATIONS.—  
25 Nothing in this subsection prohibits any tribal coali-



1 tion or organization described in paragraph (2)(A)  
2 from applying for funding to address sexual assault  
3 or domestic violence needs in the same application.”.

4 **SEC. 103. CONSULTATION.**

5 Section 903 of the Violence Against Women and De-  
6 partment of Justice Reauthorization Act of 2005 (42  
7 U.S.C. 14045d) is amended—

8 (1) in subsection (a)—

9 (A) by striking “and the Violence Against  
10 Women Act of 2000” and inserting “, the Vio-  
11 lence Against Women Act of 2000”; and

12 (B) by inserting “, and the Stand Against  
13 Violence and Empower Native Women Act” be-  
14 fore the period at the end;

15 (2) in subsection (b)—

16 (A) in the matter preceding paragraph (1),  
17 by striking “the Secretary of the Department of  
18 Health and Human Services and” and inserting  
19 “the Secretary of Health and Human Services,  
20 the Secretary of the Interior, and”; and

21 (B) in paragraph (2), by inserting “sex  
22 trafficking,” after “sexual assault,”; and

23 (3) by adding at the end the following:

24 “(c) NOTICE.—Not later than 120 days before the  
25 date of a consultation under subsection (a), the Attorney



1 General shall notify tribal leaders of the date, time, and  
2 location of the consultation.”.

3 **SEC. 104. ANALYSIS AND RESEARCH ON VIOLENCE AGAINST**  
4 **WOMEN.**

5 Section 904(a) of the Violence Against Women and  
6 Department of Justice Reauthorization Act of 2005 (42  
7 U.S.C. 3796gg–10 note) is amended—

8 (1) in paragraph (1)—

9 (A) by striking “The National” and insert-  
10 ing “Not later than 2 years after the date of  
11 enactment of the Stand Against Violence and  
12 Empower Native Women Act, the National”;  
13 and

14 (B) by inserting “and in Native villages”  
15 before the period at the end;

16 (2) in paragraph (2)(A)—

17 (A) in clause (iv), by striking “and” at the  
18 end;

19 (B) in clause (v), by striking the period at  
20 the end and inserting “; and”; and

21 (C) by adding at the end the following:

22 “(vi) sex trafficking.”;

23 (3) in paragraph (4), by striking “this Act” and  
24 inserting “the Stand Against Violence and Empower  
25 Native Women Act”; and



1           (4) in paragraph (5), by striking “this section  
2           \$1,000,000 for each of fiscal years 2007 and 2008”  
3           and inserting “this subsection \$1,000,000 for each  
4           of fiscal years 2012 and 2013”.

5 **SEC. 105. DEFINITIONS.**

6           Section 40002(a) of the Violence Against Women Act  
7 of 1994 (42 U.S.C. 13925(a)) is amended—

8           (1) by redesignating paragraphs (18) through  
9           (22) and (23) through (37) as paragraphs (19)  
10           through (23) and (25) through (39), respectively;

11           (2) by inserting after paragraph (17) the fol-  
12           lowing:

13           “(18) NATIVE VILLAGE.—The term ‘Native vil-  
14           lage’ has the meaning given that term in section 3  
15           of the Alaska Native Claims Settlement Act (43  
16           U.S.C. 1602).”;

17           (3) in paragraph (22) (as redesignated by para-  
18           graph (1))—

19           (A) in subparagraph (A), by striking “or”  
20           at the end;

21           (B) in subparagraph (B), by striking the  
22           period at the end and inserting “; or”; and

23           (C) by adding at the end the following:



1           “(C) an area or community under the ju-  
2           risdiction of a federally recognized Indian  
3           tribe.”;

4           (4) by inserting after paragraph (23) (as redes-  
5           ignated by paragraph (1)) the following:

6           “(24) SEX TRAFFICKING.—The term ‘sex traf-  
7           ficking’ means any conduct proscribed by section  
8           1591 of title 18, United States Code, regardless of  
9           whether the conduct occurs in interstate or foreign  
10          commerce or within the special maritime and terri-  
11          torial jurisdiction of the United States.”; and

12          (5) by striking paragraph (31) (as redesignated  
13          by paragraph (1)) and inserting the following:

14          “(31) TRIBAL COALITION.—The term ‘tribal co-  
15          alition’ means an established nonprofit, nongovern-  
16          mental Indian organization established to provide  
17          services on a statewide, regional, or customary terri-  
18          tory basis that—

19                 “(A) provides education, support, and tech-  
20                 nical assistance to Indian service providers in a  
21                 manner that enables the providers to establish  
22                 and maintain culturally appropriate services, in-  
23                 cluding shelter and rape crisis services, de-  
24                 signed to assist Indian women and the depend-  
25                 ents of those women who are victims of domes-



