112TH CONGRESS
1ST SESSION
S. 1763

To decrease the incidence of violent crimes against Indian women, to strengthen the capacity of Indian tribes to exercise the sovereign authority of Indian tribes to respond to violent crimes committed against Indian women, and to ensure that perpetrators of violent crimes committed against Indian women are held accountable for that criminal behavior, and for other purposes.

IN THE SENATE OF THE UNITED STATES
OCTOBER 31, 2011

Mr. AKAKA (for himself, Mr. FRANKEN, Mr. UDALL of New Mexico, Mr. INOUYE, Mr. BEGICH, Mrs. MURRAY, Mr. JOHNSON of South Dakota, Mr. BINGAMAN, Mr. TESTER, and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To decrease the incidence of violent crimes against Indian women, to strengthen the capacity of Indian tribes to exercise the sovereign authority of Indian tribes to respond to violent crimes committed against Indian women, and to ensure that perpetrators of violent crimes committed against Indian women are held accountable for that criminal behavior, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Stand Against Violence and Empower Native Women Act” or the “SAVE Native Women Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—GRANT PROGRAMS

Sec. 101. Grants to Indian tribal governments.
Sec. 102. Tribal coalition grants.
Sec. 103. Consultation.
Sec. 104. Analysis and research on violence against women.
Sec. 105. Definitions.

TITLE II—TRIBAL JURISDICTION AND CRIMINAL OFFENSES

Sec. 201. Tribal jurisdiction over crimes of domestic violence.
Sec. 202. Tribal protection orders.
Sec. 203. Amendments to the Federal assault statute.
Sec. 204. Effective dates; pilot project.
Sec. 205. Other amendments.

TITLE III—INDIAN LAW AND ORDER COMMISSION

Sec. 301. Indian Law and Order Commission.

TITLE I—GRANT PROGRAMS

SEC. 101. GRANTS TO INDIAN TRIBAL GOVERNMENTS.

Section 2015(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–10(a)) is amended—

(1) in paragraph (2), by inserting “sex trafficking,” after “sexual assault,”;

(2) in paragraph (4), by inserting “sex trafficking,” after “sexual assault,”;
(3) in paragraph (5), by inserting “sexual assault, sex trafficking,” after “dating violence,”;

(4) in paragraph (7)—

(A) by inserting “sex trafficking,” after “sexual assault,” each place it appears; and

(B) by striking “and” at the end;

(5) in paragraph (8)—

(A) by inserting “sex trafficking,” after “stalking,”; and

(B) by striking the period at the end and inserting a semicolon; and

(6) by adding at the end the following:

“(9) provide services to address the needs of youth who are victims of domestic violence, dating violence, sexual assault, sex trafficking, or stalking and the needs of children exposed to domestic violence, dating violence, sexual assault, sex trafficking, or stalking, including support for the nonabusing parent or the caretaker of the child; and

“(10) develop and promote legislation and policies that enhance best practices for responding to violent crimes against Indian women, including the crimes of domestic violence, dating violence, sexual assault, sex trafficking, and stalking.”.
SEC. 102. TRIBAL COALITION GRANTS.

Section 2001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is amended by striking subsection (d) and inserting the following:

“(d) TRIBAL COALITION GRANTS.—

“(1) PURPOSE.—The Attorney General shall award a grant to each established tribal coalition for purposes of—

“(A) increasing awareness of domestic violence and sexual assault against Indian women;

“(B) enhancing the response to violence against Indian women at the Federal, State, and tribal levels;

“(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence, including sex trafficking; and

“(D) assisting Indian tribes in developing and promoting legislation and policies that enhance best practices for responding to violent crimes against Indian women, including the crimes of domestic violence, dating violence, sexual assault, sex trafficking, and stalking.
“(2) GRANTS.—

“(A) IN GENERAL.—Subject to subparagraph (B), the Attorney General shall award grants on annual basis under paragraph (1) to—

“(i) each tribal coalition that—

“(I) meets the criteria of a tribal coalition under section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a));

“(II) is recognized by the Office on Violence Against Women; and

“(III) provides services to Indian tribes; and

“(ii) organizations that propose to incorporate and operate a tribal coalition in areas where Indian tribes are located but no tribal coalition exists.

“(B) RESTRICTION.—An organization described in subparagraph (A)(ii) shall use a grant under this subsection to support the planning and development of a tribal coalition, subject to the condition that any amounts provided to the organization under this subsection that remain unobligated on September 30 of each
fiscal year for which amounts are made available under paragraph (3) shall be redistributed in the subsequent fiscal year by the Attorney General to tribal coalitions described in sub-paragraph (A)(i).

