SUPPORT S. 1925

THE VIOLENCE AGAINST WOMEN ACT REAUTHORIZATION
STOPPING THE EPIDEMIC OF VIOLENCE AGAINST NATIVE WOMEN

In 1978, the Supreme Court held that federal laws and policies divested tribes of criminal authority over non-Indians. [1] This decision has plagued Indian country ever since, and has led to the crisis of domestic and sexual violence facing tribal communities today. Race should not play a role in bringing an abuser or sexual offender to justice. **S. 1925 will recognize and affirm tribal authority to prosecute misdemeanor cases of domestic violence by all offenders, regardless of race. This will prevent domestic violence from escalating, and begin to reverse the epidemic of violence against Native women.**

Violence against Native women has reached epidemic proportions. Native women are 2.5 times more likely than other U.S. women to be battered or raped: 34% of Native women will be raped in their lifetimes and 39% will face domestic violence. [2] This statistical reality leaves young Native women wondering not "if" they will be raped, but "when."

Like most of the U.S., interracial marriage and cohabitation of mixed races has played out in Indian country. In 1978, it may have been rare for a non-Indian to intermarry with an Indian. However, the U.S. Census Bureau recently reported that 50% of all Native American married women have non-Indian husbands, and thousands of other Native American women cohabit with, are divorced from, or share children in common with non-Indian men.

Current law is inadequate to stop Reservation domestic and dating violence. The DOJ has found the current system of justice, in which tribal governments have no authority over non-Indians, "inadequate to stop the pattern of escalating violence against Native women." In many cases, the federal government has exclusive responsibility to investigate and prosecute major and minor on-reservation crimes committed by non-Indians. Federal law enforcement resources are often far away and stretched thin.

Despite this responsibility, a 2010 GAO Report found that U.S. Attorneys declined to prosecute 67% of sexual abuse and related matters that occurred in Indian country from 2005-2009.[3] With regard to misdemeanor crimes, in 2006, U.S. Attorneys prosecuted only 24 misdemeanor crimes in Indian country, and only 21 in 2007. Again, the U.S. has *EXCLUSIVE* authority to investigate and prosecute misdemeanor crimes by non-Indians against Indians.[4]

Tribal leaders, police officers, and prosecutors have testified to patterns of escalating violence that goes unaddressed, with beating after beating, each more severe than the last, ultimately leading to death or severe physical injury. An NIJ-funded analysis of death

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[1] Oliphant v. Suquamish, 435 U.S. 191 (1978).
[2] Tribal Law and Order Act of 2010, Pub. L. No. 111-211, §202(a)(5) (2010).
[3] U.S. GOVERNMENT ACCOUNTABILITY OFFICE, U.S. Department of Justice Declinations of Indian Country Criminal Matters, REPORT NO. GAO-11-167R, at 3 (2010).
[4] The exception to this rule being crimes committed in Indian country within states governed by Public Law 83-280, which transferred the federal government's criminal enforcement authority on tribal lands to the state government in a handful of select states.

certificates found that, on some reservations, Native women are murdered at a rate more than ten times the national average.

Tribal governments — police, prosecutors, and courts — have the most at stake and should be authorized to address all crimes of domestic violence within Indian lands. Under current law, they lack this authority. Changing the law to acknowledge tribal authority to stop these initial acts of domestic violence will prevent escalated attacks, such as aggravated assault, rape, and murder.

The U.S. Supreme Court has approved similar congressional affirmations of "inherent tribal power". The Court in *U.S. v. Lara*, 541 U.S. 193 (2004), found that Congress has the authority to "recognize and affirm" the "inherent" authority of an Indian tribe. The Court held that the Constitution confers on Congress plenary power to enact legislation to limit and relax restrictions on tribal sovereign authority.

The legislation at issue in *Lara* was an amendment to the Indian Civil Rights Act (ICRA) that "recognized and affirmed" the "inherent" criminal authority of Indian tribes over non-member Indians (Indians from a different tribe). In upholding congressional power to enact this law, the Court reasoned that the law involved no interference with the power or authority of a State, nor raised questions of due process or equal protection. In addition, the law involved "recognition and affirmation" of tribal authority over non-member Indians, whom are not eligible to participate in tribal politics.

S. 1925 affirms carefully tailored/limited authority over non-Indians. Like the ICRA amendment at issue in Lara, no power is taken from the federal or state governments. Tribal power will be concurrent. S. 1925 limits tribal authority to crimes of domestic violence, dating violence, and violations of protection orders. Tribal court sentencing authority is limited to three years per offense. Full Constitutional protections are extended to the non-Indian defendants—including effective assistance of counsel and indigent counsel—and any case prosecuted under this tribal authority will be subject to tribal appellate and federal habeas review.

Further, S. 1925, Section 904 requires the defendant have "sufficient ties to the Indian tribe." According to S.1925, the tribe must prove that any defendant being prosecuted under Section 904 either: resides in the Indian country of the prosecuting tribe, is employed in the Indian country of the prosecuting tribe, or is either the spouse or intimate partner of a member of the prosecuting tribe. Individuals who live, work, and/or maintain intimate relationships in Indian country should not be allowed to violate tribal laws with impunity just because of their non-tribal member status.

