



Special Edition

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Restoration

OF NATIVE SOVEREIGNTY AND SAFETY FOR NATIVE WOMEN

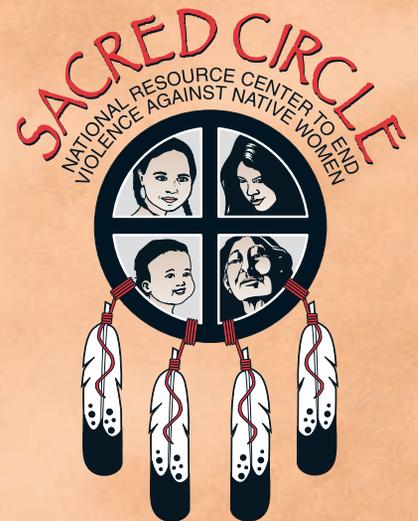


**VAWA 2005
IMPLEMENTATION**

**TITLE IX. SAFETY FOR
INDIAN WOMEN**

**COMPREHENSIVE LAW
ENFORCEMENT
REFORM S3320/HR6583**

**NEW SEXUAL ASSAULT
SERVICES PROGRAM**



**VIOLENCE AGAINST WOMEN
IS NOT TRADITIONAL**



National Task Force to End Sexual and Domestic Violence Against Women



Dear Friends,

Welcome to the third annual USDOJ Consultation with Indian nations! In 2003, a mighty grassroots national movement joined together to launch a campaign to reauthorize the Violence Against Women Act (VAWA). The success of this movement is evidenced in that Congress reauthorized VAWA and also created *Title IX. Safety for Indian Women*. This landmark legislation marks a historic turning point in the commitment of the United States to respond to violence committed against Indian women. Most importantly it clarified that the “*legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.*”

Title IX. Safety for Indian Women mandates that the U.S. Department of Justice conduct an annual consultation with Indian nations on the safety of Indian women. Consultation is a long standing principle of the government-to-government relationship between the United States and Indian nations. Consultation is a safeguard on the implementation of VAWA to strengthen the ability of tribal governments to increase the safety of women.

Violence against Indian women occurs at more than double the rate of any other population of women. Most Indian women do not report such crimes because of the belief that nothing will be done. The current rate of violence is undeniably linked to the steady erosion of the sovereign authority of Indian nations to protect women. This void in jurisdictional authority to protect women strikes at the heart of sovereignty and threatens the future existence of all Indian nations.

Contained in this volume of *Sovereignty & Safety* are materials we hope will assist you in preparing for the 2008 annual consultation including: a copy of *Title IX. Safety for Indian Women*, a list of the recommendations made during the 2007 consultation, highlights of the proposed *Tribal Law and Order Act of 2008* for comprehensive law enforcement reform, and update on the new Sexual Assault Services Program.

Thank you for attending the 2008 annual consultation! Together we can strengthen the sovereignty of Indian nations to protect women and hold all perpetrators accountable for their violent crimes! Together we can end violence against American Indian and Alaska Native women!

NCAI Task Force Co-Chairs



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work for justice.”*

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SOVEREIGNTY & SAFETY MAGAZINE, 2003-2008

The *Sovereignty & Safety* magazine is a publication dedicated to informing tribal leadership and communities of emerging legal and public policy issues impacting the safety of American Indian and Alaska Native Women. The name of the magazine, *Sovereignty & Safety*, reflects the strategy of the Task Force that by strengthening the *sovereignty* of Indian tribes to hold perpetrators accountable the *safety* of Indian women will be restored. It is a joint project of the Sacred Circle National Resource Center to End Violence Against Native Women and the National Congress of American Indians.

Co-Editors: Jacqueline Agtuca, Director of Public Policy and Terri Henry, Principal Director Clan Star, Inc. **Photographs:** Clan Star, Inc. **Design:** Walt Pourier, Nakota Designs. **Production:** Coya Artichoker and Verlaine Gullickson, Sacred Circle National Resource Center to End Violence Against Native Women



SAFETY FOR INDIAN WOMEN: A WALK IN TIME

In order to fully understand where we stand with the implementation of the Violence Against Women Act today, it is important to understand where we stood prior to the passage of this landmark legislation designed to enhance the safety of native women and promote the sovereignty of Indian Tribes.

Before there was a federal grant program.

Resources providing for emergency shelter and/or advocacy to American Indian and Alaska Native women were little to non-existent. The Office for Victims of Crime in the USDOJ and the Family Violence Prevention Services of DHHS were providing the minimal funds appropriated by Congress to support programs serving crime victims. Focusing the limited resources tribes were receiving to address the needs of battered Indian women was not on the list of priorities. In the late 1970's, the U.S. Civil Rights Commission conducted a hearing on "wife battering". At this meeting, women from across the United States expressed the experiences of battered women and the lack of resources and systemic reforms necessary to support their safety. The U.S. Civil Rights Commission directed these women to begin organizing themselves around this issue and to take the matter to the U.S. Congress.

The organizing that took place led to the creation of the statewide coalitions whose purpose was to address domestic violence and sexual assault. At the same time, the women instrumental in creating the state coalitions created the National Coalition Against Domestic Violence (NCADV) in 1978. Their purpose in building a national coalition was for the purpose of creating a unified voice that would inform Congress of the reality of battered women. Included among the initial organizers was Tillie Black Bear of the Rosebud Sioux Tribe whose presence left a lasting impression on the women of the battered women's movement and whose leadership remains emulated in the very fabric of the organization. As a result of their organizing both at the state and national level, the battered women's movement advocated for the federal funds that became available to the coalitions of the States and U.S. Territories in the early 1980's.

Shelter, Advocacy Services and Tribal Coalitions Prior to VAWA

In the late 1970's two native based shelter programs existed to provide emergency shelter and advocacy services to battered native women. In 1978, the White Buffalo Calf Woman Society of the Rosebud Sioux Tribe Reservation in south-central South Dakota, and, in 1979, the Emmonak Women's Shelter of the Native Village of Emmonak located in the Yukon Delta of Alaska, was established to provide emergency shelter and advocacy services to the native women of their tribal areas. In some tribal areas, a network of safe homes were coordinated to assist battered women fleeing the violence of their perpetrator even though there were no shelter services available. The American Indians Against Abuse (AIAA) located in Wisconsin established the first tribal coalition in 1991.

VAWA: Federal Support for Domestic Violence Shelters, Advocacy & Systematic Reform.

In 1994, the U.S. Congress passed the Violence Against Women Act (VAWA I). The VAWA provides for improved prevention and prosecution of violent crimes against women and child victims of domestic violence, sexual assault, and stalking. VAWA takes a comprehensive approach to address violence against women, combining a broad array of legal and practical reforms. In addition, VAWA created federal penalties for entering and leaving Indian country with the intent to commit an act of domestic violence and the possession of firearms by parties restrained by an effective protection order.



The funding initiative under VAWA is quite significant. VAWA provides a substantial commitment of federal resources for police, prosecutors, intervention programs, and victim service initiatives in cases involving sexual assault or domestic violence. Literally, billions of dollars are committed to this initiative. Beginning in 1994, the Office on Violence Against Women administered four grant programs in compliance with its charge of carrying out the federal legislative mandate to support tribal governments as they develop and implement comprehensive strategies to combat violence against native women. From 1995 – 1997, 238 Indian Tribal communities were receiving support to implement tribal strategies to combat violence against American Indian and Alaska Native women. This funding supports initiatives, on reservations, pueblos, Rancherias, Alaska Native villages and tribal consortia. By 1998, over \$30 million dollars were awarded to tribal grantees.

VAWA (1994) I

Included Tribes as Eligible Grantees
Contained 4% set-aside of funds to Indian tribes
Recognized tribal court orders of protection & required enforcement

VAWA (2000) II

Increased tribal set-aside to 5%
Created new Tribal Domestic Violence & Sexual Assault Coalition Program
Strengthened recognition of tribal government authority to respond
Federal criminal enhancements: Entering or leaving tribal lands to commit crime of DV, SA, Stalking

VAWA (2006) III

Universal Definitions
Universal Grant Provisions
Tribal Provisions Front to Back
Title IX. Safety for Indian Women
10% Minimal Tribal Set Aside Across VAWA
No Match for Indian Tribes or service providers
Statutorily creates Tribal Deputy Director
Mandates government-to-government consultation
Federal Code Amendments
New Research and Databases
New Dedicated Tribal Sexual Assault Funding
Non-exclusivity clause allowing tribes to apply to all programs containing tribal eligibility provision
Tribal funds remain until expired





SACRED CIRCLE NATIONAL RESOURCE CENTER TO END VIOLENCE AGAINST NATIVE WOMEN

The 1994 Violence Against Women Act created four national resource centers focused on domestic violence. This original network included the National Resource Center on Domestic Violence, the Resource Center on Civil and Criminal Law, the Resource Center on Child Custody Protection and the Health Resource Center on Domestic Violence. These centers comprise the Domestic Violence Resource Network (DVRN) and were designed to support development of local responses in all jurisdictions across the United States. Almost immediately it became apparent that the DVRN could not meet the need of the 562 sovereign Indian Tribal Nations, each able to pass their own laws and operate their own institutions. Thus was the impetus for the formation of a resource center designed specifically for Indian Nations and in 1997 Sacred Circle National Resource Center to End Violence Against Native Women became the fifth member of DVRN. Sacred Circle is most similar to the Domestic Violence Resource Center as a general resource center.

The leadership of the original DVRN had pre-existing, working relationships with Native women's leadership. Their work included development of the Violence Against Women Act, including tribal set-asides. In a historic act illustrating the strength of women's relationships and meaning of accountability, DVRN advocated to create a Special Issues Resource Center specific to the development of tribal domestic violence response. Each resource center willingly reduced their budgets for one year to establish a native-specific resource.