1           tic violence, dating violence, sexual assault, and  
2           stalking;

3           “(B) is comprised of board and general  
4           members that are representative of—

5           “(i) the service providers described in  
6           subparagraph (A); and

7           “(ii) the tribal communities in which  
8           the services are being provided;

9           “(C) serves as an information clearing-  
10          house and resource center for Indian programs  
11          addressing domestic violence and sexual assault;

12          “(D) supports the development of legisla-  
13          tion, policies, protocols, procedures, and guid-  
14          ance to enhance domestic violence and sexual  
15          assault intervention and prevention efforts in  
16          Indian tribes and communities to be served;  
17          and

18          “(E) has expertise in the development of  
19          Indian community-based, linguistically, and cul-  
20          turally specific outreach and intervention serv-  
21          ices for the Indian communities to be served.”.



1 **TITLE II—TRIBAL JURISDICTION**  
2 **AND CRIMINAL OFFENSES**

3 **SEC. 201. TRIBAL JURISDICTION OVER CRIMES OF DOMES-**  
4 **TIC VIOLENCE.**

5 Title II of Public Law 90–284 (25 U.S.C. 1301 et  
6 seq.) (commonly known as the “Indian Civil Rights Act  
7 of 1968”) is amended by adding at the end the following:

8 **“SEC. 204. TRIBAL JURISDICTION OVER CRIMES OF DOMES-**  
9 **TIC VIOLENCE.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) DATING VIOLENCE.—The term ‘dating vio-

12 lence’ means violence committed by a person who is

13 or has been in a social relationship of a romantic or

14 intimate nature with the victim, as determined by

15 the length of the relationship, the type of relation-

16 ship, and the frequency of interaction between the

17 persons involved in the relationship.

18 “(2) DOMESTIC VIOLENCE.—The term ‘domes-

19 tic violence’ means violence committed by a current

20 or former spouse of the victim, by a person with

21 whom the victim shares a child in common, by a per-

22 son who is cohabitating with or has cohabitated with

23 the victim as a spouse, or by a person similarly situ-

24 ated to a spouse of the victim under the domestic or

25 family violence laws of the Indian tribe that has ju-



1 jurisdiction over the Indian country where the violence  
2 occurs.

3 “(3) INDIAN COUNTRY.—The term ‘Indian  
4 country’ has the meaning given the term in section  
5 1151 of title 18, United States Code.

6 “(4) PARTICIPATING TRIBE.—The term ‘partici-  
7 pating tribe’ means an Indian tribe that elects to ex-  
8 ercise special domestic violence criminal jurisdiction  
9 over the Indian country of that Indian tribe.

10 “(5) PROTECTION ORDER.—The term ‘protec-  
11 tion order’ means any injunction, restraining order,  
12 or other order issued by a civil or criminal court for  
13 the purpose of preventing violent or threatening acts  
14 or harassment against, sexual violence against, con-  
15 tact or communication with, or physical proximity  
16 to, another person, including any temporary or final  
17 order issued by a civil or criminal court, whether ob-  
18 tained by filing an independent action or as a  
19 pendente lite order in another proceeding, so long as  
20 the civil or criminal order was issued in response to  
21 a complaint, petition, or motion filed by or on behalf  
22 of a person seeking protection.

23 “(6) SPECIAL DOMESTIC VIOLENCE CRIMINAL  
24 JURISDICTION.—The term ‘special domestic violence  
25 criminal jurisdiction’ means the criminal jurisdiction



1 that a participating tribe may exercise under this  
2 section but could not otherwise exercise.

3 “(7) SPOUSE OR INTIMATE PARTNER.—The  
4 term ‘spouse or intimate partner’ has the meaning  
5 given the term in section 2266 of title 18, United  
6 States Code.

7 “(b) NATURE OF THE CRIMINAL JURISDICTION.—

8 “(1) IN GENERAL.—Notwithstanding any other  
9 provision of law, in addition to all powers of self-gov-  
10 ernment recognized and affirmed by this Act, the  
11 powers of self-government of a participating tribe in-  
12 clude the inherent power of that tribe, which is here-  
13 by recognized and affirmed, to exercise special do-  
14 mestic violence criminal jurisdiction over all persons.

15 “(2) CONCURRENT JURISDICTION.—A partici-  
16 pating tribe shall exercise special domestic violence  
17 criminal jurisdiction concurrently, not exclusively.