“(3) Use of amounts.—For each of fiscal years 2013 through 2017, of the amounts appropriated to carry out this subsection—

“(A) 10 percent shall be made available to organizations described in paragraph (2)(A)(ii); and

“(B) 90 percent shall be made available to tribal coalitions described in paragraph (2)(A)(i), which amounts shall be distributed equally among each eligible tribal coalition for the applicable fiscal year.

“(4) Duration.—A grant under this subsection shall be awarded for a period of 1 year.

“(5) Eligibility for other grants.—Receipt of an award under this subsection by a tribal coalition shall not preclude the tribal coalition from receiving additional grants under this title to carry out the purposes described in paragraph (1).

“(6) Multiple Purpose Applications.—Nothing in this subsection prohibits any tribal coali-
tion or organization described in paragraph (2)(A) from applying for funding to address sexual assault or domestic violence needs in the same application.”.

SEC. 103. CONSULTATION.

Section 903 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 14045d) is amended—

(1) in subsection (a)—

(A) by striking “and the Violence Against Women Act of 2000” and inserting “, the Violence Against Women Act of 2000”; and

(B) by inserting “, and the Stand Against Violence and Empower Native Women Act” before the period at the end;

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking “the Secretary of the Department of Health and Human Services and” and inserting “the Secretary of Health and Human Services, the Secretary of the Interior, and”; and

(B) in paragraph (2), by inserting “sex trafficking,” after “sexual assault,”; and

(3) by adding at the end the following: “(c) NOTICE.—Not later than 120 days before the date of a consultation under subsection (a), the Attorney
General shall notify tribal leaders of the date, time, and location of the consultation.”.

SEC. 104. ANALYSIS AND RESEARCH ON VIOLENCE AGAINST WOMEN.

Section 904(a) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 3796gg–10 note) is amended—

(1) in paragraph (1)—

(A) by striking “The National” and inserting “Not later than 2 years after the date of enactment of the Stand Against Violence and Empower Native Women Act, the National”; and

(B) by inserting “and in Native villages” before the period at the end;

(2) in paragraph (2)(A)—

(A) in clause (iv), by striking “and” at the end;

(B) in clause (v), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(vi) sex trafficking.”;

(3) in paragraph (4), by striking “this Act” and inserting “the Stand Against Violence and Empower Native Women Act”; and
SEC. 105. DEFINITIONS.

Section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)) is amended—

(1) by redesignating paragraphs (18) through (22) and (23) through (37) as paragraphs (19) through (23) and (25) through (39), respectively;

(2) by inserting after paragraph (17) the following:

“(18) NATIVE VILLAGE.—The term ‘Native village’ has the meaning given that term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).”;

(3) in paragraph (22) (as redesignated by paragraph (1))—

(A) in subparagraph (A), by striking “or” at the end;

(B) in subparagraph (B), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:
“(C) an area or community under the jurisdiction of a federally recognized Indian tribe.”;

(4) by inserting after paragraph (23) (as redesignated by paragraph (1)) the following:

“(24) SEX TRAFFICKING.—The term ‘sex trafficking’ means any conduct proscribed by section 1591 of title 18, United States Code, regardless of whether the conduct occurs in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States.”; and

(5) by striking paragraph (31) (as redesignated by paragraph (1)) and inserting the following:

“(31) TRIBAL COALITION.—The term ‘tribal coalition’ means an established nonprofit, nongovernmental Indian organization established to provide services on a statewide, regional, or customary territory basis that—

“(A) provides education, support, and technical assistance to Indian service providers in a manner that enables the providers to establish and maintain culturally appropriate services, including shelter and rape crisis services, designed to assist Indian women and the dependents of those women who are victims of domes-
tic violence, dating violence, sexual assault, and stalking;

“(B) is comprised of board and general members that are representative of—

“(i) the service providers described in subparagraph (A); and

“(ii) the tribal communities in which the services are being provided;

“(C) serves as an information clearing-house and resource center for Indian programs addressing domestic violence and sexual assault;

“(D) supports the development of legislation, policies, protocols, procedures, and guidance to enhance domestic violence and sexual assault intervention and prevention efforts in Indian tribes and communities to be served; and

“(E) has expertise in the development of Indian community-based, linguistically, and culturally specific outreach and intervention services for the Indian communities to be served.”.
TITLE II—TRIBAL JURISDICTION
AND CRIMINAL OFFENSES

SEC. 201. TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC VIOLENCE.

Title II of Public Law 90–284 (25 U.S.C. 1301 et seq.) (commonly known as the “Indian Civil Rights Act of 1968”) is amended by adding at the end the following:

“SEC. 204. TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC VIOLENCE.