Cangleska, Inc., a non-profit, chartered by the Oglala Sioux Tribe on the Pine Ridge Reservation was awarded the grant to create the native resource center. Sacred Circle, the National Resource Center to End Violence Against Native Women, was established for this purpose.

The work of Sacred Circle is based on the premise that restoration of sovereignty of Indian Tribes is a prerequisite to the restoration of safety and dignity of Native women. Faced with the daunting task of assisting 562 tribal nations, most existing under third world conditions as colonized nations, Sacred Circle works to reclaim belief systems of traditional, Native life ways where the status of women is sacred. The organization has developed Native specific materials that acknowledge domestic violence as an impact of colonization with technical assistance and consultation based on the unique situation of each individual tribe. The goals of Sacred Circle are (1) to increase Indian Nations' capacity to provide direct services and advocacy to women and their children victimized by battering and sexual assault through technical assistance, model programming, training and information that is culturally relevant; (2) to enhance tribes' and tribal organizations' creation of coordinated community response efforts, including advocacy and shelter programs, criminal justice, law enforcement and other related systems, and (3) to enhance tribal justice system's ability to provide for victim safety and batterer accountability through analysis and development of models for codes, policies, procedures and protocols.

Activities include the development of customized information packets, annual training schedules, Workshop Partnership Program, On-Site Visit Project, website and sample tribally specific policy and codes. To-date, Sacred Circle has worked with over 150 tribes emphasizing the establishment of advocacy/shelter programs. As a strategy to support fledgling advocacy programs, Sacred Circle established a relationship with elected tribal leaders through the National Congress of American Indians (NCAI) which led to the NCAI Task Force To End Violence Against Native Women. Sacred Circle also continues to educate tribal leaders through its woman centered publication, *Restoration of Sovereignty, Restoration of Safety for Native Women*, providing information and recommendations on violence against women issues.



**EVEN IN THOUGHT,
RESPECT WOMEN.**
— THE WHITE BUFFALO CALF WOMAN

WOMEN ARE SACRED

Violence Against Native Women is not Traditional!

SACRED CIRCLE • 722 St. Joseph St., Rapid City, SD 57701 • 605-341-2050 • 1-877-RED-ROAD (733-7623) • Fax: 605-341-2472





Many important enhancements for Indian tribes, organizations, and tribal coalitions run throughout the Act, but the heart of VAWA '05 is Title IX. Safety for Indian Women.

ACCOUNTABILITY: Summary of Title IX. Safety for Indian Women

Congress recognizing the devastating violence occurring against American Indian and Alaska Native women reauthorized VAWA to include provisions for Indian tribes and women. Most importantly it enacted *Title IX. Safety for Indian Women*. Passage of this Title represented a historic turning point in the recognition by Congress of the urgent need to address the epidemic of violence against Indian women. Enactment of this Title honors the legal relationship the United States has to Indian tribes. VAWA '05 clarified that *the unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.*

VAWA '05 includes language throughout that strengthens the capacity of Indian tribes to exercise their sovereign authority to respond to violent crimes against Indian women.

Title IX. Safety for Indian Women established the following as federal law:

Government-to-Government Relations. To assure proper governmental relations between the United States and Indian Nations in the implementation of VAWA 05 and safeguard the successful implementation of *Title IX. Safety for Indian Women* Congress included two provisions: 1) the mandate that the Department of Justice conduct annual consultations with Indian tribes on statutorily defined categories, and 2) the statutory creation of a Deputy Director for Tribal Affairs within the Office on Violence Against Women. The Deputy, under the guidance of the Director, holds the authority to conduct broad inter-governmental policy work to implement VAWA amendments and tribal enhancements. The establishment of this position is based upon the long-standing policy of a government-to-government relationship between Indian tribes and the United States.

Federal Code Amendments. VAWA 2005 amends the Firearms Possession Prohibitions of VAWA 2000 to include tribal court convictions; amends the Indian Law Enforcement Reform Act to include misdemeanor arrest authority; amends the Federal code to create a Domestic Assault by an Habitual Offender; and amends Federal Criminal Information Databases to provide Indian Nations access to enter and obtain information.

New Research and Databases. Provides for a national baseline study on rates of violence against Indian women by the National Institute of Justice; a Center for Disease Control and Prevention study on the costs of injury to Indian women due to violence; and authorizes a national tribal sex offender and protection order registry to enhance the ability of tribal governments and law enforcement agencies to deal with violence against Indian women on tribal lands.

Increased Resources. Created the Indian Government Grants Program lifting programmatic restrictions to allow Indian tribes to determine the appropriate governmental strategies according to their respective forms of governance. Clarified that Indian tribes are not required to provide a match for the Federal funds. Required that technical assistance to Indian tribes and organizations be provided by entities having expertise in tribal law, customary practices, and Federal Indian Law.

How far have we come in the implementation process of these amendments? Provided on the following pages is a review of the implementation of *Title IX. Safety for Indian Women*.



2007 RECOMMENDATIONS OF TRIBAL LEADERS

In preparation for both the 2006 and 2007 annual consultations NCAI staff and Task Force coordinated a preparatory caucus for tribal leaders. During the caucus tribal leaders received a briefing and reviewed the outstanding issues concerning the safety of Indian women. The caucus developed the following list of recommendations to present to the Department of Justice. The issues and recommendations are provided below. NCAI requested that the Department respond to this list of concerns and recommendations in writing prior to the 2008 consultation. The proposed *Tribal Law and Order Act of 2008* responds to many of these barriers to the safety of Indian women.

1. Leadership Vacancies at DOJ

Federal law requires that the Attorney General conduct an annual consultation on combating violence against Native women. It is concerning that this consultation is taking place at a time when there is no Attorney General in place at the Department of Justice and at a time of transition for the Office on Violence Against Women.

Recommendation: The next Attorney General and Director of OVW should meet with tribal leaders as soon as possible.

2. Jurisdictional Issues

It is widely acknowledged that criminal jurisdiction in Indian Country is overly complex and undermines the safety of Native women. Tribal authority over non-Indians in a relationship with Native women on tribal lands or who violate an existing state or tribal order of protection on tribal lands must be reaffirmed.

Recommendation: The Department of Justice should join with tribal leaders to call upon Congress to restore tribal jurisdiction in these areas.

3. Improving the Federal Response to Violent Crime

a. Indian Country crime must be a high priority at the Department of Justice.

Recent reports about the firing of several US Attorneys active in Indian Country raise concerns that the DOJ is not committed to protecting the safety of Native women. Given the federal governments unique responsibility to Indian Country, tribal issues must be a top priority for the DOJ.

Recommendations:

- 1) Elevate the Office of Tribal Justice within the bureaucracy so that it reports directly to the Attorney General;
- 2) Establish a standing Advisory Committee of tribal leaders to provide on-going guidance to the DOJ on Indian Country issues.





b. FBI & U.S. Attorneys

Under the Major Crimes Act, the FBI and U.S. Attorneys Offices have a unique responsibility to respond to crime in Indian Country. There are widespread complaints that federal investigations and prosecutions are not happening in cases where federal jurisdiction is clear and is the only alternative.

Recommendations:

- 1) All U.S. Attorneys should issue declination letters to tribal governments explaining why they have declined to prosecute a case arising from Indian Country.
- 2) The FBI should be required to collect, analyze, and distribute data on crimes responded to in Indian Country.

c. Habitual Offender Provision

VAWA includes a provision creating a federal crime for anyone who has two prior domestic violence convictions in federal, state, or tribal court, and commits domestic assault within Indian Country. This provision is intended to give the federal government authority to intervene in repeat cases of domestic violence committed by tribal members that might not otherwise have risen to the level of a felony. To our knowledge, no steps have been taken to ensure that federal law enforcement officers, U.S. Attorneys and state authorities comply with this provision.

Recommendations:

- 1) Develop in consultation with Indian tribes guidelines for the implementation of the habitual offender provision;
- 2) Conduct cross training for Assistant United States Attorneys and tribal prosecutors for the investigation, charging and prosecution of cases under the habitual offender provision;
- 3) Inform Indian tribes of the progress and steps made toward implementation of the habitual offender provision.

d. Firearms Provisions

VAWA creates a new federal crime prohibiting offenders convicted of a domestic violence in tribal court from possessing firearms. To our knowledge, no steps have been taken to ensure that federal law enforcement officers, U.S. Attorneys and state authorities comply with this provision.



**Recommendations:**

- 1) Develop, in consultation with Indian tribes, guidelines for the implementation of the firearms provision;
- 2) Conduct cross training for Assistant United States Attorneys and tribal prosecutors for the investigation, charging and prosecution of cases under the firearms provision;
- 3) Inform Indian tribes of the progress and steps made toward implementation of the firearms provision.

e. Tribal Access to Federal Databases

VAWA §905(a) mandates that the Attorney General share federal criminal databases with Indian law enforcement agencies in cases of domestic violence, dating violence, sexual assault, and stalking. To date, we have not been made aware of any action to comply with this mandate and continue to hear from federal officials that tribal governments must go through the state in order to access the NCIC database. Tribal law enforcement agencies must have direct access to federal criminal databases to ensure the safety of Native women, particularly if the habitual offender and firearms provisions are to have any teeth.

Recommendations:

- 1) Identify which component of DOJ is responsible for implementation of §905(a) and provide Indian tribes contact information for the component;
- 2) Develop DOJ guidelines for the implementation of §905(a) and provide the guidelines to Indian tribes;
- 3) Issue a statement to Indian tribes that the system is now available for tribal law enforcement to access and enter information into the federal databases under §905(b).

f. Grants to Tribal Governments Program

VAWA 2005 statutorily combined tribal set-asides from 7 grant programs into a single program, the Grants to Indian Tribal Governments Programs (GITGP). The purpose of the single grant program is to enhance the response of Indian tribal governments to address domestic violence, sexual assault, dating violence and stalking. The establishment of this program is an important step forward in streamlining access of Indian tribes to critical funding, but a number of concerns have been raised about the implementation of the grant program.

