

United States Senate

WASHINGTON, DC 20510

April 24, 2012

Dear Colleague:

As the Senate considers the Violence Against Women Reauthorization Act this week, we want to provide additional information about the tribal jurisdiction provision (Section 904) in the bill that will help ensure greater protection for Native American women.

Native American women are 2½ times more likely than other U.S. women to be raped. It is estimated that in her lifetime, one out of every three Native American women will be sexually assaulted, and three out of every five Native women will experience domestic violence. To make matters worse, many of these crimes go unprosecuted and unpunished.

Under existing law, tribes have no authority to prosecute non-Indians for domestic violence crimes against their Native American spouses or partners on tribal lands. Yet, over 50% of Native women are married to non-Natives and 76% of the overall population living on tribal lands are not Native Americans.

Currently, these crimes fall exclusively under federal jurisdiction. But federal prosecutors have limited resources and they may be located hours away from tribal communities. As a result, non-Indian perpetrators regularly go unpunished, their violence is allowed to continue and, all too often, it results in death for Native American women.

Section 904 of the Violence Against Women Reauthorization Act provides a remedy for this serious criminal jurisdictional loophole. This tribal jurisdiction provision allows tribal courts to prosecute non-Indians in a very narrow set of cases that meet specific, reasonable conditions.

This provision does not extend tribal jurisdiction to include general crimes of violence by non-Indians, crimes between two non-Indians, or crimes between persons with no ties to the tribe. And nothing in this provision diminishes or alters the jurisdiction of any federal or state court.

Some question whether a tribal court can provide the same protections to defendants that are guaranteed in a federal or state court. The bill requires tribes to provide comprehensive protections to all criminal defendants who are prosecuted in tribal courts, whether or not the defendant is an Indian. Defendants would essentially have the same rights in tribal court as in state court.

Questions have also been raised about whether Congress has the constitutional authority to expand tribal criminal jurisdiction to cover non-Indians. This issue was carefully considered in drafting the tribal jurisdiction provision. The Indian Affairs and Judiciary Committees worked closely with the Department of Justice to ensure that the legislation is constitutional. Fifty prominent law professors sent a letter to Congress expressing their “full confidence in the constitutionality of the legislation, and in its necessity to protect the safety of Native women.” Their letter provides a detailed analysis of the jurisdiction provision and concludes that “the expansion of tribal jurisdiction by Congress, as proposed in Section 904 of S. 1925, *is* constitutional.”

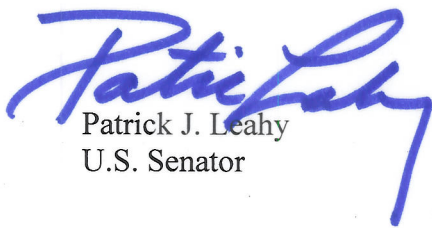
Section 904 will create a local solution for a local problem. By allowing tribes to prosecute the crimes occurring in their own communities, they will be equipped to stop the escalation of domestic violence.

Right now, many Native women don’t get the justice they deserve. We must act to eliminate a double standard in the law. Tribes are already successfully prosecuting, convicting, and sentencing Native Americans who commit crimes of domestic violence against Native American women. This bill would allow tribes to do the same when a non-Indian commits an identical crime.

We encourage our colleagues to fully support the tribal provisions in this important bill.

If you have questions, or would like additional information, please contact Ed Chung at 4-0572 or Matt Nelson at 4-7831 or matt_nelson@tomudall.senate.gov.

Sincerely,



Patrick J. Leahy
U.S. Senator



Daniel K. Akaka
U.S. Senator



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