18 “(3) APPLICABILITY.—Nothing in this sec-  
19 tion—

20 “(A) creates or eliminates any Federal or  
21 State criminal jurisdiction over Indian country;  
22 or

23 “(B) affects the authority of the United  
24 States, or any State government that has been  
25 delegated authority by the United States, to in-



1           investigate and prosecute a criminal violation in  
2           Indian country.

3           “(c) CRIMINAL CONDUCT.—A participating tribe may  
4 exercise special domestic violence criminal jurisdiction over  
5 a defendant for criminal conduct that falls into1 or more  
6 of the following categories:

7           “(1) DOMESTIC VIOLENCE AND DATING VIO-  
8           LENCE.—An act of domestic violence or dating vio-  
9           lence that occurs in the Indian country of the par-  
10          ticipating tribe.

11          “(2) VIOLATIONS OF PROTECTION ORDERS.—  
12          An act that—

13                  “(A) occurs in the Indian country of the  
14                  participating tribe; and

15                  “(B) violates the portion of a protection  
16                  order that—

17                          “(i) prohibits or provides protection  
18                          against violent or threatening acts or har-  
19                          assment against, sexual violence against,  
20                          contact or communication with, or physical  
21                          proximity to, another person; and

22                          “(ii)(I) was issued against the defend-  
23                          ant;

24                          “(II) is enforceable by the partici-  
25                          pating tribe; and



1                   “(III) is consistent with section  
2                   2265(b) of title 18, United States Code.

3                   “(d) DISMISSAL OF CERTAIN CASES.—

4                   “(1) DEFINITION OF VICTIM.—In this sub-  
5                   section and with respect to a criminal proceeding in  
6                   which a participating tribe exercises special domestic  
7                   violence criminal jurisdiction based on a criminal  
8                   violation of a protection order, the term ‘victim’  
9                   means a person specifically protected by a protection  
10                  order that the defendant allegedly violated.

11                  “(2) NON-INDIAN VICTIMS AND DEFEND-  
12                  ANTS.—In a criminal proceeding in which a partici-  
13                  pating tribe exercises special domestic violence crimi-  
14                  nal jurisdiction, the case shall be dismissed if—

15                         “(A) the defendant files a pretrial motion  
16                         to dismiss on the grounds that the alleged of-  
17                         fense did not involve an Indian; and

18                         “(B) the participating tribe fails to prove  
19                         that the defendant or an alleged victim is an  
20                         Indian.

21                  “(3) TIES TO INDIAN TRIBE.—In a criminal  
22                  proceeding in which a participating tribe exercises  
23                  special domestic violence criminal jurisdiction, the  
24                  case shall be dismissed if—



1           “(A) the defendant files a pretrial motion  
2           to dismiss on the grounds that the defendant  
3           and the alleged victim lack sufficient ties to the  
4           Indian tribe; and

5           “(B) the prosecuting tribe fails to prove  
6           that the defendant or an alleged victim—

7                   “(i) resides in the Indian country of  
8                   the participating tribe;

9                   “(ii) is employed in the Indian coun-  
10                  try of the participating tribe; or

11                  “(iii) is a spouse or intimate partner  
12                  of a member of the participating tribe.

13           “(4) WAIVER.—A knowing and voluntary fail-  
14           ure of a defendant to file a pretrial motion described  
15           in paragraph (2) or (3) shall be considered a waiver  
16           of the right to seek a dismissal under this sub-  
17           section.

18           “(e) RIGHTS OF DEFENDANTS.—In a criminal pro-  
19           ceeding in which a participating tribe exercises special do-  
20           mestic violence criminal jurisdiction, the participating  
21           tribe shall provide to the defendant—

22                   “(1) all applicable rights under this Act;

23                   “(2) if a term of imprisonment of any length is  
24                   imposed, all rights described in section 202(c); and



1           “(3) all other rights whose protection is nec-  
2           essary under the Constitution of the United States  
3           in order for Congress to recognize and affirm the in-  
4           herent power of the participating tribe to exercise  
5           criminal jurisdiction over the defendant.

6           “(f) PETITIONS TO STAY DETENTION.—

7           “(1) IN GENERAL.—A person who has filed a  
8           petition for a writ of habeas corpus in a court of the  
9           United States under section 203 may petition that  
10          court to stay further detention of that person by the  
11          participating tribe.

12          “(2) GRANT OF STAY.—A court shall grant a  
13          stay described in paragraph (1) if the court—

14                 “(A) finds that there is a substantial likeli-  
15                 hood that the habeas corpus petition will be  
16                 granted; and

17                 “(B) after giving each alleged victim in the  
18                 matter an opportunity to be heard, finds, by  
19                 clear and convincing evidence that, under condi-  
20                 tions imposed by the court, the petitioner is not  
21                 likely to flee or pose a danger to any person or  
22                 the community if released.