Recommendations:

- 1) The GITGP should receive the highest priority in the OVW schedule for grant making and award schedule. The lack of adequate resources available to tribal governments is well documented. Indian tribes lack the resources to maintain programs during gaps in access to continuation funding. Start-up and shutting down of tribal programs due to administrative issues is a tragic result of tribal programs not being prioritized by the OVW.
- 2) All Indian tribes opting to participate in the GITGP should be funded, and a formula for distribution of funds should be developed by tribal leadership.
- 3) Pre-solicitation workshops should be conducted for Indian tribes needing assistance in completing the application process.
- 4) The GITGP should be funded within 90 days of OVW receiving the Congressional appropriation. All funds appropriated on an annual basis must be expended. Life saving funds should not sit in a Treasury account while women suffer.
- 5) Award date and access to funds should occur at the same time.
- 6) Project period should be no longer than a two-year period except at the request of individual grantees.





- 7) Population caps should be eliminated to address the specific and unique needs of the individual tribal grantees.
- 8) Administrative requirements not applicable to Indian tribes should be removed.
- 9) All technical assistance and training offered by OVW that Indian tribes are required to attend must be designed to specifically address the unique legal and jurisdictional circumstances of Indian tribes.
- 10) All training and technical assistance awards should be to organizations having expertise in working with Indian tribal governments and also expertise in addressing violence against Indian women, specifically domestic violence, sexual assault, stalking and dating violence as required under VAWA.

g. Annual Consultation

VAWA requires that the DOJ conduct an annual consultation on violence against Native women.

Recommendations:

- 1) Jointly decide with tribal leaders, date, time, format, and facilitation for all consultations;
- 2) Set the date for the next annual consultation at the end of the prior one to allow for advanced planning and maximum participation of tribal leadership;
- 3) Immediately set the schedule for scoping calls to allow the opportunity for all tribal governments to participate in the preparatory call;
- 4) Allocate no more than one quarter of the total time of the consultation to presentations and allow three quarters of the time for statements and questions of tribal governments;
- 5) All DOJ components charged with the responsibility for investigating or prosecuting perpetrators of violence crimes against Indian women should attend the annual consultation, of particular importance is the Office of the Attorney General, the United States Attorney; the Federal Bureau of Investigations;
- 6) OVW should present a complete report on the amount of tribal set aside funds; grant awards allocated from tribal set aside funds; any remaining tribal roll over funds not allocated and why the funds were not allocated;
- 7) Prepare a compendium of the statements made by tribal leadership and copies of all written testimony to Indian tribes that participated;
- 8) Issue a written response to the questions and concerns raised by Indian tribes during the consultations within 90 days of the annual consultation;
- 9) Prepare an action plan for components of the Department to implement actions to address the concerns and recommendations made during the consultation by Indian tribes.





REVIEW OF TITLE IX. SAFETY FOR INDIAN WOMEN

“The unique legal relationship of the United States to Indian tribes creates a federal responsibility to assist tribal governments in safeguarding the lives of Indian women.”

VAWA was reauthorized by Congress and signed into law by the President on January 5, 2006. It has now been almost three years and many outstanding questions exist about the implementation of the Act. In short, while VAWA contained landmark provisions intended by Congress to increase the safety of Indian women not all the provisions have been fully implemented. In fact the Department has not made progress in the implementation of some of the law enforcement reform provisions. In regards to other provisions it has made only partial progress and implementation is not uniform and varies region to region. In some United States districts these provisions have made a difference resulting in increased prosecutions and in others no progress has been made towards implementation. A partial reason for the annual consultation is to review and make recommendations for enhancing the safety of women and the federal response. To assist tribal leaders and representatives prepare for the 2008 consultation a complete review of *Title IX. Safety for Indian Women* is included on the following pages.

§901 Findings

Section 901 provides the justification for creation of Title IX and amendments to the Violence Against Women Act of 1994 and 2000. Findings 1 – 4 are statistics from federal research that highlight the nature and extent of violence against Indian women. Finding 5 is a conclusion reported by the U.S. Civil Rights Commission in its report “A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country.” Finding 6 articulates the legal responsibility of the United States to Indian tribes in safeguarding the lives of Indian women.

Congress finds that—

- (1) 1 out of every 3 Indian (including Alaska Native) women are raped in their lifetimes;
- (2) Indian women experience 7 sexual assaults per 1,000, compared with 4 per 1,000 among Black Americans, 3 per 1,000 among Caucasians, 2 per 1,000 among Hispanic women, and 1 per 1,000 among Asian women;
- (3) Indian women experience the violent crime of battering at a rate of 23.2 per 1,000, compared with 8 per 1,000 among Caucasian women;
- (4) during the period 1979 through 1992, homicide was the third leading cause of death of Indian females aged 15 to 34, and 75 percent were killed by family members or acquaintances;
- (5) Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and
- (6) the unique legal relationship of the United States to Indian tribes creates a Federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.

Quick Facts:

- Native women experience violent victimization at a higher rate than any other U.S. population.
- 34.1%, more than 1 in 3, Indian women will be raped in their lifetime
- 64%, more than 6 in 10, Indian women will be physically assaulted
- Indian women are stalked at more than twice the rate of other women
- Between 1997 and 2006, federal prosecutors rejected nearly two-thirds of the reservation cases brought to them by FBI and BIA investigators, more than twice the rejection rate for all federally prosecuted crimes.



Title IX. Safety for Indian Women, §902 Purposes

Section 902 is a statement of the Congressional purposes for the enactment of *Title IX Safety for Indian Women*. It provides an overview of the ultimate goals intended by Congress to be accomplished by *Title IX*. The three purpose areas also provide clarity for the implementation of the Act. It links the decrease of violence against Indian women to the increased capacity of Indian tribes to exercise their sovereign authority to protect Indian women and hold perpetrators accountable for their crimes.

The purposes of this title are to:

- (1) to decrease the incidence of violent crimes against Indian women;
- (2) to strengthen the capacity of Indian tribes to exercise their sovereign authority to respond to violent crimes committed against Indian women; and
- (3) to ensure that perpetrators of violent crimes committed against Indian women are held accountable for their criminal behavior.

Note on Implementation: The inclusion of language recognizing the *sovereign authority to respond to violent crimes committed against Indian women* is extremely significant to self-governance. The concurrent authority of Indian tribes and the United States under the Major Crimes Act has created confusion in justice agencies responding to violent crimes against Indian women. Particularly, in crimes of sexual assault an inaccurate interpretation has resulted in a public myth that Indian tribes do not have the jurisdictional authority to respond to the crime of rape. This language and other language contained in the *VAWA 2005* clarify this confusion. Further, significant funding is made available under the *VAWA 2005* for Indian Nations to develop tribal justice systems to address sexual assault.





Title IX. Safety for Indian Women, §903 Consultation

Section 903 directs the Attorney General and Secretary of Health and Human Services to each conduct annual consultations with Indian tribal governments concerning the federal administration of tribal funds and programs established under the *Violence Against Women Acts* of 1994 and 2000. It requires the Attorney General, during such consultations, to solicit recommendations from Indian tribes concerning: (1) administering tribal funds and programs; (2) enhancing the safety of Indian women from domestic violence, dating violence, sexual assault, and stalking; and (3) strengthening the federal response to such violent crimes.

- (a) In General.--The Attorney General shall conduct annual consultations with Indian tribal governments concerning the Federal administration of tribal funds and programs established under this Act, the Violence Against Women Act of 1994 (title IV of Public Law 103-322; 108 Stat. 1902) and the Violence Against Women Act of 2000 (division B of Public Law 106-386; 114 Stat. 1491).
- (b) Recommendations.--During consultations under subsection (a), the Secretary of the Department of Health and Human Services and the Attorney General shall solicit recommendations from Indian tribes concerning--
 - (1) administering tribal funds and programs;
 - (2) enhancing the safety of Indian women from domestic violence, dating violence, sexual assault, and stalking; and
 - (3) strengthening the Federal response to such violent crimes.

Note on Implementation: Annual consultations were held in 2006 and 2007. The successful implementation of VAWA within tribal communities requires consultation and coordination between the Department of Justice and Indian Nations. Coordination of on-going inter-governmental activities within the Department is required to conduct successful annual consultation with Indian tribes. A clear understanding of the unique government-to-government relationship the United States has with Indian tribes is required to fulfill this responsibility. This unique legal relationship is established in the Constitution, Federal statutes, Supreme Court cases, and Executive Orders. The development of policies and programs for Indian tribes must draw upon Federal Indian Law and not be developed separate from long standing principles and canons of construction.

Outstanding Concerns Regarding Annual Consultation:

- The Department has not responded to the majority of concerns and recommendations made during the 2006 – 07 consultations.
- In 2007 key components of the USDOJ failed to attend the consultation, in particular the following components were absent United States Attorneys General from districts containing Indian tribes, Attorney General's Native American Issues Sub-Committee, Federal Bureau of Investigations, and the National Criminal Information Center.
- In 2007 the Department scheduled other meetings and consultations with Indian tribes that created a conflict in the attendance of some tribal leaders of the VAWA mandated consultation.



Title IX. Safety for Indian Women, §904(a) Research on Violence Against Indian Women

Section 904(a) directs the Attorney General, acting through the National Institute of Justice, in consultation with the Director of the Office on Violence Against Women, to conduct a national baseline study to: (1) examine violence against Indian women; and (2) evaluate the effectiveness of federal, state, tribal and local responses to offenses against Indian women. Authorized appropriations of \$1,000,000 for FY2007 and FY2008. In FY 2008 Congress appropriated \$940,000.

(a) National Baseline Study.--

(1) In general.--The National Institute of Justice, in consultation with the Office on Violence Against Women, shall conduct a national baseline study to examine violence against Indian women.

