

S. HRG. 112-311

**NATIVE WOMEN: PROTECTING, SHIELDING, AND
SAFEGUARDING OUR SISTERS, MOTHERS, AND
DAUGHTERS**

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JULY 14, 2011

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CONTENTS

	Page
Hearing held on July 14, 2011	1
Statement of Senator Akaka	1
Statement of Senator Barrasso	2
Statement of Senator Franken	4
Statement of Senator Murkowski	4
Statement of Senator Udall	3
Prepared statement	3

WITNESSES

Deer, Sarah, Amnesty International, Assistant Professor, William Mitchell School of Law	68
Prepared statement	70
O’Leary, Carmen, Director, Native Women’s Society of the Great Plains	51
Prepared statement	53
Perrelli, Thomas J., Associate Attorney General, U.S. Department of Justice ..	5
Prepared statement with attachments	7
Peercy, Mickey, Executive Director, Health Services of Choctaw Nation of Oklahoma	63
Prepared statement	65
Rodgers, Hon. Donald W., Chief, Catawba Indian Nation	44
Prepared statement	46
Tibbetts, Sherry Sanchez, Executive Director, American Indian Community Housing Organization	55
Prepared statement	56
Weahkee, Ph.D., Rose, Director, Division of Behavioral Health, Indian Health Service, U.S. Department of Health and Human Services	29
Prepared statement	31

APPENDIX

Cherokee Nation, prepared statement	82
Cultee, Hon. Clifford, Chairman, Lummi Indian Nation, prepared statement ..	84
Francis, Hon. Kirk E., Chief, Penobscot Indian Nation, prepared statement	115
Ingram, Jolanda E., B.A., J.D., Executive Director, Niwongwh xw E:na:wh Stop the Violence Coalition, Inc., prepared statement	115
Koepflinger, Suzanne, Executive Director, Minnesota Indian Women’s Resource Center, prepared statement	122
National Congress of American Indians (NCAI) Task Force on Violence Against Women, prepared statement	98
National Indian Health Board, prepared statement	113
Response to written questions submitted by Hon. Daniel K. Akaka to Carmen O’Leary	124
Response to written questions submitted by Hon. John Barrasso to Rose Weahkee, Ph.D.	124
Shelly, Hon. Ben, President, Navajo Nation, prepared statement	79
Soler, Esta, Founder/President, Futures Without Violence, prepared statement	119
Walker, Jana L., Senior Attorney, Indian Law Resource Center, prepared statement	92

**NATIVE WOMEN: PROTECTING, SHIELDING,
AND SAFEGUARDING OUR SISTERS,
MOTHERS, AND DAUGHTERS**

THURSDAY, JULY 14, 2011

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:37 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. DANIEL K. AKAKA,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. I call this hearing of the Committee on Indian Affairs to Order.

Aloha and thank you for being with us today. Today's hearing is entitled Native Women: Protecting, Shielding, and Safeguarding Our Sisters, Mothers, and Daughters.

The Committee will hear about some very difficult topics, issues that, unfortunately, affect Native women every day in our Country. For Native peoples, women are sacred. They bring life and nurture us. They malama, in Hawaiian, they care for our peoples, and we must malama them.

Many Native peoples mark the important stages of a woman's life with ceremonies and community celebration. Yet, many of the Native women find themselves in unbearable situations that threaten their security, stability, and even their lives.

Two in five Native women will suffer domestic violence and one in three Native women will be sexually assaulted in their lifetime. These statistics, these realities are unacceptable and we must act to change this.

Women are also starting to tell their stories about being victimized by traffickers who prey on them in our urban and reservation communities, coercing them into prostitution. We will look at the Violence Against Women Act and listen to providers, advocates, and tribal leaders to learn what is working and what is not.

Violence against Native women affects each and every one of us.

Before we hear from our witnesses today, I would like to play a short public service announcement from Minnesota entitled, "When I Grow Up," as an example of why we are here today.

[Public service announcement video played.]

"While I'm pregnant, I can keep our baby safe by not drinking, smoking, or using drugs. But how are we going to keep her safe after she's born?"

When I grow up, I look forward to dancing in pow-wows, going to college, and being successful, but I don't want to be one out of three American Indian women to be raped or sexually assaulted in her lifetime.

As relatives and friends of Native women, it is our responsibility to stand up and speak out for every woman's right to be safe in her home and the community.

Sponsored by the Minnesota Indian Women's Sexual Assault Coalition."

[End of public service announcement video.]

The CHAIRMAN. I look forward to hearing from all witnesses as to what next steps we can take to better prosecute and punish the perpetrators. We will be looking for ways to keep women safe, empower them, and help them heal.

Vice Chair Barrasso, my good friend from Wyoming, is my partner on this Committee and I am happy that we are able to work together on this. Vice Chair Barrasso, would you like to make any remarks?

**STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. I certainly would, Mr. Chairman. Thank you very much and thank you for playing that When I Grow Up from Minnesota. I think it is very telling and very chilling, and, as a physician who has worked taking care of families in Wyoming, I know the impact of this sort of violence. So I am so grateful that you have brought in these experts today and that this is our topic.

Many times over the years this Committee has heard of the serious problems of public safety and violence against Native women and children. Congress passed the Tribal Law and Order Act a year ago. Next week will be one year. The Act was intended to address many of these very issues and to also increase accountability of Federal prosecutors and to improve training and coordination between law enforcement agencies, judiciary, and service providers.

We know that the Tribal Law and Order Act will not solve all of the problems, including these problems, of violence against Native women, so I see it as a meaningful step, one meaningful step in the direction of reducing the danger of domestic violence. But we know that violence against Native women affects much more than just the well being of that woman, and I think that very telling tape that we played, When I Grow Up, talks about that, about safety and lack of safety. So it profoundly affects children and too often children witness acts of violence against their mothers, against their sisters, against their brothers, and sometimes, very unfortunately, they are themselves the victims of violence and abuse.

The Congressional Research Service has noted several studies which found that the exposure to violence alone has harmful effects on our children. So exposure to violence impacts a child's emotional and behavioral development, it impacts their cognitive functioning, their initiative, their personality style, their self-esteem and their

self-control, and these problems, in turn, can increase the potential for future acts of risky behavior, of violence or substance abuse.

So I look forward to hearing from the witnesses, from the experts about what is being done and what can be done in our Indian communities, so thank you, Mr. Chairman.

The CHAIRMAN. Thank you for your statement, Vice Chair Barrasso.

Would any of the other members like to make comments? Senator Udall.

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Chairman Akaka.

I think both you and Vice Chairman Barrasso have covered the field here very well in terms of what we are facing. The one thing I would add, as a State attorney general, I used to deal with this issue and I had a statewide task force to deal with violence against women, and the thing that we learned was that it is a cycle within families, and it goes from one generation to the next generation.

And the key is breaking the cycle, and the way to do that involves a number of approaches, but one of the most effective is letting people know that you are going to have law enforcement on the beat. And the disturbing thing about this GAO report and what we are going to hear in this Committee is 50 percent of the cases that are presented to United States attorneys are not prosecuted.

So if you don't have the law enforcement person and the prosecutor on the beat, then you don't have that enforcement element. So we need to find a way where the prosecution moves forward in a very aggressive way on these kinds of cases so that the perpetrators know that if they do something they are going to be prosecuted.

So with that I want to thank you again, both of you, for calling this hearing, and appreciate it very much and yield back, and ask my full statement be put in the record.

[The prepared statement of Senator Udall follows:]

PREPARED STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

Thank you, Chairman Akaka, for holding this very important hearing. The rate of violence against women in Indian Country is abhorrent. This very vulnerable population struggles to survive domestic violence, sexual abuse and assault, and other violent crimes in areas too rural for a quick response and full of jurisdictional holes.

The impact that domestic violence, sexual abuse, and sexual assault have on individuals and communities is severe. Survivors face years of healing overcoming psychological and physical suffering, and communities cannot be whole when many individuals are struggling to cope with trauma from violence.

Addressing violence against women and children should be a priority for tribes, federal agencies and congress. Together we must identify steps to ensure that every native woman and child can live to her full potential free from fear of violence.

I was appalled by the findings of a recent GAO Report that US Attorney Offices have a declination rate of about 50 percent for crimes related to Native Americans, and that most of these crimes are domestic violence and sexual abuse. We must find a way to equip IHS Hospitals, Tribal Law Enforcement, and Federal Law Enforcement with the tools necessary to collect evidence and convict violent offenders.

As congress begins to contemplate reauthorization of the Violence Against Women Act, I hope that we, as a committee, can work with the Judiciary Committee to make sure that provisions specific to the needs of native women are included in the final reauthorization. I look forward to hearing from the panels and am anxious to

hear their input on improving VAWA and federal and tribal judicial responses to violence against native women.

The CHAIRMAN. Thank you very much, Senator Udall.
Senator Franken.

**STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA**

Senator FRANKEN. Thank you, Mr. Chairman, and thank you to the Vice Chairman for his words, and to Senator Udall, both of which I would like very much to associate myself with. Thank you both for organizing this important hearing on how better to prevent abuse against Native women. I am very pleased that we will hear from two witnesses from Minnesota, Sherry Sanchez Tibbetts and Sarah Deer, who are both leaders in the ongoing work to end and prevent domestic violence and sexual assault. I look forward to hearing from you both.

As the Chairman noted, as we heard in that chilling ad, the startling fact is that one in three Indian women will be raped in their lifetime, nearly 40 percent of Indian women experience domestic violence, and about 17 percent are stalked each year. These statistics, along with anecdotal evidence, make it clear that we must break the cycle, as the Senator from New Mexico talked about, the cycle of violence, and better protect Native women.

When the VAWA, the Violence Against Women Act, was most recently reauthorized in 2005, several critical provisions were added to help meet the needs of tribal women, and this was a great start in addressing the unique needs of Native victims of violence. Yesterday the Judiciary Committee held a hearing to highlight the successful efforts of VAWA and we heard from advocates who testified on the many components of VAWA that have helped women in all our communities be safer.

But the hearing also made me more aware that this law must be updated to the current needs of women. It can better protect stalking victims and better help State and local organizations increase capacities for emergency and transitional housing, and I can't tell you how important that is. And VAWA can also better serve Indian women like making sure that no survivor ever has to pay a single dime for a rape kit.

I look forward to hearing from you all on how we can continue successful programs and also improve VAWA to help keep Native women safer.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

Senator Murkowski, from Alaska, would you like to make a statement at this point in time?

**STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Mr. Chairman, I just want to thank you for scheduling the hearing this afternoon, this oversight hearing, as we examine the very difficult statistics that impact American Indian and Alaska Native women. These are statistics that none of us are proud of, and whether it is one in three Native women that will

be raped in their lifetime, or one in four, the fact of the matter is that any act of violence against any woman is simply unacceptable.

We have struggled for so long in our State to try to improve these statistics and I wish that I could tell you that we are making some progress, but I meet with far too many who tell me that there is still so much that is kept in the shadows, still so much that continues, and as it continues we know the destruction that it causes not only to the victim, but to the families, to those in the communities.

Something that I never thought would be a situation in my State is that of a growing level of sex trafficking amongst our young Native women. I am told that they are considered “veratile” because they can be trafficked either as Asian or Hawaiian on the Internet, and we have had some really frightening instances of young women coming into town, coming in from the villages, basically being picked up off the street and lost, gone forever into these sex trafficking rings, and the families never knowing where they are or if they will ever come back.

I have had an opportunity to speak with law enforcement officers in Anchorage, our largest city, to determine, well, how big is this? Is this just one story in the newspaper today? And, unfortunately, it is not, and I think we face these realities with a sense of helplessness at times.

Everything that we can do at the Federal level, at the State level, and at the local level to shine the light on what is going on and to help in any way that we can, we need to do so, so I appreciate your efforts here today in helping to shine that light.

The CHAIRMAN. Thank you very much, Senator Murkowski, for your statement.

As Chairman, it is my goal to ensure that we hear all who want to contribute to the discussion. As I have done in the past, I want to remind you of this and tell you that the hearing record is open for two weeks from today and encourage everyone to submit your comments in written testimony.

I want to remind the witnesses to please limit your oral testimony to 5 minutes. Let me ask the witnesses to please take their seats at the table. Thank you.

Tom Perrelli is the Associate Attorney General at the Department of Justice, and Dr. Rose Weahkee is the Director of Division of Behavioral Health at the Indian Health Service.

I want to welcome both of you and ask Mr. Perrelli to please proceed with your testimony.

STATEMENT OF THOMAS J. PERRELLI, ASSOCIATE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. PERRELLI. Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee, thank you so much for holding this hearing and shining a spotlight on an issue that cannot get enough attention, and for bringing together experts to talk about how best to protect, shield, and safeguard Native women from violent crime, which is a very high priority for the Department of Justice as we work in anticipation of the reauthorization of the Violence Against Women Act this year. The Department has been engaging in com-

prehensive discussions, including formal consultations with Indian tribes, about how best to protect the safety of Native women.

As I think all of the Senators have indicated, violence against Native women has reached epidemic rates, and not simply violence, but we see in some communities murder rates of Native women at 10 times the national average. Tribal leaders, police officers, prosecutors tell us of an all-too familiar pattern of escalating violence that goes unaddressed, one beating after another, each one more severe than the last, ultimately leading to death or severe physical injury.

Something must be done to end this cycle of violence. For a host of reasons, the current legal structure for prosecuting domestic violence in tribal communities is not well suited to combating this pattern of escalating violence. Federal resources are stretched thin and are often distant from where the violence occurs, and tribal governments, police, prosecutors, and courts, which need to be an essential part of the solution, often lack authority to address many of the crimes.

Until this Committee acted last year with the Congress with the Tribal Law and Order Act, tribal courts could only sentence Indian offenders to one year in prison. It was an extraordinary achievement to move that to three years, and we think that that will make a material difference in tribal communities going forward.

But still tribal police officers who respond to a domestic violence call, only to discover that the accused is a non-Indian and, therefore, outside the tribe's criminal jurisdiction, often mistakenly believe that they can't even make an arrest. Not surprisingly, abusers who aren't arrested are more likely to repeat and escalate their attacks, and research shows that the failure to arrest and prosecute abusers only emboldens attackers.

We see three major gaps that Congress could address that involve tribal criminal jurisdiction, tribal civil jurisdiction, and Federal criminal law for Federal prosecutors in Federal court. The first is that the patchwork of Federal, State, and Tribal criminal jurisdiction in Indian Country has made it difficult for law enforcement and prosecutors to adequately address domestic violence, particularly the kinds of misdemeanor domestic violence, such as simple assaults, that may ultimately lead to greater violence.

New Federal legislation could recognize certain tribes' power to exercise concurrent criminal jurisdiction over domestic violence cases, regardless of whether the defendant is Indian or non-Indian. Fundamentally, this builds on the philosophy of the Tribal Law and Order Act, which recognized that tribal nations with sufficient resources and authority will best be able to address violence in their own communities; that law offered more authority to tribal courts and prosecutors if certain procedural protections were established.

Second, there is at least one court ruling out there that has found that tribal courts have no authority to issue or enforce protection orders against non-Indians who reside on tribal lands. We think that is actually contrary to what Congress tried to do in the Violence Against Women Act and we think it is important to clarify that in legislation.

And the third thing is we have to recognize that Federal criminal law has not developed in parallel in this area with respect to the States. The States, in the area of domestic violence in particular, have developed graduated sanctions for particular kinds of conduct, recognizing that you need more severe sanctions as the conduct increases in severity.

Federal law has not matched that over time, so we would propose Federal legislation that would, again, more clearly track what you see in State law, creating a one-year offense for assaulting a person by striking, beating or wounding; a five-year offense for assaulting a spouse, intimate partner, or dating partner, resulting in substantial bodily injury; and a 10-year offense for assaulting a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate.

We think those reforms would significantly improve the safety of women in tribal communities and would allow Federal and tribal law enforcement agencies to hold more perpetrators of domestic violence accountable for their crimes.

I thank the Committee very much for focusing on these issues and look forward to answering your questions.

[The prepared statement of Mr. Perrelli follows:]

PREPARED STATEMENT OF THOMAS J. PERRELLI, ASSOCIATE ATTORNEY GENERAL,
U.S. DEPARTMENT OF JUSTICE

Chairman Akaka, Vice Chairman Barrasso, and members of the Committee:

Thank you for inviting me to testify today regarding how best to protect, shield, and safeguard Native women from violent crime. The Department of Justice has placed a high priority on combating violence against women in tribal communities. In anticipation of this year's reauthorization of the Violence Against Women Act (VAWA), the Department has been engaging in comprehensive discussions, including formal consultations with Indian tribes, about how best to protect the safety of Native women. We are very pleased that you also are focusing on this critically important issue, and we look forward to working with you on it in the coming weeks, months, and years.

The Epidemic of Violence Against Native Women

Violence against Native women has reached epidemic rates. One regional survey conducted by University of Oklahoma researchers showed that nearly three out of five Native American women had been assaulted by their spouses or intimate partners. According to a nationwide survey funded by the National Institute of Justice (NIJ), one third of all American Indian women will be raped during their lifetimes. And an NIJ-funded analysis of death certificates found that, on some reservations, Native women are murdered at a rate more than ten times the national average. Tribal leaders, police officers, and prosecutors tell us of an all-too-familiar pattern of escalating violence that goes unaddressed, with beating after beating, each more severe than the last, ultimately leading to death or severe physical injury.

Something must be done to address this cycle of violence. For a host of reasons, the current legal structure for prosecuting domestic violence in Indian country is not well-suited to combating this pattern of escalating violence. Federal resources, which are often the only ones that can investigate and prosecute these crimes, are often far away and stretched thin. Federal law does not provide the tools needed to address the types of domestic or dating violence that elsewhere in the United States might lead to convictions and sentences ranging from approximately six months to five years—precisely the sorts of prosecutions that respond to the early instances of escalating violence against spouses or intimate partners.

Tribal governments—police, prosecutors, and courts—should be essential parts of the response to these crimes. But under current law, they lack the authority to address many of these crimes. Until recently, no matter how violent the offense, tribal courts could only sentence Indian offenders to one year in prison. Under the Tribal Law and Order Act of 2010 (TLOA), landmark legislation enacted last year in no small part due to the efforts of this Committee, tribal courts can now sentence Indian offenders for up to three years per offense, provided defendants are given prop-

er procedural protections, including legal counsel. But tribal courts have no authority at all to prosecute a non-Indian, even if he lives on the reservation and is married to a tribal member. Tribal police officers who respond to a domestic-violence call, only to discover that the accused is non-Indian and therefore outside the tribe's criminal jurisdiction, often mistakenly believe they cannot even make an arrest. Not surprisingly, abusers who are not arrested are more likely to repeat, and escalate, their attacks. Research shows that law enforcement's failure to arrest and prosecute abusers both emboldens attackers and deters victims from reporting future incidents.

In short, the jurisdictional framework has left many serious acts of domestic violence and dating violence unprosecuted and unpunished.

The Department of Justice's Efforts to Combat This Violence

The Department of Justice has made, and is continuing to make, strong efforts to investigate and prosecute domestic-violence cases in Indian country, including, among other things:

- Deploying 28 new Assistant U.S. Attorneys whose sole mission is to prosecute crime in Indian country.
- Instructing U.S. Attorneys to prioritize the prosecution of crimes against Indian women and children.
- Establishing new domestic-violence training programs for law-enforcement officials and prosecutors alike.
- Creating a Violence Against Women Federal/Tribal Prosecution Task Force to develop "best practices" for both Federal and tribal prosecutors.

But we believe that more needs to be done.

Areas Ripe for Legislative Reform

The Department of Justice sees three major legal gaps that Congress could address, involving tribal criminal jurisdiction, tribal civil jurisdiction, and Federal criminal offenses.

First, the patchwork of Federal, state, and tribal criminal jurisdiction in Indian country has made it difficult for law enforcement and prosecutors to adequately address domestic violence—particularly misdemeanor domestic violence, such as simple assaults and criminal violations of protection orders. New Federal legislation could recognize certain tribes' power to exercise concurrent criminal jurisdiction over domestic-violence cases, regardless of whether the defendant is Indian or non-Indian. Fundamentally, such legislation would build on what this Committee did in the Tribal Law and Order Act. The philosophy behind TLOA was that tribal nations with sufficient resources and authority will be best able to address violence in their own communities; it offered additional authority to tribal courts and prosecutors if certain procedural protections were established.

Second, at least one Federal court has opined that tribes lack civil jurisdiction to issue and enforce protection orders against non-Indians who reside on tribal lands. That ruling undermines the ability of tribal courts to protect victims. Accordingly, new Federal legislation could confirm the intent of Congress in enacting the Violence Against Women Act of 2000 by clarifying that tribal courts have full civil jurisdiction to issue and enforce certain protection orders involving any persons, Indian or non-Indian.

Third, Federal prosecutors lack the necessary tools to combat domestic violence in Indian country. New Federal legislation could provide a one-year offense for assaulting a person by striking, beating, or wounding; a five-year offense for assaulting a spouse, intimate partner, or dating partner, resulting in substantial bodily injury; and a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate.

The Views of Tribal Leaders and Experts

The Department of Justice has consulted extensively with Indian tribes about these issues, including at the Attorney General's listening conference in 2009, the tribal consultations we held on TLOA implementation in 2010, our annual tribal consultations under the Violence Against Women Act, and a series of tribal consultations focused on potential legislative reforms in June of this year. All of these consultations—indeed, all of the Justice Department's work in this area, especially in the wake of the TLOA's enactment last year—have also involved close coordination across Federal agencies, including the Departments of the Interior and of Health and Human Services.

Throughout these consultations, the common thread that ran through nearly all the tribal input focused on the need for greater tribal jurisdiction over domestic-vio-

lence cases. Specifically, tribal leaders expressed concern that the crime-fighting tools currently available to their prosecutors differ vastly, depending on the race of the domestic-violence perpetrator. If an Indian woman is battered by her husband or boyfriend, then the tribe typically can prosecute him if he is Indian. But absent an express Act of Congress, the tribe cannot prosecute a violently abusive husband or boyfriend if he is non-Indian. And recently, one Federal court went so far as to hold that, in some circumstances, a tribal court could not even enter a civil protection order against a non-Indian husband.

Faced with these criminal and civil jurisdictional limitations, tribal leaders repeatedly have told the Department that a tribe's ability to protect a woman from violent crime should not depend on her husband's or boyfriend's race, and that it is immoral for an Indian woman to be left vulnerable to violence and abuse simply because the man she married, the man she lives with, the man who fathered her children is not an Indian.

Tribal Jurisdiction over Crimes of Domestic Violence

The first area for potential Federal legislation involves recognizing certain tribes' concurrent criminal jurisdiction to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses, intimate partners, or dating partners, or who violate protection orders, in Indian country. Such legislation would not remove criminal jurisdiction from any government. Rather, it would recognize that a tribe has concurrent jurisdiction over a tightly defined set of crimes committed in Indian country: domestic violence, dating violence, and violations of enforceable protection orders. To the extent those crimes can be prosecuted today by Federal or State prosecutors, that would not be changed by enactment of new legislation.

Similar to TLOA, such additional authority would only be available to those tribes that guarantee sufficient protections for the rights of defendants. Tribes exercising this statutorily recognized jurisdiction over crimes of domestic violence should be required to protect a robust set of rights, similar to the rights protected in State-court criminal prosecutions. This approach would thus build on the Indian Civil Rights Act of 1968, as amended in 1986 and 1990, and on TLOA. Tribes that choose not to provide these protections would not have this additional authority.

Not surprisingly, expanding tribal criminal jurisdiction to cover more perpetrators of domestic violence would tax the already scarce resources of most tribes that might wish to exercise this jurisdiction. Therefore, new legislation could authorize grants to support these tribes by strengthening their criminal-justice systems, providing indigent criminal defendants with licensed defense counsel at no cost to those defendants, ensuring that jurors are properly summoned, selected, and instructed, and according crime victims' rights to victims of domestic violence.

Tribal Protection Orders

A second major area for new Federal legislation would deal with tribal civil jurisdiction. New legislation could confirm the intent of Congress in enacting the Violence Against Women Act of 2000 by clarifying that every tribe has full civil jurisdiction to issue and enforce certain protection orders against both Indians and non-Indians. That would effectively reverse a 2008 decision from a Federal district court in Washington State, which held that an Indian tribe lacked authority to enter a protection order for a nonmember Indian against a non-Indian residing on non-Indian fee land within the reservation.