23          “(g) GRANTS TO TRIBAL GOVERNMENTS.—The At-  
24          torney General may award grants to the governments of



1 Indian tribes (or to authorized designees of those govern-  
2 ments)—

3 “(1) to strengthen tribal criminal justice sys-  
4 tems to assist Indian tribes in exercising special do-  
5 mestic violence criminal jurisdiction, including—

6 “(A) law enforcement (including the capac-  
7 ity to enter information into and obtain infor-  
8 mation from national crime information data-  
9 bases);

10 “(B) prosecution;

11 “(C) trial and appellate courts;

12 “(D) probation systems;

13 “(E) detention and correctional facilities;

14 “(F) alternative rehabilitation centers;

15 “(G) culturally appropriate services and  
16 assistance for victims and their families; and

17 “(H) criminal codes and rules of criminal  
18 procedure, appellate procedure, and evidence;

19 “(2) to provide indigent criminal defendants  
20 with the effective assistance of licensed defense  
21 counsel, at no cost to the defendant, in criminal pro-  
22 ceedings in which a participating tribe prosecutes a  
23 crime of domestic violence or dating violence or a  
24 criminal violation of a protection order;



1           “(3) to ensure that, in criminal proceedings in  
2           which a participating tribe exercises special domestic  
3           violence criminal jurisdiction, jurors are summoned,  
4           selected, and instructed in a manner consistent with  
5           all applicable requirements; and

6           “(4) to accord victims of domestic violence, dat-  
7           ing violence, and violations of protection orders  
8           rights that are similar to the rights of a crime victim  
9           described in section 3771(a) of title 18, United  
10          States Code, consistent with tribal law and custom.

11          “(h) SUPPLEMENT, NOT SUPPLANT.—Amounts  
12          made available under this section shall supplement and  
13          not supplant any other Federal, State, tribal, or local gov-  
14          ernment amounts made available to carry out activities de-  
15          scribed in this section.

16          “(i) AUTHORIZATION OF APPROPRIATIONS.—There  
17          are authorized to be appropriated to carry out subsection  
18          (g) and to provide training, technical assistance, data col-  
19          lection, and evaluation of the criminal justice systems of  
20          participating tribes such sums as are necessary.”.

21          **SEC. 202. TRIBAL PROTECTION ORDERS.**

22          Section 2265 of title 18, United States Code, is  
23          amended by striking subsection (e) and inserting the fol-  
24          lowing:



1       “(e) TRIBAL COURT JURISDICTION.—For purposes  
2 of this section, a court of an Indian tribe shall have full  
3 civil jurisdiction to issue and enforce protection orders in-  
4 volving any person, including the authority to enforce any  
5 orders through civil contempt proceedings, the exclusion  
6 of violators from Indian land, and other appropriate mech-  
7 anisms, in matters arising anywhere in the Indian country  
8 of the Indian tribe (as defined in section 1151) or other-  
9 wise within the authority of the Indian tribe.”.

10 **SEC. 203. AMENDMENTS TO THE FEDERAL ASSAULT STAT-**  
11 **UTE.**

12       (a) ASSAULTS BY STRIKING, BEATING, OR WOUND-  
13 ING.—Section 113(a)(4) of title 18, United States Code,  
14 is amended by striking “six months” and inserting “1  
15 year”.

16       (b) ASSAULTS RESULTING IN SUBSTANTIAL BODILY  
17 INJURY.—Section 113(a)(7) of title 18, United States  
18 Code, is amended by striking “substantial bodily injury  
19 to an individual who has not attained the age of 16 years”  
20 and inserting “substantial bodily injury to a spouse or in-  
21 timate partner, a dating partner, or an individual who has  
22 not attained the age of 16 years”.

23       (c) ASSAULTS BY STRANGLING OR SUFFOCATING.—  
24 Section 113(a) of title 18, United States Code, is amended  
25 by adding at the end the following:



1           “(8) Assault of a spouse, intimate partner, or  
2           dating partner by strangling, suffocating, or at-  
3           tempting to strangle or suffocate, by a fine under  
4           this title , imprisonment for not more than 10 years,  
5           or both.”.