(2) Scope.--

(A) In general.--The study shall examine violence committed against Indian women, including--

- (i) domestic violence;
- (ii) dating violence;
- (iii) sexual assault;
- (iv) stalking; and
- (v) murder.

(B) Evaluation.--The study shall evaluate the effectiveness of federal, state, tribal, and local responses to the violations described in subparagraph

(A) committed against Indian women.

(C) Recommendations.--The study shall propose recommendations to improve the effectiveness of federal, state, tribal, and local responses to the violation described in subparagraph (A) committed against Indian women.

(4) Report.--Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to the Committee on Indian Affairs of the Senate, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report that describes the study.

(5) Authorization of appropriations.--There is authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years 2007 and 2008, to remain available until expended.

Note on Implementation: Violence against Indian women occurs on a societal spectrum. Due to underreporting current government research is reflective of only a small percentage of actual cases. Most Indian women do not report such crimes because of the belief that nothing will be done. Understanding violence in the context of a lifetime and not single incidents is important to developing a strategic response capable of ending violence against Indian women. While the Department of Justice released the American Indians and Crime Reports it has not conducted a single major study focused on violence against American Indian and Alaska Native women.



Title IX. Safety for Indian Women, §904(a)(3) Task Force to Guide Research

Section 904(a)(3) directs the Attorney General, acting through the Director of the Office on Violence Against Women, to establish a task force to assist in the development and implementation of the study. It requires the Director to appoint to the task force representatives from: (1) national tribal domestic violence and sexual assault nonprofit organizations; (2) tribal governments; and (3) the national tribal organizations.

(3) Establishment. Task force.—

(A) In general.--The Attorney General, acting through the Director of the Office on Violence Against Women, shall establish a task force to assist in the development and implementation of the study under paragraph (1) and guide implementation of the recommendations in paragraph (2)(C).

(B) Members.--The Director shall appoint to the task force representatives from--
(i) national tribal domestic violence and sexual assault nonprofit organizations;
(ii) tribal governments; and
(iii) the national tribal organizations.

Note on Implementation: The Task Force was established March 31, 2008 and held its first meeting August 20-21, 2008. The establishment of the Task Force will provide the expertise on violence against American Indian and Alaska Native women essential to successful development and implementation of the study. The Task Force will meet for the second time immediately before the 2008 USDOJ Consultation in Palm Springs.



Members of the §904 Task Force on Violence Against American Indian and Alaska Native Women with USDOJ Staff.





In 2007, a total of 10,007 Indian people were listed as missing by the National Crime Information Center.

Title IX. Safety for Indian Women, §905(a). Access to Federal Databases

Section 905(a) Amends the federal code to require the Attorney General to permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from, federal criminal information databases.

(a) Access to Federal Criminal Information Databases.--Section 534 of title 28, United States Code, is amended--

- (1) by redesignating subsection (d) as subsection (e); and
- (2) by inserting after subsection (c) the following:

“(d) Indian Law Enforcement Agencies.--The Attorney General shall permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into federal criminal information databases and to obtain information from the databases.”

Note on Implementation: The federal amendment to permit Indian law enforcement agencies access to enter and obtain information from the federal crime data systems was a tremendous step forward in creating safety for Indian women. Unfortunately, this lifesaving amendment to federal law has not changed reality. Tribal law enforcement still cannot access the national federal system without permission of the state in which the tribe is located. Many state governments refuse Indian tribes access through their state system. As a result tribal law enforcement officers cannot access criminal information on suspects placing the lives of officers and women at risk. In addition, some state governments in conflict with federal law do not allow tribal court orders of protection to be entered into their state registry. The amendment to the federal code was intended to eliminate the barrier of Indian tribes being denied access to essential criminal justice information required to manage crime and protect women.





Title IX. Safety for Indian Women, §905(b) National Tribal Sex Offender and Order of Protection Registry

The ability for Indian tribes to access the national registry would enable tribes to protect their communities from transient habitual perpetrators that prey on Indian women.

Section 905(b) directs the Attorney General to contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain a national tribal sex offender registry and a tribal protection order registry. The creation of a National Tribal Registry was enacted by Congress and funded in the omnibus FY 2008 appropriations bill to provide all federally recognized Indian tribes the ability to enter life saving information into a national registry. Congress authorized appropriations of \$1,000,000 for each year beginning in FY2007-FY2011. In FY2008 Congress appropriated \$940,000. The Office on Violence Against Women held a focus group on establishing the national tribal sex offender and order of protection registry at the end of September in Washington, DC.

(b) Tribal Registry.--

- (1) Establishment.--The Attorney General shall contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain--
 - (A) a national tribal sex offender registry; and
 - (B) a tribal protection order registry containing civil and criminal orders of protection issued by Indian tribes and participating jurisdictions.
- (2) Authorization of appropriations.--There is authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years 2007 through 2011, to remain available until expended.

Note on Implementation: The creation of a National Tribal Registry designed for Indian tribes to enter and access information regarding orders of protection and convicted sex offenders holds the potential to truly enhance the safety of Indian women. All federally recognized Indian tribes opting to participate will have timely access to life saving information. The design of the registry will be unfettered by state and national based requirements streamlining administration and cost of





participating in registry. Such barriers prevent full participation of Indian tribes within the registries and thus also prevent access of law enforcement agencies to life saving critical information. The effectiveness of any database depends on the timely entry of information and the ability to keep that information current and correct. In the case of tribal entries into National registries, delayed entry or inaccuracies of information can place a Native woman at immediate risk. At the time of the passage of VAWA 2005 a separate tribal registry was required because administrative barriers delayed or prevented the inclusion of tribal data on the National Order of Protection Registry and National Sex Offender Public Registry. Since passage of the Tribal Registry provision the *Adam Walsh Act* became law further complicating participation of Indian tribes in a national sex offender registry. In FY2008 Congress appropriated \$940,000 to launch the National Tribal Registry.

Barriers to Participation within the National Order of Protection Registry:

- Entry of tribal orders for protection into the National registry can currently be accomplished only by entry of order for protection information through state administered criminal information links to the National Crime Information Center (NCIC);
- Although every law enforcement agency and court of record in the country has been assigned an ORI (originating agency identifier) number for accessing NCIC, individual states assign and limit the number of active ORI's authorized to access National registries through the state's criminal information system, and often give tribal law enforcement low priority for access;
- Without an active ORI and direct link to NCIC, tribes cannot enter, update, or access orders for protection in the National registry except through an already active link, usually county law enforcement and/or courts;
- County law enforcement and courts often do not have the resources to prioritize the entry and updating of their own orders for protection, let alone those forwarded to them by tribal courts;
- Tribal orders are often considered suspect and not enforced by law enforcement outside of the issuing jurisdiction when the enforcing agency cannot readily verify an order from an individual tribe through the National registry and NCIC.

Barriers to Participation within the Adam Walsh Act National Sex Offender Registry:

- Participation is limited to only Indian tribes falling under federal criminal jurisdiction and more than half of all federal recognized Indian tribes are excluded from participating;
- An Indian tribe excluded from participating must rely upon a state to access the registry. If a state is not in compliance with the requirements of the Act the tribal governments will be locked out of the national registry;
- The requirements under the Act are designed based on state systems and not tribal justice systems.
- Tribal sex offender convictions are classified as misdemeanor making many provisions under the Act irrelevant to a tribe.
- The cost of participation in the national registry is unfunded.

Adam Walsh Update:

In 2006 Congress passed the *Adam Walsh Child Protection and Safety Act*, which included Indian tribes in the federal sex offender registration laws for the first time. The Act created two classes of tribes: 1) those subject to PL 280 jurisdiction in MN, WI, NE, OR, CA, and AK, and 2) all other tribes. Tribes in the second category were given one year to pass a resolution stating their intention to comply with the mandates of the Act. For those tribes that failed to pass a resolution within one year, as well as the PL 280 tribes in the first category, the responsibility to implement the new law was delegated to the state. Of the 212 tribes that were eligible to elect to comply with the law, 198 did so before the July 27, 2007 deadline. An additional five tribes passed resolutions delegating their responsibilities to the state. Over half of all federally recognized Indian tribes are locked out of participating in the registry. All states and tribes have until July 27, 2009, to come into compliance with the mandates of the Act.



Title IX. Safety for Indian Women, §906 Grants to Indian Tribal Governments

Section 906 directs the Attorney General to combine funds from seven of the VAWA 2005 grant programs to create the *Grants to Indian Tribal Government Program (GITGP)*. The purpose of the single grant program is to enhance the response of tribal governments to address violence against Indian women. The Program was intended to: 1) streamline access to tribal funds by combining the set-asides from seven programs into one grant program; 2) allow tribal governments to design tribally based responses to violence against Indian women reflective of their respective systems of governance, customs, and practices; and, 3) lift programmatic restrictions not applicable to Indian tribes.

Significant gains have been accomplished by the creation of this single grant program. One of the most important is the increase in the number of Indian tribes accessing OVW grant funds. The number of Indian tribes funded in 2005 totaled only 58 tribes. This number more than doubled in 2007 to a total of 120 Indian tribes. Many of these tribes had not accessed OVW grant funds since the establishment of the Office in 1995.

In addition, the statutory establishment of the Deputy Director for Tribal Affairs and the tribal unit increased both the expertise and number of staff available to assist Indian tribes in implementing their grant projects. Until the middle of 2007 the tribal grant program operated at half the staff required. This staffing level negatively impacted the implementation of projects of Indian tribes.