Amendments to the Federal Assault Statute

The third and final major area for Congress to consider involves Federal criminal offenses rather than tribal prosecution. In general, Federal criminal law has not developed over time in the same manner as State criminal laws, which have recognized the need for escalating responses to specific acts of domestic and dating violence. By amending the Federal Criminal Code to make it more consistent with State laws in this area where the Federal Government (and not the State) has jurisdiction, Congress would simply be ensuring that perpetrators would be subject to similar potential punishments regardless of where they commit their crimes. Specifically, new legislation could amend the Federal Criminal Code to provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling or suffocating; a five-year offense for assaulting a spouse, intimate partner, or dating partner resulting in substantial bodily injury; and a one-year offense for assaulting a person by striking, beating, or wounding. All of these are in line with the types of sentences that would be available in State courts across the Nation if the crime occurred other than in Indian country.

Existing Federal law provides a six-month misdemeanor assault or assault-and-battery offense that can be charged against a non-Indian (but not against an Indian)

who commits an act of domestic violence against an Indian victim. (A similar crime committed by an Indian would fall within the exclusive jurisdiction of the tribe.) A Federal prosecutor typically can charge a felony offense (against either an Indian or a non-Indian defendant) only if the victim's injuries rise to the level of "serious bodily injury," which is significantly more severe than "substantial bodily injury."

So, in cases involving any of these three types of assaults—(1) assault by strangling or suffocating; (2) assault resulting in substantial (but not serious) bodily injury; and (3) assault by striking, beating, or wounding—Federal prosecutors today often find that they cannot seek sentences in excess of six months. And where both the defendant and the victim are Indian, Federal courts may lack jurisdiction altogether.

New legislation could increase the maximum sentence from six months to one year for an assault by striking, beating, or wounding, committed by a non-Indian against an Indian in Indian country. (Similar assaults by Indians, committed in Indian country, would remain within the tribe's exclusive jurisdiction.) Although the Federal offense would remain a misdemeanor, increasing the maximum sentence to one year would reflect the fact that this is a serious offense that often forms the first or second rung on a ladder to more severe acts of domestic violence.

Assaults resulting in substantial bodily injury sometimes form the next several rungs on the ladder of escalating domestic violence, but they too are inadequately covered today by the Federal Criminal Code. New legislation could fill this gap by amending the Code to provide a five-year offense for assault resulting in substantial bodily injury to a spouse, intimate partner, or dating partner.

And new legislation also could amend the Code to provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate. Strangling and suffocating—conduct that is not uncommon in intimate-partner cases—carry a high risk of death. But the severity of these offenses is frequently overlooked because there may be no visible external injuries on the victim. As with assaults resulting in substantial bodily injury, Federal prosecutors need the tools to deal with these crimes as felonies, with sentences potentially far exceeding the six-month maximum that often applies today.

Finally, the Major Crimes Act, which Federal prosecutors use to prosecute Indians for major crimes committed against Indian and non-Indian victims, could be simplified to cover all felony assaults under section 113 of the Federal Criminal Code. That would include the two new felony offenses discussed above—assaults resulting in substantial bodily injury to a spouse, intimate partner, or dating partner; and assaults upon a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate—as well as assault with intent to commit a felony other than murder (which is punishable by a maximum ten-year sentence). Without this amendment to the Major Crimes Act, Federal prosecutors could not charge any of these three felonies when the perpetrator is an Indian. Assault by striking, beating, or wounding would remain a misdemeanor and would not be covered by the Major Crimes Act.

We believe that enacting reforms along these lines—dealing with tribal jurisdiction over crimes of domestic violence, tribal protection orders, and amendments to the Federal assault statute—would significantly improve the safety of women in tribal communities and allow Federal and tribal law-enforcement agencies to hold more perpetrators of domestic violence accountable for their crimes.

I thank the Committee for its interest in these critically important issues and for its support.

Attachments



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Joseph R. Biden, Jr.
President
United States Senate
Washington, D.C. 20510

July 21, 2011

Dear Mr. President:

In anticipation of this year's reauthorization of the Violence Against Women Act (VAWA), the Department of Justice has been engaging in comprehensive discussions, including formal consultations with Indian tribes, about how best to protect the safety of Native women. As you know, the Department has placed a high priority on combating violence against women in tribal communities. We now believe that this goal could be significantly advanced by new Federal legislation.

Violence against Native women has reached epidemic rates. One regional survey conducted by University of Oklahoma researchers showed that nearly three out of five Native American women had been assaulted by their spouses or intimate partners. According to a nationwide survey funded by the National Institute of Justice (NIJ), one third of all American Indian women will be raped during their lifetimes. And an NIJ-funded analysis of death certificates found that, on some reservations, Native women are murdered at a rate more than ten times the national average. Tribal leaders, police officers, and prosecutors tell us of an all-too-familiar pattern of escalating violence that goes unaddressed, with beating after beating, each more severe than the last, ultimately leading to death or severe physical injury.

Something must be done to address this cycle of violence. For a host of reasons, the current legal structure for prosecuting domestic violence in Indian country is not well-suited to combating this pattern of escalating violence. Federal resources, which are often the only ones that can investigate and prosecute these crimes, are often far away and stretched thin. Federal law does not provide the tools needed to address the types of domestic or dating violence that elsewhere in the United States might lead to convictions and sentences ranging from approximately six months to five years — precisely the sorts of prosecutions that respond to the early instances of escalating violence against spouses or intimate partners.

Tribal governments — police, prosecutors, and courts — should be essential parts of the response to these crimes. But under current law, they lack the authority to address many of these crimes. Until recently, no matter how violent the offense, tribal courts could only sentence Indian offenders to one year in prison. Under the Tribal Law and Order Act (TLOA), landmark legislation that Congress enacted last year, tribal courts can now sentence Indian offenders for up to three years per offense, provided defendants are given proper procedural protections, including legal counsel. But tribal courts have no authority at all to prosecute a non-Indian, even if he lives on the reservation and is married to a tribal member. Tribal police officers who respond to a domestic-violence call, only to discover that the accused is non-Indian and therefore

outside the tribe's criminal jurisdiction, often mistakenly believe they cannot even make an arrest. Not surprisingly, abusers who are not arrested are more likely to repeat, and escalate, their attacks. Research shows that law enforcement's failure to arrest and prosecute abusers both emboldens attackers and deters victims from reporting future incidents.

In short, the jurisdictional framework has left many serious acts of domestic violence and dating violence unprosecuted and unpunished.

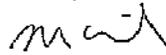
The Department of Justice is therefore asking Congress to consider proposals to address the epidemic of domestic violence against Native women. Draft legislative language and an explanatory document are attached to this letter. The legislation we propose would:

- Recognize certain tribes' concurrent criminal jurisdiction to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses, intimate partners, or dating partners, or who violate protection orders, in Indian country.
- Clarify that tribal courts have full civil jurisdiction to issue and enforce certain protection orders against both Indians and non-Indians.
- Amend the Federal Criminal Code to provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling or suffocating; a five-year offense for assaulting a spouse, intimate partner, or dating partner resulting in substantial bodily injury; and a one-year offense for assaulting a person by striking, beating, or wounding.

We believe that these changes in Federal law will significantly improve the safety of women in tribal communities and allow Federal and tribal law-enforcement agencies to hold more perpetrators of domestic violence accountable for their crimes. We look forward to working with you on these critically important issues.

Thank you for the opportunity to present these proposals. The Office of Management and Budget has advised us that there is no objection to submission of this legislative proposal from the standpoint of the Administration's program.

Sincerely,



Ronald Weich
Assistant Attorney General

IDENTICAL LETTER SENT TO THE HONORABLE JOHN A. BOEHNER, SPEAKER
OF THE U.S. HOUSE OF REPRESENTATIVES

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

6
 7

8 *Be it enacted by the Senate and House of Representatives of the United States of*
 9 *America in Congress assembled,*

10 SECTION 1. TABLE OF CONTENTS.

11 The table of contents for this new title of the Violence Against Women Act of 2011 is
 12 as follows:

- 13 Sec. 1. Table of contents.
- 14 Sec. 2. Tribal jurisdiction over crimes of domestic violence.
- 15 Sec. 3. Tribal protection orders.
- 16 Sec. 4. Amendments to the Federal assault statute.
- 17 Sec. 5. Effective dates; pilot project.
- 18 Sec. 6. Severability.
- 19 Sec. 7. Technical amendments.

20 SEC. 2. TRIBAL JURISDICTION OVER CRIMES OF 21 DOMESTIC VIOLENCE.

22 Subchapter I of chapter 15 of title 25, United States Code (25 U.S.C. 1301 et seq.), is
 23 amended by adding at the end the following new section:

24 "SEC. 1304. TRIBAL JURISDICTION OVER CRIMES OF 25 DOMESTIC VIOLENCE.

26 "(a) DEFINITIONS.—In this section, the term—

27 "(1) 'dating violence' means violence committed by a person who is or has been in
 28 a social relationship of a romantic or intimate nature with the victim, as determined
 29 by the length of the relationship, the type of relationship, and the frequency of
 30 interaction between the persons involved in the relationship;

31 "(2) 'domestic violence' means violence committed by a current or former spouse
 32 of the victim, by a person with whom the victim shares a child in common, by a
 33 person who is cohabitating with or has cohabitated with the victim as a spouse, or by
 34 a person similarly situated to a spouse of the victim under the domestic- or family-
 35 violence laws of an Indian tribe that has jurisdiction where the violence occurs;

- 1 “(3) ‘Indian Civil Rights Act’ means sections 1301 to 1303, as amended;
- 2 “(4) ‘Indian country’ has the meaning given that term in section 1151 of title 18,
3 United States Code;
- 4 “(5) ‘participating tribe’ means an Indian tribe that elects to exercise special
5 domestic-violence criminal jurisdiction over the Indian country of such tribe;
- 6 “(6) ‘protection order’ means any injunction, restraining order, or other order
7 issued by a civil or criminal court for the purpose of preventing violent or threatening
8 acts or harassment against, sexual violence against, contact or communication with,
9 or physical proximity to, another person, including any temporary or final order
10 issued by a civil or criminal court whether obtained by filing an independent action
11 or as a pendente lite order in another proceeding so long as any civil or criminal
12 order was issued in response to a complaint, petition, or motion filed by or on behalf
13 of a person seeking protection;
- 14 “(7) ‘special domestic-violence criminal jurisdiction’ means the criminal
15 jurisdiction that a participating tribe can exercise pursuant to this section but could
16 not otherwise exercise; and
- 17 “(8) ‘spouse or intimate partner’ has the meaning given that term in section
18 2266(7) of title 18, United States Code.
- 19 “(b) NATURE OF THE CRIMINAL JURISDICTION.—
- 20 “(1) Notwithstanding any other provision of law, in addition to all powers of self-
21 government recognized and affirmed by the Indian Civil Rights Act, the powers of
22 self-government of participating tribes include the inherent power of those tribes,
23 hereby recognized and affirmed, to exercise special domestic-violence criminal
24 jurisdiction over all persons, subject to the limitations set forth in this subchapter.
- 25 “(2) A participating tribe shall exercise special domestic-violence criminal
26 jurisdiction concurrently, not exclusively.
- 27 “(3) Nothing in this section creates or eliminates any Federal or State criminal
28 jurisdiction or affects the authority of the United States, or any State government that
29 has been delegated authority by the United States, to investigate and prosecute any
30 criminal violation in Indian country.
- 31 “(c) CRIMINAL CONDUCT.—A participating tribe may exercise special domestic-
32 violence criminal jurisdiction over a defendant only for criminal conduct that falls into
33 one or both of the following categories:
- 34 “(1) DOMESTIC VIOLENCE AND DATING VIOLENCE.—Any act of domestic violence
35 or dating violence that is occurring or has occurred in the Indian country of the
36 participating tribe.
- 37 “(2) VIOLATIONS OF PROTECTION ORDERS.—Any act that is occurring or has
38 occurred in the Indian country of the participating tribe and that violates or violated
39 the relevant portion of a protection order that was issued against the defendant, is

1 enforceable by the participating tribe, and is consistent with section 2265(b) of title
 2 18, United States Code. In this paragraph, the term 'relevant portion of a protection
 3 order' means the portion of such order that prohibits or provides protection against
 4 violent or threatening acts or harassment against, sexual violence against, contact or
 5 communication with, or physical proximity to, another person.

6 "(d) DISMISSAL OF CERTAIN CASES.—

7 "(1) In a criminal proceeding in which a participating tribe exercises special
 8 domestic-violence criminal jurisdiction, if the defendant files a pretrial motion to
 9 dismiss on the ground that the crime did not involve any Indian, the case shall be
 10 dismissed if the prosecuting tribe fails to prove that the defendant or an alleged
 11 victim, or both, is an Indian.

12 "(2) In a criminal proceeding in which a participating tribe exercises special
 13 domestic-violence criminal jurisdiction, if the defendant files a pretrial motion to
 14 dismiss on the ground that the defendant and the alleged victim lack sufficient ties to
 15 the tribe, the case shall be dismissed if the prosecuting tribe fails to prove that the
 16 defendant or an alleged victim, or both, resides in the Indian country of the
 17 prosecuting tribe, is employed in the Indian country of the prosecuting tribe, or is a
 18 spouse or intimate partner of a member of the prosecuting tribe.

19 "(3) A knowing and voluntary failure to file a pretrial motion under paragraph (1)
 20 or paragraph (2) shall be deemed a waiver.

21 "(4) In any criminal proceeding in which a participating tribe exercises special
 22 domestic-violence criminal jurisdiction based on a criminal violation of a protection
 23 order, the 'victim' shall be deemed to be the person or persons specifically protected
 24 by the provision of the order that the defendant allegedly violated.

25 "(e) RIGHTS OF DEFENDANTS.—In a criminal proceeding in which a participating tribe
 26 exercises special domestic-violence criminal jurisdiction, the tribe shall provide to the
 27 defendant—

28 "(1) all rights protected by the Indian Civil Rights Act;

29 "(2) if a term of imprisonment of any length is imposed, all rights described in
 30 paragraphs (1) through (5) of section 1302(c); and

31 "(3) all other rights whose protection would be required by the United States
 32 Constitution in order to allow the participating tribe to exercise criminal jurisdiction
 33 over the defendant.

34 "(f) PETITIONS TO STAY DETENTION.—Any person who has filed a petition for a writ of
 35 habeas corpus in a court of the United States under section 1303 may petition that court
 36 to stay further execution of his tribal detention. The court shall grant the stay if it finds
 37 that there is a substantial likelihood that the habeas corpus petition will be granted and,
 38 after giving the alleged victim or victims of the petitioner an opportunity to be heard, also
 39 finds by clear and convincing evidence that, under conditions imposed by the court, the
 40 petitioner is not likely to flee or pose a danger to any person or to the community if

1 released.

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

4 “(1) strengthen tribal criminal-justice systems, including law enforcement
5 (including the capacity to enter information into and obtain information from
6 national crime information databases), prosecution, trial and appellate courts,
7 probation, detention and correctional facilities, alternative rehabilitation centers,
8 culturally appropriate services and assistance for victims and their families, criminal
9 codes, and rules of criminal procedure, appellate procedure, and evidence, to assist
10 tribes in exercising special domestic-violence criminal jurisdiction;

11 “(2) provide indigent criminal defendants with the effective assistance of licensed
12 defense counsel, at no cost to those defendants, in criminal proceedings in which a
13 tribe is prosecuting a crime of domestic or dating violence or a criminal violation of a
14 protection order;

15 “(3) ensure that, in criminal proceedings in which a participating tribe exercises
16 special domestic-violence criminal jurisdiction, jurors are summoned, selected, and
17 instructed in a manner consistent with all legal requirements; and

18 “(4) accord victims of domestic violence, dating violence, and protection-order
19 violations a set of crime victims’ rights similar to those described in section 3771(a)
20 of title 18, United States Code, consistent with tribal law and custom.

21 “(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated
22 such sums as may be necessary for the grants described in subsection (g) and to provide
23 training, technical assistance, data collection, and evaluation to improve the criminal-
24 justice systems of participating tribes.

25 “(i) NONSUPPLANTATION.—Amounts made available under this subchapter shall be
26 used to supplement and not supplant other Federal, State, tribal, and local funds expended
27 to further the purposes of this subchapter.”

28 SEC. 3. TRIBAL PROTECTION ORDERS.

29 Section 2265 of title 18, United States Code, is amended by striking subsection (e) and
30 inserting the following:

31 “(e) For purposes of this section, a court of an Indian tribe shall have full civil
32 jurisdiction to issue and enforce protection orders involving any persons, including
33 authority to enforce any orders through civil contempt proceedings, exclusion of violators
34 from Indian lands, and other appropriate mechanisms, in matters arising anywhere in the
35 Indian country of the Indian tribe (as defined in section 1151 of title 18) or otherwise
36 within the authority of the Indian tribe.”

37 SEC. 4. AMENDMENTS TO THE FEDERAL ASSAULT 38 STATUTE.

- 1 (a) ASSAULTS BY STRIKING, BEATING, OR WOUNDING.—Section 113(a)(4) of title 18,
2 United States Code, is amended by striking “six months” and inserting “1 year”.
- 3 (b) ASSAULTS RESULTING IN SUBSTANTIAL BODILY INJURY.—Section 113(a)(7) of title
4 18, United States Code, is amended by striking “substantial bodily injury to an
5 individual who has not attained the age of 16 years” and inserting “substantial
6 bodily injury to a spouse or intimate partner, a dating partner, or an individual who
7 has not attained the age of 16 years”.
- 8 (c) ASSAULTS BY STRANGLING OR SUFFOCATING.—Section 113(a) of title 18, United
9 States Code, is amended by adding at the end the following new paragraph:
10 “(8) Assault upon a spouse or intimate partner or dating partner by strangling,
11 suffocating, or attempting to strangle or suffocate, by a fine under this title or
12 imprisonment for not more than ten years, or both.”
- 13 (d) DEFINITIONS.—Section 113(b) of title 18, United States Code, is amended—
14 (1) by striking “As used in this subsection” and inserting “As used in this section”;
15 (2) in paragraph (1), by striking “and”;
16 (3) in paragraph (2), by striking the period and inserting a semicolon;
17 (4) by adding at the end the following new paragraphs:
18 “(3) the term ‘dating partner’ has the meaning given that term in section 2266(10);
19 “(4) the term ‘spouse or intimate partner’ has the meaning given that term in
20 section 2266(7);
21 “(5) the term ‘strangling’ means intentionally, knowingly, or recklessly impeding
22 the normal breathing or circulation of the blood of a person by applying pressure to
23 the throat or neck, regardless of whether such conduct results in any visible injury
24 and regardless of whether there is any intent to kill or protractedly injure the victim;
25 and
26 “(6) the term ‘suffocating’ means intentionally, knowingly, or recklessly impeding
27 the normal breathing of a person by covering the mouth of the person, the nose of the
28 person, or both, regardless of whether such conduct results in any visible injury and
29 regardless of whether there is any intent to kill or protractedly injure the victim.”.
- 30 (e) INDIAN MAJOR CRIMES.—Section 1153(a) of title 18, United States Code, is
31 amended by striking “assault with intent to commit murder, assault with a
32 dangerous weapon, assault resulting in serious bodily injury (as defined in section
33 1365 of this title)” and inserting “a felony assault under section 113”.

34 SEC. 5. EFFECTIVE DATES; PILOT PROJECT.

- 35 (a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b), this new title
36 shall take effect on the date of enactment of this Act.
- 37 (b) EFFECTIVE DATE FOR SPECIAL DOMESTIC-VIOLENCE CRIMINAL JURISDICTION.—
38 (1) IN GENERAL.—Except as provided in paragraph (2), subsections (b), (c), (d), and
39 (c) of section 1304 of title 25, United States Code, as added by section 2 of this
40 new title, shall take effect on the date 2 years after the date of enactment of this

1 Act.

2 (2) PILOT PROJECT.—

3 (A) IN GENERAL.—At any time within 2 years after the date of enactment of
4 this Act, an Indian tribe may ask the Attorney General to designate the tribe as a
5 participating tribe on an accelerated basis. The Attorney General (or his
6 designee) may grant such a request after coordinating with the Secretary of the
7 Interior (or his designee), consulting with Indian tribes, and concluding that the
8 criminal-justice system of the requesting tribe has adequate safeguards in place
9 to protect defendants' rights, consistent with section 1304(e) of title 25, United
10 States Code, as added by section 2 of this new title.

11 (B) EFFECTIVE DATES FOR PILOT-PROJECT TRIBES.—An Indian tribe whose
12 request is granted may commence exercising special domestic-violence criminal
13 jurisdiction pursuant to subsections (b), (c), (d), and (e) of section 1304 of title
14 25, United States Code, as added by section 2 of this new title, on a date
15 established by the Attorney General, after consultation with such tribe, but in no
16 event later than the date 2 years after the date of enactment of this Act. The
17 tribe may continue exercising such jurisdiction thereafter.

18 **SEC. 6. SEVERABILITY.**

19 If any provision of this Act, an amendment made by this Act, or the application of such
20 a provision or amendment to any individual, entity, or circumstance, is determined by a
21 court of competent jurisdiction to be invalid, the remaining provisions of this Act, the
22 remaining amendments made by this Act, and the application of those provisions and
23 amendments to individuals, entities, or circumstances other than the affected individual,
24 entity, or circumstance shall not be affected.

25 **SEC. 7. TECHNICAL AMENDMENTS.**

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

27 (1) in paragraph (1), by striking "Assault with intent to commit murder, by
28 imprisonment for not more than twenty years" and inserting "Assault with intent to
29 commit murder or a felony under chapter 109A, by a fine under this title or
30 imprisonment for not more than twenty years, or both";

31 (2) in paragraph (3), by striking "and without just cause or excuse" and by striking
32 the comma immediately following those words; and

33 (3) in paragraph (7), by striking "fine" and inserting "a fine".

34 (b) REPEAT OFFENDERS.—Section 2265A(b)(1)(B) of title 18, United States Code, is
35 amended by inserting "or tribal" after "State".

**Questions and Answers on
Proposed Federal Legislation to Help Tribal Communities
Combat Violence Against Native Women**

The Department of Justice is proposing new Federal legislation to better protect women in tribal communities from violent crime. The following Questions and Answers explain the proposed legislation's overall purposes and its substantive provisions, section by section.

OVERVIEW

What are the key gaps in current law that the proposed legislation would fill?

The Department of Justice sees three major legal gaps that Congress could address, involving tribal criminal jurisdiction, tribal civil jurisdiction, and Federal criminal offenses.

First, the patchwork of Federal, state, and tribal criminal jurisdiction in Indian country has made it difficult for law enforcement and prosecutors to adequately address domestic violence — particularly misdemeanor domestic violence, such as simple assaults and criminal violations of protection orders. The Department therefore is proposing Federal legislation recognizing certain tribes' power to exercise concurrent criminal jurisdiction over domestic-violence cases, regardless of whether the defendant is Indian or non-Indian. Fundamentally, such legislation would build on the Tribal Law and Order Act of 2010 (TLOA). The philosophy behind TLOA was that tribal nations with sufficient resources and authority will be best able to address violence in their own communities; it offered additional authority to tribal courts and prosecutors if certain procedural protections were established.

Second, at least one Federal court has opined that tribes lack civil jurisdiction to issue and enforce protection orders against non-Indians who reside on tribal lands. That ruling undermines the ability of tribal courts to protect victims. Accordingly, the Department is proposing Federal legislation to confirm the intent of Congress in enacting the Violence Against Women Act of 2000 by clarifying that tribal courts have full civil jurisdiction to issue and enforce certain protection orders involving any persons, Indian or non-Indian.

Third, Federal prosecutors lack the necessary tools to combat domestic violence in Indian country. So the Department is proposing Federal legislation to provide a one-year offense for assaulting a person by striking, beating, or wounding; a five-year offense for

assaulting a spouse, intimate partner, or dating partner, resulting in substantial bodily injury; and a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate.

How significant a problem is domestic violence in tribal communities?

Violence against Native women has reached epidemic rates. One regional survey conducted by University of Oklahoma researchers showed that nearly three out of five Native American women had been assaulted by their spouses or intimate partners. According to a nationwide survey funded by the National Institute of Justice (NIJ), one third of all American Indian women will be raped during their lifetimes. And an NIJ-funded analysis of death certificates found that, on some reservations, Native women are murdered at a rate more than ten times the national average. Tribal leaders, police officers, and prosecutors tell us of an all-too-familiar pattern of escalating violence that goes unaddressed, with beating after beating, each more severe than the last, ultimately leading to death or severe physical injury.