6           (d) DEFINITIONS.—Section 113(b) of title 18, United  
7 States Code, is amended—

8           (1) by striking “(b) As used in this sub-  
9           section—” and inserting the following:

10          “(b) DEFINITIONS.—In this section—”;

11          (2) in paragraph (1)(B), by striking “and” at  
12          the end;

13          (3) in paragraph (2), by striking the period at  
14          the end and inserting a semicolon; and

15          (4) by adding at the end the following:

16          “(3) the terms ‘dating partner’ and ‘spouse or  
17          intimate partner’ have the meanings given those  
18          terms in section 2266;

19          “(4) the term ‘strangling’ means intentionally,  
20          knowingly, or recklessly impeding the normal breath-  
21          ing or circulation of the blood of a person by apply-  
22          ing pressure to the throat or neck, regardless of  
23          whether that conduct results in any visible injury or  
24          whether there is any intent to kill or protractedly in-  
25          jure the victim; and



1           “(5) the term ‘suffocating’ means intentionally,  
2           knowingly, or recklessly impeding the normal breath-  
3           ing of a person by covering the mouth of the person,  
4           the nose of the person, or both, regardless of wheth-  
5           er that conduct results in any visible injury or  
6           whether there is any intent to kill or protractedly in-  
7           jure the victim.”.

8           (e) INDIAN MAJOR CRIMES.—Section 1153(a) of title  
9 18, United States Code, is amended by striking “assault  
10 with intent to commit murder, assault with a dangerous  
11 weapon, assault resulting in serious bodily injury (as de-  
12 fined in section 1365 of this title)” and inserting “a felony  
13 assault under section 113”.

14 **SEC. 204. EFFECTIVE DATES; PILOT PROJECT.**

15           (a) GENERAL EFFECTIVE DATE.—Except as pro-  
16 vided in subsection (b), the amendments made by this title  
17 shall take effect on the date of enactment of this Act.

18           (b) EFFECTIVE DATE FOR SPECIAL DOMESTIC-VIO-  
19 LENCE CRIMINAL JURISDICTION.—

20           (1) IN GENERAL.—Except as provided in para-  
21 graph (2), subsections (b) through (e) of section 204  
22 of Public Law 90–284 (as added by section 201)  
23 shall take effect on the date that is 2 years after the  
24 date of enactment of this Act.

25           (2) PILOT PROJECT.—



1 (A) IN GENERAL.—At any time during the  
2 2-year period beginning on the date of enact-  
3 ment of this Act, an Indian tribe may ask the  
4 Attorney General to designate the tribe as a  
5 participating tribe under section 204(a) of Pub-  
6 lic Law 90–284 on an accelerated basis.

7 (B) PROCEDURE.—The Attorney General  
8 (or a designee of the Attorney General) may  
9 grant a request under subparagraph (A) after  
10 coordinating with the Secretary of the Interior  
11 (or a designee of the Secretary), consulting with  
12 affected Indian tribes, and concluding that the  
13 criminal justice system of the requesting tribe  
14 has adequate safeguards in place to protect de-  
15 fendants’ rights, consistent with section 204 of  
16 Public Law 90–284.

17 (C) EFFECTIVE DATES FOR PILOT  
18 PROJECTS.—An Indian tribe designated as a  
19 participating tribe under this paragraph may  
20 commence exercising special domestic violence  
21 criminal jurisdiction pursuant to subsections (b)  
22 through (e) of section 204 of Public Law 90–  
23 284 on a date established by the Attorney Gen-  
24 eral, after consultation with that Indian tribe,



1 but in no event later than the date that is 2  
2 years after the date of enactment of this Act.

3 **SEC. 205. OTHER AMENDMENTS.**

4 (a) ASSAULTS.—Section 113(a) of title 18, United  
5 States Code, is amended—

6 (1) by striking paragraph (1) and inserting the  
7 following:

8 “(1) Assault with intent to commit murder or  
9 a felony under chapter 109A, by a fine under this  
10 title, imprisonment for not more than 20 years, or  
11 both.”;

12 (2) in paragraph (3) by striking “and without  
13 just cause or excuse,”; and

14 (3) in paragraph (7), by striking “fine” and in-  
15 serting “a fine”.

16 (b) REPEAT OFFENDERS.—Section 2265A(b)(1)(B)  
17 of title 18, United States Code, is amended by inserting  
18 “or tribal” after “State”.

19 **TITLE III—INDIAN LAW AND**  
20 **ORDER COMMISSION**

21 **SEC. 301. INDIAN LAW AND ORDER COMMISSION.**

22 Section 15(f) of the Indian Law Enforcement Reform  
23 Act (25 U.S.C. 2812(f)) is amended by striking “2 years”  
24 and inserting “3 years”.



## LESSONS OF THE NCAI TASK FORCE ON VIOLENCE AGAINST WOMEN

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

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

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

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

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



### **Balancing Western and Indigenous Justice**

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

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



# VIOLENCE AGAINST WOMEN ACT 2011 REAUTHORIZATION CONTACTS



National Task Force  
to End Sexual and  
Domestic Violence Against Women

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



# UPDATE FROM THE NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER

The National Indigenous Women's Resource Center, Inc. (NIWRC) has been serving as the National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women since October 1, 2011. Over the past few months, we have been very busy getting our administrative and technological infrastructure up and running. Our phone system, including fax and toll free number, are now fully functional, and we are adding content to our website daily.