Section 906 reads as follows:

- (a) Grants.--The Attorney General may make grants to Indian tribal governments or authorized designees of Indian tribal governments to--
- (1) develop and enhance effective governmental strategies to curtail violent crimes against and increase the safety of Indian women consistent with tribal law and custom;
 - (2) increase tribal capacity to respond to domestic violence, dating violence, sexual assault, and stalking crimes against Indian women;
 - (3) strengthen tribal justice interventions including tribal law enforcement, prosecution, courts, probation, correctional facilities;
 - (4) enhance services to Indian women victimized by domestic violence, dating violence, sexual assault, and stalking;
 - (5) work in cooperation with the community to develop education and prevention strategies directed toward issues of domestic violence, dating violence, and stalking programs and to address the needs of children exposed to domestic violence;
 - (6) provide programs for supervised visitation and safe visitation exchange of children in situations involving domestic violence, sexual assault, or stalking committed by one parent against the other with appropriate security measures, policies, and procedures to protect the safety of victims and their children;
 - (7) provide transitional housing for victims of domestic violence, dating violence, sexual assault, or stalking, including rental or utilities payments assistance and assistance with related expenses such as security deposits and other costs incidental to relocation to transitional housing, and support services to enable a victim of domestic violence, dating violence, sexual assault, or stalking to locate and secure permanent housing and integrate into a community; and
 - (8) provide legal assistance necessary to provide effective aid to victims of domestic violence, dating violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence, at minimal or no cost to the victims.





The elimination of the match requirement for Indian tribes is an important step forward in understanding the federal trust responsibility for safeguarding the lives of Indian women.

(b) Collaboration.--All applicants under this section shall demonstrate their proposal was developed in consultation with a nonprofit, nongovernmental Indian victim services program, including sexual assault and domestic violence victim services providers in the tribal or local community, or a nonprofit tribal domestic violence and sexual assault coalition to the extent that they exist. In the absence of such a demonstration, the applicant may meet the requirement of this subsection through consultation with women in the community to be served.

Ten percent of the following are combined to create the Grants to Indian Tribal Government Program:

- 1) Grants To Combat Violent Crimes Against Women
- 2) Grants To Encourage State Policies and Enforcement of Protection Orders Program
- 3) Rural Domestic Violence and Child Abuse Enforcement Assistance Grants
- 4) Safe Havens for Children Program
- 5) Transitional Housing Assistance Grants for Child Victims of Domestic Violence, Stalking, or Sexual Assault Program; and
- 6) Court Training and Improvements Program; and
- 7) Seven percent of funds from the Legal Assistance for Victims Improvements Program.

Indian Tribal Government Grant Program Appropriations for FY 2007 and 2008

Originating Program	FY 2007	FY 2008	Tribal
Grants To STOP Violent Crimes Against Women	\$155.7	\$161.7	10%
Grants To Encourage Arrest Policies	\$62.4	\$59.2	10%
Rural Domestic Violence and Child Abuse Enforcement Assistance	\$38.8	\$40.4	10%
Safe Havens for Children Program (Supervised Visitation)	\$13.8	\$13.6	10%
Transitional Housing Assistance	\$14.8	\$17.4	10%
Court Training and Improvements	\$0.0	\$2.8	10%
Civil Legal Assistance for Victims	\$38.8	\$36.7	7%
Total	\$324.3	\$331.8	

Appropriations numbers expressed in millions

Note on Implementation of Grants to Indian Tribal Government Program:

The purpose of the single grant program was to increase the access of Indian tribes to OVW funds by streamlining administrative burdens. The single grant program was designed to accomplish this goal by eliminating administrative barriers. Prior to this Program, Indian tribes could only access funds by submitting separate applications to each of the 7 grant programs. For each grant received a tribe was also required to fulfill all of the administrative requirements separately including 2 bi-annual reports and 4 quarterly financial status reports in a 12-month period. For example if a tribe received all 7 grants it was required to file 42 reports each year.

Unfortunately, in the design of the new Tribal Government Program the Office created significant barriers that negatively impact Indian tribes in the implementation of this life-saving Program. These barriers are not required by the statute and in some instances are in violation of the statutory language intended to guide the streamlining of the Program. The most important of these barriers are discussed below. During the 2007 tribal consultation tribal leadership raised these concerns and made these specific recommendation. It is imperative that the Office responds to these concerns and act to address these outstanding issues. The Office should provide a list of the actions taken to streamline the grant application and implementation process.



“Requirements of the Original Grant Program Shall Not Apply”

Congress included specific statutory language to prevent requirements being placed on the Program that would hinder the ability of Indian tribes to create tribally based programs designed to meet the needs of tribal women within their specific communities. It is clear that the most effective programs are those that are tribally and culturally specific. The theory of *one size shoe fits all* does not apply to Indian tribes. Congress recognized this need and the reality that a comprehensive program did not exist to fulfill this need. The solution was combining the set-asides from 7 different grant programs into a single program without the various restrictions. The statutory language specifically states ***the requirements of the program the funds are being transferred from shall not apply***. In conflict with this statutory mandate the Office required Indian tribes in the 2007 and 2008 solicitation to provide updates under each of the 7 original grant program. Thus instead of streamlining the application, the Office lengthened the application. In some instances the application more than doubled in page length. The Office should remove the original grant requirements and allow Indian tribes to develop and submit tribally based applications designed to meet their specific needs.

“Tribal Set-Aside Should be Not Less than 10% of the Total Amount”

Funding for the Tribal Government Program is provided from the tribal set-asides of 7 of the OVW Grant Programs. The amount of each set-aside is mandated by statutory language that states ***not less than ten percent of the total amount*** shall be set-aside for Indian tribes. The only exception for this amount is the Civil Legal Assistance Program that contains a 7% set-aside that is to be transferred to the Tribal Government Program. The remaining 3% is administered directly by the Civil Legal Assistance Program.

This statutory language is essential to provide sufficient funding for the Tribal Government Program. Contained in this language are two separate requirements that safeguard this need. The first safeguard is provided in the language ***“not less than.”*** This language sets the minimum amount that the Office can allocate to Indian tribes. It is not a ceiling or cap, but, represents the lowest amount that must be awarded under each of the original grant programs. The second safeguard is the language ***“ten percent of the total amount.”*** This language mandates that the tribal set-aside be removed prior to any other deductions made by the Office. It is imperative that the Office is transparent with the administration of tribal funds and provides a detail accounting of the amounts of the set-asides of each of the 7 grant programs comprising the Tribal Government Program.

“Annual Appropriation to be Awarded on a 12-Month Project Period”

Congress appropriates an annual budget for each fiscal year. The funds available under the Tribal Government Program would dramatically increase if awarded to Indian tribes also on an annual basis for a 12-month project period. Unfortunately, the Office adopted a policy that the annual appropriation for the tribal program be stretched over a three-year project period. Tribal leaders strongly objected to this administrative decision during both the 2006 and 2007 annual consultations. Tribal leaders recommended that the project period be for a 12-month project period, but, no longer than a 2-year period. The shortening of the project period would increase the amount of available funding on an annual basis. Adopting the recommendation of tribal leaders that the awards be for a 12-month period would triple the available funds each year. Given the epidemic rates of violence against Indian women and the desperate need for services the Office should adopt the recommendation of tribal leaders to shorten the project period. Funds appropriated for the STOP State Formula Program are allocated to the states on an annual basis. Similarly, the Office should shorten the project period for the Tribal Government Program and make the full appropriation immediately available to Indian tribes.





“Application Process should be Expedited”

In creating the Tribal Government Program, Congress recognized that ***Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women.*** Given the national crisis in the severity and frequency of such violence and lack of resources the Tribal Government Program should be expedited and receive the highest priority in processing of grants by the Office. The majority of Indian tribes do not have the resources to cover the cost of gaps in funding between grants. Unlike state governments Indian tribes do not have an independent tax base to pay such cost. Thus any lapse in funding often results in a termination of services and personnel. The lack of services can result in the loss of lives and the termination of staff can result in wasted resources to restart programs. The Office should prioritize the Tribal Government Program and award these grants within 180 days of receiving the appropriation.

“All Indian Tribes Opting to Access Funds should Receive an Award”

All federally recognized Indian tribes are eligible to participate in this Program and all tribes opting to participate in the Program should be funded. In 2007, tribal leadership submitted this concern to the Office and recommended that tribal leadership develop a formula for distribution of the funds. Similar to other federal programs the Office could issue a call for Indian tribes to submit letters of intent to participate in the Program. The Office, based on the number of Indian tribes opting to participate, could distribute the amount appropriated to those Indian tribes. Any funds not distributed due to an Indian tribe withdrawing from the process or other reason could be distributed to the remaining Indian tribes. This formula based approach would eliminate the cost of the peer review process and create a more equitable process for awarding funds. This approach would also eliminate the highly criticized population cap currently used by the Office to determine the amount a tribe is eligible to receive. The Office should immediately adopt this approach and work with tribal leadership to develop the formula for distribution of funds for 2009.



Traditional drummers join march to end sexual violence against Native women.



OVW Funding 2005 to 2007 More Than Doubled

Fiscal Year	Number of Grants	Total Amount
2005	58	\$20 million
2006	62	\$24.5 million
2007	120	\$47.1 million
2008	94	\$38.9 million

Increased Resources to Address Violence Against Indian Women

Since the 1960's the federal policy of tribal self-determination has recognized that tribal governments are best positioned to devise solutions for the problems plaguing their communities. Research has repeatedly shown that self-determination works and federal programs that allow for flexible, tribally driven solutions are the most effective. The *VAWA Acts of 1994 and 2000* recognized this reality and provided for a set-aside for tribal governments in the numerous grant programs included in the legislation. *VAWA 2005* continued a ten-year history of providing a tribal governmental set-aside throughout the Act. The tribal set-aside statutorily defines the minimum amount to be allocated under the respective grant program to Indian tribes.