Something must be done to address this cycle of violence. For a host of reasons, the current legal structure for prosecuting domestic violence in Indian country is not well-suited to combating this pattern of escalating violence. Federal resources, which are often the only ones that can investigate and prosecute these crimes, are often far away and stretched thin. Federal law does not provide the tools needed to address the types of domestic or dating violence that elsewhere in the United States might lead to convictions and sentences ranging from approximately six months to five years — precisely the sorts of prosecutions that respond to the early instances of escalating violence against spouses or intimate partners.

Tribal governments — police, prosecutors, and courts — should be essential parts of the response to these crimes. But under current law, they lack the authority to address many of these crimes. Until recently, no matter how violent the offense, tribal courts could only sentence Indian offenders to one year in prison. Under the Tribal Law and Order Act (TLOA), landmark legislation that Congress enacted last year, tribal courts can now sentence Indian offenders for up to three years per offense, provided defendants are given proper procedural protections, including legal counsel. But tribal courts have no authority at all to prosecute a non-Indian, even if he lives on the reservation and is married to a tribal member. Tribal police officers who respond to a domestic-violence call, only to discover that the accused is non-Indian and therefore outside the tribe's criminal jurisdiction, often mistakenly believe they cannot even make an arrest. Not surprisingly, abusers who are not arrested are more likely to repeat, and escalate, their attacks. Research shows that law enforcement's failure to arrest and prosecute abusers both emboldens attackers and deters victims from reporting future incidents.

In short, the jurisdictional framework has left many serious acts of domestic violence and dating violence unprosecuted and unpunished.

Has the Department of Justice consulted with Indian tribes about this proposal?

Yes. Consistent with Executive Order 13175 and President Obama's November 5, 2009 Memorandum on tribal consultation, the Department of Justice has been consulting with tribal leaders about public safety generally and about violence against women specifically. We have discussed these issues at many sessions, including the Attorney General's listening conference in 2009, the tribal consultations that we held on Tribal Law and Order Act implementation in 2010, and our annual tribal consultations under the Violence Against Women Act in Prior Lake in 2006, in Albuquerque in 2007, in Palm Springs in 2008, in St. Paul in 2009, and in Spokane last October.

Moreover, the Department held tribal consultations focused on this legislative proposal in Milwaukee on June 14, 2011, and by conference calls with tribal leaders on June 16 and 17, 2011. The Department also received extensive written comments on the proposal from tribal leaders and domestic-violence experts throughout the country.

All of these consultations — indeed, all of the Justice Department's work in this area, especially in the wake of the TLOA's enactment last year — has also involved close coordination across Federal agencies, including the Departments of the Interior and of Health and Human Services.

What were the main points that tribal leaders made during these consultations?

The common thread that ran through nearly all the tribal input focused on the need for greater tribal jurisdiction over domestic-violence cases — very much along the lines of what the Department of Justice is proposing here.

Specifically, tribal leaders expressed concern that the crime-fighting tools currently available to their prosecutors differ vastly, depending on the race of the domestic-violence perpetrator. If an Indian woman is battered by her husband or boyfriend, then the tribe typically can prosecute him if he is Indian. But absent an express Act of Congress, the tribe cannot prosecute a violently abusive husband or boyfriend if he is non-Indian. And recently, one Federal court went so far as to hold that, in some circumstances, a tribal court could not even enter a civil protection order against a non-Indian husband.

Faced with these criminal and civil jurisdictional limitations, tribal leaders repeatedly have told the Department that a tribe's ability to protect a woman from violent crime should not depend on her husband's or boyfriend's race, and that it is immoral for an

Indian woman to be left vulnerable to violence and abuse simply because the man she married, the man she lives with, the man who fathered her children is not an Indian.

TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC VIOLENCE (SECTION 2)

What would section 2 of the proposed legislation — on “Tribal Jurisdiction over Crimes of Domestic Violence” — accomplish?

Section 2 would recognize certain tribes’ concurrent criminal jurisdiction to investigate, prosecute, convict, and sentence persons who assault Indian spouses, intimate partners, or dating partners, or who violate protection orders, in Indian country.

Could any tribe be a “participating tribe”?

Any federally recognized Indian tribe could elect to become a “participating tribe,” so long as (1) it exercises powers of self-government over an area of Indian country and (2) it adequately protects the rights of defendants. Those two requirements follow long-standing principles of Federal Indian law.

Why does the proposed legislation state that exercising this criminal jurisdiction is an “inherent power” of the tribe?

Under this proposed legislation, when a tribe prosecutes an accused perpetrator of domestic violence, it would be exercising an inherent tribal power, not a delegated Federal power. One practical consequence would be to render the Double Jeopardy Clause inapplicable to sequential prosecutions of the same act of domestic violence by the tribe and the Federal Government (just as the Clause is inapplicable to sequential prosecutions by a State and the Federal Government). For example, if a tribe unsuccessfully prosecuted a domestic-violence case under the authority recognized in this legislation, the Federal Government would not then be barred from proceeding with its own prosecution of the same defendant for a discrete Federal offense. That is the normal rule when prosecutions are brought by two separate sovereigns.

What does the proposed legislation mean in stating that tribes will exercise this jurisdiction “concurrently, not exclusively”?

Neither the United States nor any State would lose any criminal jurisdiction under this proposed legislation. The Federal and State governments could still prosecute the same crimes that they currently can prosecute. But in addition, tribes could prosecute some crimes that they cannot currently prosecute. In many parts of Indian country, this statutorily recognized tribal criminal jurisdiction would be concurrent with Federal jurisdiction under the General Crimes Act (also known as the Indian Country Crimes

Act). In some parts of Indian country, however, it would be concurrent with State jurisdiction under Public Law 280 or an analogous statute.

Without this proposed legislation, do tribes have any criminal jurisdiction over domestic-violence cases?

Yes. Even without this new legislation, generally tribes already have criminal jurisdiction over domestic-violence and dating-violence crimes committed by Indians (but not by non-Indians) in Indian country. Because existing jurisdiction is expressly excluded from the proposed legislation's definition of "special domestic-violence criminal jurisdiction," existing tribal jurisdiction over crimes committed by Indians would be unaffected by this legislation.

What types of crimes would this proposed legislation cover?

The proposed legislation is narrowly tailored to cover three types of crimes:

- Domestic violence.
- Dating violence.
- Violations of protection orders.

Could a tribe use this new law to prosecute crimes that occur off the reservation and outside of Indian country?

No.

Why would protection orders need to be "enforceable" and "consistent with section 2265(b) of title 18, United States Code," to form the basis of a tribal criminal offense?

That language ensures that the person against whom the protection order was issued was given reasonable notice and an opportunity to be heard, which are essential for protecting the right to due process. If the accused had no chance of learning that a protection order was being issued against him, a violation of the order, by itself, would not be a criminal offense.

For a crime involving domestic violence, dating violence, or the violation of an enforceable protection order, would the specific elements of the criminal offense be determined by Federal law or by tribal law?

Tribal law.

What is the purpose of the subsection on "Dismissal of Certain Cases"?

This subsection clarifies that tribes would not have criminal jurisdiction over cases in which neither the accused nor the victim is Indian. Since at least the late nineteenth

century, criminal cases involving only non-Indians have been understood to rest within the exclusive jurisdiction of the State where the offense occurred. This legislation would not alter that long-standing rule. Likewise, this subsection states that tribes would not have criminal jurisdiction over cases in which neither the accused nor the victim has sufficient ties to the tribe.

What rights of criminal defendants are protected by the Indian Civil Rights Act and therefore would be protected under this proposed legislation?

Since Congress enacted it in 1968, the Indian Civil Rights Act has protected individual liberties and constrained the powers of tribal governments in much the same ways that the Federal Constitution, especially the Bill of Rights and the Fourteenth Amendment, limits the powers of the Federal and State governments. The Indian Civil Rights Act protects the following rights, among others:

- The right against unreasonable search and seizures.
- The right not to be twice put in jeopardy for the same offense.
- The right not to be compelled to testify against oneself in a criminal case.
- The right to a speedy and public trial.
- The right to be informed of the nature and cause of the accusation in a criminal case.
- The right to be confronted with adverse witnesses.
- The right to compulsory process for obtaining witnesses in one's favor.
- The right to have the assistance of defense counsel, at one's own expense.
- The rights against excessive bail, excessive fines, and cruel and unusual punishments.
- The right to the equal protection of the tribe's laws.
- The right not to be deprived of liberty or property without due process of law.
- The right to a trial by jury of not less than six persons when accused of an offense punishable by imprisonment.
- The right to petition a Federal court for habeas corpus, to challenge the legality of one's detention by the tribe.

What are the "rights described in paragraphs (1) through (5) of section 1302(c)," which also would be protected under this proposed legislation?

In 2010, Congress passed the Tribal Law and Order Act, which (among other things) amended the Indian Civil Rights Act to allow tribal courts to impose longer sentences. In return, the 2010 amendments require tribal courts imposing longer sentences to undertake additional measures to safeguard defendants' rights. The Department's proposed legislation would apply these additional safeguards to domestic-violence cases with shorter sentences, as well:

- The right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution.
- The right of an indigent defendant to the assistance of a licensed defense attorney at the tribe's expense.
- The right to be tried by a judge with sufficient legal training who is licensed to practice law.
- The right to access the tribe's criminal laws, rules of evidence, and rules of criminal procedure.
- The right to an audio or other recording of the trial proceeding and a record of other criminal proceedings.

Under the proposed law, would a tribe exercising this jurisdiction be required to provide counsel for indigent defendants in all cases where imprisonment is imposed?

The proposed legislation would require participating tribes to provide all indigent non-Indian domestic-violence and dating-violence defendants with licensed defense counsel in any criminal proceeding where imprisonment is imposed, regardless of the length of the sentence. It is also quite possible that the Indian Civil Rights Act or tribal law would be interpreted to require that those same tribes then must provide appointed counsel to similarly situated Indian defendants.

Although certain indigent defendants would not have to pay for an attorney, the proposed legislation would authorize Federal grants to help tribes cover these costs.

What is the purpose of the constitutional catch-all provision?

In addition to the rights described in the Indian Civil Rights Act and the Tribal Law and Order Act, paragraph (3) of proposed section 1304(e) would require a participating tribe to provide the defendant with all rights whose protection would be required by the United States Constitution in order to allow that tribe to exercise criminal jurisdiction over the defendant. Given that paragraphs (1) and (2) of this proposed section would already protect most of the rights that a criminal defendant in State (or Federal) court has under the Federal Constitution, the set of additional rights, if any, that would be captured by this paragraph will ultimately be fleshed out by tribal courts and by Federal courts reviewing habeas corpus petitions. One indirect effect of this constitutional catch-all provision might be to encourage participating tribes (and tribes that aspire to participate) to provide all the same protections that would be provided in Federal and State courts.

What avenues for appellate or habeas review would be available to defendants?

Defendants typically would have a direct right to appeal to a tribal (or intertribal) appellate court. And the Indian Civil Rights Act gives any defendant detained by order

of an Indian tribe the right to seek release by petitioning a Federal district court for a writ of habeas corpus. There would, however, be no direct right of appeal to a Federal court.

What is the purpose of the subsection on “Petitions to Stay Detention”?

This subsection, which would apply to any habeas corpus proceeding under the Indian Civil Rights Act, would clarify the current legal standards for determining whether a person can be released from tribal detention prior to final resolution of his habeas petition.

Why does the bill authorize Federal grants to tribal governments?

Expanding tribal criminal jurisdiction to cover more perpetrators of domestic violence would tax the already scarce resources of most tribes that might wish to participate. Therefore, the proposed legislation would authorize a new grant program to support tribes that are or wish to become participating tribes.

TRIBAL PROTECTION ORDERS (SECTION 3)

What would section 3 of the proposed legislation — on “Tribal Protection Orders” — accomplish?

Section 3 would confirm the intent of Congress in enacting the Violence Against Women Act of 2000 by clarifying that every tribe has full civil jurisdiction to issue and enforce certain protection orders involving any persons, Indian or non-Indian. This section would effectively reverse *Martinez v. Martinez*, 2008 WL 5262793, No. C08-55-3 FDB (W.D. Wash. Dec 16, 2008), which held that an Indian tribe lacked authority to enter a protection order for a nonmember Indian against a non-Indian residing on non-Indian fee land within the reservation.

AMENDMENTS TO THE FEDERAL ASSAULT STATUTE (SECTION 4)

What would section 4 of the proposed legislation — on “Amendments to the Federal Assault Statute” — accomplish?

Section 4 would amend the Federal Criminal Code to provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling or suffocating; a five-year offense for assaulting a spouse, intimate partner, or dating partner resulting in substantial bodily injury; and a one-year offense for assaulting a person by striking, beating, or wounding. (The amendments would not directly affect tribal prosecutions.)

Why are amendments to the Federal assault statute needed?

The proposed legislation would enable Federal prosecutors more effectively to combat three types of assault frequently committed against women in Indian country — assault by strangling or suffocating; assault resulting in substantial bodily injury; and assault by striking, beating, or wounding.

Existing Federal law provides a six-month misdemeanor assault or assault-and-battery offense that can be charged against a non-Indian (but not against an Indian) who commits an act of domestic violence against an Indian victim. (A similar crime committed by an Indian would fall within the exclusive jurisdiction of the tribe.) A Federal prosecutor typically can charge a *felony* offense (against either an Indian or a non-Indian defendant) only if the victim's injuries rise to the level of "serious bodily injury," which is significantly more severe than "substantial bodily injury."

So, in cases involving any of these three types of assaults — (1) assault by strangling or suffocating; (2) assault resulting in substantial (but not serious) bodily injury; and (3) assault by striking, beating, or wounding — Federal prosecutors today often find that they cannot seek sentences in excess of six months. And where both the defendant and the victim are Indian, Federal courts may lack jurisdiction altogether.

How would the proposed amendments to the Federal assault statute compare to State criminal laws?

In general, Federal criminal law has not developed over time in the same manner as State criminal laws, which have recognized the need for escalating responses to specific acts of domestic and dating violence. Amending the Federal Criminal Code to make it more consistent with State laws in this area where the Federal Government (and not the State) has jurisdiction would simply ensure that perpetrators would be subject to similar potential punishments regardless of where they commit their crimes. The maximum sentences proposed here are in line with the types of sentences that would be available in State courts across the Nation if the crime occurred other than in Indian country.

What would the language on "Assaults by Striking, Beating, or Wounding" accomplish?

This language would increase the maximum sentence from six months to one year for an assault by striking, beating, or wounding, committed by a non-Indian against an Indian in Indian country. (Similar assaults by Indians, committed in Indian country, would remain within the tribe's exclusive jurisdiction.) Although the Federal offense would remain a misdemeanor, increasing the maximum sentence to one year would reflect the fact that this is a serious offense that often forms the first or second rung on a ladder to more severe acts of domestic violence.

What would the language on “Assaults Resulting in Substantial Bodily Injury” accomplish?

These assaults sometimes form the next several rungs on the ladder of escalating domestic violence, but they too are inadequately covered today by the Federal Criminal Code. Under current law, an assault resulting in “serious” bodily injury is subject to a maximum ten-year sentence; and an assault resulting in “substantial” bodily injury (which is less severe) is subject to a maximum five-year sentence if the victim is less than 16 years old. But if an adult Indian victim suffers a substantial bodily injury at the hands of her spouse or intimate partner or dating partner, typically the sentence will be capped at six months if the perpetrator is non-Indian and there will be no Federal jurisdiction at all if the perpetrator is Indian. The proposed legislation would fill this gap by amending the Federal Criminal Code to provide a five-year offense for assault resulting in substantial bodily injury to a spouse, intimate partner, or dating partner.

What would the language on “Assaults by Strangling or Suffocating” accomplish?

It would amend the Federal Criminal Code to provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate. Strangling and suffocating — conduct that is not uncommon in intimate-partner cases — carry a high risk of death. But the severity of these offenses is frequently overlooked because there may be no visible external injuries on the victim. As with assaults resulting in substantial bodily injury, Federal prosecutors need the tools to deal with these crimes as felonies, with sentences potentially far exceeding the six-month maximum that often applies today.

Why would the proposed legislation amend the Major Crimes Act?

Federal prosecutors use the Major Crimes Act to prosecute Indians for major crimes committed against Indian and non-Indian victims. This amendment would simplify the Major Crimes Act to cover all felony assaults under section 113 of the Federal Criminal Code, as amended. That would include the two new felony offenses discussed above — assaults resulting in substantial bodily injury to a spouse, intimate partner, or dating partner; and assaults upon a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate. It also would include a felony assault that currently is omitted from the Major Crimes Act: assault with intent to commit a felony other than murder (which is punishable by a maximum ten-year sentence). Without this amendment to the Major Crimes Act, Federal prosecutors could not charge any of these three felonies when the perpetrator is an Indian. Assault by striking, beating, or wounding, which would have a maximum sentence of twelve months under the proposed legislation, would remain a misdemeanor and would not be covered by the Major Crimes Act.

EFFECTIVE DATES AND THE PILOT PROJECT (SECTION 5)**What would section 5 of the proposed legislation — on “Effective Dates” and a “Pilot Project” — accomplish?**

Section 5 would set the effective dates for each part of the proposed legislation and establish a pilot project for tribes wishing to exercise jurisdiction over crimes of domestic violence on an accelerated basis.

When would the reforms in this proposed legislation take effect?

Most of the proposed legislation would take effect immediately upon enactment. But four subsections that form the core of the provision on tribal criminal jurisdiction would generally take effect two years after enactment, to give tribes time to amend their codes and procedures as necessary to exercise this expanded jurisdiction. However, if a tribe believes it is ready to proceed in less than two years, it can request an earlier start date from the Attorney General, as part of a pilot project.

How would the pilot project work?

The tribes wishing to participate in the pilot project would apply to the Attorney General, who then would coordinate with the Department of the Interior and consult with the tribes. If the Attorney General concluded that a particular tribe’s criminal-justice system had adequate safeguards in place to protect defendants’ rights, then he could grant an earlier starting date for the tribe’s exercise of this statutorily recognized criminal jurisdiction.

The CHAIRMAN. Thank you very much for your testimony, Mr. Perrelli.

Dr. Weahkee, please proceed with your testimony.

STATEMENT OF ROSE WEAHKEE, PH.D., DIRECTOR, DIVISION OF BEHAVIORAL HEALTH, INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Dr. WEAHKEE. Mr. Chairman and members of the Committee, good afternoon. I am Dr. Rose Weahkee, Director for the Division of Behavioral Health at Indian Health Service. I am also a member of the Navajo Nation from Crownpoint, New Mexico. I am pleased to have this opportunity to testify on the Indian health system’s response to domestic violence and sexual assault.

As you know, the IHS plays a unique role in the U.S. Department of Health and Human Services to meet the Federal trust responsibility to provide health care to American Indians and Alaska Natives. The IHS provides comprehensive health service delivery to 1.9 million federally recognized American Indians and Alaska Natives through a system of IHS-operated, tribally-operated, and urban Indian-operated programs.

Under the Indian Self-Determination and Education Assistance Act, many tribes across the Country have assumed full authority for all health care delivery within their communities.

We all know that the statistics on domestic violence and sexual assault against Native women are alarming. What the numbers do not tell us, however, is the tremendous physical and psychological

toll that sexual assault and domestic violence takes on individual societies and Indian Country.

The President signed the Tribal Law and Order Act on July 29, 2010, and the various provisions of the Act offer important policy support for health, wellness, and public safety in Indian communities. The Act requires the IHS Director to provide written approval or disapproval of subpoenas or other requests from tribal and State courts for the testimony of IHS employees. The IHS has drafted a revised delegation of authority to include the requirements under the Act and is developing additional guidance for IHS programs and facilities.

The Act also requires the IHS Director to develop sexual assault policies and protocols. The IHS has also established a national sexual assault policy which is the foundation for local policies at hospitals that are operated by the Indian Health Service.

The Act authorizes the Comptroller General to study the capability of IHS and tribal programs to collect, maintain, and secure evidence of sexual assault and domestic violence incidents, and to develop recommendations for improving those capabilities. IHS has worked very closely with the Government Accountability Office in the development of this study.

In addition, IHS has implemented a nationally Coordinated Domestic Violence Prevention Initiative. This Initiative has awarded a total of 65 projects throughout Indian Country and IHS tribal and urban Indian health programs. This Initiative expands outreach, increases awareness, and supports Sexual Assault Nurse Examiner and Sexual Assault Forensic Examiner programs.

In addition, IHS has a number of partnerships. One of those is a partnership with the Administration for Children and Families, and in that partnership we have funded over 35 sites to identify strategies and develop interventions to address domestic violence. This partnership has provided the foundation for future IHS efforts in the area of domestic violence and has led to IHS-wide screening for domestic violence.

In addition, IHS has an interagency agreement with the Department of Justice Office on Victims of Crime which involves the Federal Bureau of Investigation and the Department of the Interior. The goal of this initiative is to address the needs of sexual assault victims in Indian Country and to ensure more effective and victim-centered investigations and prosecutions.

To adequately address the problem of violence against Native women, IHS focuses on prevention and treatment services. IHS is proactively focusing on behavioral health treatment through partnerships and initiatives directed at minimizing the causes of such abuse.

In summary, the IHS and its tribal and its Federal partners are committed to maximizing the available resources to provide appropriate prevention and treatment services, as well as safe environments for Native women and girls.

This concludes my remarks and I will be happy to answer any questions you may have. Thank you.

[The prepared statement of Dr. Weahkee follows:]

PREPARED STATEMENT OF ROSE WEAHKEE, PH.D., DIRECTOR, DIVISION OF
BEHAVIORAL HEALTH, INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Mr. Chairman and Members of the Committee:

Good afternoon, I am Dr. Rose Weahkee, Indian Health Service (IHS) Director for the Division of Behavioral Health. I am pleased to have this opportunity to testify on the Indian health system's response to protecting, shielding, and safeguarding American Indian and Alaska Native women and girls.

The IHS plays a unique role in the U.S. Department of Health and Human Services to meet the Federal trust responsibility to provide health care to American Indians and Alaska Natives (AI/AN). The IHS provides comprehensive health service delivery to 1.9 million Federally-recognized American Indians and Alaska Natives through a system of IHS, Tribal, and Urban operated facilities and programs based on treaties, judicial determinations, and Acts of Congress. The mission of the agency is to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level, in partnership with the population we serve. The agency aims to assure that comprehensive, culturally acceptable personal and public health services are available and accessible to the service population. Our foundation is to promote healthy American Indian and Alaska Native people, communities, and cultures, and to honor the inherent sovereign rights of Tribes.

The IHS works in partnership with the communities it serves as such, IHS hospital administration frequently includes Tribal representatives who closely participate, as key stakeholders, in the health care delivery system. Additionally, under the Indian Self-Determination and Education Assistance Act (ISDEAA), many Tribes across the country have assumed full authority for all health care delivery within their communities, including hospital operations. Currently, 84 percent of Alcohol and Substance Abuse programs and 54 percent of Mental Health programs are Tribally operated. Traditionally, behavioral health and medical programs, both IHS and Tribally operated, have been separately managed; however, it is now a major focus of the IHS to reintegrate these programs to provide more efficient and effective patient care.

Introduction

AI/AN women are central to family and community life, yet domestic violence, and intimate partner violence, continues to be a serious and pervasive problem. Domestic violence often begins with intimate partner rape and can end in homicide. The statistics on domestic violence and sexual assault against AI/AN women are alarming. According to the Centers for Disease Control and Prevention, 39 percent of AI/AN women have experienced intimate partner violence—the highest percentage in the U.S.¹ In addition, one out of every three AI/AN women will be sexually assaulted in her lifetime,² and AI/AN women are more than five times as likely to die from domestic violence-related injuries than women of any other race.³

It is important to acknowledge the role that historical and intergenerational trauma has played in the high levels of domestic violence and sexual assault against AI/AN women. Colonization brought significant changes for AI/AN people—changes that have been attributed to the high levels of violent crime in Indian Country, particularly violence against women.^{4, 5, 6, 7}

What the numbers do not tell us, however, is the tremendous physical and psychological toll that sexual assault and domestic violence take on individuals and society. Besides the obvious costs of medical care and evidence collection, there is increasing evidence that interpersonal violence is associated with many common

¹Centers for Disease Control and Prevention (2008). Adverse health conditions and health risk behaviors associated with intimate partner violence-United States, 2005. *MMWR*, 57(05), 113-117. Retrieved March 2, 2010, from <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm>

²Sacred Circle and the National Congress of American Indians Task Force on Violence Against Women in Indian Country (2006, September). *Restoration of Safety for Native Women. Restoration of Native Sovereignty*, 5.