The S. 1925, Title IX amendments have been the subject of Senate hearings. The key tribal provisions of S.1925 are contained in S. 1763, the SAVE Native Women Act. The U.S. Senate Committee on Indian Affairs (SCIA), the committee of jurisdiction over Indian issues and tribal jurisdiction, held a legislative hearing on S.1763 and has held numerous oversight hearings to examine issues of violence against Native women, including complex jurisdictional issues on tribal lands.

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THE VIOLENCE AGAINST WOMEN ACT REAUTHORIZATION—S.1925
THE TRUTH ABOUT TITLE IX, SAFETY FOR INDIAN WOMEN

Myth: Native women are not in need of extra protections.
Fact: Existing law denies Native women equal access to justice, which is borne out in statistic after statistic: 34% of American Indian and Alaska Native women will be raped in their lifetimes; 39% will be subjected to domestic violence in their lifetimes; and on some reservations, Native women are murdered at more than ten times the national average

Myth: The Federal Government has no legal responsibility to protect Native women.
Fact: VAWA 2005 recognizes that the legal relationship between tribes and the U.S. creates a federal trust responsibility to assist tribes in safeguarding Indian women.

Myth: S.1925 strips jurisdiction of federal or state authorities.
Fact: S. 1925 does not in any way alter or remove the current criminal jurisdiction of the United States or of any state. Rather, S.1925 restores concurrent tribal criminal jurisdiction over a very narrow set of crimes that statistics demonstrate are an egregious problem on Indian reservations.

Myth: Tribal jurisdiction exercised under Section 904 would violate Double Jeopardy.
Fact: Tribal jurisdiction exercised under Section 904 would be an exercise of inherent tribal authority, not a delegated Federal power, and would thus render the Double Jeopardy Clause inapplicable to sequential prosecutions of the same crime by the tribe and the Federal Government.

Myth: S.1925 gives tribes criminal jurisdiction over all crimes committed by non-Indians on or off the reservation.
Fact: S.1925 provides a limited jurisdictional fix to address a narrow set of egregious crimes committed in Indian country. Statistics demonstrate that crimes of domestic violence, dating violence, and violations of protection orders are rampant on Indian reservations. Section 904 of the bill recognizes concurrent tribal authority to prosecute these specific crimes committed in Indian country. It does not extend to other crimes or to crimes committed beyond reservation boundaries.

Myth: Congress does not have the authority to expand tribal jurisdiction.
Fact: The provisions in S.1925 are well within Congressional authority. Congress' power to define the contours of tribal jurisdiction is a well-settled matter of U.S. Supreme Court law. The Court in U.S. v. Lara, 541 U.S. 193 (2004), held that the Constitution confers on Congress the power to enact legislation to limit restrictions on the scope of inherent tribal sovereign authority.

Myth: Section 904 would permit tribal prosecutions of all non-Indians.
Fact: Section 904 of S.1925 is limited to only crimes of domestic violence or dating violence committed in Indian country where the defendant is a spouse or established intimate partner of a tribal member. It does not permit tribal prosecutions unless the defendant has "sufficient ties to the Indian tribe," meaning he/she must either reside in the Indian country of the prosecuting tribe, be employed in the Indian country of the prosecuting tribe, or be the spouse or intimate partner of a member of the prosecuting tribe.

Myth: S.1925 is unconstitutional because tribal courts are not bound by the U.S. Constitution.
Fact: Under Section 904, tribal courts must provide defendants with the same constitutional rights in tribal court as they would have in state court. Defendants would be entitled to the full

panoply of constitutional protections, including due-process rights and an indigent defendant's right to appointed counsel (at the expense of the tribe) that meets federal constitutional standards. This includes the right to petition a federal court for habeas corpus to challenge any conviction and to stay detention prior to review, and explicit protection of "all other rights whose protection is necessary under the Constitution of the United States."

Myth: The tribal civil jurisdiction provisions in Section 905 grant tribes new authority that they did not previously have.
Fact: The civil jurisdiction found in Section 905 already exists under the full faith & credit clauses of VAWA 2000. S.1925 simply clarifies the intent of this earlier reauthorization by making clear that tribes have full civil authority to issue and enforce protection orders against Indians and non-Indians alike regarding matters arising in Indian country.

Myth: The amendments to Title IX have not been the subject of Senate hearings.
Fact: The amendments to Title IX have been the subject of numerous Senate hearings. The key tribal provisions of S.1925 are also contained in Senator Akaka's S.1763, the Stand Against Violence & Empower Native Women Act. The U.S. Senate Committee on Indian Affairs (SCIA), the primary committee of jurisdiction over Indian issues and tribal jurisdiction, held a legislative hearing on S.1763 on November 10, 2011 and has held numerous oversight hearings to examine issues of violence against Native women, including complex jurisdictional issues on tribal lands.