



National
Congress of
American
Indians

The Violence Against Women Reauthorization Act – S.1925 Title IX: Safety for Indian Women

The U.S. Constitution and hundreds of treaties, federal laws, and court cases acknowledge that Indian tribes are sovereign governments. Despite this fact, Indian tribes are the only government in America without jurisdiction to combat certain types of domestic violence in their communities. S.1925, the Violence Against Women Reauthorization Act, addresses this jurisdictional gap with local solutions that will deliver long-overdue justice to Native women and safety to tribal communities.

Existing law denies Indian women equal access to justice.

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.

VAWA 2005 recognizes that the U.S. has a federal trust responsibility to assist tribes in safeguarding the lives of Indian women.

Yet, despite the federal government's primary enforcement responsibility on Indian reservations:

- U.S. Attorneys decline to prosecute nearly 52% of violent crimes that occur in Indian country; and
- 67% of cases declined were sexual abuse related cases.¹

Local Problem, Local Solution

S.1925 delivers a local solution for local problems. Local governments — including tribes — have had significant successes in combating crimes of domestic violence, but without an act of Congress, tribes cannot prosecute a non-Indian for domestic violence — *even if that person lives on the reservation and is married to a tribal member!* This jurisdictional gap means that non-Indian men who batter their Indian wives or girlfriends often go unpunished and the violence escalates. Local justice officials in tribal communities are the most appropriate entities to respond to this violence and deal with criminals who choose to live and commit crimes on tribal lands. S.1925 provides tribes with the necessary authority to do so.

Violence against native women:

- 34% of American Indian and Alaska Native women will be raped in their lifetimes*
- 39% of American Indian and Alaska Native women will be subjected to domestic violence in their lifetimes*
- 56% of American Indian women have non-Indian husbands**
- Non-Indians commit 88% of all violent crimes against Native women***
- On some reservations, Native women are murdered at more than ten times the national average****

*Congressional findings in the Tribal Law & Order Act of 2010, 25 USC 2801 et seq. (2010).

**U.S. Census Bureau, *Census 2000*.

***Patricia Tjaden & Nancy Thoene, U.S. Dep't of Justice, Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey 22 (2000).

****NIJ Funded Analysis of Death Certificates.

¹ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, U.S. Department of Justice Declinations of Indian Country Criminal Matters, REPORT NO. GAO-11-167R, at 3 (2010).

Key Points about the Tribal Provisions of S. 1925

COVER A NARROW SET OF CRIMES – *S.1925 provides a limited jurisdictional fix to address a narrow set of egregious crimes.*

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 and does not alter or remove the current jurisdiction of the United States or of any state.

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. In addition, *Lara* makes clear that tribal prosecutions do not violate double jeopardy requirements. Just as federal and state prosecutors coordinate on a broad range of state and federal offenses, tribal and federal prosecutors also coordinate so that lower level crimes are handled in local tribal courts, and serious assault crimes are handled in federal court.

DO NOT APPLY TO JUST ANY RANDOM PERSON - *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.*

In addition, any defendant prosecuted under Section 904 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. Individuals who live, work, and/or maintain intimate relationships in Indian country should not be allowed to violate tribal domestic violence laws with impunity just because of their non-Indian status.

PROVIDE REQUISITE CONSTITUTIONAL SAFEGUARDS – *S.1925 provides defendants with the same rights in tribal court as they would have in state court.*

Defendants prosecuted under Section 904 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." These provisions ensure that the federal courts can review and protect the rights of defendants.