³Department of Justice, Bureau of Justice Statistics National Crime Database.

⁴BigFoot, D. S. (2000). *History of Victimization in Native Communities*. University of Oklahoma Health Sciences Center, Center on Child Abuse and Neglect, grant number 97-VI-GX-0002 (NCJ 213165).

⁵Bubar, R., & Thurman, P.J. (2004). Violence against Native women. *Social Justice*, 31(4), 70-86.

⁶Poupart, L.M. (2002). Crime and justice in American Indian communities. *Social Justice*, 29(1-2), 144-159.

⁷Smith, A. (2003). Not an Indian tradition: The sexual colonization of Native Peoples [Electronic version]. *Hypatia*, 18, 70-85. Retrieved June 16, 2007.

health problems, including obesity, hypertension, chronic pain, headaches, gastrointestinal problems, complications of pregnancy, post traumatic stress disorder (PTSD), alcohol use disorders, depression, and anxiety.⁸ All of these health problems can impact an individual's family life and ability to work. The economic impact of the loss of work and productivity is enormous.

Tribal Law and Order Act

The President signed the Tribal Law and Order Act (TLOA) on July 29, 2010. The Act was an important step toward helping the Federal government better address the unique public safety challenges that confront Tribal communities. The Act emphasizes decreasing violence against women, and is one of many steps needed to address the challenges faced by AI/AN women and girls. The various provisions of the TLOA offer important policy support for health, wellness, and public safety in AI/AN communities and a recognition of the multiple factors that influence domestic violence and sexual assault issues. The TLOA also has several health specific provisions which will be addressed in further detail below. Taken together, these provisions should increase the rate of domestic violence and sexual assault convictions. Increased convictions may increase the reporting of domestic violence and sexual assault incidents by changing the climate and norms surrounding violence against women in AI/AN communities.

Testimony and Production of Documents by Federal Employees

Section 263 of the TLOA requires the IHS Director to provide written approval or disapproval of subpoenas or other requests from Tribal or State courts for the testimony of IHS employees or for the production of documents by IHS employees under the Director's supervision. The IHS Division of Regulatory Affairs, on advice from the HHS Office of the General Counsel, is the lead representative on implementation of Section 263. The IHS has drafted a revised delegation of authority to permit IHS Area Directors to authorize testimony by Federal employees in criminal and civil cases at the local level. The draft delegation of authority notes that: (1) subpoenas and requests may be approved if the request is consistent with HHS' policy to remain impartial; and (2) subpoenas or requests for documents or testimony in violent crime cases which would include sexual assault and domestic violence must be approved or disapproved within 30 days after receipt or the subpoenas and requests will be deemed approved. The draft delegation of authority pertains to factual information obtained by Federal employees in carrying out their official duties. It does not apply to requests for expert testimony from Federal employees.

IHS Sexual Assault Policy

Section 265 of the TLOA adds a new section to the Indian Law Enforcement Act requiring the IHS Director to develop sexual assault policies and protocols based on similar protocols established by the DOJ. In response, IHS established a national sexual assault policy, which is the foundation for local policies at hospitals managed by the IHS as they develop their own standard operating procedures and protocols on sexual assault medical forensic examinations. The policy establishes a uniform standard of care for sexual assault victims seeking clinical services. The policy ensures that the needs of the victim are addressed, care is culturally sensitive, patient-centered, and community response is coordinated. The policy also includes evidence collection guidance which aligns with criminal justice system response and subpoena regulations. The IHS consulted with Tribal leaders and Urban Indian health directors and is reviewing comments for incorporation in future revisions of this policy.

Study of IHS Sexual Assault and Domestic Violence Response Capabilities

Section 266 of the TLOA authorizes the Comptroller General to study the capability of IHS facilities and Tribal programs to collect, maintain, and secure evidence of sexual assaults and domestic violence incidents required for criminal prosecution and to develop recommendations for improving those capabilities. This section also requires a report to Congress to assess current readiness and propose recommendations for improving response capabilities. IHS has cooperated with the GAO in the development of this study, which is due to Congress no later than one year after July 29, 2010.

⁸Centers for Disease Control and Prevention (2008). Adverse health conditions and health risk behaviors associated with intimate partner violence-United States, 2005. *MMWR*, 57(05), 113-117. Retrieved March 2, 2010, from <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm>

IHS Domestic Violence Prevention Initiative

In 2009, Congress appropriated \$7.5 million to the IHS in the Omnibus Appropriations Act, P.L. 111–8, to implement a nationally-coordinated Domestic Violence Prevention Initiative (DVPI). In 2010, Congress appropriated an additional \$2.5 million for a total of \$10 million. Prior to developing specific domestic violence and sexual assault prevention and treatment programs and initiatives, IHS engaged in Tribal consultation sessions with the National Tribal Advisory Committee on Behavioral Health (NTAC). The NTAC is composed of elected Tribal leaders across all twelve IHS Service Areas. Using the NTAC recommendations as a guide, the IHS established the DVPI.

The DVPI promotes the development of evidence-based and practice-based models that represent culturally-appropriate prevention and treatment approaches to domestic violence and sexual assault from a community-driven context. The DVPI expands outreach and increases awareness by funding programs that provide outreach, victim advocacy, intervention, policy development, community response teams, and community and school education programs. The funding is also being used for the purchase of forensic equipment and includes case coordination of Sexual Assault Nurse Examiner (SANE), Sexual Assault Forensic Examiner (SAFE), and Sexual Assault Response Team (SART) programs to help victims of sexual assault by training medical personnel on how to properly conduct sexual assault medical forensic exams.

DVPI has awarded a total of 65 projects that include IHS, Tribally, and Urban operated programs. These include 49 domestic violence and sexual assault community developed models, 8 domestic violence and sexual assault Urban Indian health program grants, and 8 SANE/SAFE/SART programs. Projects have recently begun reporting on practice- and evidence-based outcome measures to assess program effectiveness.

From August 2010 through January 2011, 56 of the 65 funded programs reported data. From these programs, DVPI funding resulted in over 220 project-affiliated full-time equivalent positions and the development of 21 interdisciplinary SARTs. Over 2,100 victims of domestic violence or sexual assault were served and over 3,300 referrals were made for mostly domestic violence services, culturally-based services, and clinical behavioral health services. Over 140 individuals received shelter services. Forty-eight adult and 18 child SAFE kits were completed and submitted to Federal, State, and Tribal law enforcement. Over 9,100 patients were screened for domestic violence and nearly 9,500 community members were reached through community and educational events. There were 37 training events held, including training on domestic violence, mandated reporting for abuse, child maltreatment, dating violence, and bullying, with 442 participants attending. Although the DVPI is in the early stages of implementation, these preliminary data strongly suggest very effective programming is taking place in Indian Country across a wide range of communities and areas of focus.

In addition to the direct services above, the national DVPI conference was conducted last week, July 6–8, in Albuquerque, New Mexico. At the conference, DVPI funded recipients were able to participate in training, effective dialogue, network, and share their program experience and expertise involving the prevention and treatment of domestic violence and sexual assault in Indian Country. Over 140 DVPI program and IHS staff attended the conference which specifically covered community awareness planning, advocacy, safety planning, agency collaborations (specifically with the Federal Bureau of Investigation), impact of battery violence on children, provider self care, working with Tribal advocacy programs, engaging men, incorporating traditional healing, teen dating awareness, and conducting effective community assessments. Specific to the SANE/SAFE/SART programs, the conference covered the important role staff play in evidence collection, identifying abuse, and understanding local sexual assault laws.

IHS Partnerships

IHS has devoted considerable effort to develop and share effective programs throughout the Indian health system. Strategies to address domestic violence and sexual assault include collaborations and partnerships with consumers and their families, Tribes and Tribal organizations, Urban Indian health programs, Federal, State, and local agencies, as well as public and private organizations. We believe the development of programs that are collaborative, community driven, and nationally supported offers the most promising potential for long term success and sustainment. Our partnership and consultation with Tribes ensure that we are working together in improving the health of AI/AN communities.

Through a partnership with the Administration for Children and Families (ACF) dating to 2002, IHS and ACF collaborated to fund over 35 sites to identify strategies

and develop interventions to address domestic violence in AI/AN communities. These domestic violence pilot programs trained medical and nursing staff to screen for domestic violence and to provide safety planning for all female patients, forged community partnerships, and developed policies and procedures on domestic violence. In addition, sites developed culturally sensitive screening tools, policies and procedures, and informational brochures. These programs also educated community members and adolescents on healthy relationships, dating violence, and domestic violence. This partnership and the work of the domestic violence pilot programs provided the foundation for future IHS efforts in domestic violence prevention, and led to IHS wide screening for domestic violence, routine domestic violence education, and the development of safety planning for women. The joint release of a 2010 report by the IHS, ACF, and Futures Without Violence offers a series of recommendations to ensure that domestic violence victims receive appropriate medical care at clinics and hospitals.

The IHS and the DOJ Office on Victims of Crime (OVC) entered into a partnership involving the Federal Bureau of Investigation and the Department of the Interior. This partnership is the SANE-SART AI/AN Initiative, and is funded through the OVC. The goal of the SANE/SART Initiative is to address the needs of sexual assault victims in Indian Country that restores the dignity, respect, and mental and physical health of victims of sexual assault and ensures more effective and victim-centered investigations and prosecutions. Using evidence-based practices involving SANEs, SARTs, and victim-centered law enforcement practices, the initiative will support victim recovery, satisfaction, and cooperation with the Federal criminal justice system, as well as supporting victims' of sexual assault and Tribal communities' need for justice. To address this overall goal, the project will identify, assess, and support existing SANE and SART efforts by providing training and technical assistance resources for all of the IHS and OVC funded SANE/SART programs, and through the development of comprehensive SANE/SART demonstration projects.

Summary

To adequately address the problem of violence against AI/AN women, IHS focuses on both prevention and treatment services. HIS treats individuals with associated behavioral health problems, and engages and empowers communities to change accepted norms of violence. Prevention of domestic violence and sexual assault begins with strong community prevention programs.

Our prevention and treatment efforts must also focus on children and adults who have already witnessed or experienced domestic violence and sexual assault. Our youth, who have witnessed domestic violence or who have experienced child abuse/sexual abuse including incest are at great risk of becoming victims or perpetrators of violence and sexual assault as adults. Girls who witness the domestic abuse of their mothers, or who are victims of childhood sexual abuse are at special risk of developing PTSD, depression, and alcohol use disorders including binge drinking and alcohol dependence. Because alcohol and/or drugs are involved in the overwhelming majority of assaults, the IHS is proactively focusing on behavioral health treatment and rehabilitation through partnerships and initiatives directed at minimizing the causes of such abuse.

In summary, the safety of AI/AN women and girls is a serious problem with multiple personal, familial, and community factors. The programs IHS supports significantly improve the lives of AI/AN women and girls. The IHS and its Tribal and Federal partners are committed to maximizing available resources to provide appropriate prevention and treatment services, as well as safe environments for AI/AN women and girls in all our communities.

This concludes my remarks and I will be happy to answer any questions that you may have. Thank you.

The CHAIRMAN. Thank you very much, Dr. Weahkee.

Now I am going to ask the members of the Committee to ask their questions before I do, and I am going to ask Senator Udall for his questions, Senator Murkowski, and Senator Franken.

Senator Udall.

Senator UDALL. Thank you very much, Senator Akaka.

Mr. Perrelli, you heard me in my opening talking about how enforcement is one of the keys to breaking the cycle of violence. I assume you would agree with that; that unless you have aggressive

enforcement, the word kind of goes out that nothing is going to be done on this.

Mr. PERRELLI. Senator, I think that is right. Certainty of enforcement is incredibly important in this area.

Senator UDALL. So when you have half the cases coming in, reading this GAO report, on the violent crimes it is 52 percent where there is a declination, and on the less violent it is, I guess, 40 percent, that doesn't send a very strong signal, does it?

Mr. PERRELLI. I think on this issue of declinations, let me step back and break it down into three pieces and talk about how we have tried to address this, because this has been a longstanding issue. There is a part of this that is your commitment to addressing violent crime in Indian Country and in tribal communities and, in particular, in the area of domestic violence and violence against children.

This is an area where we went to our United States attorneys in the early part of 2010 and directed them, one, to engage with tribal governments, prosecutors on a more regular basis than they ever had before; do outreach and have operational plans, actual plans about how they are going to address the particular violence in those communities.

Senator UDALL. Do you have each U.S. attorney doing that now? There are 90-plus U.S. attorneys going out? Because I know in New Mexico the new U.S. attorney has a liaison, an assistant U.S. attorney working with every tribal community on this. Do you have that going on all across the Country, in Minnesota, Wyoming—

Mr. PERRELLI. In all of the jurisdictions with Indian Country jurisdiction or with tribes in their jurisdictions, that is about 45 of the districts, I believe, not just the tribal liaison, it is meeting with tribal leaders and actually developing a plan, and it is something we require of them in the first eight months. We also directed them to focus on crimes against Indian women and children, recognizing that this had been something that had not been sufficiently addressed previously. I think we hope to see the impact of this over time.

Another piece of this, though, is communication, particularly you talked about the task force you had. Those kinds of partnerships are critically important, particularly where you have all of the jurisdictional challenges that you have today. So we directed our United States attorneys to communicate more effectively about what is going on in particular cases, and obviously with the legal mandates of the Tribal Law and Order Act, to ensure that there are opportunities if the Federal Government is not going to proceed with a case, then there is the possibility of a tribal court proceeding, depending on the facts, that that might proceed. And we are seeing—

Senator UDALL. Let me just stop you a second. That handoff is particularly important, because if you have a decision at the Federal level in the U.S. attorney's office, a declination, they basically say back to the law enforcement agency, we aren't going to prosecute this case in Federal court, but if it just sits there and the Federal prosecutors don't take all the evidence they have, get over with the tribal court system, tell the tribal court system we have all of this evidence, we think that you could probably move on this

with different standards and whatever, if there isn't that handoff, it is a big problem, isn't it?

Mr. PERRELLI. I agree with that. I think that is absolutely right. I will give you an example of something we are doing in Montana, where the tribal liaison, every two weeks, is talking to the tribal prosecutors and going through what is going on with this case, what is going on with that case; tell us, is there anything we have missed? Is there something that has been reported that we don't know about? Again, trying to build that communication so that you, in partnership, can make a decision about what is the best way to go.

I think we recognize that declination rates are likely to remain high in tribal communities, in part because sometimes cases come in where you decide there wasn't Federal jurisdiction or that ultimately you refer a case out. But we should be able to do a better job of explaining why those prosecutions don't occur.

Senator UDALL. Great. My time is almost out, but I just want to emphasize to the Justice Department, and I think each of the States you see reflected up here in the 45 U.S. attorney's districts, from Alaska to Minnesota to Hawaii to Wyoming, we want to see the Justice Department bring those declination rates down. And if you are really not going to prosecute, try to work with the tribal courts to see something is done, because I think the key to breaking the cycle of violence is making sure that the perpetrators are brought to justice. If they have a sense that 50 percent of the cases nothing is going to happen, that is a big, serious problem. Thank you.

And thank you, Chairman Akaka, for the courtesies. I know I am running a little bit over here. And I wish I could stay for the whole thing. I know we are also going to have a vote, I think, in a few minutes, so thank you.

The CHAIRMAN. Thank you very much, Senator Udall.

Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Perrelli, Ms. Weahkee, thank you for being here today, for your testimony.

Mr. Perrelli, you heard my comments about the sex trafficking and the concern that I have that we are seeing these increased rates in Alaska where young girls are literally being hunted. You have these predators that are hanging out by the homeless teen shelters, going to the cultural family events, the annual AFN convention, the largest gathering of Natives in our State, and it is really causing a very real, very tangible level of concern within so many of our communities.

Can you tell me what the Department of Justice is doing to really target those sex traffickers that are threatening Alaska Native women and American Indian women around our Country here today? What efforts are underway and what are we doing to ensure that these individuals are being prosecuted to the full extent of the law?

Mr. PERRELLI. Senator Murkowski, I think you identify what is really a scourge. We have seen a couple of major cases in Alaska involving Alaska Native women coming, perhaps, for health care to Anchorage and ending up in the hands of commercial sex traf-

fickers, and we have had prosecutions there. This is an extraordinarily difficult set of issues.

I think we did a focus group last year on this issue, focusing on Alaska Native and American Indian women and commercial sex trafficking and found a lack of research and understanding of the issue. Law enforcement didn't always know how to identify the issue, so more training is needed. We found that perhaps some of the grant programs might need some additional flexibility to allow grantees to focus on trafficking issues, and that is something we are looking at in the context of the reauthorization of the Violence Against Women Act. And I think that we recognize that this is an issue that people need to understand better, because I think there is a sense that in individual communities they don't even know it is happening until there is a major prosecution.

The last thing I would say is there is a piece that is back in the Alaska Native-American Indian community which is really focused on youth and protecting our children. There is also a piece where some of this activity occurs in major urban areas, where we don't necessarily have the culturally appropriate services in those areas for Alaska Native and American Indian women, and we need to think about how to provide them protection, safe places to go when they may be away from home and may be in danger.

Senator MURKOWSKI. Let me ask you, because so many, or oftentimes, I should say, it will be a situation where the young woman is really a young woman, she is a minor, she is under age and has been brought into this prostitution ring. We have had Federal laws on the books since the early 1900s that make transporting a minor over State lines for the purposes of committing a sex act, under the Mann Act, illegal and calls for prosecution.

Well, let me ask it this way. Is it a crime, then, for a young woman, a minor, if she is transported from a Native village or a reservation in the lower 48 to another part of the State for purposes of prostitution, this young woman is being used as part of sex trafficking, if we were to clarify that that is a crime just as transporting a minor across State boundaries is a crime, does that help you at all?

Mr. PERRELLI. Well, I think under at least the TVPA, if there is force, fraud, coercion of any kind, there only needs to be an effect on interstate commerce, there doesn't need to be actual transport across any State line. So I think that at least that statute, I think, would quite often deal with, I think, the situation that you are talking about. But we should at least discuss this issue of moving from Native village to outside the Native village. I think this is one we haven't focused on.

Senator MURKOWSKI. I would appreciate that.

Dr. Weahkee, we are focused today on the impact on Native girls and women, but more specifically on women, but I think we recognize, we all recognize that children that are in a household where there are acts of domestic violence that are occurring, those children are impacted as well, and in a way that perhaps we don't fully understand. I think we all know in our heart it is not good, it is not a healthy situation.

But I am curious to know whether, within the IHS system you have been specifically looking to possible linkages between acts of

domestic violence within the home that young people see and the very elevated rates of youth suicide that we are seeing. Are you tracking any of that?

Dr. WEAHKEE. Well, the research does suggest that those risk factors of domestic violence, sexual assault, and family violence are predictors for suicide, so there is a relationship between that experience and suicide, and we see that with other risk factors as well; child abuse, child sexual abuse. All of those contribute to the predictors for suicide, and also in terms of historical trauma. So we look at not only the impact of historical trauma, but the multiple losses that individuals and children and communities are facing, and all of that are risk factors for suicide.

Senator MURKOWSKI. But that is something that you are tracking? As we all try to figure out how we deal with this epidemic of youth suicide, I think it is helpful to know what some of that background is and, unfortunately, it seems that far too often it ties back to domestic violence, family violence within the home.

Mr. Chairman, I have gone over my time. I have another question for Dr. Weahkee, but I will submit that one for the record.

Senator FRANKEN. Thank you, Mr. Chairman. Thank you, Senator Murkowski.

Dr. Weahkee, I am going to follow up on Senator Murkowski's discussion of the effect on children. In your testimony, your written testimony, you describe the children who witness or experience abuse are at great risk of developing PTSD or depression, and even of becoming perpetrators themselves. We had this testimony yesterday in the Judiciary Committee on the reauthorization of VAWA, Violence Against Women Act, that a kid, once a kid witnesses violence, this kind of violence against his or her mother, or whomever the violence is against, it might be against themselves, they become a different person, essentially.

And we have epidemics not just of the tragic epidemic of suicide, but of drug abuse and alcoholism and other mental illnesses. In testimony we received yesterday and from your testimony, it is very clear that these children require treatment to respond to the profound psychological impacts of violence upon them.

Can you speak to what the Indian Health Service is doing to make this kind of treatment accessible to children?

Dr. WEAHKEE. Well, there is definitely a need for treatment and prevention, and, as you mentioned, it really contributes to a whole host of physical and emotional issues, school problems, bullying. So we are working with your Federal partners in coordinating our resources to address those issues because we see these issues not only as needing a health response, but also we need to involve our schools, our parents, our communities, tribal leaders, and our criminal justice system.

So one aspect is providing the services and making them accessible to Indian children, perhaps utilizing telebehavioral health services, access to behavioral health providers in Indian communities, but also making sure that they have the appropriate training to deal with issues of child sexual abuse and child abuse in general.

And, as we know, there is difficulty in terms of accessing these services, but we are implementing different efforts to try to make

access to those services more available to IHS tribal and urban Indian communities. So part of it is providing the treatment and prevention programs, but also ensuring that our providers are trained to respond to these issues and making sure that we are coordinating with multiple systems to respond.

Senator FRANKEN. And what does it mean in terms of a child who has witnessed this in Red Lake? What does that mean? Does the child go to somebody and say I witnessed this and they immediately get treatment, or what does it mean?

Dr. WEAHKEE. Well, what it means is it hopefully results in access to that treatment. And I am not only talking about the behavioral health providers, but ensuring that our primary care providers are aware of these issues. We know that a lot of times these kids are not going to their behavioral health providers for whatever reason. A lot of times they are going to their primary care providers or emergency rooms in IHS facilities or tribal facilities.

So it is important for us to make sure that those health providers are also screening and making appropriate referrals to behavioral health when that is needed.

Senator FRANKEN. Okay. Ms. Weahkee, Amnesty International's 2007 Maze of Injustice Study, which Professor Deer, who will be testifying later, was instrumental in developing, reports that "Although IHS services are free, if an American Indian or Alaska Native woman has to go to a non-IHS hospital for a sexual assault forensic examination, she may be charged by that facility. The IHS has a reimbursement policy, but it is complex and survivors may not be aware of it. In some cases the IHS has reportedly failed or refused to pay for forensic examination at outside facilities."

Ms. Weahkee, I have introduced bipartisan legislation that would prohibit any State, local, or tribal hospital from billing rape victims for their rape kits. Until we get that bill passed, can the Indian Health Service commit to working to improve this system so that a woman never has to pay one dime for her rape kit?

Dr. WEAHKEE. Yes. And in the newly established sexual assault policy it does state in there that IHS hospitals are required to provide free sexual assault forensic examinations and full reimbursement. So that is a requirement now as a result of that newly established policy, and that was established just this past March.

Senator FRANKEN. I am sorry to go over my time, but that policy still doesn't answer the question if a woman has to go to a non-IHS hospital.

Dr. WEAHKEE. They are required to provide full reimbursement as well. Not only provide access to free sexual assault forensic examination, but also full reimbursement for that service.

Senator FRANKEN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

Mr. Perrelli, four out of five offenders who sexually assault or batter Native women are non-Indian, but the Supreme Court ruled that Indian tribes do not have criminal jurisdiction over non-Indians who commit crimes on Indian lands. Without a legislative fix, the question is how do we hold these non-Indian offenders responsible?

Mr. PERRELLI. And, Mr. Chairman, that is certainly the situation that we are in now. I think we are trying to do a number of things to address that currently. One is, again, the notion of partnerships; that Federal, State, local, and tribal officials all need to be working together because any individual matter, whether a defendant is Indian or non-Indian will be determinative of where that person can be prosecuted.

So we are trying to build partnerships in particular between localities and tribal communities. A memorandum of understanding, cross-deputization agreements, agreements so that the criminal justice system is more seamless that the tribal police officer knows that they can arrest the person and knows to whom they can hand them off ultimately to be prosecuted. So there is that piece.