Soon, we hope to introduce our Clearinghouse Library of resources, as well as a Tribal Resource Directory of tribal shelters & programs by region, both of which will be available via website. We will also be adding a social networking component to our website that will enable each of you to access resources and share ideas and strategies in implementing your programs directly with others -- fostering peer to peer mentoring and leadership development. We will also be introducing our bi-monthly e-newsletter that will include information on new resources and training opportunities, as well as highlight successful programs and new initiatives across the country.

We recently established our preliminary training schedule for the remainder of 2011, including monthly webinars on a variety of topics. An overview of these opportunities is provided on the next few pages, and we welcome your feedback on what other topics you would like for us to address.

In addition to all of the above activities, we are pleased to inform you of our new office location. We moved from Rapid City, South Dakota to Lame Deer, Montana, the capital of the Northern Cheyenne Indian Reservation. Although the NIWRC is a national organization, our purpose is to provide resources and information to Indian and Alaska Native tribal governments and Native non-profit organizations. As such, our Board felt it made an important policy statement for our organization to be headquartered in Indian country, because it means that we truly understand the problems associated with addressing violence against Native women, especially in rural Native communities. Living and working in Indian country was an important consideration that the organization took into account when appointing each member to the national Board of Directors. The Board felt that this was an



**National Indigenous  
Women's Resource Center**

important consideration for the organization's office location as well.

Being headquartered on one Indian Reservation, it is important to note that our national Board of Directors, representing nine different regions of the United States, is committed to ensuring that the information and resources we provide are not limited to one tribe or even one region. Each Board member represents a different region of the United States, and they are committed to ensuring that the NIWRC meets the needs of each of these regions equally and in a culturally appropriate manner. Our diverse leadership will ensure that the NIWRC is responsive to Indian and Alaska Native nations, Native Hawaiians, and Native non-profit organizations from throughout the country.

We hope to hear from you as to what your needs are and how we can better serve Indian and Alaska Native nations, Native Hawaiians, and Native non-profit organizations addressing safety for Native women.

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

Ahéhee',



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

**Lucy Simpson, Esq.  
Executive Director**



# NIWRC BOARD OF DIRECTORS

Region 1  
**Lenora (“Lynn”) Hootch**, Board Member  
Yupik Eskimo

Region 2  
**Dee Koester**, Board Member  
Lower Elwha Klallam

Region 3  
**Carmen O’Leary**, Board Member  
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Region 4  
**Ruth Jewell**, Board Member  
Penobscot

Region 5  
**Wendy Schlater**, Secretary/Treasurer  
La Jolla Band of Luiseno Indians