“(a) DEFINITIONS.—In this section:

“(1) DATING VIOLENCE.—The term ‘dating violence’ means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

“(2) DOMESTIC VIOLENCE.—The term ‘domestic violence’ means violence committed by a current or former spouse 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, or by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the Indian tribe that has ju-
risdiction over the Indian country where the violence occurs.

“(3) INDIAN COUNTRY.—The term ‘Indian country’ has the meaning given the term in section 1151 of title 18, United States Code.

“(4) PARTICIPATING TRIBE.—The term ‘participating tribe’ means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.

“(5) PROTECTION ORDER.—The term ‘protection order’ means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another proceeding, so long as the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

“(6) SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION.—The term ‘special domestic violence criminal jurisdiction’ means the criminal jurisdiction
that a participating tribe may exercise under this section but could not otherwise exercise.

“(7) Spouse or intimate partner.—The term ‘spouse or intimate partner’ has the meaning given the term in section 2266 of title 18, United States Code.

“(b) Nature of the Criminal Jurisdiction.—

“(1) In general.—Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by this Act, the powers of self-government of a participating tribe include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.

“(2) Concurrent Jurisdiction.—A participating tribe shall exercise special domestic violence criminal jurisdiction concurrently, not exclusively.

“(3) Applicability.—Nothing in this section—

“(A) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or

“(B) affects the authority of the United States, or any State government that has been delegated authority by the United States, to in-
vestigate and prosecute a criminal violation in Indian country.

“(c) CRIMINAL CONDUCT.—A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into 1 or more of the following categories:

“(1) DOMESTIC VIOLENCE AND DATING VIOLENCE.—An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.

“(2) VIOLATIONS OF PROTECTION ORDERS.—An act that—

“(A) occurs in the Indian country of the participating tribe; and

“(B) violates the portion of a protection order that—

“(i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

“(ii)(I) was issued against the defendant;

“(II) is enforceable by the participating tribe; and
“(III) is consistent with section 2265(b) of title 18, United States Code.

“(d) DISMISSAL OF CERTAIN CASES.—

“(1) Definition of victim.—In this subsection and with respect to a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction based on a criminal violation of a protection order, the term ‘victim’ means a person specifically protected by a protection order that the defendant allegedly violated.

“(2) Non-Indian victims and defendants.—In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the case shall be dismissed if—

“(A) the defendant files a pretrial motion to dismiss on the grounds that the alleged offense did not involve an Indian; and

“(B) the participating tribe fails to prove that the defendant or an alleged victim is an Indian.

“(3) Ties to Indian tribe.—In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the case shall be dismissed if—
“(A) the defendant files a pretrial motion to dismiss on the grounds that the defendant and the alleged victim lack sufficient ties to the Indian tribe; and

“(B) the prosecuting tribe fails to prove that the defendant or an alleged victim—

“(i) resides in the Indian country of the participating tribe;

“(ii) is employed in the Indian country of the participating tribe; or

“(iii) is a spouse or intimate partner of a member of the participating tribe.

“(4) Waiver.—A knowing and voluntary failure of a defendant to file a pretrial motion described in paragraph (2) or (3) shall be considered a waiver of the right to seek a dismissal under this subsection.

“(e) Rights of Defendants.—In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant—

“(1) all applicable rights under this Act;

“(2) if a term of imprisonment of any length is imposed, all rights described in section 202(e); and
“(3) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise criminal jurisdiction over the defendant.

“(f) PETITIONS TO STAY DETENTION.—

“(1) IN GENERAL.—A person who has filed a petition for a writ of habeas corpus in a court of the United States under section 203 may petition that court to stay further detention of that person by the participating tribe.

“(2) GRANT OF STAY.—A court shall grant a stay described in paragraph (1) if the court—

“(A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

“(B) after giving each alleged victim in the matter an opportunity to be heard, finds, by clear and convincing evidence that, under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

“(g) GRANTS TO TRIBAL GOVERNMENTS.—The Attorney General may award grants to the governments of
Indian tribes (or to authorized designees of those governments)—

“(1) to strengthen tribal criminal justice systems to assist Indian tribes in exercising special domestic violence criminal jurisdiction, including—

“(A) law enforcement (including the capacity to enter information into and obtain information from national crime information databases);

“(B) prosecution;

“(C) trial and appellate courts;

“(D) probation systems;

“(E) detention and correctional facilities;

“(F) alternative rehabilitation centers;

“(G) culturally appropriate services and assistance for victims and their families; and

“(H) criminal codes and rules of criminal procedure, appellate procedure, and evidence;

“(2) to provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to the defendant, in criminal proceedings in which a participating tribe prosecutes a crime of domestic violence or dating violence or a criminal violation of a protection order;
“(3) to ensure that, in criminal proceedings in which a participating tribe exercises special domestic violence criminal jurisdiction, jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and

“(4) to accord victims of domestic violence, dating violence, and violations of protection orders rights that are similar to the rights of a crime victim described in section 3771(a) of title 18, United States Code, consistent with tribal law and custom.