Training. We have launched a couple of major efforts in training as a result of the Tribal Law and Order Act, so we have a significant Indian Country training initiative and are working on best practices in conjunction with a task force with tribal law enforcement officials.

But I do think that this is an area that, without legislation and/or investment, it is not going to be easy to make a major impact on the problem.

The CHAIRMAN. Well, we hope we can work with you on that.

Dr. Weahkee, the Tribal Law and Order Act required the Director of the Indian Health Service to develop standardized sexual assault policies and protocol for IHS facilities. The Director issued the policy in March. How is the Department implementing these protocols agency-wide?

Dr. WEAHKEE. Well, obviously one part of the step is to actually establish the policy, but we also need to think about how that can be implemented throughout our IHS hospitals as well. So as part of that we are developing a delegation of authority that will give some clear guidance and include the Tribal Law and Order Act requirements.

We are also in the process of developing guidelines for our IHS employees and programs so that gives more specific and clear guidance and accountability around implementing the sexual assault policy. And the other piece is to ensure that our providers have training about the Tribal Law and Order Act requirements, the implementation of the sexual assault policy, and how that works in terms of coordinating those services with other agencies like the U.S. Attorney's Office and Federal Bureau of Investigation.

So that is part of what we are also doing, is ensuring that we have that coordinated training or cross-training with law enforcement and prosecutors so that we understand each other's role in addressing domestic violence and sexual assault. They understand what we need to do in terms of the health care response and our providers have a better understanding of the role that they play as well.

The CHAIRMAN. Thank you.

I am going to call for a second round.

Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

Senator Franken has brought up the issue of the rape kits and the hurdle that has been in place with the cost associated, so I ap-

preciate the fact that full reimbursement will be applied. One of the things that we anticipate that we will learn from the GAO report that this Committee asked for that was tasked with reviewing IHS collection and the preservation of the forensic evidence, I think there are some things that we may learn that will be new. But I think one of the things that I am expecting to learn from that is that there are some real obstacles in the collection and the preservation of the forensic evidence, and particularly when you get out to some very remote, very rural areas, as we have in far too many places across rural Alaska.

What is IHS doing to work to help with the training of the individuals who will be tasked with this so that the steps are taken appropriately? It is a difficult enough situation to be the victim, but then to know that you may have lost that opportunity to have your matter prosecuted because somebody just didn't know how to correctly collect and/or preserve the forensic evidence. So what are we doing? Because we know that this is going to be an outcome of this GAO report.

Dr. WEAHKEE. Well, one piece is with the establishment of the sexual assault policy, it gives very detailed information in terms of the chain of custody, what needs to be collected, how it needs to be stored. So that is provided within the sexual assault policy itself.

As you mentioned, training is also a very significant and important issue to ensure that our providers are actually implementing the policy and know how to collect forensic evidence, how to store it, how to transfer that evidence as well. So we have been providing regional training, sexual assault nurse examiner, sexual assault forensic examiner, sexual assault response team trainings that include the Federal Bureau of Investigation, law enforcement, and prosecutors as part of that training. So we do plan to continue to do that.

Just last week we had our Domestic Violence Prevention Initiative conference that was in Albuquerque, New Mexico, where we provided training to over 140 providers, and I would say in the past year we have provided training to over 600 health care providers on these very issues. So those are one way. I think we need to continue to provide that training and it needs to be maintained because we know that we have different providers coming in or that they need to continue to have that continuing education about how to do that.

And I mentioned earlier the other partnership that we have is with the Department of Justice Office of Victims of Crime, the Federal Bureau of Investigation and Department of Interior. So as part of that, it is an American Indian-Alaska Native sexual assault nurse examiner, sexual assault response team initiative and we are going to be working together to address a lot of these challenges and to work together to come up with some solutions. And I think that will also benefit our system, but also their systems as well.

Senator MURKOWSKI. And I appreciate that you are giving that considered attention to some of the unique obstacles that we face. In most of our facilities you don't have a doctor, you don't have a nurse; we have community health aides. They will need that level of training. In many areas there may be issues that relate to the

appropriate storage and whether or not we can appropriately and adequately provide for the storage. The transport of the evidence, if you are weathered in and there is no airplane, there is no way in or out, how do we deal with this? So I appreciate that you are working with some challenges there that are perhaps a little bit unique, but in fact they are part of the daily world that so many in our villages face.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Murkowski.

Senator Franken.

Senator FRANKEN. Mr. Perrelli, I just want to talk about law enforcement a little bit. We have had testimony and we have had hearings here on the level of law enforcement on reservations and the problems in recruitment and retention of law enforcement officials, and even the level at which the funding in reservations where crime may be four times as high as in the other areas of America, they are budgeted for two-thirds what the average jurisdiction would be in America. To what extent does the shortage of law enforcement officials in Indian Country account for the lack of prosecutions and enforcement of domestic violence?

Mr. PERRELLI. I think it has a very significant impact. If you have one or two officers who are covering hundreds and hundreds of square miles, and for an individual who is faced with the prospect of reporting something that has just happened, the idea that someone wouldn't get there for a couple of hours may well cause someone to say, you know, I am just going to have to figure out a different way to deal with what I am facing here. So I think we have recognized that. Each of the last few years we have asked for funds for additional FBI agents. Last year, in our Community-oriented Policing Services Grant programs, we were able to fund only one of eight officers across the Country, but we tried to fund every single tribal police department that applied because we recognized that the need was so tremendous.

So another thing we are doing to try to address this is we have designated three community prosecution pilots where we try to put a Federal prosecutor who is more engaged with the community, either living on or near the reservation, along with a victim witness specialist so that you get the opportunity, sort of access to victim services as quickly as you can possibly get it, and that you hopefully build trust over time in working with those individual communities.

Senator FRANKEN. It seems that we have so many vicious cycles in Indian Country. I mean, you talk about what this does to the kids who are witness to violence and how that correlates with suicide or their being abusers themselves, ultimately, or crime or drug abuse or mental health issues, and then you see that because of the lack of recruitment of law enforcement in Indian Country, that that is a problem.

And one of the reasons that you have a lack of recruitment is that when you are asking someone to be a law enforcement in Indian Country, they are going into a situation where the schools are not great for their kids, the housing isn't great for their family, the employment opportunities aren't terrific for their spouse, so we have just these continuous vicious cycles that I see over and over

again when I am in this Committee, and it seems like we have to really make an effort to close those cycles.

And one of them, to me, is making sure that we have the proper level of law enforcement, that we have the proper level of response to children who are witness to abuse, and that it is not enough to say, well, we are trying; it is not enough to say we are planning to coordinate; it is not enough to do that, and that our job is to make sure that those things become realities and they become realities now, when they should have been realities yesterday.

And we have a lot of making up to do because we are seeing the legacy of all of this for so many years, and I feel that we owe Indian Country a special debt for our own negligence and our own guilt in not fully funding education and fully funding law enforcement and fully funding health care that we, by treaty, we are supposed to do.

I only have a few seconds, so I am sorry. I am going to submit a question on what specific jurisdictional challenges you see in bringing these people to justice and what legislative fixes you might recommend. Okay?

Mr. PERRELLI. Thank you, Senator.

Senator FRANKEN. Thank you very much.

And thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

I have other questions that I will submit for the record, and I want to thank the first panel very much for your responses. It certainly will help us in our work here, and we look forward to continuing to work with you on this, and if we need to get to the point of legislating some language that will help the cause here. So thank you very much, panel one.

Mr. PERRELLI. Thank you, Mr. Chairman.

The CHAIRMAN. I would like to invite the second panel to the witness table. On our second panel we have the Honorable Donald Rodgers, Chief of the Catawba Indian Nation in Rock Hill, South Carolina; Carmen O'Leary, the Director of Native Women's Society of the Great Plains in Timber Lake, South Dakota; and I would like to ask my friend and colleague, Senator Franken, to introduce our next witness, Ms. Sherry Sanchez Tibbetts, from Minnesota.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman, for this honor.

Sherry Sanchez Tibbetts is currently the Executive Director of the American Indian Community Housing Organization in Duluth, Minnesota. This organization was founded in 1993 to respond to social issues impacting Native American women, including domestic violence and homelessness. It is the only provider of culturally specific housing and services in Northeast Minnesota. I have had the pleasure of meeting Ms. Tibbetts several times. On each occasion I have been impressed with her knowledge of the needs of Native women and her passion for ending violence and homelessness.

Ms. Tibbetts, thank you for being here, and please go ahead with your testimony.

The CHAIRMAN. Thank you very much, Senator Franken.

Senator FRANKEN. I am sorry, Mr. Chairman, that is your prerogative to ask. I got carried away, I'm sorry.

[Laughter.]

The CHAIRMAN. I want to welcome our second panel and ask Chief Rodgers to please proceed with your testimony.

STATEMENT OF HON. DONALD W. RODGERS, CHIEF, CATAWBA INDIAN NATION

Mr. RODGERS. Yes, sir. Thank you very much. Good afternoon, Chairman Akaka and distinguished members of the Committee. My name is Donald Rodgers. I am Chief of the Catawba Indian Nation in South Carolina. I apologize for my accent a little bit, but that's all right.

On behalf of the United South and Eastern Tribes, I would like to thank you for the privilege of testifying in front of this Committee today on the issues of violence against Native women. Violence against women has been a serious concern of Indian tribes for hundreds of years, not just recently.

This has been going on for hundreds of years. I know that it has been an issue for the Catawba Tribe since the mid-1700s, when we were ruled by the great King Hagler. King Hagler was a renowned chief of the Catawba Indian Nation from 1750 to 1763. He is famously remembered for keeping the peace between the settlers and the Catawbans in the area, in the upper portion of South Carolina.

However, what I remember him most for, and what really hits home today for us all, is his belief that the evils of alcohol that led to the victimization and the abuse of women. He made a bold statement in the 1760s that was how we should treat our women and how we should honor them and how we should stay away from alcohol because it would lead us to do things we shouldn't do. Over 300 years ago he made this statement, and it is sad that King Hagler's desire to see Native women treated with dignity and respect has not yet been realized.

As Tribal Chief, husband, father, and son, I am well aware of the violence against women in tribal communities. It is a pervasive problem with devastating effects. Studies have shown that American Indian and Alaska Native women experience higher levels of sexual violence than all other women in the United States. Our women are two and a half more times likely to be raped or sexually assaulted than any other race in America. One in three Native women will be raped during her lifetime. One in three. I have a daughter, and whenever I see her with my nieces, one of those children will face this.

The VAWA grants have helped combat violence against women in our own community. We use our VAWA grant to fund a counselor who provides therapy services for member victims of sexual assault, as well as children affected by domestic violence.

The Houlton Band of Maliseet Indians runs a domestic violence program as well and sexual assault program which provides crisis intervention and legal assistance, among many other things.

All of these changes are helpful, but they are not enough. The Federal Government has a responsibility to assist us in safeguarding the lives of Native women. USET fully supports the National Congress of American Indians' recommendations to help fix this problem. We need to restore tribal criminal jurisdiction over all persons and clarify tribal civil jurisdiction over non-Indians. There need to be new Federal offenses to combat violence against

women and there need to be ways for tribes who are landless to bring Federal charges. We need to create service programs for Native women and we need to increase support for tribal domestic and sexual assault coalitions.

Before I close my comments, I figured this would take me a short time; I speak a little fast. I am a survivor. I grew up in a home with domestic violence, and it was because of poverty, it was because of the things that our people did not have. I am only 43 years old, and I didn't have running water until I was 12. We didn't have electricity until I was 8. I never knew what a hot water heater was until I was 19 years old.

So those issues in Indian Country have caused the effect of domestic violence to increase. Alcoholism, drug abuse, the constant badgering of Indian people by the outside that they are no good, that they are worth nothing. We have seen that. I grew up that way.

But I am proud to say that I am a survivor and that through church organizations, help from friends and other family members have allowed me to become who I am today, and with that I will be short to thank you for the opportunity, Chairman, to share this information with you, but also the personal experience with you. Thank you for the opportunity to speak today.

[The prepared statement of Mr. Rodgers follows:]

PREPARED STATEMENT OF HON. DONALD W. RODGERS, CHIEF, CATAWBA INDIAN NATION

"A Nation is not defeated until the hearts of its women are on the ground. Then it is done, no matter how brave its warriors or how strong its weapons."¹

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Committee. My name is Donald Rodgers and I am Chief of the Catawba Indian Nation, located in South Carolina. On behalf of the United South and Eastern Tribes I would like to thank you for the privilege of testifying in front of the Committee today on the issue of violence against Native women.

The United South and Eastern Tribes, Inc. (USET), is an inter-tribal organization representing 26 federally recognized Tribes from Texas across to Florida and up to Maine. The USET Tribes are within the Eastern Region of the Bureau of Indian Affairs (BIA) and the Nashville Area Office of Indian Health Services (IHS), covering a large expanse of land and area compared to the Tribes in other Regions. USET Tribes can be found from the Canadian Border in Maine and New York, along the east coast to Florida, west into Mississippi and south into Texas. Due to this large geographic area, the tribes in the Eastern Region have incredible diversity. I offer this testimony on behalf of USET as well as on behalf of the Catawba Indian Nation.

Violence against women has been a serious concern for Indian tribes for hundreds of years. King Hagler, or Nopkehe, was a renowned Chief of the Catawba Nation from 1750-1763.² He is remembered not just for being an excellent leader of his people, but also for denouncing the evils of alcohol and how its abuse led to the victimization of all Catawba people, including women.³ It's a great tragedy that King Hagler's desire to see the eradication of

¹ Cherokee Proverb, available at http://www.malixacts.com/domestic_violence.htm.

² James H. Merrell, *Minding the Business of the Nation: Hagler as Catawba Leader*, 33.1 *Ethnohistory* 33 (Winter, 1986) (Duke University Press).

³ *Treaty between North Carolina and King Hagler and the Catawba Indians North Carolina*, August 29, 1754, Colonial and State Records of North Carolina, available at

violence against Native women has not yet been fully realized today. As women are revered within traditional Native societies, violence against women is contrary to Indian culture. It is the belief of many that one of the sources of this crisis is historical trauma coming from the effects of the arrival of Europeans. This notion is reflected in the art of the U.S. Capitol. At the end of this testimony, I have placed an image of a calculating Columbus pulling back the veil of a distressed "Indian Maiden," which can be found on the Senate-side of the U.S. Capitol. In this eerie image, the artist has captured Columbus' ill intent – a legacy that is still with Native peoples today. Accordingly, USET and its member tribes have taken a strong position against tribal domestic violence and the abuse of Native women and fully support increased funding for the protection of Native people under the reauthorization of the Violence against Women Act. USET also urges full funding and implementation of the Tribal Law and Order Act, which will strengthen the law enforcement component needed to address domestic and sexual violence.

Regrettably, violence against women in Tribal communities is all-too frequent. Federal government studies have consistently shown that American Indian and Alaska Native women experience higher levels of sexual violence than other women in the United States. U.S. Department of Justice data shows that American Indian and Alaska Native women are more than 2.5 times likely to be raped or sexually assaulted than all other races,³ and one in three American Indian and Alaskan Native women will be raped during her lifetime.⁴ "Native American women living in some countries composed largely of tribal lands are murdered at a rate more than ten times the national average."⁵

The unique relationship of the United States to Indian Tribes creates a federal trust responsibility to assist Tribal Governments in safeguarding the lives of Native women.⁷ Title IX, Safety for Indian Women, of the Violence against Women and Department of Justice Reauthorization Act of 2005 (VAWA) was passed by Congress to combat the high rates of domestic violence found in Indian country.⁶ Title IX recognized that American Indian and Alaskan Native women experience violent crime at a rate of 23.2 per 1,000 women, compared with 8 per 1,000 among Caucasian women.⁸

USET has been and continues to be a staunch supporter of increased funding for Title IX, including increased funding for the Grants to Tribal Governments Program and the

0061. Although King Hagler's position against the victimization of Native American women is primarily based in oral accounts passed down through the years in the tribe, historical proof can be found in the story of how King Hagler executed a member of the Catawba tribe who killed the daughter of a settler while intoxicated. This event was particularly notable due to the traditional practice of excusing crimes that were committed when the individual was drunk. Merrell, *supra* note 2, at 62.

³ Steven W. Perry, *American Indians and Crime – A BJS Statistical Profile 1992-2002*, Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs, December 2004.

⁴ Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence against Women*, US Department of Justice, 2000.

⁵ *Proposed Legislation to Help Tribal Communities Combat Violence Against Native Women*, U.S. Dept. of Justice Framing Paper, Office of the Associate Attorney General, May 20, 2011.

⁶ USET Resolution No. 2009-064, Position on Violence Against Women Act Consultation Conducted By The U.S. Department of Justice, October 29, 2009.

⁷ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, Title IX (2006).

⁸ *Id.*

Tribal Women's Coalition Program.¹⁰ Title IX provides valuable funding and support to American Indian and Alaska Native communities in their efforts to combat domestic violence, sexual assault, stalking and other acts of violence in tribal communities.¹¹ The United States response to violent crimes against Native women has been inadequate because perpetrators are rarely prosecuted.¹² Seventy-six percent of adult sexual assault crimes referred to federal prosecutors are declined.¹³ USET condemns violence against women and urges its member Tribes to formally act to eliminate this on Indian Country.¹⁴ The future of American Indians and Alaskan Natives rests in the capacity of tribes to preserve the safety, integrity, and well being of its members, including the right of women to live in a world free of violence.¹⁵

As Chief of the Catawba Tribe I have experienced firsthand the positive effect that VAWA grants can have. We use our VAWA grant to fund a counselor who provides therapy services for member victims of sexual assault. Our therapist also provides secondary counseling services to children affected by domestic violence. This therapy not only helps the individuals who are being counseled but also helps move the family into a more stable environment so that instances of domestic violence will not occur again in the future.

The Houlton Band of Maliseet Indians, also a member of USET, runs a Domestic Violence and Sexual Assault Program in order to effect change within its Tribal community so that equality, respect, and nonviolence may become the cornerstones of all relationships. The Maliseet Domestic Violence and Sexual Assault Program is dedicated to ending violence against Native women by assisting victims in regaining personal safety and control of their life, ensuing accountability of perpetrators of violence within the Tribal and non-tribal Law enforcements and judicial systems, and promoting peaceful relations in our Tribal families and Community. The Program offers crisis intervention, emergency shelter and related assistance, hospital accompaniment and legal assistance among many other things. Additionally, "[t]he Eastern Band of Cherokee Indians has developed a tribal justice system to provide safety to women within [its] jurisdiction, including [a] dedicated code[s] to address domestic violence."¹⁶

Despite the successes that VAWA has helped enact, changes should be made in order to adequately address the safety and protection of women and allow tribal communities to effectively combat violence against native women. The creation of the Violence Against Women Federal and Tribal Prosecution Task Force by the Attorney General in January 2011 is only one step in the right direction. In her report to the United Nations on violence against Native women, Special Rapporteur Ms. Rashida Manjoo summarized the needed changes:

¹⁰ USET Resolution No. 2009:004, Support for Title IX, Safety for Indian Women Act, Pub. L. 109-162 (Oct. 16, 2008).

¹¹ *Id.*

¹² USET Resolution No. 2009:064, Position on Violence Against Women Act Consultation Conducted By The U.S. Department of Justice, October 29, 2009.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Rashida Manjoo, Addendum, Mission to the United States of America A/HRC/17/26/Add.5*, 25 (2011).

"Lacking the necessary criminal authority to prosecute non-native offenders, tribal courts have used civil laws and remedies to respond to cases of violence against women. These include civil contempt proceedings, banishment, suspension of certain tribal benefits, and issuance of tribal protection orders, monetary penalties, community service, and restitution, among others. Furthermore, Indian nations regularly issue civil protection orders to prevent future violence and award temporary custody of children, to both native and nonnative women in their jurisdiction. Tribal authorities enforce these protection orders on their land, but once women leave tribal land, they must rely on other jurisdictions, mainly at the state level, for their enforcement. . . . [M]any States do not recognize or enforce tribal protection orders. . . . [E]fforts made by Indian nations to address the problem of violence against women are diluted by a lack of essential resources. . . . [I]n many tribal communities, Indian women are disadvantaged by a lack of basic services and personnel to assist victims of sexual and physical violence. Many Indian nations have only a few police officers to cover their vast territories."¹⁷

USET generally supports the recommendations of the NCAI National Task Force on Violence Against Women regarding the reauthorization of the Violence Against Women Act, including:

1. **Restore tribal criminal jurisdiction over all persons.** Without such jurisdiction it will remain extremely difficult to comprehensively address this issue within tribal communities. While not contingent on funding, the Federal government should provide additional funding for tribal courts, law enforcement and detention facilities to facilitate exercising that jurisdiction.
2. **Clarify tribal civil jurisdiction over non-Indians.** Clarification is especially needed in such areas as the issuance of protection orders.
3. **Create new federal offenses to combat violence against women.** In addition to the recommendations of the task force regarding new offenses, which one way or another are tied to tribal lands, USET would like to explore with the committee ways to bring Federal charges in the context of tribes that are land-less.
4. **Create services program for Native women.** The expansion of such programs is critically important, especially when the law enforcement response to acts of violence against Native women remains insufficient.
5. **Establish comprehensive funding streams to support sexual assault services for Native women.** Tribal sexual assault service providers have not always been able to take advantage of the Sexual Assault Services Program established by Congress in 2005 due to ambiguous language, which should be clarified to make tribes and tribal providers clearly eligible.
6. **Amend definition of "rural" under the OVW Rural Grant Program** so that American Indian tribes are considered eligible entities. When this program was amended in 2005, the new definitions did not include American Indian and Alaska Native tribes. This should be corrected.
7. **Increase support for Indian tribes sharing concurrent state criminal jurisdiction.** This is critical for tribes in Public Law 280 states, but also for certain USET tribes who have similar concurrent jurisdiction with the states, or who are landless and therefore

¹⁷ *Id.*

have no land over which to exercise jurisdiction. For the latter tribes, it is important to support relationship-building with state authorities; and

8. **Increase support for Tribal Domestic and Sexual Assault Coalitions.**¹⁸ These coalitions are the frontline of the effort to end domestic and sexual violence and yet they are inadequately funded. USET urges increased funding in support of these coalitions.

There are also several bills that have been introduced in the Senate to address sex trafficking. USET has not comprehensively reviewed these bills, but would like to note that sex trafficking is an issue in Indian country and there is a need to assure specific tribal inclusion in any legislation which addresses that issue.

Much of the effort to address domestic and sexual violence turns on jurisdictional issues. Because of this, it is important to address the Supreme Court's decision in *Carcieri v. Salazar*, which by putting in jeopardy the status of many Indian lands has the potential to overturn existing jurisdictional understandings in Indian country, making the prosecution of domestic and sexual offenders that much more difficult.

Conclusion. Although VAWA has resulted in many positive changes among Native communities, further changes are needed to ensure that each tribe has adequate resources to protect, shield, and safeguard Native women. Thank you for this opportunity to provide testimony on this critically important issue. USET stands ready to provide whatever further assistance or support the Committee may require to address this issue further and more effectively.

"Columbus and the Indian Maiden", U.S. Capitol



¹⁸ Letter from NCAI National Task Force on Violence Against Women to Associate Attorney General Perrelli, Office on Violence Against Women, U.S. Dept. of Justice, June 17, 2011 (on file with author).

The CHAIRMAN. Thank you very much, Chief Rodgers.
Ms. O'Leary, please proceed with your testimony.

**STATEMENT OF CARMEN O'LEARY, DIRECTOR, NATIVE
WOMEN'S SOCIETY OF THE GREAT PLAINS**

Ms. O'LEARY. Honorable Chairman Akaka and Mr. Franken, thank you for inviting me to testify today.

I am here representing the Native Women's Society of the Great Plains. That is a tribal coalition and our membership is located in the Great Plains area, North Dakota, South Dakota, Wyoming, Montana, Nebraska, and Southern Minnesota. The board is composed of representatives from programs on the ground on a day-to-day basis who are providing services to the women in our Native lands. Some are nonprofit programs, some are tribal programs, and we have known about this problem for a long time. I used to work in one of those programs.

Back in 1996, 15 years ago, was when the Department of Justice first showed in their statistics that Native women were violated at the rate that they are today, and here we are 15 years later with more statistics and more funding, but we still have a ways to go in bringing those numbers down.

