

THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT: COMBATING DOMESTIC VIOLENCE AGAINST TRIBAL WOMEN

Studies indicate that nearly three out of five Native American women have been assaulted by their spouses or intimate partners, and one-third of all American Indian women will be raped during their lifetime. The 2005 reauthorization of VAWA took initial steps to address this problem, establishing a separate title that focused on Indian victims of domestic and sexual assault. The Violence Against Women Reauthorization Act of 2011 includes important measures to strengthen this response and takes on the plague of violence affecting Native women.

Providing Law Enforcement With Tools to Combat Domestic Violence in Tribal Communities

The Violence Against Women Reauthorization Act adds new Federal crimes – including a 10-year offense for assaulting a spouse or intimate partner by strangling or suffocating and a five-year offense for assaults resulting in substantial bodily injury – that will enable Federal prosecutors to more effectively combat types of assault frequently committed against women in Indian country. **These new crimes allow law enforcement to appropriately address the gradual escalation of seriousness often associated with domestic violence offenses.** The bill also clarifies that Tribal courts have the authority to issue and enforce Tribal protection orders, ensuring that these protection orders can be used effectively to keep women safe.

Ensuring That Abusers Do Not Escape Justice

The Violence Against Women Reauthorization Act will close a jurisdictional hole by giving Tribal courts concurrent jurisdiction over Indian and non-Indian defendants who commit domestic violence offenses against an Indian in Indian country. Currently, Tribal courts do not have jurisdiction over non-Indian defendants who abuse and attack their Indian spouses on Indian lands, even though more than 50 percent of Native women are married to non-Indians. **Prosecution of domestic violence offenses in Indian country often falls through the cracks, since Federal and state law enforcement and prosecutors have limited resources and may be located hours away from Tribal communities.**

The Violence Against Women Reauthorization Act helps alleviate this problem by allowing Tribal courts to prosecute non-Indians in a narrow set of cases that meet the following specific conditions:

- The crime must have occurred in Indian country;
- The crime must be either a domestic violence or dating violence offense, or a violation of a protection order; and
- The non-Indian defendant must have voluntarily established significant ties to the prosecuting tribe. In other words, the non-Indian defendant must reside in Indian country, be employed in Indian country, or be the spouse or intimate partner of a member of the prosecuting tribe.

The bill provides comprehensive protections to all criminal defendants who are prosecuted in Tribal courts, whether or not the defendant is an Indian. These include the rights to counsel, a speedy trial, and due process; and the rights against unreasonable search and seizures, double jeopardy, and self-incrimination; among many others. **In fact, a Tribe that does not provide these protections cannot prosecute non-Indians under this provision of the Violence Against Women Reauthorization Act.**

Support for Provisions in S.1925 to Protect Native Women from Domestic Violence

“Violence against Native women has reached epidemic proportions, and federal laws force tribes to rely exclusively on far away federal—and in some cases, state—government officials to investigate and prosecute misdemeanor crimes of domestic violence committed by non-Indians against Native women. As a result, many cases go uninvestigated and criminals walk free to continue their violence with no repercussions... Public safety in Indian country is a primary responsibility of Congress, the solution is narrowly tailored to address significant concerns relating to domestic violence in Indian country, and the **legislation is unquestionably constitutional and within the power of Congress.**” – *Joint letter signed by 50 law professors, April 21, 2012*

“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.” – *National Congress of American Indians, December 5, 2011*