

Tribal Consultation Mandate VAWA 2005 §903 and VAWA 2013 §903

In 2000, President Clinton signed Executive Order 1175 on “Consultation and Coordination with Indian Tribal Governments.”⁷⁴ In 2009, President Obama continued this directive signing a Memorandum on Tribal Consultation pronouncing tribal consultations “a critical ingredient of a sound and productive federal-tribal relationship.”⁷⁵ In this broader context, Congress established in VAWA 2005 and strengthened in VAWA 2013 a specific mandate requiring an annual tribal consultation addressing violence against Native women.

The VAWA 2005 Safety for Indian Women Title mandates that the U.S. Departments of Justice (USDOJ) and Health and Human Services (HHS) each consult annually with Indian nations on issues concerning the safety of Indian women. It required that the United States solicit recommendations during these annual consultations 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.

VAWA 2013 further extends this mandate to addressing tribal leaders’ expressed concerns on the consultation process. The 2013 amendments increase the likelihood that by engaging in mutual dialogue as governments the legal and policy roadblocks to the safety of Native women will be removed. In drafting the 2005 Tribal Title, the consultation process was viewed as an essential way to involve the participation of tribal governments in the implementation of VAWA, which in turn leads to strengthened internal tribal capacity to increase safety for Native women.

The NCAI Task Force understood that for VAWA to increase systematic protections for Native women, Indian nations would need to identify barriers and implement solutions that will enhance their capacity as governments to protect women. An annual consultation on the highest level of legal and policy issues between the United States and Indian nations as governments was seen as an essential safeguard to the successful implementation of VAWA.

The historic amendments of VAWA 2013 confirm that the inclusion of a separate annual consultation with Indian tribes on safety for Native

women is, and will continue to be, critical to successful implementation of VAWA. This nation-to-nation interaction provides an avenue for tribal governments and the United States to discuss matters that at the broadest level impact the safety of Indian women. It provides an opportunity to examine and address important issues that impact all Indian nations in providing safety for women.

The VAWA 2013 tribal amendments are the result of concerns raised during the consultation process since 2006. Over the last seven years, tribal leaders have raised and engaged the USDOJ leadership in dialogue on the most serious roadblocks to the safety of Native women and on issues impacting the ability of Indian tribes to protect women. VAWA 2013 amendments to the VAWA 2005 consultation mandate are outlined below.

In preparation for each of the annual consultations, the NCAI Task Force coordinated a preparatory caucus for tribal leaders, during which tribal leaders received a briefing and review of outstanding issues concerning the safety of Indian women. Following each caucus, a developed list of recommendations regarding the implementation of VAWA was provided to the USDOJ and the White House.

For each VAWA consultation, the National Indigenous Women's Resource Center in partnership with the Task Force publish a special edition of the *Restoration* magazine. This special consultation edition provides tribal leaders with a written outline of past consultation matters. It provides a review of the tribal provisions contained in the Tribal Title and previous concerns and recommendations made to the USDOJ addressing the three statutory mandated areas. Lastly, recommendations are provided to the USDOJ that could significantly increase the capacity of Indian tribes to assist victims of domestic violence, dating violence, sexual assault, and now, sex trafficking.

During the initial years (2006–2008), following enactment of the VAWA annual tribal consultation mandate, tribal leadership raised numerous concerns that the USDOJ was not fully implementing the mandate. Since 2009, the consultation process organized by OVW has improved each year with the increased attendance of USDOJ leadership, issuance of the required consultation report to Congress and made available online,⁷⁶ and a pre-consultation process to determine date, location, and consultation issues. While the VAWA 2005 consultation mandate included the Secretary of the Department of Health and Human Services (HHS), the Department was engaged in ongoing annual consultation with Indian tribes. While continuing this practice, the HHS also, since 2011, attends the VAWA-mandated annual consultation. The annual consultation established

under the VAWA 2005 is now institutionalized and provides a process to annually review and monitor critical issues concerning the safety of Native women.

VAWA 2013 Amendments to the VAWA 2005 Consultation Mandate Require:

- The Attorney General provides 120 days’ notice to Indian tribes of the date, time, and location of the annual consultation.
- The Secretary of Interior attends the annual consultation.
- The Attorney General submits to Congress an annual report that:
 - Contains the recommendations made by Indian tribes during the year covered by the report
 - Describes actions taken during the year to respond to recommendations made during the year or a previous year
 - Describes how the Attorney General will work in coordination and collaboration with Indian tribes, the Secretary of Health and Human Services, and the Secretary of the Interior to address the recommendations
- Sex trafficking is added to the list of items to be addressed at the consultation.

Annual USDOJ VAWA Consultations 2006–2013

<i>Date</i>	<i>Location</i>	<i>Highest USDOJ HHS Official</i>
September 19, 2006	Shakopee, Mdewakanton Sioux Community, MN	OVW Director Diane Stuart
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	USDOJ Associate Attorney General Tom Perrelli; HHS* Director Marylouise Kelly

October 4, 2010	Kalispel Indian Tribe Airway Heights, WA	USDOJ Associate Attorney General Tom Perrelli
December 15, 2011	Santa Ana Pueblo, NM	OVW Director Susan Carbon; HHS Director Marylouise Kelly
October 2, 2012	Tulsa, OK	OVW Acting Director Bea Hanson; HHS Director Marylouise Kelly
November 14, 2013	Washington, DC	Associate Attorney General Tony West

*Department of Health and Human Services, Family Violence Prevention Division, Family and Youth Services Bureau, Administration for Children and Families (ACF)

VAWA 2005. §903. Consultation.

(a) In General—The Attorney General shall conduct annual consultations with Indian tribal governments concerning the federal administration of tribal funds and programs established under this Act, the Violence Against Women Act of 1994 (Title IV of Public Law 103-322; 108 Stat. 1902), and the Violence Against Women Act of 2000 (division B of Public Law 106-386; 114 Stat. 1491).

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

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

VAWA 2013. §903. Consultation.

Section 903 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 14045d) is amended—

(1) in subsection (a)—

(A) by striking “and the Violence Against Women Act of 2000” and inserting “, the Violence Against Women Act of 2000”; and

(B) by inserting “, and the Violence Against Women Reauthorization Act of 2013” before the period at the end;

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking “Secretary of the Department of Health and Human Services” and inserting “Secretary of Health and Human Services, the Secretary of Interior,” and

(B) in paragraph (2), by striking “and stalking” and inserting “stalking, and sex trafficking”; and (3) by adding at the end the following:

“(c) Annual Report.—The Attorney General shall submit to Congress an annual report on the annual consultations required under subsection (a) that—

“(1) contains the recommendations made under subsection (b) by Indian tribes during the year covered by the report;

“(2) describes actions taken during the year covered by the report to respond to recommendations made under subsection (b) during the year or a previous year; and

“(3) describes how the Attorney General will work in coordination and collaboration with Indian tribes, the Secretary of Health and Human Services, and the Secretary of the Interior to address the recommendations made under subsection (b).

“(d) Notice.—Not later than 120 days before the date of a consultation under subsection (a), the Attorney General shall notify tribal leaders of the date, time, and location of the consultation.”