One of the things that I see that has been a problem and that we need to have some help with is that our services are not stable for a variety of reasons. We have model programs that have come out of these statistics, and they have come and gone. The instability and ongoing need for services remains a great problem in our community. The funding that is often made available is discretionary and it is inconsistent.

There are a lot of reasons that it doesn't stay consistent from year to year. We have women that need those services, and when they go, the program may no longer be there, and the failure to provide services puts these women at an increased risk for ongoing violence and sometimes even death. And to combat that, I think the funding needs to be stabilized so the services are continuous, and not just a duration of a two- or three-year program. Funding these programs on a consistent, annual basis would directly and positively combat the problem of violence in our community.

Like you all have heard today, we need to have accountability for offenders in our communities. We just can't take our time in making that happen. What we find in our communities due to the lack of accountability is that they gain a lot of support. In my own experience this year, I had taken leave from work because I was personally involved with some of the victims in a case at Federal court. The pedophile had pled guilty, and part of his reason for pleading guilty was because of the additional sentencing guidelines that have come about because of the new laws that have been passed.

What was appalling was that we had a line officer who regionally covers our area for the Bureau of Indian Affairs Education and also one of our BIA principals write support letters, and the principal was sitting behind the pedophile, not the students, and that type of normalization of sexual abuse in our communities has got to stop.

You have to think about what is the impact on the victims and their families when prominent people are sitting behind the perpetrators, rather than the victims. That is just heaping more insult on injury. I just find it completely inexcusable that Federal employ-

ees with a trust responsibility to those they serve could act just so outrageously.

As I travel across our region, I hear of the barriers that our program advocates have to overcome simply to get help for those they serve. In some communities there are no local services whatsoever; in others there may be a local program, but when that program loses its vital funding due to the end of a grant term or some other situations, there are no services for women in life-threatening situations.

In one community the advocates have to think through how to get women to receive medical services after a sexual assault. Sometimes it can be four different places that they have to go in that particular community. In another community women are taken away to anywhere from 60 to 100 miles to receive medical services, and maybe they are taken by ambulance, and they have to find their own way back to their communities. Those are the type of things that the women in our programs help to overcome and to find ways to do that, and when those programs go down, once again, those are factors and barriers for women to get help and to find justice and the medical services that they need.

So we have to remember that there has to be a plan. There needs to be medical response and victim service providers; otherwise we re-victimize the women who have been hurt in our response, and our lack of response.

So the other thing I want you to think about is that when a program goes down in whatever community it is in and those advocates have to go on and find another job or do whatever they need to survive for themselves, that that outcome is often crushing.

One of the things that I can recommend, and I have other things in my testimony, but that there is the Victims of Crime Fund, otherwise known as a VOCA Fund, and one of the ways that we have consistent services in State programs is that that goal is on from year to year, and part of that, the Fund comes from Federal offenders who pay in fines and other penalties, and some of them are from jurisdictions in Indian Country.

But we are not put into that formula at all, any of the tribal jurisdictions, and that would be one place that we wouldn't have to find new monies to allocate from Federal dollars; it is already there, it is capped, and there would be a couple of different ways to ensure that we could have services from year to year by using the Fund money, including tribal programs in tribal areas to have some of that set aside to ensure that Native victims have access to services that they will need from year to year. The Victims of Crime Act is supposed to help rebuild lives, and that is where some of that comes from.

Again, like we have heard today, that many of the episodes that happen in Indian Country are perpetrators of another race who know that they can continue to offend without any consequences due to the unique and confusing jurisdictional rules present in Indian Country, and we do need the jurisdictional fix that they were talking about earlier that would give back the criminal jurisdiction over non-Indians to the tribes, because the offender that goes unpunished under our current system needs to get what they deserve, and his victim or victims may finally achieve some sense of

peace knowing that justice was served at least at some level, if not at a Federal level.

We heard from Indian Health Service that the impact of abuse on women has long-term effects. We know that their quality of life and what has happened to them endures long after any bruises heal.

The CHAIRMAN. Ms. O'Leary, would you please summarize your statement?

Ms. O'LEARY. Sure. My clock is a little bit off, isn't it? I'm sorry.

The CHAIRMAN. Your full statement will be placed in the record.

Ms. O'LEARY. Thank you.

Part of what I need to submit further, Your Honor, is sexual assault protocol. We have some written testimony that wasn't finalized yet for that, and I am glad to have the two weeks.

But Native women deserve an equal chance to rebuild their lives.

Thank you for allowing me to testify here today, and I am happy to answer any questions.

[The prepared statement of Ms. O'Leary follows:]

PREPARED STATEMENT OF CARMEN O'LEARY, DIRECTOR, NATIVE WOMEN'S SOCIETY
OF THE GREAT PLAINS

Honorable Chairman Akaka, and other distinguished members of the Committee, thank you for inviting me to testify today. My name is Carmen O'Leary, and I am a member of the Cheyenne River Sioux Tribe located in South Dakota. I am here today representing the Native Women's Society of the Great Plains, a tribal coalition that provides support to programs serving Native women subjected to violence throughout the Great Plains. Our member programs are located in North and South Dakota, Wyoming, Montana, Nebraska and southern Minnesota. Our board is composed of representatives from each of our member programs. We work together toward the overall goal of increasing the safety of Native women in our Native lands.

Our Native nations have known for some time that violence against Native women is a problem. But this was confirmed for the first time by the federal government in 1996 when the Department of Justice issued a report finding that Native women were homicide victims at a far greater rate than any other population in the United States. Unfortunately, Native Women continue to lead the nation in victimization rates. One in three Native women experience rape in our nations today.

I understand that numbers have been presented time and again about the need in Indian Country for increased services and accountability. And as a result of these numbers, various model programs have come and gone. But the instability and ongoing need for services remains a great problem in our communities. The funding that is available is usually discretionary and inconsistent. Too often, women in need of services find that the local DV/SA program is no longer funded or the services are no longer offered. This failure to provide services puts these women at increased risk for ongoing violence, and too often, death. To combat this, funding needs to be stabilized so the services are continuous and not just the duration of a two or three year grant. Funding these programs on a consistent, annual basis will directly and positively combat the problem of violence in our communities.

In addition to increasing the availability of services, we need to hold offenders accountable by increasing community accountability. How much time will it take to overcome decades of behavior that has been accepted due to offenders going unpunished and the community accepting the offender's actions as the status quo? This normalization of violence is imbedded deeply in our society today. I had the sad experience to observe one of the worst examples of this acceptance in a federal courtroom earlier this year. Thanks to the threat of increased sentencing, one pedophile plea bargained and was being sentenced. He had pled guilty; there was no jury or assumption of innocent at this point in his procedures. The victims who had courageously come forth all were current or former students at a Bureau of Indian Affairs school. The regional line officer of the Bureau of Indian Affairs and one of the principals of a local Bureau of Indian Affairs school wrote letters of support. But not for their students—for the pedophile. The principal sat behind the pedophile at the hearing, not behind the students. I am not sure any of us can understand the impact it must have had on these victims and those who love them—that the

support of prominent people in their community supported the perpetrators, and dismissed the victims. Sadly, insult to injury is heaped on those strong enough to come forward. I find it completely inexcusable that federal employees, with a trust responsibility towards those they serve—namely the students—could act so egregiously.

As I travel across our region, I hear of the barriers that program advocates have to overcome simply to get help for those they serve. In some communities, there are no local services whatsoever. In others, there may be a local program, but when that program loses its vital funding, due to the end of a grant term or some other situation, there are no other local services for women in life threatening situations. In another community, the program staff may have to figure out one of four possible sites to take a sexual assault victim. Another program had to find a way to get women back from emergency services in a far off facility. There, the sexual assault victim was taken by ambulance to the emergency room sixty to hundred miles from home, and she was left to find her own way back with no resources. In all of these situations, very little effort has been made to plan for anything except the minimal medical response for victims. And it is the victims that suffer, often revictimized by the response process, or lack thereof, that they must face.

The stability and knowledge gained by the staff is lost as they have to move to another job and take their experience and expertise with them. It does take the knowledge of the local native women to help other native women. The base of what works and what is needed is lost as a program goes down.

The long term effects of violence to Indian women are well documented. We know that the damage to their quality of life endures well beyond the bruises. The fear they endure takes so much from women's lives and the lives of their families and our communities. Depression, substance abuse, and suicide are often the remnants of the violence in the lives of Native women and their children. It is hard to put a life back together after such violence. Then pile on the poverty, isolation, and blame that Native women subjected to violence must face. The outcome is crushing.

These are the barriers victims, women and children, come up against in small communities, over and over, in their hunt for safety and perhaps some sense of justice. For years, I have heard the stories of women and their children having to overcome huge barriers to be safe and survive in some overwhelming situations. Often times, the advocates who help victims are also threatened in numerous ways as they seek to help women and their children. And in more times than I care to admit, the violence escalates to the point of murder. A few years ago, one Native woman, a mother of five, disappeared. It took thirty days for any agency to launch a search for her. And even though her battered body was finally found, her murder goes unsolved to this day.

Efforts at solutions have been passed, such as the Tribal Law and Order Act. These are commendable steps. But additional steps need to be taken in this area to fully implement the necessary provisions. One important step is a return of criminal jurisdiction to Indian nations over crimes of domestic violence, stalking, dating violence and sexual assault by non-Indians. This type of jurisdictional fix is critical to enhancing the safety of Native Women. Many episodes of violence against Native women include perpetrators of another race who know that they can continue to offend without any consequences due to the unique and confusing jurisdictional rules present in Indian country. With a jurisdictional fix that restores tribal criminal jurisdiction over non-Indians for these limited crimes, the offender that goes unpunished under the current system might finally get what he deserves and his victim might finally achieve a sense of peace, knowing that justice was served.

The rate of sexual assault is at epidemic proportions. Grant programs for tribal programs are not meeting the needs, and accessing funds from these programs has many barriers. This often results in a mindset that sexual assault, although not acceptable in other places, is acceptable in Indian country. Other jurisdictions have access to the Victims of Crimes Fund, otherwise known as the VOCA fund. The monies in the VOCA fund are monies paid by federal offenders for fines and other penalties including fines paid by offenders in federal jurisdictions like those who commit crimes in Indian Country. But, under the Victims of Crime Act, practically no money is directed at Indian Tribes. States receive a formula grant each year; no competition is required so the funding for the services is guaranteed from year to year. Tribes need the same type of funding set aside to immediately begin to better serve Native victims of violence. Such a tribal set-aside would cause no loss of funding to others receiving VOCA funds under the existing scheme if the amount was above the current cap. Such an "above-the-cap" set-aside for tribes would help ensure that Native victims have access to the services they need, while still maintaining the existing set aside amounts for the states. This would focus the funds on an area of demonstrated need which has been ignored for far too long. The Victims of

Crime Act is supposed to help rebuild a life through assistance and compensation. Native Women victims deserve an equal chance to rebuild their lives.

Thank you for allowing me to present my testimony here today. I am happy to try and answer any questions you may have.

The CHAIRMAN. Thank you very much.

A vote is in order now in the chambers, so, as Chair, I call a recess here, subject to the call of the Chair. So recess. Thank you. And I will be right back.

[Recess.]

The CHAIRMAN. This hearing on Native women, an oversight hearing, will come to order. We will continue with our testimonies, and may I call on Ms. Tibbetts for your testimony.

STATEMENT OF SHERRY SANCHEZ TIBBETTS, EXECUTIVE DIRECTOR, AMERICAN INDIAN COMMUNITY HOUSING ORGANIZATION

Ms. TIBBETTS. Thank you, Mr. Chairman. I also want to take a moment to thank Senator Franken for his introduction.

My name is Sherry Sanchez Tibbetts. I am the Executive Director of the American Indian Community Housing Organization. AICHO is a multi-service nonprofit located in Northeast Minnesota. We provide a wide range of culturally specific housing and supportive services targeting Native American women who experience physical and sexual violence.

In 1996, AICHO developed the first transitional housing program in the State of Minnesota dedicated to serving Native American women who have been battered and were homeless. We operate one of only a handful of culturally specific domestic violence shelters nationwide and provide scattered site supportive housing to long-term homeless families, individuals, and unaccompanied youth.

AICHO is also in the process of developing one of the first permanent supportive housing projects in the Country for urban Indian homeless and precariously housed people. While we incorporate traditional American Indian practices and customs in all our programs, AICHO serves all persons in need, and we recognize that there is an undeniable connection between homelessness and violence against women.

In 2008, after reviewing client files and case situations, we found that 46 percent of all the women connected to an AICHO program had been involved in trafficking or prostitution. When staff realized that nearly one out of every two women who were in our office on a regular basis had somehow been commercially sexually exploited, they were shocked. Most of the women had not presented as trafficking victims, though some had admitted that they entered into prostitution or began hooking when they were 12 or 13 years old.

The women seeking services at AICHO had come to our offices from other community programs, area reservations, and the streets. They presented as just homeless or in need of shelter after a boyfriend had beat them up. Some had developmental disabilities; most lived at or below the poverty line and had few resources available to them. At the same time, there were also police reports and stories from mothers of young girls being lured off reservations and other areas and taken to ships on port, beaten, and gang raped.

AICHO staff had collected information in response to a request from the Minnesota Indian Women's Resource Center. At the time, there was a significant lack of information about American Indian victims of trafficking and relatively few services to help victims find safety and to heal from the trauma in a life of prostitution, although there had been numerous reports from advocates of Native girls being trafficked into urban areas and then forced into prostitution, pornography, and strip shows across the State and over State lines.

The Minnesota Indian Women's Resource Center began working on a report, *Shattered Hearts*, which is the first research in the Country to analyze the scope of sexual exploitation of American Indian women and children in the United States. Among the findings, the report stated that historical trauma, multi-generational grief and loss, compounded by high rates of poverty and sexual violence, make American Indians extremely vulnerable to sexual predators.

It has also been our experience at AICHO that many of the women seeking our services are experiencing multiple forms of victimization at one time. Violence against women occurs on a spectrum, and Native women are very likely to experience more than one form of violence. Domestic violence, sexual assault, stalking, dating violence, and sex trafficking, as well as homelessness, are all issues that intersect with one another and often co-occur.

Native American women must have access to multifaceted, culturally-based services in order to attain safety, stability and autonomy. Organizations serving them, particularly in an urban setting, must be able to provide those services in a culturally competent manner.

As a service provider working with Native American women who have been commercially sexually exploited, AICHO makes the following recommendations for moving forward:

Develop culturally appropriate housing services, especially in urban areas. Emergency and permanent housing with client-driven supportive services is needed to help Native American women and children break away from pimps and those who would exploit them, and safely rebuild their lives;

Provide training and technical assistance to mainstream programs to help them identify trafficking victims. Most women will not present as a trafficking victim, but will seek services for homelessness or other causes; and provide assistance to help them deliver services in a culturally competent manner; and

Finally, eliminate the requirement for law enforcement certification for domestic sex trafficking victims to qualify for services funded by Federal dollars. Many of the women victimized are in fear of their safety if they get involved with law enforcement.

Thank you, Mr. Chairman, and I welcome any questions you may have.

[The prepared statement of Ms. Tibbetts follows:]

PREPARED STATEMENT OF SHERRY SANCHEZ TIBBETTS, EXECUTIVE DIRECTOR,
AMERICAN INDIAN COMMUNITY HOUSING ORGANIZATION

The American Indian Community Housing Organization (AICHO) is a multi-service nonprofit located in Northeast Minnesota. We provide a wide-range of culturally

specific housing and supportive services targeting Native American women who have experienced physical and sexual violence. In 1996, AICHO developed the first transitional housing program in the state of Minnesota dedicated to serving Native American women who had been battered; we operate one of only 26 culturally specific domestic violence shelters nationwide; and provide scattered site supportive housing to long-term homeless families, individuals and unaccompanied youth. AICHO is also in the process of developing a multi-use facility that will create one of the first permanent supportive housing projects in the country for urban Indian homeless and precariously housed families. While we incorporate traditional American Indian practices and customs in all our programs, AICHO serve all persons in need.

In 2008, we found that 46 percent of all the women connected to an AICHO program had been involved in trafficking or prostitution. When staff realized that nearly 1 out of every 2 women who were in our office on regular basis had been commercially sexually exploited, they were shocked. Most of those women had not presented as “trafficking victims,” though some had admitted that they had entered into prostitution or started “hooking” when they were twelve or thirteen years old. The women seeking services at AICHO had come to our offices from other community programs, reservations, and the streets. They presented as “just homeless” or in need of shelter after their “boyfriend had beat them,” and only later acknowledged that their “boyfriend” had actually trafficked or forced them into prostitution. Some had development disabilities, most lived at or below the poverty line and had few resources available. There were also police reports from Duluth, where AICHO is located, showing that Native girls were being lured off reservations, taken onto ships in port, beaten, and gang-raped.

As a housing organization, AICHO recognizes that there is an undeniable connection between homelessness and violence against women. Often, women experiencing physical or sexual violence may have to choose between remaining in an abusive relationship or face being homeless, which can compound a situation by exposing a woman (and her children) to higher risks of assault. The vast majority of Native American women who come into shelter are not only being physically and emotionally battered by their partners, they are also being sexually assaulted. Sexual assault is often a tool that is used by abusive partners but it *also* exists as a historical legacy for every Native American woman; whereas the dynamics of domestic violence assert power and control of one partner by another, the dynamics of colonization asserts the domination of one race and culture by another. Native American women are at the receiving end of *both* types of domination, and the experiences of these forms of violence and oppression are intertwined.

AICHO staff collected information in response to a request from the Minnesota Indian Women’s Resource Center. At the time, there was a significant lack of information about American Indian victims of trafficking and a relative absence of services to help victims find safety and heal from the trauma of life in prostitution, despite numerous reports from tribal advocates of Native girls being trafficked into urban areas then forced into prostitution, pornography, and strip shows across the state, over state lines, and internationally into Mexico. MIWRC was working on a report that documented the commercial sexual exploitation of Native American women and children. Shattered Hearts was the first research in the country to analyze the scope of sexual exploitation of American Indian women and children in the United States. The report found that historical trauma and multi-generational grief and loss, compounded by high rates of poverty and sexual violence make American Indians extremely vulnerable to sexual predators. It also found that the average age into prostitution was 12 years old.

Violence against Native American women, whether physical or sexual, is grounded in an abuse of power and reinforced through intimidation, coercion, and control. Long-term safety and self-sufficiency for women who have experienced domestic and/or sexual violence requires far more than merely leaving an abusive relationship. Freedom from violence requires comprehensive planning and holistic, client-centered supportive services. Staff at Dabinoo’Igan, AICHO’s domestic violence shelter, have often seen that Native women seeking our services are experiencing multiple forms of victimization at one time. Violence against women occurs on a spectrum and Native women are very likely to experience more than one form of violence. Domestic violence, sexual assault, stalking, dating violence and sex trafficking are all issues that intersect with one another and often co-occur. Native American women must have access to multi-faceted, culturally based services in order to attain safety, stability, and autonomy; organizations serving them, particularly in an urban setting, must be able to provide those services.

AICHO provides the following recommendations for moving forward:

Develop culturally appropriate housing services, especially in urban areas to help protect and safeguard Native American women and children. Emergency and permanent housing with client driven services is needed to help Native American women and children break away from pimps and safely rebuild their lives.

Technical assistance and training for mainstream programs is needed to help identify trafficking victims (most do not present as such) and deliver culturally competent services. Native Americans are disproportionately impacted by violence and over-represented in domestic violence shelters.

Eliminate the requirement for law enforcement certification for domestic sex trafficking victims to qualify for services funded by federal dollars.

Thank you for bringing attention to the sexual exploitation of American Indian women and children. Your help is needed to ensure that they receive the care and services they need in order to rebuild their lives.

The CHAIRMAN. Thank you very much, Ms. Tibbetts. We have some questions here and I would like to ask Senator Franken whether he has any questions of the second panel.

Senator FRANKEN. Thank you, Mr. Chairman.

I am sorry I missed your oral testimony, but I did get to read it. Ms. Tibbetts, of course, it is great to see you again, and thank you for being here today. A 2006 Wilder Foundation study on homelessness in the Minnesota Indian community found that 36 percent of respondents statewide had stayed in an abusive situation because of lack of other housing. Let me ask you about that because I have been places in the States and am interested in the whole issue of domestic violence and know the importance of emergency housing and transitional housing. How does a lack of affordable housing in Indian Country specifically contribute to the cycle of violence?

Ms. TIBBETTS. Thank you, Senator Franken. I am familiar with the Wilder study, and it also shows that Native American people are disproportionately represented in homelessness. I think the biggest impact that the lack of affordable housing has on Indian communities is that there are fewer resources for women to go to; they will stay in an abusive relationship.

There are fewer domestic violence shelters available, especially out in Northern Minnesota. To put it in context, in Northeast Minnesota, the seven counties around Duluth, which includes three reservations, have two domestic violence shelters, for a total of about 42 bed spaces.

If women are unable to access emergency shelter and transitional housing or affordable housing isn't available to them, they have no place to go. They may end up back with their abuser; they may end up at a homeless shelter or out on the streets and further victimized by those who are predators in those areas.

Transitional housing is important to help families, but they also need long-term housing; they need a place to go after they have been in an supportive environment.

Senator FRANKEN. According to the testimony yesterday we had in Judiciary on VAWA, maybe the most important period of time for a woman leaving an abusive situation is right after she has left, and the person who testified basically said that it is so important to engage in planning when you leave a situation.

Anyone want to speak to that, Ms. O'Leary or Ms. Tibbetts?

Ms. O'LEARY. Safety planning is what I was talking about services, and I am not sure how much of that you were here for, services is what the advocates do on the ground in the programs that are funded, and safety planning is a real important time so that women take with them the basic things that they are going to need for themselves and their children, just to help them survive in a shelter, be it their Social Security numbers, IDs, things like that, who they can call for help, how they can get transportation.

In our area, transportation is a big deal because of large geographical areas that have to travel to get to a safe place. All of that is part of the services that often go down because of the discretionary funding and inconsistent funding that has been happening in Indian Country.

Senator FRANKEN. Thank you.

Ms. Tibbetts, your organization, the American Indian Community Housing Organization in Duluth provides culturally-specific programs for domestic violence victims, including a domestic violence shelter, transitional housing, and advocacy. These programs are so important to Native women and your organization does a great job with them. Can you talk about the need for culturally-specific programs and why traditional programs may not meet the needs of all victims?

Ms. TIBBETTS. Thank you, Senator.

Most of our services are geared towards Native women who have been battered. It is important to have culturally-specific services in place on many different levels. Women may not feel comfortable accessing mainstream programs; mainstream programs may not be readily available. The need for culturally-specific services is especially important in urban areas where women who have been battered may have been isolated from their family or their community, and we have heard earlier today that most perpetrators of violence against Native women are non-Native people. To have a place that provides culturally-specific services helps in the healing process for women who have been victimized that way.

Senator FRANKEN. Thank you.

I am out of time, but I would feel remiss if I didn't thank Chief Rodgers, Chairman Rodgers for your very moving testimony.

May I ask one question of the chairman?

The CHAIRMAN. Go ahead.

Senator FRANKEN. Not to go into any specifics of your situation from which you are a survivor, can you speak a little bit to the psychological ramifications of either being a victim or a witness to domestic abuse?

Mr. RODGERS. Yes, sir. Thank you, Senator. I will be able to share just a moment. When I grew up, my mother was a victim of domestic violence, and it turned to the children at times, and psychologically it can do one of two things: it can turn you into a perpetrator or it can turn you into an advocate, and I have turned to be an advocate.

One of the things you asked earlier about, and if I can allude to the question, women, when they are involved in domestic violence, they love their husbands or love their partner, whoever they are with. I grew up with the saying, as I was somewhat being taught in many different ways from some of our elders, is that you can

love that person, but you sure can hate what they do. And it takes a community of friends and other family to get those people out of those situations, and Indian women specifically are strong-willed. Right, ladies?

[Laughter.]

Mr. RODGERS. Very strong-willed, and it is tough for them to say I am weak, and I have seen that.

But psychologically speaking, it made me stronger as a man, as a dad, as a husband, as a father, especially as a father of a daughter. Again, it makes you realize that you don't want to continue with this cycle. And there is spirituality that goes along with this. One needs to find spirituality, whether traditional spirituality within their own Native culture or whether it is external with modern religion. And once you find that spirituality you can overcome that and many, many obstacles that are placed before you.