The principle of allocating a portion of funds as a tribal set-aside is founded upon the unique government-to-government relationship of the United States to Indian tribes. This legal relationship is recognized in the Constitution, numerous executive orders, and federal statutes. In fulfilling its federal trust obligation the United States government has a legal responsibility to assist tribal governments in providing governmental services to maintain safe communities. Within the findings of *Title IX – Safety for Indian Women*, Congress recognized that *the unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.*

VAWA 2005 contained new and old grant programs that require that *not less than* a statutorily defined amount be allocated to Indian tribes. *VAWA 1994* contained a 4% set-aside and *VAWA 2000* increased the amount to 5%. *VAWA 2005* increased the set-aside to *not less than* 10% in most grant programs and 15% of certain grant programs of the Housing Title. The increase recognizes the level of danger facing American Indian and Alaska Native women. Examples of funding streams not contained in the GITGP are listed on the following page.



**VAWA Grant Programs Containing Set-Asides for Indian Tribes:**

- Privacy Protections for Victims of Domestic Violence, Dating Violence, Sexual Violence, Sexual Assault and Stalking: not less than 10% set-aside
- Sexual Assault Services Program: not less than 10% set-aside Services to Advocate For & Respond to Youth: not less than 7% set-aside
- Access to Justice for Youth: not less than 10% set-aside
- Training and Collaboration on the Intersection Between Domestic Violence & Child Maltreatment: not less than 7% set-aside
- Grants to Assist Children & Youth Exposed to Violence: not less than 10% set-aside
- Engaging Men and Youth in Preventing Domestic Violence, Dating Violence, Sexual Assault, and Stalking: not less than 10% set-aside

Grant Programs available to Indian Tribes, Tribal Organizations and Tribal Non-Profits:

- Education, Training, and Enhanced Services to End Violence Against and Abuse of Women with Disabilities
- Enhanced Training and Services to End Violence Against and Abuse of Women in Later Life
- Title VI – Housing Opportunities and Safety for Battered Women and Children contains numerous grant programs with tribal set-sides of 15 % of the available grant funds.

Tribal Domestic Violence & Sexual Assault Coalition Funding Streams:

- Tribal Domestic Violence and Sexual Assault Coalition Grant Program: increase of set-aside from 5 to 10%
- New Sexual Assault Services Program: 10% set-aside
- As well as other grant programs such as the Grants for Outreach to Underserved Populations that contains a 10% set-aside for tribal programs.

OVW FY 2007 Funding to Tribal Governments & Organizations

Grant Program	Number of Tribal Grantees	Total Funding
Grants to Indian Tribal Governments	82	\$31,649,599
Tribal Domestic Violence & Sexual Assault Coalitions	9	\$3,171,961
Rural Domestic Violence & Child Victimization	9	\$4,938,295
SAFE Havens	2	\$599,848
Legal Assistance for Victims	6	\$2,421,223
Transitional Housing	5	\$1,240,381
Grants to Encourage Arrest & Enforcement of Protective Orders	8	\$2,869,409
Campus	1	\$299,512
Total	122	\$47,190,228



Title IX. Safety for Indian Women, §907 Tribal Deputy in the Office on Violence Against Women

Section 907 provides for the establishment in the Office on Violence Against Women of a statutorily mandated Deputy Director for Tribal Affairs. This mandate is the culmination of a ten-year process by the Department of Justice to create policies and programs to support Indian tribes in addressing the safety of Indian women. The creation of this position is the organizational extension of this process. The Deputy Director is to fulfill three broad areas of responsibility: the administration of the Indian Tribal Grants Program and tribal set-asides contained in the other Titles of VAWA; serves as a point of coordination with various Federal agencies and within DOJ on the implementation of the amended federal statutes by providing inter-governmental expertise in Federal Indian Law and policy; directing the developing of the new tribal registries, technical assistance programming and research in accordance with federal policies as a result of the consultation and guidance by the Task Force.

Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.), as amended by section 906, is amended by adding at the end the following:

- (a) Establishment.--There is established in the Office on Violence Against Women a Deputy Director for Tribal Affairs.
- (b) Duties.--
 - (1) In general.--The Deputy Director shall under the guidance and authority of the Director of the Office on Violence Against Women--
 - ((A) Grants. Contracts. Oversee and manage the administration of grants to and contracts with Indian tribes, tribal courts, tribal organizations, or tribal nonprofit organizations;
 - ((B) ensure that, if a grant under this Act or a contract pursuant to such a grant is made to an organization to perform services that benefit 1 Indian tribe, the approval of each Indian tribe to be benefitted shall be a prerequisite to the making of the grant or letting of the contract;
 - ((C) coordinate development of Federal policy, protocols, and guidelines on matters relating to violence against Indian women;
 - ((D) advise the Director of the Office on Violence Against Women concerning policies, legislation, implementation of laws, and other issues relating to violence against Indian women;
 - ((E) represent the Office on Violence Against Women in the annual consultations under section 903;
 - ((F) provide technical assistance, coordination, and support to other offices and bureaus in the Department of Justice to develop policy and to enforce Federal laws relating to violence against Indian women, including through litigation of civil and criminal actions relating to those laws;
 - ((G) maintain a liaison with the judicial branches of Federal, State, and tribal governments on matters relating to violence against Indian women;
 - ((H) support enforcement of tribal protection orders and implementation of full faith and credit educational projects and comity agreements between Indian tribes and States; and





((I) ensure that adequate tribal technical assistance is made available to Indian tribes, tribal courts, tribal organizations, and tribal nonprofit organizations for all programs relating to violence against Indian women.

((c) Authority.--

((1) In general.--The Deputy Director shall ensure that a portion of the tribal set-aside funds from any grant awarded under this Act, the Violence Against Women Act of 1994 (title IV of Public Law 103-322; 108 Stat. 1902), or the Violence Against Women Act of 2000 (division B of Public Law 106-386; 114 Stat. 1491) is used to enhance the capacity of Indian tribes to address the safety of Indian women.

((2) Accountability.--The Deputy Director shall ensure that some portion of the tribal set-aside funds from any grant made under this part is used to hold offenders accountable through--

- ((A) enhancement of the response of Indian tribes to crimes of domestic violence, dating violence, sexual assault, and stalking against Indian women, including legal services for victims and Indian-specific offender programs;
- ((B) development and maintenance of tribal domestic violence shelters or programs for battered Indian women, including sexual assault services, that are based upon the unique circumstances of the Indian women to be served;
- ((C) development of tribal educational awareness programs and materials;
- ((D) support for customary tribal activities to strengthen the intolerance of an Indian tribe to violence against Indian women; and
- ((E) development, implementation, and maintenance of tribal electronic databases for tribal protection order registries."



Lorraine Edmo, first Deputy Director of Tribal Affairs, Office on Violence Against Women, USDOJ and husband Jerry Cordova of Taos Pueblo and daughter Lauren Cordova..



Title IX. Safety for Indian Women, §908 Enhanced Criminal Law Resources.

Section 908(a) expands the *Firearms Possession Prohibition* to include tribal law conviction by amending the federal criminal code to include under the term *misdemeanor crime of domestic violence* any offense that is a misdemeanor under Tribal Law. Section 908(b) amends the *Indian Law Enforcement Reform Act* to provide misdemeanor arrest authority for federal officers and tribal specialized officers with reasonable grounds to believe that the person to be arrested has committed or is committing domestic violence, dating violence, stalking, or violation of a protection order and has as an element of the use or attempted use of physical force, or the threatened use of a deadly weapon.

- (a) Firearms Possession Prohibitions.--Section 921(33)(A)(i) of title 18, United States Code, is amended to read: "(i) is a misdemeanor under Federal, State, or Tribal law; and".
- (b) Law Enforcement Authority.--Section 4(3) of the Indian Law Enforcement Reform Act (25 U.S.C. 2803(3)) is amended--
 - (1) in subparagraph (A), by striking "or";
 - (2) in subparagraph (B), by striking the semicolon and inserting ", or"; and
 - (3) by adding at the end the following:
 - (C) the offense is a misdemeanor crime of domestic violence, dating violence, stalking, or violation of a protection order and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim, and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing the crime;".

Federal jurisdiction is technically available in some districts over spouse abuse, but such prosecutions are rare. The Ninth Circuit Gender Biased Task Force concluded that crimes against women are under-prosecuted in this setting. Jurisdictional inadequacies and complexities must be confronted in any attempt to stop violence against native women.



Note on Implementation: The inclusion of tribal court convictions represents an important step forward in the national effort to increase the safety of Indian women. The training and usage of this important provision in preventing perpetrators of sexual and domestic violence from possessing a firearm is unclear. The United States Attorneys should provide a report at the consultation on the implementation of this provision.



Domestic violence is a pattern of violence that escalates over time in severity and frequency. To prevent future violence and end the pattern perpetrators must be held accountable immediately. To often habitual offenders are not identified.

Title IX. Safety for Indian Women, §909 Domestic Assault by an Habitual Offender

Section 909 amends the federal criminal code to impose enhanced criminal penalties upon repeat offender who: (1) commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country; and (2) has a final conviction on at least two separate prior occasions in federal, state, or tribal court for offenses that would be, if subject to federal jurisdiction, an assault, sexual abuse, or serious violent felony against a spouse or intimate partner, or a domestic violence offense.

Chapter 7 of Title 18, United States Code, is amended by adding at the end the following:

Sec. 117. Domestic assault by an habitual offender

(a) In General.--Any person who commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country and who has a final conviction on at least 2 separate prior occasions in federal, state, or Indian tribal court proceedings for offenses that would be, if subject to federal jurisdiction--

- ``(1) any assault, sexual abuse, or serious violent felony against a spouse or intimate partner; or
- ``(2) an offense under chapter 110A, shall be fined under this title, imprisoned for a term of not more than 5 years, or both, except that if substantial bodily injury results from violation under this section, the offender shall be imprisoned for a term of not more than 10 years.

(b) Domestic Assault Defined.--In this section, the term `domestic assault' means an assault committed by a current or former spouse, parent, child, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child, or guardian of the victim."