“(h) SUPPLEMENT, NOT SUPPLANT.—Amounts made available under this section shall supplement and not supplant any other Federal, State, tribal, or local government amounts made available to carry out activities described in this section.

“(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subsection (g) and to provide training, technical assistance, data collection, and evaluation of the criminal justice systems of participating tribes such sums as are necessary.”.

SEC. 202. TRIBAL PROTECTION ORDERS.

Section 2265 of title 18, United States Code, is amended by striking subsection (e) and inserting the following:
“(e) Tribal Court Jurisdiction.—For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, the exclusion of violators from Indian land, and other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.”.

SEC. 203. Amendments to the Federal Assault Statute.

(a) Assaults by Striking, Beating, or Wounding.—Section 113(a)(4) of title 18, United States Code, is amended by striking “six months” and inserting “1 year”.

(b) Assaults Resulting in Substantial Bodily Injury.—Section 113(a)(7) of title 18, United States Code, is amended by striking “substantial bodily injury to an individual who has not attained the age of 16 years” and inserting “substantial bodily injury to a spouse or intimate partner, a dating partner, or an individual who has not attained the age of 16 years”.

(e) Assaults by Strangling or Suffocating.—Section 113(a) of title 18, United States Code, is amended by adding at the end the following:
“(8) Assault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate, by a fine under this title, imprisonment for not more than 10 years, or both.”.

(d) DEFINITIONS.—Section 113(b) of title 18, United States Code, is amended—

(1) by striking “(b) As used in this sub-section—” and inserting the following:

“(b) DEFINITIONS.—In this section—”;

(2) in paragraph (1)(B), by striking “and” at the end;

(3) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

“(3) the terms ‘dating partner’ and ‘spouse or intimate partner’ have the meanings given those terms in section 2266;

“(4) the term ‘strangling’ means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim; and
“(5) the term ‘suffocating’ means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.”.

(c) INDIAN MAJOR CRIMES.—Section 1153(a) of title 18, United States Code, is amended by striking “assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title)” and inserting “a felony assault under section 113”.

SEC. 204. EFFECTIVE DATES; PILOT PROJECT.

(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b), the amendments made by this title shall take effect on the date of enactment of this Act.

(b) EFFECTIVE DATE FOR SPECIAL DOMESTIC-VIOLENCE CRIMINAL JURISDICTION.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsections (b) through (e) of section 204 of Public Law 90–284 (as added by section 201) shall take effect on the date that is 2 years after the date of enactment of this Act.

(2) PILOT PROJECT.—
(A) IN GENERAL.—At any time during the 2-year period beginning on the date of enactment of this Act, an Indian tribe may ask the Attorney General to designate the tribe as a participating tribe under section 204(a) of Public Law 90–284 on an accelerated basis.

(B) PROCEDURE.—The Attorney General (or a designee of the Attorney General) may grant a request under subparagraph (A) after coordinating with the Secretary of the Interior (or a designee of the Secretary), consulting with affected Indian tribes, and concluding that the criminal justice system of the requesting tribe has adequate safeguards in place to protect defendants’ rights, consistent with section 204 of Public Law 90–284.

(C) EFFECTIVE DATES FOR PILOT PROJECTS.—An Indian tribe designated as a participating tribe under this paragraph may commence exercising special domestic violence criminal jurisdiction pursuant to subsections (b) through (e) of section 204 of Public Law 90–284 on a date established by the Attorney General, after consultation with that Indian tribe,
but in no event later than the date that is 2 years after the date of enactment of this Act.

SEC. 205. OTHER AMENDMENTS.

(a) Assaults.—Section 113(a) of title 18, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) Assault with intent to commit murder or a felony under chapter 109A, by a fine under this title, imprisonment for not more than 20 years, or both.”;

(2) in paragraph (3) by striking “and without just cause or excuse,”; and

(3) in paragraph (7), by striking “fine” and inserting “a fine”.

(b) Repeat Offenders.—Section 2265A(b)(1)(B) of title 18, United States Code, is amended by inserting “or tribal” after “State”.

TITLE III—INDIAN LAW AND ORDER COMMISSION

SEC. 301. INDIAN LAW AND ORDER COMMISSION.

Section 15(f) of the Indian Law Enforcement Reform Act (25 U.S.C. 2812(f)) is amended by striking “2 years” and inserting “3 years”.

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