And I am just grateful that I had a strong-willed mom who was my rock. My dad passed away when I was 17; my mom passed away just a few years ago. And for her to go through life as she did and remain strong-willed as she was was phenomenal.

But she was a stalwart to other women because she died blind, she died a double amputee, she died of heart disease and liver and kidney failure, but until the day she died she worked for herself. So being a victim and living like that and overcoming all those obstacles made her a whole lot stronger. So psychologically you do one of two things, you either become a perpetrator or you become an advocate. So I am proud to say I am an advocate.

Senator FRANKEN. Thank you. Thank you for your advocacy.

Mr. RODGERS. Yes, sir. Thank you.

The CHAIRMAN. Thank you, Senator Franken.

Chief Rodgers, what do you think tribal leaders can do to eradicate violence against Native women in Native communities?

Mr. RODGERS. Mr. Chairman, I think that we, as tribal leaders, need to take a stance: one, being advocates against domestic violence, but also allowing and creating programs within your tribal communities that will work. We have a social services department that uses the VAWA grant to do several different things with, but it takes the advocacy of the tribal committee to go out and say these are the things that we know are problems and these are the things that we approve our dollars to be used for. It is down to my signature on what grants come to the tribe, and so tribal leaders need to be advocates for those things that are problems.

I was discussing with Indian Health Service about tribal leaders have so much animosity toward Indian Health Service, and I ask myself. I serve on the Direct Service Tribes Advisory Committee and I have asked myself why, as I was traveling the Country, why do tribal leaders have so much animosity toward Indian Health Service. It is because their heart has grown fainter in one way: they have failed to realize what they need to be thankful for and be grateful for what they have, than asking for more that they don't need. So in my position, and I share my personal position, we as tribal leaders need to work hand-in-hand with the programs that are available and advocate those in our own tribal communities to allow those to progress.

We can't fight it if we don't have people in place to fight it. And that is kind of an oxymoron. Here we are talking about domestic violence and we are fighting the problem. But we need to put people in place who are there who can assist those people who are in these situations, and we need to make sure tribal dollars are allocated for that, make sure that we advocate for those grants and support those grants that support their services, as well as, you know, one thing that I guess you see I have a tender heart, and it is a fortunate and unfortunate thing. Sometimes it is good, sometimes it is bad.

But as a tribal leader, some tribal leaders are looked to as spiritual leaders, and I have sat in my council with females who come who are victims of domestic violence, with their social services director and help them and listen. Tribal leaders need to listen. They stop listening to their members many times over and they need to be good listeners and help them and advocate for those programs.

Thank you, sir.

The CHAIRMAN. Thank you for your response, Chief Rodgers.

Ms. O'Leary, how do we improve victims' access to medical services, especially in rural Native communities?

Ms. O'LEARY. Your Honor, I think that having services in our communities, increasing those services and stabilizing those services so when that message gets out that they are still there. We all know that victims don't always come forward right away. A couple weeks ago I was talking to a friend I didn't know about that she had been a sexual assault victim many years ago, and she was talking about reporting, even if it wasn't for the conviction, just so that the record was there that that had happened.

At the time it happened to her there were no services in our communities for her to report to. What I see time and again out in the other communities, where we have started up programs and then there is no continuity, maybe they heard about the program on the radio or something and then when they went to access it it wasn't there.

So I think that those service providers, those community women, the advocates, are the ones that are going to make sure that women are able to access services; they are going to help them walk through that procedure and they are going to be there from day to day and year to year. That is what I see that is working. Thank you.

The CHAIRMAN. Thank you.

Ms. Tibbetts, I just found out that domestic violence shelters have been closed in Northeast Minnesota since the budget crisis, but homeless shelters remain open. What are the victims doing for shelter?

Ms. TIBBETTS. Mr. Chairman, it is not just in Northeast Minnesota; it is throughout the State of Minnesota. The State is in a budget crisis and our government shut down. Many domestic violence shelters depend on State funding to operate. On the first day of the shutdown, there were two shelters in the Twin Cities, one was a culturally-specific shelter; it shut down. This last week there were two shelters in Northeastern Minnesota; they have both closed as well, including AICHO shelter.

What it means is that there are even fewer places for victims to go to. We have been making arrangements to have any calls that come in referred to other programs. There is a program I Superior, which is literally across the bridge from Duluth, where we are able to take Minnesota residents to get housing. Because there are shelters that have been closed, the crisis is going to get worse and worse for victims and their children, with fewer options for them to go to.

You did mention that homeless shelters are now up and running. That is correct. The problem with homeless shelters, when domestic violence victims or women who have been physically or sexually assaulted go there, the staff at homeless shelters may not be trained to recognize the trauma that some women have experienced. It is also common for predators to hang out at the homeless shelters and lure vulnerable women and young girls into prostitution and trafficking situations there as well.

The CHAIRMAN. Your city, Ms. Tibbetts, Duluth, Minnesota, has been referenced in the study of Shattered Hearts as having Native women and girls trafficked for prostitution on ships in the Port of Duluth. Can you tell the Committee what you think needs to be done to stop the trafficking of Native women?

Ms. TIBBETTS. I think as a service advocate, there are two things first. We need to raise community awareness about what is going on. When we talk about trafficking, especially in the Duluth area, people often refer to the situation at the docks and say, well, that has always been going on, but that is just there. They don't realize the magnitude of the problem.

The other thing is I think there needs to be clearer jurisdictional authority over this issue. For example, the Coast Guard attends a local trafficking and task force committee. I spoke to the Coast Guard regarding any incidences of women being trafficked onto ships. They have assured us that with increased security matters that this happens very rarely, but that really the Port Authority or Customs would be the folks that we needed to talk to.

When speaking to Customs, they said, yes, they are the first people onboard of a vessel, and they will certify that vessel to enter the port, but once the vessel goes into the channel, it becomes a local water craft and subject to the local police department. The local police are also on our task force and they have reported instances before, in the past, of reports.

So I think one of the things that needs to be clarified is who actually is in charge in that situation. It is unclear, as a service provider working with these different agencies, who would be the primary contact.

The CHAIRMAN. Well, thank you. That is something that we need to work on. Jurisdiction is something we need to look at.

I do appreciate your responses and thank you for your patience, but this is an issue that we need to continue to work on as quickly as we can and see what we can do to bring about changes that are needed. Your responses will be helpful to us and, as you know, we are really looking at what needs to be legislated to help you with this kind of problem.

Senator Franken, do you have any additional second round questions for this panel?

Senator FRANKEN. No. As a matter of fact, Mr. Chairman, I am kind of eager to get to the third panel so I can introduce Sarah Deer, because I have to preside soon and have another thing I have to do. But I want to thank the panelists, all of you, for your testimony.

The CHAIRMAN. Thank you.

Well, I want to thank the panel, too, very much for your responses and look forward to working with you. Thank you very much.

I would like to call on our third panel, Mr. Mickey Peercy, the Executive Director of Health Services of the Choctaw Nation of Oklahoma, and I would like to ask my colleague, Senator Franken, to introduce our witness from Minnesota, Ms. Sarah Deer.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. It is my honor to introduce Sarah Deer. Sarah is an Assistant Professor at William Mitchell College of Law in St. Paul, Minnesota, a member of the Muskogee Creek Nation. Professor Deer has dedicated her time and her career to ending violence against Native women. She has volunteered as a rape crisis counselor and chose to attend law school so that she could respond to the unique legal needs of Native survivors of sexual assault.

Professor Deer contributed extensively to Amnesty International's groundbreaking 2007 Maze of Injustice report on violence against Native women. Last year she received the prestigious Sheila Wellstone Award, which recognizes individuals who share the great Sheila Wellstone's vision of safe, healthy homes and communities. Earlier this year Professor Deer was recognized by the Department of Justice for her commitment to victims of crime. Each time I have met her I have been moved by her commitment to ending violence against Native women.

Professor Deer, thank you so much for being here.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

So I would like to ask Mr. Peercy to please proceed with your testimony.

**STATEMENT OF MICKEY PEERCY, EXECUTIVE DIRECTOR,
HEALTH SERVICES OF CHOCTAW NATION OF OKLAHOMA**

Mr. PEERCY. Thank you. Good afternoon, Mr. Chairman, Senator Franken.

Also, in providing written testimony, I would ask that folks please take a look at that as we go and later on because I can't do justice with the five minutes, but I am going to give it my best shot. And on behalf of Chief Gregory E. Pyle, Chief of the Choctaw Nation of Oklahoma, I bring greetings, extend to you the support of the people of the Choctaw Nation. My name is Mickey Peercy. I represent the Choctaw Nation, the third largest tribe in the United States, over 206,000 members across the United States, some in the areas that each member of the Committee represents.

We are here today to speak in strong support of the reauthorization of the Violence Against Women Act. The Act is the nexus to protect, shield, and safeguard our sisters, mothers, and daughters

against cruelty and violence. I thank you for inviting the Choctaw Nation to provide testimony.

Violence against women wasn't acceptable in the early years of the Choctaw Nation. It is not a part of the culture. It is not a part of any culture, it is something that is brought on and learned. It was only after colonization that the social maladies began to affect the Choctaw people.

The Choctaw Nation is committed to treating and preventing these travesties. Keep in mind the Choctaw Nation is an off-reservation tribe with an area population of 12,000 square miles, roughly the size of Vermont. And within that 12,000 square miles we have 84 independent school districts. So you can tell the scope of what we are dealing with.

We know that the things that contribute to domestic violence, violence against women, violence against children come from somewhere, and we think a lot of the contribution comes from poverty, comes from lack of education, unemployment, alcohol and substance abuse. And the only way you can really end these things long-term is to deal with those issues.

The Choctaw Nation works hard to make sure folks are employed and also to make sure that there is career development for those who don't want to go to college, and scholarships for those who want to. Also keep in mind we provide substance abuse programs for those who are dealing with those issues.

We have to start there. I have heard it said several times about the cycle. It is very true, it is a cycle. And what we are doing is attempting to treat it in a multifaceted sort of way. We do a lot of things with prevention. The Choctaw Nation is treating those who are already involved in the violence cycle and also making efforts to stop the violence before it starts. We have found that violence begets violence. It is a cycle. We view this, again, multifaceted.

I think I was asked to be here because we have some programs going forward and I wanted to bring as many of those out as possible in a very short amount of time.

First, we have some for the younger kids, Better Beginnings. Those are zero to five in the early childhood development sorts of programs and dealing with families.

We have support for pregnant and parenting teens projects. Keep in mind, in one small rural school we have four teenagers, we have two girls that are pregnant by two young men in that school system, and we are dealing with that. None of them are old enough to drive. That is a little frightening. So we work with those kids and we work with their parents in an effort to do everything we can to make sure that those social issues are taken care of.

Family Preservation supports healthy paternal behaviors, and in 2010 we served more than 2,000 women and families.

It has to be a collaboration. It has to be partnerships. We partner with drug courts, with all areas of prosecutors, law enforcement, social services agencies through the State. We go to SAMHSA, we deal with DOJ. Many of our dollars come from grant programs and we fight hard for those grant programs.

I also wanted to mention a project, Falummichechi. It is 150 children who deal with second graders. They go into the schools and

deal with second graders. That program received an Achievement of Excellence Award from Harvard University and we are very proud of that program. That is, again, with the youngsters.

And we also, in terms of the clinical, I have to say before my time runs out, we work very hard on the clinical aspect. We do have the sexual assault response team in place. We work very hard. We have, within our hospital, five SANE nurses, sexual abuse nurses. All five of those nurses are certified internationally. And that doesn't happen very often; it sure doesn't happen in Indian Country. We also have 16 advocates for sexual abuse.

More programs than I can mention. We are trying very hard to stop the cycle. We have a long way to go. What we want to do, again, is treat those things that are happening on an everyday basis, protect the women, protect the children, but also, starting with the youngsters, make sure that we stop the cycle so we are not here 20 years from now talking about the same things with the same problems.

Please, those who are interested, please read the written testimony. Thank you, sir.

[The prepared statement of Mr. Peercy follows:]

PREPARED STATEMENT OF MICKEY PEERCY, EXECUTIVE DIRECTOR, HEALTH SERVICES
OF CHOCTAW NATION OF OKLAHOMA

Good afternoon, distinguished Members of the Committee. On behalf of Chief Gregory E. Pyle, of the Great Choctaw Nation of Oklahoma, I bring greetings, and extend to you the support of the People of the Choctaw Nation. My name is Mickey Peercy, and I represent the Choctaw Nation of Oklahoma, the third largest Tribe in the United States. We have over 206,000 tribal members spread throughout all states and communities, including those you represent in your respective districts. We are here before you today to speak in strong support of the Reauthorization of the Violence Against Women Act. This Act is the nexus to protect, shield and safeguard our sisters, mothers and daughters against undeserved cruelty and violence. I thank you for inviting the Choctaw Nation to provide testimony.

People are the essence of the Choctaw Nation and women are viewed as the heart of our families and communities. Choctaw women are honored as "Holitopa" meaning beloved or life giver. When women experience violence it not only has a negative impact on them, but also has a grave impact on the children, the families and the community. The children come to accept violence as a natural part of intimate relationships. Violence becomes an acceptable way to cope with anger and life's frustrations. These children have a higher risk of becoming victims or offenders themselves. Violence against intimate partners becomes normalized, and the destructive cycle continues. Small rural communities experience increasing challenges in holding offenders responsible. By targeting families and communities and working collaboratively, we have a greater potential for significantly impacting and breaking the cycle of violence for our children and our tribal community. This guiding principle has helped us build a compassionate and caring framework of victim and family-centered prevention and treatment services that address violence and sexual assault across the lifespan. Although I will use the term victim, I assure you it is an understood descriptor only, because we view all people as having strengths despite the violent experiences that have impacted their lives. To help those who have experienced violence we use a holistic, family-centered approach that has been adopted within all of our programs, one that provides a compassionate foundation for our interventions.

Over 256,598 people reside in the Choctaw service area, including over 80,000 certified-by-blood Tribal Members and 35,000 Native Americans from other tribes.¹ Levels of abuse and violence are elevated due to the extreme poverty, high rate of illiteracy, lack of education and jobs, and alcohol and substance abuse. As has been reported, women in tribal communities are three and a half times more likely to be victims of violent crime. In partnership with numerous local, state, and federal partners the Choctaw Nation strives to deliver effective family-based services to address the rising needs across the 11,784 square mile service area.

We believe that our youngest citizens deserve the best chance for a healthy start. Teen-age parents are vulnerable to family violence. Our response to decreasing the impact of violence to this population is comprised of two *Better Beginnings* programs that provide early childhood development services to Native American pregnant or parenting women of children age 0-5. The first of these projects is *Chohta Inchukka*, a Tribal home visiting program whose goal is to improve maternal and infant health, strengthen parenting skills, increase school-readiness and prevent child abuse and neglect. The *Support for Pregnant and Parenting Teens Project* provides services to pregnant and parenting teen mothers under 19 years old, their infants, male partners and families to reduce repeated unwanted pregnancies, improve health outcomes for mothers and infants, increase healthy parenting skills, and provide opportunities for education and job training. Both of these programs were designed to identify problematic family issues early and provide the children and young families with the tools they need to build a healthy family. If risk issues are identified, a family can also be referred to a far-reaching network of Tribal and community partners that offers comprehensive services including but not limited to family preservation, counseling, financial assistance and literacy, career development, housing, vocational assistance, and support for victims of domestic violence. *Family Preservation* builds family strength and stability, supports healthy parental behaviors, and promotes the protection of our children. The program served over 2,000 women and their families in 2010 by identifying strengths, finding solutions, and supporting self-reliance.

Project SAFE and *Project United Voice* are aimed at enhancing the safety of children, youth, and adults who have been victims of domestic violence, dating violence, sexual assault, and stalking. These programs encourage collaboration among tribal and non-tribal law enforcement, courts, prosecutors, community service providers, educational institutions, and health care providers. Stronger partnerships help us to identify, assess, and appropriately respond to risky situations. These programs also educate our communities to build awareness of warning signs and resources. Dating violence is addressed with the "*SAFE DATE*" curriculum that teaches 5th-12th grade students to identify healthy relationships related to appropriate and inappropriate dating behaviors and expectations. *Project Falummichechi* teaches children how to deal with their emotions in a healthy manner. The curriculum is implemented by 150 youth trained to serve as mentors to 2nd graders. The mentors present puppet shows and other creative activities as teaching tools. The older youth have a powerful impact on the younger ones.

¹ U.S. Census Bureau 2010 State and County Quick Facts.
Choctaw – growing as one with pride, hope and success

All of the Choctaw Nation advocacy and treatment programs are built on respect, respecting the dignity of the victim and of the family so that we can provide the resources necessary to help them to make the decisions that are right for them at a time when decisions are hard to make. An array of Integrated services is available for quick response. The *Choctaw Nation Sexual Assault Response Team* has developed a collaborative protocol to respond to the crime of sexual assault. *Tribal Law Enforcement* and *Tribal Justice* as well as multiple law enforcement and prosecutor agencies located within the Choctaw Nation are part of this effort. *Voices for Survivors* provides five *Sexual Assault Nurse Examiner* or "SANE" nurses who provide forensic exams and services at our Tallhna Health Center. Sixteen victim advocates are available 24/7 to provide crisis counseling and support, as well as longer term services. A licensed counselor is co-located in our *Women's Health Clinic* to provide domestic violence screenings and counseling. *Project House* and the *Family Violence Program* provide a broad range of services such as transitional housing assistance, emergency food and clothing, safety planning, transportation, child care services, parenting and life skill enhancements, case management, court room advocacy, employment, and counseling. Two very special projects are *Project Empower*, which has served over 130 families thus far, and *Project Empower2Dream*. These programs support victims and their families by providing them with advocacy services, traditional "Healing Circles," higher education, financial assistance, and legal assistance. Faith-based counseling and traditional healing are also supported through our *Faith Based Counseling for Victims of Crime*.

A very unique collaboration has developed between the Nation and the *Child Advocacy Centers* within our tribal boundaries. Many of our Native children receive services through these centers. Through our *Voices for Survivors Program* we have co-located a Victim's Advocate who is also trained as a Forensic Interviewer. This has been a very successful collaboration and allows us to provide much needed services and resources.

We have also recognized that families dealing with substance abuse face issues beyond the drug and alcohol use. These families bring with them situations that are often difficult to conceive - past childhood trauma, grief, extreme poverty, ongoing sexual assault, and extreme violence inflicted by those we are usually taught to trust. Our *Wind Horse Family Recovery Center* offers family centered treatment that addresses both addiction and violence. Through the family we are able to identify and reduce triggers for substance use while helping the family to recognize the impact of the addiction. Family centered therapy allows us to present healthy ways of dealing with common stressors without turning to drugs or violence. Children involved in the program learn about healthy relationships and how to deal with emotions positively.

Chi Hulfa Li is our substance abuse treatment facility for women and their children. Over 90% of the women admitted report that they have been abused by someone they trusted. Evidence of the cycle of abuse is evident in the women's interaction with their children. From these women we have learned that when one experiences sexual assault or physical violence it impacts every facet of one's life. Treatment focuses on healing the traumas that have been experienced and learning to break the cycle of substance abuse and violence.

It is understood by all of our staff and our tribal leaders, that our programs have a shared responsibility to create an environment of healing and safety for those impacted by the trauma of domestic violence and sexual assault. We believe wholeheartedly that our families, children, sons, and daughters all have the right to a life free from fear. We have a traditional responsibility to provide service, humbly, with caring and compassion and in recognition that all our people are *Hollitopa* in spirit.

Without the continuation of the VAWA, these important partnerships and efforts might not survive. The reauthorization of VAWA is critical to meet the rising need of victims both for funding and for partnership efforts. The Choctaw Nation stands ready and committed to participate hand in hand with every level of government to address this critical need. As a reminder of the impact our shared efforts....I leave you with a statement from a victim client:

"My name is Wanette. I thought I had married my true love, until one day my whole world turned upside down. Very shortly after having my daughter, he started using drugs. In an attempt to understand him, I started to use as well. That is when the abuse started. When he was coming down was always when he would get into fights. He was very physically and mentally abusive. This went on for almost two years. One day when he left me and my son stranded, it took us almost four hours to walk home, and he took our little girl to a drug house, I had enough. I left everything behind. When I called for help, the Choctaw EMPOWER folks came right over. They helped me get the things that I needed at the shelter. They helped me get all my identifications, my social security card, birth certificates, driver's license. They also helped me get back into school. They got me a house. They're also helping me regain trust from my family. I am now a year clean and free of that life and couldn't be happier. They are helping me to get a relationship with my son. They have counseling for me and him both. Our relationship is getting a lot stronger. They are a great support, not only helping me with the normal everyday things, but are a great friend when I just need someone to talk to. Whenever I have a problem, they are right there helping me figure out a solution to the problem. They have also helped me get full custody of my little girl and divorced from my husband. I don't know where I would be without them."

Yakoke.

The CHAIRMAN. Thank you very much for your testimony, Mr. Peercy.

Ms. Deer, will you please proceed with your testimony.

**STATEMENT OF SARAH DEER, AMNESTY INTERNATIONAL,
ASSISTANT PROFESSOR, WILLIAM MITCHELL SCHOOL OF
LAW**

Ms. DEER. Thank you, Chairman.

On behalf of Amnesty International and Amnesty International's American Indian and Alaska Native Advisory Council, I would like to express my deep appreciation and thanks for inviting me to testify before the Senate Committee on Indian Affairs hearing today.

As you may know, Amnesty International is a worldwide grassroots human rights organization with over 3 million members worldwide. On behalf of AI's nearly half a million members here in the United States, I thank you for holding this important hearing and for the opportunity to testify before Congress and this Committee on some of the grave human rights abuses that American Indian and Alaska Native women face here in the U.S.

While many of these abuses exist in the broader context of both current and historical injustices, my testimony will focus on the interrelated issues of sexual violence, trafficking and prostitution, and disparities in health care.

As other hearings have documented, it has been challenging for the legal system to respond to the high rates of rape in Indian Country. There is a complex interrelation between Federal, State,

and tribal jurisdiction that undermines tribal authority and often allows perpetrators to evade justice. Tribal and Federal agencies responsible for providing the services necessary to ensure that survivors receive adequate care and that perpetrators are held accountable for their crimes are chronically underfunded and without the appropriate resources to uphold agency duties. Tribal governments are hampered by a complex set of laws and regulations created by the Federal Government and the Supreme Court that make it difficult, if not impossible, to respond to sexual assault in an effective manner.

With the Administration's long-awaited endorsement of the United Nations' Declaration on the Rights of Indigenous Peoples this past December 2010 and the Tribal Law and Order Act of July 2010, the U.S. now has both a national and an international rights framework with which to address the issues that Native peoples face here in the United States.

As one Native advocate put it, sexual assault rates and violence against Native women did not just drop from the sky; they are a process of history. Many of the current issues that American Indian and Alaska Native women face in the United States can be traced back to the legacy of abuse and systemic assault on Native culture, land, and people as part of the colonization of the Americas. Gender-based violence against Native women was used by settlers as an integral part of conquest and colonization.

The United States Federal Government has historically made a series of attempts to compel American Indian and Alaska Native peoples to assimilate into the dominant Euro-American society, and a number of policies historically designed to promote assimilation have contributed to the breaking up of tribal societies. One such policy in the 1800s involved removing children as young as five from their homes and compelling them to attend boarding schools. Many of these historical actions would meet the legal definition of human trafficking if they happened in 2011.

I am happy to share with this Committee that in my professional capacity as an Assistant Professor at William Mitchell College of Law, I have been working in partnership with my colleagues at the Minnesota Indian Women's Sexual Assault Coalition and Prostitution Research and Education to conduct additional research and analysis on the issue of prostitution in Indian Country, and will soon be releasing our findings and report in October. It is our hope that the report will shed additional light on the depth and severity of the issue and that the needs assessment will have an impact on the culturally appropriate services and advocacy.

The two organizations interviewed 105 American Indian women who were prostituted and trafficked in Minnesota and we are still engaged in the empirical data analysis, but of the 105 women interviewed in the study, their ages ranged from 18 to 60, with an average of 35. Two-thirds of the women had been used for sex by up to 300 men, with a third of the women reporting that they had been used for sex by between 400 and 1,000 men. The women also reported that 70 percent of the women that they knew in prostitution had been lured, tricked, and trafficked into it, and 95 percent said they wanted to escape prostitution.