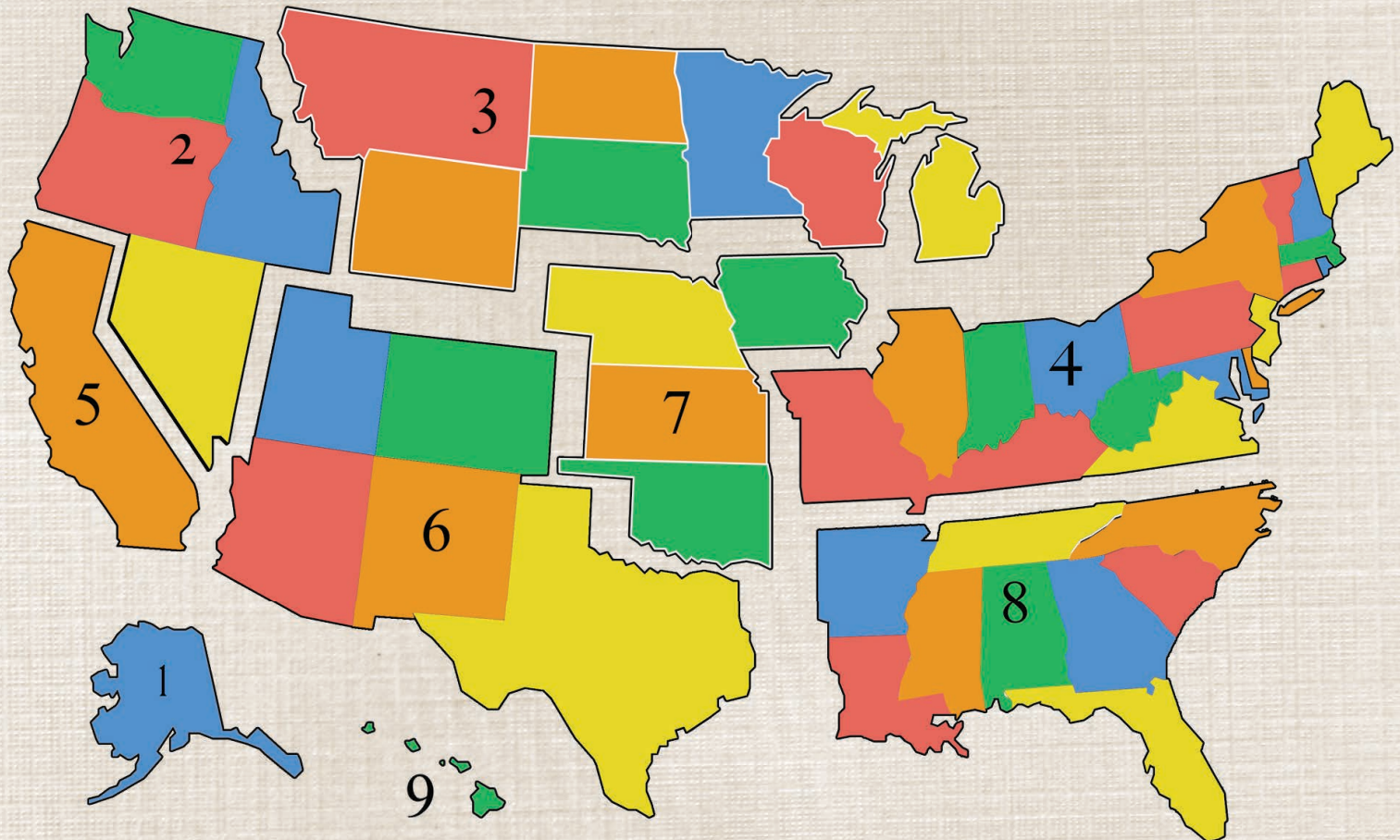
Region 6  
Vacant

Region 7  
Vacant

Region 8  
**Terri Henry**, Chairwoman  
Eastern Band of Cherokee

Region 9  
**Valli (“Kalei”) Kanuha**, Board Member  
Native Hawaiian

*Please visit our website ([niwrc.org](http://niwrc.org)) for detailed biographies on each of our board members.*





# NIWRC TRAINING & WEBINAR SCHEDULE 2012

## **PARTNERSHIP PROGRAM-**

*Dec. 14-15, 2011*

**Fort McDowell Yavapai Nation's Office of the Prosecutor, Understanding the Intersection of Domestic Violence, Mental Health and Substance Abuse, Fountain Hills Community Center**

*TBD 1st Quarter 2012*

**United Indian Health Services, Arcata, CA**

## **REGIONAL TRAININGS-**

*1st Quarter 2012 (pending) - California*

*April 2012 - Montana (including tribes in Wyoming, North and South Dakota, Nebraska, Kansas, Minnesota, Wisconsin, Michigan and Iowa)*

*May or July 2012 - TBD*

*October 2012 (pending) - Fairbanks, Alaska*

## **NATIVE WOMEN'S LEADERSHIP TRAINING-**

*June 17 – 20, 2012 - NIWRC Native Women's Leadership Working Group, in conjunction with NCAI Mid-Year Conference, Lincoln, NE*

## **NCAI TASK FORCE MEETINGS-**

*March 5, 2012 - NCAI Executive Winter Session, Washington, D.C. (NCAI Conference is March 6-8, 2012)*

*June 17, 2012 - NCAI Mid-Year, Lincoln, NE (NCAI Conference is June 17-20, 2012)*

*October 21, 2012 - NCAI Annual Convention, Sacramento, CA (NCAI Annual Convention is October 21-26, 2012)*

## **INFORMATION NETWORKING-**

*Feb. 1-2, 2012 - The Nat'l Tribal Judicial Ctr at The Nat'l Judicial College Tribal State Federal Jurisdiction Symposium, Reno, NV*

*March 29-31, 2012 - National Health Conference on Domestic Violence, Futures Without Violence, San Francisco, CA*

*August 21-24, 2012 - Women Empowering Women for Indian Nations' 8th Annual Conference, Mystic Casino Hotel, Prior Lake, MN*