Note on Implementation: The enactment of the *Domestic Assault by an Habitual Offender* section represented hope to Indian women repeatedly abused by perpetrators of rape and domestic violence. Domestic violence is a crime that increases in severity and frequency over time. The most effective response to preventing future violence is the immediate and strong response of the local community. Unfortunately, because federal law restricts the sentencing limitation of Indian tribes many perpetrators of sexual and domestic violence crimes are not held accountable. Often times in such cases the level of severity does not rise to the federal standard for prosecution of the case. This new law was intended to address the repeat offender and enhance the penalty for continued criminal behavior. A report on the number of cases prosecuted by the United States Attorneys should be provided during the annual consultation.





Tribal Law and Order Act of 2008 (S. 3320) (HR 6583)

The Department of Justice should support the Tribal Law and Order Act to address the gaps required to enhance the safety of Indian women.

Five hearings conducted by the Senate Committee on Indian Affairs in the 110th Congress have documented a longstanding public safety crisis within many tribal communities. One of the primary causes for violence against Indian women is the divisive system of justice that limits local tribal authority to respond to crime, and vests that authority in the Federal or state government. The strongest response to preventing violence against women is an immediate response from the justice system to hold the perpetrator accountable for the violence.



On November 7, 2007, Chairman and North Dakota Senator Byron Dorgan released a concept paper of proposals to address the problem of violent crime and sexual assault within tribal communities. The paper was widely circulated and received broad support from tribal leadership and communities. This process of consulting with tribal leadership over the last year during NCAI conferences and other meetings has resulted in the introduction of the *Tribal Law and*

Order Act of 2008 (S. 3320) (HR 6583). The legislation seeks to bring greater local control to tribal law enforcement agencies, and would establish accountability measures for federal agencies responsible for providing public safety in Indian country. A summary of key sections in the context of increasing the safety of Indian women is provided below.

Title I. Federal Accountability, §102. Declination Reports - would require justice personnel (law enforcement and US Attorneys) of the Department of Justice to submit declination reports to tribal justice officials to coordinate the prosecution of reservation crimes. The USDOJ would be required to maintain records of such declination and make them available to Congress on an annual basis. Often times when a woman reports a sexual assault months or years may pass without her being informed of the status of the case. Women often fear retaliation by the perpetrator for reporting sexual assault or domestic violence. The lack of notice that the U.S. Attorney has declined to prosecute the case creates barriers to the safety of women. The woman unaware the case was declined by the US Attorney may not take the appropriate steps to protect herself from future violence. Tribal justice personnel uninformed that the U.S. Attorney has declined the case may not take appropriate steps to





charge the perpetrator in tribal court. This Title would also enhance consultation and communication between the Bureau of Indian Affairs Office of Justice Services and tribal communities.

Title II. State Accountability, §201 - would permit Tribes to call on the United States to maintain federal concurrent jurisdiction and assist state governments in the prosecution of major crimes where the states have the authority. In 1953, during the termination era, Congress enacted what is known as PL 280. This Act transferred Federal criminal justice authority to particular state governments. The Department of Interior, as a policy interpretation, denied access to Indian tribes located within those states to Federal funds to develop their respective tribal justice systems. As a result when a woman is raped within an Indian tribe located within a PL 280 state no tribal criminal justice agency may be available to assist her or hold the rapist accountable. As a result an injustice occurs in the life of the woman and the perpetrator is free to continue committing horrific violence against the same or a different woman. Unfortunately, state governments for lack of resources or other issues often do not adequately respond to crimes within tribal communities. This Title would apply to PL 280 or states with concurrent tribal jurisdiction similar to PL 280. This Title would also establish a program to provide technical and financial assistance to encourage tribal-State cooperative law enforcement agreements.

Title III. Empowering Tribal Law Enforcement Agencies and Governments §303. Access to National Criminal Information Databases – For decades Indian tribes have been denied access to life-saving information contained in the national sex offender and order of protection registries. Indian women enter and leave tribal jurisdiction continuously to work, shop, and for many other reasons. A woman's life may depend on her order of protection being granted full faith and credit by another jurisdiction. Currently, many tribal orders of protection and information regarding convicted sex offenders are not listed on the national registries. *Title IX. Safety for Indian Women*, §905(a) mandated that the Attorney General *permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking* to enter and access information from the national databases. §303 strengthens and clarifies this mandate. This Title would also expand on a program that authorizes tribal police to make arrests for all crimes committed on Indian lands.

§304. Tribal Court Sentencing Authority – would increase the sentencing authority of tribal courts to three years for any single offense (up from 1-year under current law). Between 2004 and 2007, the United States declined to prosecute 62% of Indian country criminal cases referred to Federal prosecutors, including 75% of child and adult sex crimes. It is one the greatest barriers to the safety of Indian women that in cases declined by the United States a perpetrator of rape receive a maximum of one year per offense. In every other jurisdiction in the United States rape is considered a felony offense with an average sentence of four years. This provision would also permit Tribes to transfer prisoners to the nearest appropriate federal facility at the expense of the United States. This would allow tribal courts to appropriately sentence perpetrators without the restraint of not having a facility or the budget to contract for bed space for prisoners.

Title IV - would reauthorize and amend existing programs to better serve tribal communities. The programs to be reauthorized include the BIA and DOJ tribal courts programs, the DOJ Jails program, the Tribal Youth program and the Indian Alcohol and Substance Abuse Act. Importantly, this Title would also reauthorize the DOJ Tribal Community Oriented Policing Services program to permit long term, and in some cases, permanent grants for the hiring of tribal police officers, computers and other necessary equipment. All of these programs intersect the response of tribal justice systems to the spectrum of violence committed against Indian women. Adequately funded tribal courts, jails programs for youth and to address substance abuse programs are essential in creating a community response to violence against women. The reduction in the DOJ Tribal Community Oriented Policing Services program jeopardized the lives of many Indian women in that no law enforcement officers existed to receive their emergency calls.



Title V. Indian Country Crime Data - seeks to establish consistent collection of reservation crime data by Federal and tribal law enforcement officers responsible for investigating and enforcing crimes committed in Indian country.

Title VI. Domestic Violence and Sexual Assault Prosecution and Prevention - includes provisions to address the epidemic of domestic violence and sexual assault in Indian country.

§601. Prisoner Release and Reentry - would require the United States to notify tribal justice officials when a sex offender is released from federal custody to Indian country. Currently every state and territory is required to provide notification when a sex offender is released and entering a community. Currently many Indian women receive no notification of the release of their rapist from federal prison. This realization comes only at the moment they see the offender in their grocery store, on their front porch, or when picking up their child at the school gate. It is a horrifying frightening realization. This provision would require the United States to provide notice to tribal jurisdictions. It would also require the U.S. to register the offender with the appropriate law enforcement agency including the tribal registry. This Title also requires law enforcement officers and prosecutors to receive specialized family violence training to enhance the prosecution of crimes of sexual violence in Indian country.

§602. Domestic and Sexual Violence Assault Training – would provide training to *Indian law enforcement agencies to properly interview victims of domestic and sexual violence and to collect, preserve, and present evidence to Federal and tribal prosecutors to increase the conviction rate for domestic and sexual violence offenses for purposes of addressing and preventing domestic and sexual violent offenses.*

§603. Testimony by Federal Employees in Cases of Rape and Sexual Assault – would require the Director of Justice Services and Indian Health Service to *approve or disapprove, in writing, any request or subpoena for a law enforcement officer, sexual assault nurse examiner, or other employee under their supervision to provide testimony in a deposition, trial, or other similar proceeding regarding information obtained in carrying out the official duties of the employee.* The approval would be granted unless the testimony would violate the policy of the Department of Interior to maintain strict impartiality with respect to private causes of action. If the request is not responded to within 30 days of receipt it shall be considered approved. Currently, the successful prosecution of many sexual and domestic violence cases is jeopardized because of the failure to obtain testimony from federal doctors, nurse examiners, and law enforcement officers that handled the case. The primary justifications for federal employees not testifying in such cases are: 1) reassignment to a different reservation or service area; 2) inadequate staffing levels preventing the release of the employee from their duties to testify. These justifications have created an institutionalized barrier to the successful prosecution of cases of rape and domestic violence. The pattern of denial or delay in responding to such requests represents a refusal to cooperate in the prosecution of these violent crimes against women.

§604. Coordination of Federal Agencies – would require the Secretary of Health and Human Services in coordination with the Attorney General, Federal and tribal law enforcement agencies, the Indian Health Service, and domestic violence and sexual assault victim organizations to develop appropriate domestic and sexual assault victim services and advocate training programs to: *1) improve domestic violence and sexual abuse responses; 2) improve forensic examination and collection; 3) identify problems or obstacles in the prosecution of domestic violence or sexual abuse; and 4) meet other needs to carry out other activities required to prevent, treat, and improve prosecutions of domestic violence and sexual abuse.* Two years after enactment a report to Congress would be required that describes: *the improvements made and needed, problems or obstacles identified, and costs necessary to address the problems or obstacles, and any other recommendations.* The lack of coordination of these federal agencies has institutionalized a bureaucratic maze resulting





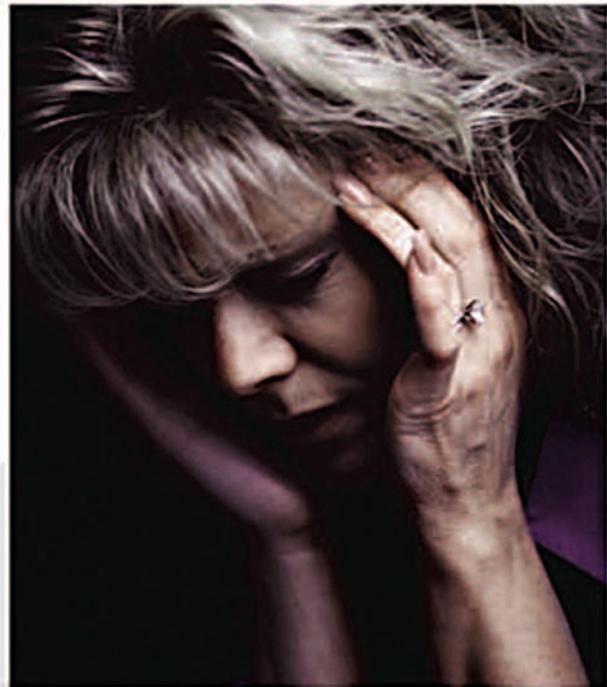
in an ineffective, unresponsive, and confusing federal response to violence against Indian women. The Office on Violence Against Women has required and offered grant programs promoting a strategy of a coordinated community response. In tribal jurisdiction with concurrent federal criminal jurisdiction the FBI and BIA serves as the investigators, the United States Attorneys the prosecutors, and federal courts the judicial system. The concept of a coordinated community response is incomplete without the coordination of these federal agencies. Such coordination must be between federal components and also with tribal justice agencies. The broader national strategy of creating a seamless criminal justice response to violence against women in the United States is difficult if not impossible without such coordination.

