THE VIOLENCE AGAINST WOMEN ACT REAUTHORIZATION—S.1925
IMPORTANT CLARIFICATIONS REGARDING TITLE IX, SAFETY FOR INDIAN WOMEN

Violence against Native women has reached epidemic proportions. Native women are battered, raped, and stalked at far greater rates than any other population of women in the United States: 34 % of Native women will be raped in their lifetimes and 39 % will be the victim of domestic violence.[1] This statistical reality leaves young Native women wondering not "if" they will be raped, but "when."

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. Given the complex jurisdictional scheme on tribal lands, the federal government has the primary responsibility to investigate and prosecute major crimes that occur on the reservation; yet, according to a 2010 GAO Study, U.S. Attorneys decline to prosecute 67% of sexual abuse and related matters that occur in Indian country.[2] S.1925 makes improvements to current law to ensure that the federal government can fulfill its legal trust obligation to tribes.

S.1925 restores <u>concurrent</u> tribal criminal jurisdiction over a very narrow set of crimes that statistics demonstrate are an egregious problem on Indian reservations. Section 904 of the bill recognizes tribes' inherent authority to investigate and prosecute crimes of domestic violence, dating violence, and violations of protection orders that occur in Indian country. It does not in any way alter or remove the current criminal jurisdiction of the United States or of any state.

Tribal jurisdiction exercised under Section 904 would be an exercise of inherent tribal authority, not a delegated Federal power. Congress possesses the plenary power to enact legislation that relaxes restrictions on tribal sovereign authority.[3] The practical effect of this is to render the Double Jeopardy Clause inapplicable to sequential prosecutions of the same crime by the tribe and the Federal Government.

Section 904 does not permit tribal prosecutions unless the defendant has "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.

S.1925 provides the requisite constitutional safeguards, including an adequate right to counsel for defendants. A tribe exercising special domestic violence jurisdiction under Section 904 must guarantee Indian and non-Indian defendants alike the same constitutional rights to indigent counsel and effective assistance of counsel that would be available in Federal or state court. S.1925 adopts the same constitutional standards in Section 904 as Congress adopted in 2010 when it passed the Tribal Law & Order Act of 2010, specifically Section 234(c).

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[1] Tribal Law and Order Act of 2010, Pub. L. No. 111-211, §202(a)(5) (2010).
[2] U.S. GOVERNMENT ACCOUNTABILITY OFFICE, U.S. Department of Justice Declinations of Indian Country Criminal Matters, REPORT NO. GAO-11-167R, at 3 (2010).
[3] United States v. Lara, 541 U.S. 193 (2004). *See also* 25 U.S.C. §1301(2).

S.1925 fulfills the intent of VAWA 2005 regarding tribal civil jurisdiction to issue protection orders. VAWA 2005 intended to make clear that tribes have full civil authority to issue and enforce protection orders against Indians and non-Indians alike.[4] Unfortunately, a 2008 U.S. District Court decision out of Washington State muddied the waters when it held that an Indian tribe lacked authority to enter a protection order for a nonmember Indian against a non-Indian residing on non-Indian fee land within the reservation.[5] Section 905 of S.1925 carries out the congressional intent of VAWA 2005 by clarifying that every tribe has full civil jurisdiction to issue and enforce protection orders against all persons regarding matters arising on tribal lands.

S.1925 brings federal assault statutes into parity with state laws governing violence against women. As the primary prosecutor of major crimes violations on tribal lands, it is imperative that the federal government have the same range of tools as state and local prosecutors to achieve justice. S.1925 would bring federal assault statutes in line with similar state statutes so that federal prosecutors have the tools to adequately punish perpetrators of heinous crimes against Native women.

S.1925 increases support for tribal domestic and sexual assault coalitions. The training and assistance that tribal coalitions provide is essential to enhancing the safety of Native women. Currently, tribal coalitions are eligible for discretionary funding but this funding is wholly inadequate and unstable when compared to their state and territorial counterparts, which receive formula funding on an annual basis. S.1925 would stabilize tribal coalition funding by shifting from a competitive tribal coalition grant program to an annual formula award and amending current funding language to establish a sufficient base amount to provide services.

The amendments to Title IX have been the subject of 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.[6]

The U.S. Department of Justice and the Obama Administration fully support the tribal amendments in S.1925. In July, 2011, after much consultation and collaboration with tribal leaders, the Department of Justice (DOJ) released a comprehensive legislative proposal which sought to address the epidemic of domestic violence against American Indian and Alaska Native women. The DOJ's proposal addressed three major gaps in the current system that leave Native women vulnerable to violent crimes of domestic violence and sexual assault: tribal criminal jurisdiction, tribal civil jurisdiction, and federal assault statutes. All of the major tenets of the DOJ's legislative proposal are included in S.1925 and have the Obama Administration's full support.

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[4] *See* 18 U.S.C. §2265.
[5] Martinez v. Martinez, No. C08-5503 FDB (D. Wash. 2008).
[6] On July 14, 2011, SCIA held an oversight hearing entitled, "Native Women: Protecting, Shielding, and Safeguarding Our Sisters, Mothers, and Daughters," and on September 27, 2007, SCIA held an oversight hearing on the prevalence of violence against Native women.