## **WEBINARS-**

*December 7, 2011*

**Introducing the National Indigenous Women's Resource Center (NIWRC)**

*January 11, 2012*

**What is Trauma Informed Work and Why Should We Care?**

*February 1, 2012*

**Teen Dating Violence: Working in Indian Communities**

*February 15, 2012*

**VAWA Reauthorization 2011**

*February 29, 2012*

**Tribal Law and Order Act of 2010**

*March 14, 2012*

**Evidence Based Practices and working with Children Exposed to Violence**

*April 11, 2012*

**Sexual Assault Awareness Month: SA Advocacy and Trafficking**

*May 9, 2012*

**Legal Barriers to Justice for Native Women**

*May 23, 2012*

**Firearms Disqualification and Habitual Offender Provisions**

*June 6, 2012*

**Criminal Jurisdiction in Indian Country**

*June 20, 2012*

**Criminal Jurisdiction in PL-280 Jurisdictions, Alaska and Land Claims Settlement States**

*July 11, 2012*

**How DV Impacts Children**

*August 8, 2012*

**Working with Women who are Victims of DV and Substance Abuse**

*September 12, 2012*

**DV/SA Shelters In Indian Country: What's Working and What's Not, An Interactive Opportunity For Sharing Among All Participants**

*Please visit our website ([niwrc.org](http://niwrc.org)) for a detailed description on any of these training opportunities, to register for a webinar, or to learn about other training opportunities.*



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

34.1%, more than 1 in 3, Indian women will be raped in their lifetime.

64%, more than 6 in 10, Indian women will be physically assaulted.

Indian women are stalked at **more than twice** the rate of other women.

## RESTORATION OF SOVEREIGNTY & SAFETY MAGAZINE, 2003-2011

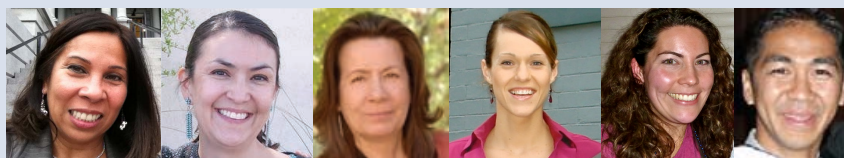
Eight years ago during the reauthorization process of the Violence Against Women Act, three national organizations came together to take a stand for the safety of Native women. Sacred Circle National Resource Center to End Violence Against Native Women, the National Congress of American Indians, and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

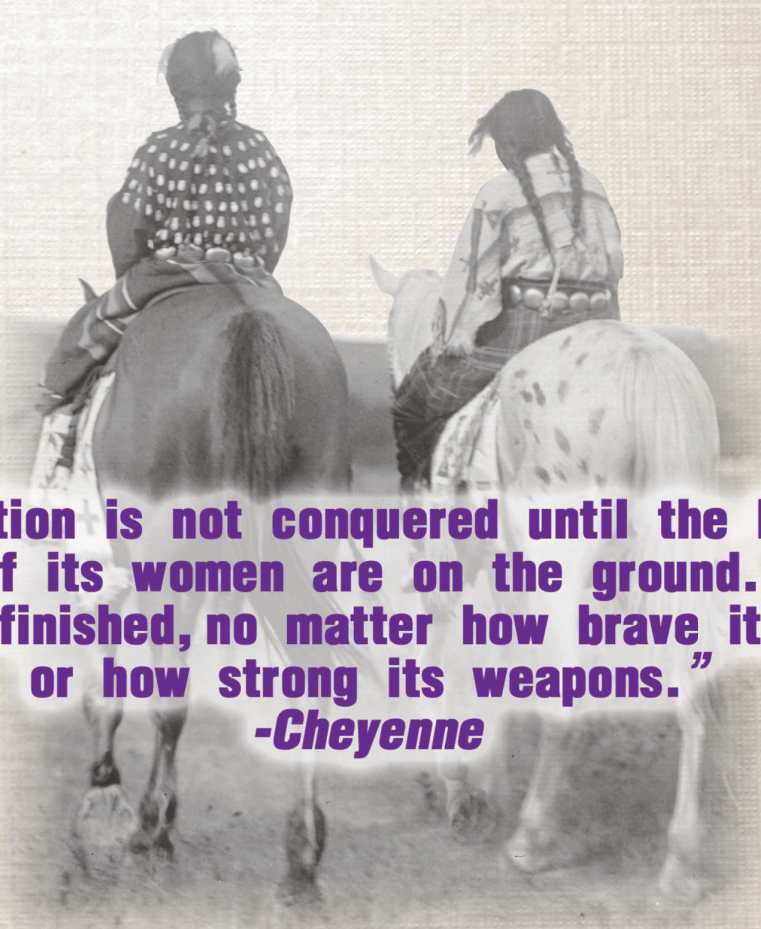
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**Contributors:** Lucy Simpson, Executive Director, National Indigenous Women's Resource Center; Jana Walker, Staff Attorney Indian Law Resource Center; Katy Jackman, Staff Attorney, National Congress of American Indians.

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







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



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*Violence Against Women is Not Our Tradition*