§605. Sexual Assault Protocol – would require the Director of Service of Indian Health Service to develop standardized policies and protocols on sexual assault for the facilities. The policies and protocols would be developed in coordination with the Director of the Office on Violence Against Women in consultation with Indian tribes and tribal organizations, and in conference with urban Indian organizations. The policies and protocol would be based on the similar protocol that was established by the Department of Justice. In September 2004 the U.S. Department of Justice Office on Violence Against Women adopted the first *National Protocol for Sexual Assault Medical Forensic Examinations*. In the last 14 years since the implementation of the VAWA it has been established that coordinated community efforts are the best way to stop violence against women and hold offenders accountable for their crimes. Understanding this lesson the Department developed the protocol as a guide for criminal justice and health care practitioners. It provides detailed guidelines for responding to the immediate needs of sexual assault victims. No such protocol has been developed or adopted by the Indian Health Service, which is the primary health care provider for Indian tribes. The lack of such a national protocol for Indian Health Service is a glaring gap in the federal response to sexual assault of Indian women.

This legislation is expected to be reintroduced in the upcoming 111th Congress.

SEPTEMBER 2004

A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents





VAWA 2005, TITLE II. SEXUAL ASSAULT SERVICES PROGRAM

Title II contains the Sexual Assault Services Program (SASP). This Program was authorized to provide assistance to victims of sexual violence. The creation of the SASP was a tremendous step forward in increasing the response to sexual violence. Specifically, SASP provides the first ever dedicated federal funding stream to rape crisis centers, tribes, and state, territorial and tribal sexual assault coalitions. SASP contains specific set-asides for both Indian tribes and also Tribal Sexual Assault Coalitions to address sexual assault of Indian women. The Office on Violence Against Women will administer this Program. Congress appropriated funds in 2007, but, the funds will not be released until FY 2008.

SASP authorizes the Attorney General to award grants that can be used for: general intervention and advocacy (including accompaniment) through medical, criminal justice and social support systems and related assistance; and; training and technical assistance relating to sexual assault for various organizations, including government, law enforcement, courts, nonprofit organizations, faith-based organizations and professionals working in legal services, social services and healthcare.

LESSONS OF THE NCAI TASK FORCE ON VIOLENCE AGAINST WOMEN

The lessons of the NCAI Task Force are numerous and have increased significance to Indian Nations in the world in which we co-exist as sovereigns and indigenous peoples. Since 2003 many lessons exist but the following stand out to guide future organizing efforts to increase the safety of Indian women.

American Indian and Alaska Native: Recognition of the unique distinction and relationship of American Indian tribes and Alaska Native Villages. This emphasis is of critical importance to the defense of sovereignty in the lower forty-eight United States as well as Alaska. The United States has a legal responsibility to all federally recognized Indian Nations.

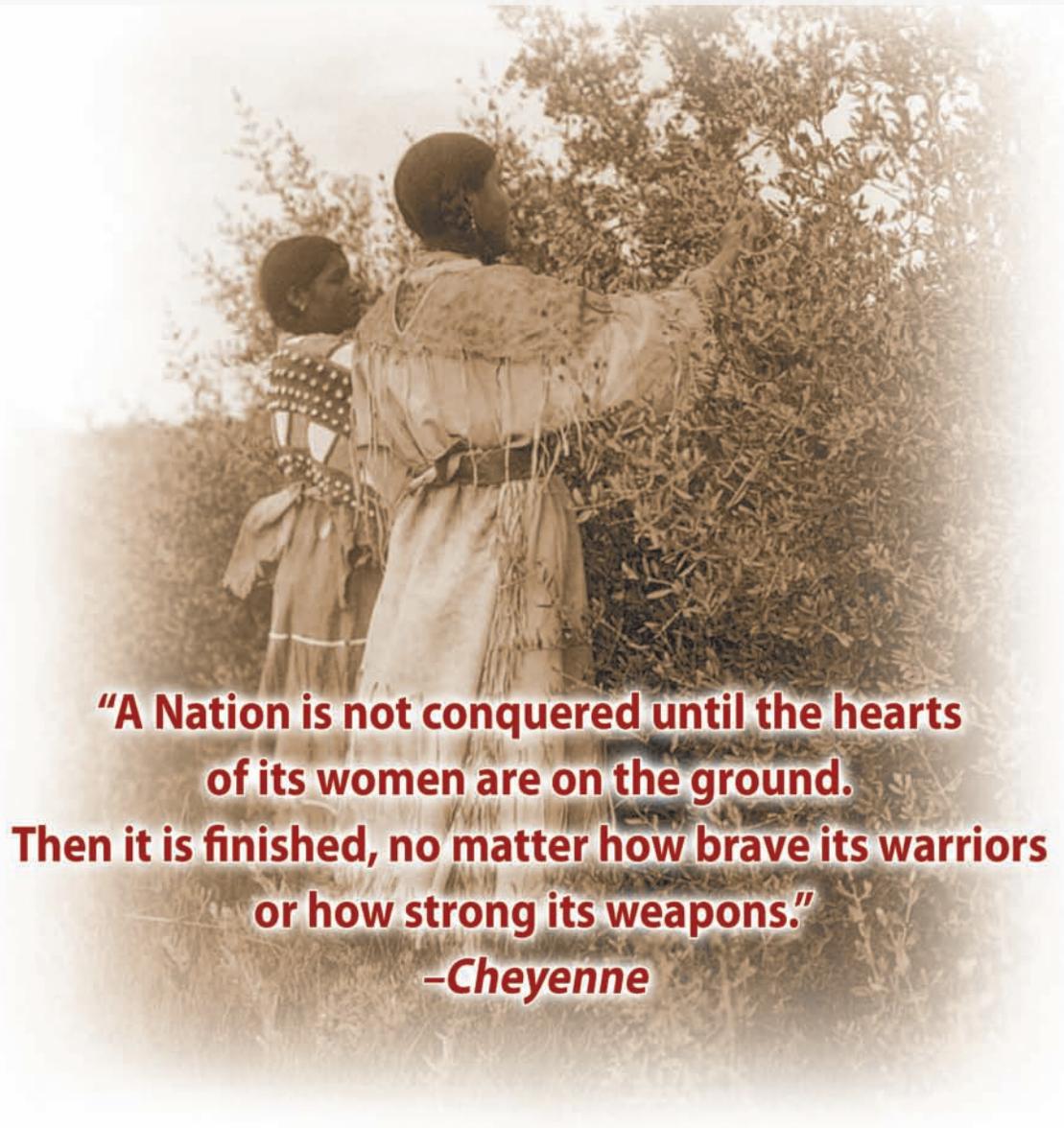
Addressing Public Law 53-280: In 1953, during the termination era, Congress enacted what is known as PL 280. This Act transferred federal criminal justice authority to particular state governments. The Department of Interior, as a policy interpretation, denied access to Indian tribes located within those states to federal funds to develop their respective tribal justice systems. Often when a woman is raped within an Indian tribe located within a PL 280 state no criminal justice agency may be available to assist her. As a result the perpetrator is free to continue committing horrific violence against the same or different woman. Efforts of the Task Force have included addressing safety for women under federal jurisdiction and PL 280 state jurisdiction.

Balancing Western and Indigenous Justice Approaches: The strategic goal of the NCAI Task Force is to increase safety and restore the sacred status of American Indian and Alaska Native women. A dual approach to achieving this goal exists. One approach is to reform the western justice systems response to crimes of violence against Indian women. The other approach is to strengthen the tribal beliefs and practices that operate as protectors of women within tribal communities.

Broad Communication: Since the creation of the NCAI Task Force it has regularly published *Sovereignty & Safety* magazine to inform and share with tribal leadership, advocates, and tribal communities its work. The magazine serves as an information bridge for the thousands of tribal leaders and community members to understand and participate in the movement to increase the safety of Indian women.

Anchorage is ranked No. 1 in the nation per capita on the sexual assault of Alaska Native women. Statistics show that there were 374 cases of reported sexual assaults in the first six months (182+ days) of 2003. Statistics such as these are unavailable for the rural communities in Alaska, however, anecdotal information provided by some of these off road communities indicate that 100% of the women reported, at some point in time, being a victim of domestic or sexual abuse.

The NCAI Task Force represents the maturation of a grassroots movement across American Indian and Alaska Native communities to increase the safety of Native women.



**"A Nation is not conquered until the hearts of its women are on the ground. Then it is finished, no matter how brave its warriors or how strong its weapons."
-Cheyenne**



Rooted in the Plains, the mission of Sacred Circle, National Resource Center To End Violence Against Native Women, a project of Cangleska, Inc., is to change individual and institutional beliefs that justify the oppression of Native women. The work to transform tribal families and communities into a circle of balance and harmony requires individual growth and systematic responsibility.

We are dedicated to actions that promote the sovereignty and safety of women.

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VIOLENCE AGAINST WOMEN IS NOT OUR TRADITION