As shocking as these statistics are, even more horrifying is that this information is but a glimpse into the unknown larger picture of which little research and data collection has been done, and we look forward to sharing the final report with the Committee.

In closing, I would like to impress upon you the importance of prioritizing Native women's health and safety for the long term, and it will take many, many years, and perhaps even decades, to reverse the alarming trends that have only recently been documented, but have been ongoing for hundreds of years. We need to know that the Federal Government will stand with us for the foreseeable future, until such time that Native women are restored to their traditional status of honor within tribal communities.

Thank you very much for your time and consideration. Mvto.
[The prepared statement of Ms. Deer follows:]

PREPARED STATEMENT OF SARAH DEER, AMNESTY INTERNATIONAL, ASSISTANT
PROFESSOR, WILLIAM MITCHELL SCHOOL OF LAW

The Honorable Chairman Akaka, Ranking Member Barasso, and Members of the Committee,

Mvccv nettv ce homv hueret cem kerkuecety vm pohateclat, mvto cekticis. Svevfvekes.¹

On behalf of Amnesty International USA (AIUSA) and AIUSA's Native American and Alaska Native Advisory Council, I would like to express my deep appreciation and thanks for inviting me to testify before the Senate Committee on Indian Affairs Oversight Hearing on "Native Women: Protecting, Shielding, and Safeguarding Our Sisters, Mothers, and Daughters". As you may know, Amnesty International is a world-wide grassroots human rights movement with over 3 million members worldwide. On behalf of AI's nearly half a million members here in the United States, I thank you for holding this important hearing and for the opportunity to testify before Congress and this Committee on some of the grave human rights abuses that Native American and Alaska Native women face here in the U.S. While many of these abuses exist in the broader context both current and historical injustices, my testimony will focus on the interrelated issues of sexual violence, trafficking and prostitution, and disparities in healthcare that Indigenous women face.

In April 2007, Amnesty International issued a compelling report on the epidemic levels of sexual violence against American Indian and Alaska Native women in the United States entitled "*Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA.*" The high rates of sexual and domestic violence perpetrated against American Indian and Alaska Native women are violations of human rights.

Amnesty's report documented that according to the Department of Justice (DOJ)'s own statistics, American Indian and Alaska Native women are more than two and a half times more likely to be raped or sexually assaulted than women in the United States in general and that one in three American Indian and Alaska Native women will be raped in her lifetime. For a vast majority of these crimes, the perpetrators

¹ Translation from the Mvskoke language: "I thank you for inviting me to stand before you to testify today. I am happy with this invitation."

will go unpunished, as survivors of sexual violence frequently have to navigate a maze of federal, state and tribal law.

As other hearings have documented, it has been challenging for the legal system to respond to Native survivors of sexual violence because of jurisdictional complexities. The federal government has created a complex interrelation between federal, state and tribal jurisdictions that undermines tribal authority and often allows perpetrators to evade justice. Tribal and federal agencies responsible for providing the services necessary to ensure that survivors receive adequate care and that perpetrators are held accountable for their crimes are chronically underfunded and without the appropriate resources to uphold agency duties. Tribal governments are hampered by a complex set of laws and regulations created by the federal government that make it difficult, if not impossible, to respond to sexual assault in an effective manner.

The Senate Committee on Indian Affairs has demonstrated its leadership on this issue by passing the Tribal Law and Order Act of 2010, and by working with the Administration to make additional policy changes such as ensuring the addition of federal agents and Assistant United States Attorneys to Indian Country, which will begin to help improve public safety and ensure justice services to survivors of sexual violence in Indian Country. And with the Administration's long-awaited endorsement of the United Nations Declaration on the Rights of Indigenous Peoples this past December 2010, the U.S. now has an international human rights framework with which to address the issues that Indigenous Peoples face here in the United States.

While some progress has been made, much more still remains to be done. Both the Universal Declaration of Human Rights and the UN Declaration on the Rights of Indigenous Peoples, which the U.S. have endorsed, iterate the right of all individuals, Indigenous or otherwise, to life, liberty and security of person and to live a life free from discrimination.

Yet one in three American Indian and Alaska Native women will be raped in her lifetime, and face disparities and barriers to accessing adequate healthcare. It will take much more than a single piece of legislation to address this crisis.

As one Indigenous advocate put it,

“Sexual assault rates and violence against Native American women did not just drop from the sky. They are a process of history.”

Jacqueline Aguca, Alaska Native Women's Conference, Anchorage, Alaska, 24 May 2005

Many of the current issues that American Indian and Alaska Native peoples face in the United States, particularly Native women, can be traced back to the legacy of abuse and systematic assault on Native culture, land and people as a part of European/U.S. colonization of the Americas. Gender based violence against Native women was used by settlers as an integral part of conquest and colonization. The United States federal government has historically made a series of attempts to compel American Indian and Alaska Native peoples to assimilate into a dominant Euro-American society. In the late 19th and early 20th centuries, a number of policies designed to promote assimilation contributed to the breaking up of tribal societies, damaging communal solidarity and traditional social networks.

One such policy, which started in 1869, involved removing children as young as five from their families and compelling them to attend boarding schools. The Bureau of Indian Affairs (BIA) controlled 25 boarding schools and 460 additional schools were run by churches with federal funds. Reports of

condition in the schools are harrowing: cruel and inhuman treatment was the norm and many children experienced a pattern of physical and sexual violence from the early years of the boarding school system, continuing until the end of the 1980's². Children reportedly died by the hundreds in these schools because of inadequate food or medical care, although no firm statistics exist. One reason for the lack of statistics is that many schools sent children home when they became seriously ill, or simply never recorded their deaths.

Many of these historical actions would meet the legal definition of human trafficking if they happened today.

Negative and dehumanizing stereotypes of Native Americans in general, and Indigenous women in particular, are not confined to distant history. For example, a 1968 federal appellate court ruling upheld a statute under which an American Indian man who committed a rape in Indian Country received a lower penalty if the victim was a Native woman. It has been suggested that Congress, in passing this law, may have viewed Native women as immoral and less worthy of equal protection.

While recent steps have been made to begin to address some of the issues that American Indian and Alaska Native populations face in the United States, it will take more than one piece of legislation to comprehensively address the impact of this significant historical legacy of discrimination and abuse. Native women need and deserve continued attention and resources from the federal level.

The United States federal government has a legal responsibility³ to ensure protection of the rights and wellbeing of American Indian and Alaska Native peoples, including a responsibility to provide social, educational and medical services. The legacy of abuse, disempowerment and erosion of tribal government authority, and the chronic under-resourcing of law enforcement agencies and services which should protect Indigenous women from sexual violence, must be reversed.

The Tribal Law and Order Act has begun to address the long-standing public safety and justice services disparities on tribal lands, by beginning to restore to tribal governments the authority and resources to protect their citizens. Yet, the recent increase and attention given to ending violence against Native women has failed to specifically address prostitution or sex trafficking as forms of violence against women. Two Minnesota-based organizations have issued reports in the past three years exploring the broad range of historical and current injustices that make Native women particularly vulnerable to prostitution or sex trafficking, but to my knowledge, there are no major empirical or government-led studies focusing on the factors and experiences of prostituted and trafficked American Indian and Alaska Native women in the United States.

In 2009, the Minnesota Indian Women's Resource Center (MIWRC) released *Shattered Hearts*, a report documenting the commercial sexual exploitation of American Indian women and girls in Minnesota. The report details the historical legacy of physical and psychological abuse of Native women in the U.S. in conjunction with the social, economic, and cultural factors that contribute to making American Indian women particularly vulnerable to being trafficked into prostitution⁴.

²"Soul Wound: The Legacy of Native American Schools". By Andrea Smith. Amnesty International Magazine 2007. <http://www.amnestyusa.org/ips/?id=7342>. Last accessed on July 12, 2011.

³This federal trust responsibility is set out in treaties between tribal nations and the federal government, further solidified in federal law, federal court decisions and policy.

⁴http://www.miwrc.org/shattered_hearts_full_report_web_version.pdf. Last accessed on July 11, 2011

I am happy to share with this Committee that in my professional capacity as an Assistant Professor at William Mitchell College of Law, I have been working in partnership with my colleagues at the Minnesota Indian Women's Sexual Assault Coalition (MIWSAC) and Prostitute Research and Education (PRE), to conduct additional research and analysis on the issue and will soon be releasing our findings and report. It is our hope that the report will shed additional light on the depth and severity of the issue and that the needs assessment will have an impact on culturally appropriate services and advocacy to trafficked Native American women.

MIWSAC and PRE interviewed 105 American Indian women who were prostituted and trafficked in Minnesota. While we are currently still engaged empirical analysis – our initial research has documented the following shocking statistics. Of the 105 women interviewed in the study, their ages ranged from 18 to 60 years old, with an average of 35 years. Two thirds of the women had been used for sex by up to 300 men, with a third of the women reporting that they had been used for sex by between 400 and a thousand men. The women also reported that 70 percent of the women they knew in prostitution had been lured, tricked or trafficked into it. As shocking as these statistics are, even more horrifying is that this information is but a glimpse of an unknown, larger picture of which little research and data collection has been done. Crimes of sexual violence are often undocumented and known to be underreported – and due to the nature of trafficking and prostitution, current understanding and analysis of just how widespread and severe the problems are known to be partial at best. We advocate for future hearings that focus specifically on the issues of prostitution and trafficking of Native women. We believe that several Native women could speak to you about their experience and the failures of the system to address the ongoing systemic discrimination that they have faced.

In addition to the challenges in public safety and justice that American Indian women face as victims of sexual violence, exploitation, and trafficking, the grave disparities in quality of and access to adequate healthcare services not only have a direct impact on the ability of an Indigenous survivor of sexual assault to obtain justice and legal services, but also impact American Indian and Alaska Native women's basic right to health care services, in many instances guaranteed by treaty rights.

Today, the Indian Health Service still suffers from severe, long-term underfunding and a chronic lack of resources and staff. The ability of any law enforcement agency or health care facility to respond to violent crime is in large part dependent on the funding they receive annually. The per capita health expenditure for American Indian and Alaska Native populations continues to be less than half that for other groups in the United States. In 2011, the IHS reported that the following per capita personal health care expenditures: IHS user population average \$2741 in contrast with the total U.S. population averaging \$6909 in healthcare expenditures³. The IHS serves members of 565 federally recognized tribes, and approximately 2 million American Indians and Alaska Natives residing on or near reservations. Unlike Medicaid, the IHS receives its funding via annual appropriations bills.

The federal government's severe under-funding of IHS results in American Indian and Alaska Native women facing a number of specific barriers in obtaining a number of critical and basic health care services - such as the ability to obtain a properly and sensitively administered sexual assault forensic examination (SAFE) in the event of sexual violence, and from receiving adequate and basic prenatal care services that reduce the risk of maternal death and morbidity as a result of pregnancy or pregnancy-related complications.

³ <http://www.ihs.gov/PublicAffairs/IHS brochure/Profile2011.asp>. Last accessed on July 7, 2011

Prenatal care is a key element in facilitating a safe pregnancy – women who do not receive prenatal care are three to four times more likely to die than women who do. Those with high-risk pregnancies are 5.3 times more likely to die if they do not receive prenatal care. In the United States, 25 percent of women do not receive adequate prenatal care, but the figure rises to a shocking 41 percent among American Indian and Alaska Native women. Native women are also more likely to experience poorer quality of care, discrimination or culturally inappropriate treatment; and without access to adequate prenatal care - the likelihood and risk of maternal death or morbidity during pregnancy increases. According to the Center for Disease Control (CDC), nearly half of all maternal deaths in the United States are preventable – yet despite this, one sign at an Indian Health Service facility read: “You will not be seen unless you are in labor”⁶.

“Our reproductive choices are decided for us by the federal government....the Indian Health Service. And it's up to them as to whether or not they want to provide various services. For instance, we cannot access emergency contraceptives [unless] there's been a sexual assault”

Charon Asotow, Executive Director of the Native American Women's Health Education Resource Center, cited in Center for American Progress, "The Failing State of Native American Women's Health, an interview with Charon Asotow", 16 May 2007

According to the Native American Women's Health Education Resource Center, American Indian and Alaska Native women face particular barriers in obtaining sexual and reproductive health services – including not always being provided with adequate information or access to all contraceptive options. Native American and Alaska Native women experience disproportionate difficulty in obtaining emergency contraception – Plan B – which is approved by the federal government to be available without prescription in pharmacies. Yet, according to the Native American Women's Health Education Resource Center, only half of IHS pharmacies stock Plan B and only 15 percent offer it without a doctor's prescription. Adequate access to timely emergency contraception is critical, particularly in cases of rape. Failure to provide access has a disproportionate impact on American Indian and Alaska Native women, who are 2.5 times more likely than other women in the US to be raped or sexually assaulted.

In the event of sexual violence, forensic evidence collected by a health care provider plays a significant role in the prosecution of perpetrators. Yet there are no national figures on how many IHS hospitals have sexual assault nurse examiners (SANE) – health care providers with advanced education and clinical preparation in collecting forensic evidence in cases of sexual violence. In 2005, the Native American Women's Health Education Resource Center found that 44 percent of IHS facilities lacked personnel trained to provide emergency services in the event of sexual violence.

From prevention to response, the quality and availability of public safety, justice, and health care services for Native women in the U.S. are disproportionately and chronically underfunded and prioritized. The historical discrimination and ongoing economic, social, and cultural abuse of Native peoples in the U.S. results in shocking levels of violence, including trafficking and sexual exploitation. It must be addressed immediately.

It is Amnesty International's recommendation that Congress and the Administration continue to prioritize ending sexual violence against American Indian and Alaska Native women in the U.S. As a starting point for doing so, we urge the committee to ensure the full and timely implementation of the Tribal Law and Order Act, including by ensuring full funding, resources, and agency capacity as necessary and required

⁶ Reported by a tribal representative during a two-day summit with federal officials 15 and 16 April 2009. Carol Berry, “Native Health Needs and Federal Apology are Tied at an IHS Conference”, *Indian Country Today*, 23 June 2009, available at <http://www.indiancountrytoday.com/articles/indianews/48418202.html>, last visited 15 December 2009.

for full implementation of the law. The Tribal Law and Order Act will begin to address the long-standing public safety and justice service disparities in Indian Country by beginning to restore to tribal governments the authority and resources to protect their citizens, particularly women and girls.

Yet, despite the strides made by Congress and the Administration to restore tribal authority, true tribal empowerment and sovereignty will not be possible without addressing the Supreme Court's 1978 ruling on *Oliphant vs. Suquamish*, which effectively strips tribal authorities of the power to prosecute crimes committed by non-Indian perpetrators on tribal land, and denies due process and equal protection of the law to survivors of sexual violence. We therefore urge Congress to re-recognize the concurrent jurisdiction of tribal authorities over all crimes committed on tribal lands, regardless of the Native identity of the accused, legislatively overriding the U.S. Supreme Court's decision on *Oliphant vs. Suquamish*.

Additionally, while we recognize the difficulties posed by the current budget climate, we further call on Congress to, at a minimum, fully support the President's FY12 budget request as relevant to the full and necessary funding for agencies and programs affecting Native peoples in the U.S. This includes but is not limited to increased funding for the Indian Health Service in order to ensure the timely and appropriate collection of forensic evidence in cases of sexual assault, and to ensure that American Indian and Alaska Native women are able to access and receive basic and adequate healthcare, in particular, pre-natal and maternal health care services. In addition to increased funding for IHS, we also call on Congress to ensure the specific designation of increased appropriations for public safety and tribal law enforcement training programs, and specific funding allocations within the Office of Violence Against Women in the Department of Justice to ensure the specific analysis, research and data collection on violence against Native women, with a particular focus on the sexual exploitation and trafficking of Native women in the U.S. We urge Congress to also support the President's FY12 request for the development of a national clearinghouse to provide information and technical assistance on violence against Indigenous women within the OVW – and further urge Congress to ensure that that much needed information on sex trafficking of Indigenous women and girls is included.

Chairman Akaka and the Committee, I am grateful for the opportunity to testify on behalf of Amnesty International on how we may all work together to uphold the human rights of Native women by addressing and responding to the past and present challenges that Native American and Alaska Native women in the U.S. particularly face. We are grateful for the Committee's continued leadership and partnership with Native people, as well as the renewed commitment that both Congress and the Administration have demonstrated toward addressing the urgent and pressing concerns of Native people, particularly Native women. We hope that this progress will continue until all people can enjoy and exercise their full and equal human rights.

In closing, I would like to impress upon you the importance of prioritizing Native women's health and safety for the long term. It will take many years – maybe even decades – to reverse the alarming trends that have only recently been officially documented. We need to know that the federal government will stand with us for the foreseeable future until such time that Native women are restored to their traditional status of honor in tribal communities.

Thank you for the Committee's time and consideration. Mytoi

The CHAIRMAN. Thank you very much, Ms. Deer, for your testimony.

Mr. Percy, you mentioned a number of important health services provided by your tribe for sexual assault victims, including forensic examiners and crisis counselors. How do you fund these critical services?

Mr. PERCY. The majority of the funding we were able to go to the Federal Government. Several ways. It is kind of what I mentioned a while ago, it is an ACF funding, as well as some Indian Health Service dollars. We are a compact tribe, and we also, as was mentioned by the Chairman earlier, you kind of make your priorities in your tribe, and we put tribal dollars to that also.

So it is a combination. Everything we do is pretty much a combination of the IHS, any grant monies that we can find, whether that be State, whether that be Federal, and tribal dollars. We know

we are fortunate. We are more fortunate than many tribes in that we are able to have businesses. We have some business, we have some gaming, and we are able to use some of those dollars, so we know we are fortunate in that area.

The CHAIRMAN. Thank you.

Ms. Deer, given your testimony, criminal jurisdiction is still a major issue. What still concerns you about the prosecution of those who harm Native women?

Ms. DEER. I think there are two major issues that tribal governments continue to face. The first is the sentencing limitation. So the Indian Civil Rights Act has limited, traditionally, the ability of tribal governments to incarcerate for more than one year, and that was recently increased to three years with the Tribal Law and Order Act, but we are talking about perhaps a child rapist. The maximum sentence that the tribe can impose is three years. So some victims would feel that it is probably safer to not report, because that perpetrator will come back to that community within a short amount of time.

The second, of course, is the *Oliphant versus Suquamish Indian Tribe* decision of 1978, which held that tribal governments did not have criminal jurisdiction over non-Indians. This flies in the face of hundreds of years of asserting authority over people who come into your community and commit crimes. So we are still hoping that Congress will reconsider that jurisdictional framework and restore what has been taken away through an amendment to a legislative overturn of *Oliphant*.

The CHAIRMAN. Mr. Peercy, does your tribe face any challenges in prosecuting perpetrators of domestic violence, sexual assault, or sex trafficking?

Mr. PEERCY. I would say to you, Senator, I don't know that it is not happening in Southern Oklahoma. The trafficking issue hasn't been a large issue, but the ability to prosecute is always an issue. We are scattered over 12,000 square miles and we have tribal law enforcement, but we have to use the district courts, and you have a large number of district courts in the area. So you have to deal with district attorneys, different law enforcement areas.

We have all the MOUs with all the law enforcement, so we are able to have that dual jurisdiction, but it becomes an issue. Really, the forensic issues we are just starting. I think we are going to be able to come back here in three years and really give some good numbers. I know when we talked to the staff they were looking for numbers, but many of the things that we are starting are very good, but they are very new. So we are putting it all together.

But there is a definite challenge when you have the distance that we have. Plus, we have a hospital in the center of the area, but we are three hours away from maybe a hospital in the northeast part of our area. We don't have our SANE nurses there, so we are dealing with those local hospitals that may not have their stuff together.

So, yes, sir, it is a challenge, but we anticipate that we are trying to put it together in a comprehensive program in dealing with those hospitals, those prosecutors, that law enforcement in different areas, that I can come back to you in several years and say we have a model program that we can take on the road and do any-

where else, even in Minnesota, where we have lots and lots of things going on.

I got outnumbered by Minnesota today, sir, by the way. Thank you, sir.

The CHAIRMAN. Well, thank you very much for that, because I think we need to generally look across the Country and look for model programs and share those programs, instead of starting from zero. Some of you have done some excellent programs that have worked and maybe others should know about such models.

Mr. PEERCY. Yes, sir. And I think, again, as we move with the collaborative work with SAMHSA, with ACF, with DOJ, those Federal partners recognize and they don't mind putting us on the road to take our programs to other places, and we don't have anything to hide. I know our Chief always says we steal our best ideas, so we don't mind somebody stealing our ideas if they work. So thank you.

The CHAIRMAN. Thank you.

Ms. Sarah Deer, since Native women often encounter many forms of violence at once, trafficking, domestic abuse, sexual assault, how can we strengthen the Violence Against Women Act to support women who are victims of multiple crimes?

Ms. DEER. I think the key is always the advocacy, because what happens is you have different agencies, different government agencies that have different roles; prosecutors prosecute, law enforcement make the arrests in the investigation; and it is the advocates that hold all of those pieces together. So as women experience multiple forms of violence, the advocates can help them walk through the process.

And the Violence Against Women Act does a great job of providing resources, but as Ms. O'Leary said, advocacy programs have to apply year to year, and they don't know, sometimes, from one year to the next whether they are going to continue their programs; and that makes it, actually, sometimes more dangerous for women because they heard about this program that existed and then they finally got up the courage to go to it and the funding had been pulled.

So we want to make sure that advocacy programs have sustained funding and that they don't have to turn away women at the end of a fiscal year because of lack of funding.

The CHAIRMAN. Well, we have heard from all of you, our witnesses, and I really appreciate it. Again, I am repeating that your testimonies will help us try to improve this situation across the Country, so I want to thank our witnesses for participating in today's hearing. I applaud you for taking up this, what we call kuleana, or this responsibility, and I recognize the difficult job you have in carrying out the policies intended to keep people safe. As policy makers, we need to hear your voices as you speak for others who are not here and from your experiences with them as well.

We will be looking at the Violence Against Women Act and other Federal laws during this session to make sure the laws are working as intended. From the testimony received, it is clear there is still, without question, much work to do to keep our sisters, daughters, and mothers safe and secure.

Again, I want to give those who haven't had a chance to be witnesses an opportunity to let us know how they feel, so please remember that the hearing record is open for written testimony for two weeks and we look forward to your part in this as well.

Again, I want to thank you. We have had a good dialogue and received great reports from you directly, and my reason for doing what we are doing is that I don't only want to talk to the chiefs, but I want to talk to others as well, and to deal with the so-called trenches, to find out what problems there are and how we can resolve them. So that is what this is all about. But it takes our partnership working together to bring this about. So again I thank you so much for your time and we look forward to continuing to do this work. Thank you very much.

This hearing is adjourned.

[Whereupon, at 5:07 p.m. the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. BEN SHELLY, PRESIDENT, NAVAJO NATION

Introduction

It is my privilege to submit for the congressional record the Navajo Nation's position on the reauthorization of Title IX of the Violence Against Women Act (VAWA) and on possible amendments to the Tribal Law and Order Act (TLOA) to correct jurisdictional gaps in enforcement of crimes against women in our communities.

Domestic and sexual violence against women and in the household is an epidemic within the lands of the Navajo Nation. The Navajo Nation continues to lack the necessary funding and jurisdictional tools necessary to stem this scourge.

On the Navajo Nation, police enforcement resources are stretched nearly to the breaking point with low numbers of officers, vast distances to cover, and significant shortages of funding. With scarce police resources, and restrictive jurisdictional rules, domestic and sexual violence offenders frequently go unpunished.

The Navajo Nation desires and is in the best position to enforce, prosecute, and try domestic and sexual violence crimes, but we require adequate funding and the authority to exercise civil and criminal jurisdiction over domestic and sexual violence crimes. The Navajo Nation has one of the most highly developed tribal court and legal systems. We vigorously regulate the practice of law within our borders to ensure that only the most professional and competent practice.

The Navajo Nation supports the reauthorization of VAWA and amendments to the TLOA, but urges Congressional authorization to exercise criminal and civil jurisdiction over non-Indians in domestic and sexual violence cases, and increases in funding based on population and territorial size to meet the corresponding increase in responsibilities. The Navajo Nation urges separate appropriations to the Navajo Nation based on its population and the size of its territorial jurisdiction which far surpasses any other tribal nation. The Navajo

Nation urges recognition that membership in its bar association is equivalent to membership in a state bar association, and that therefore Navajo Nation judges and prosecutors are already qualified to prosecute and hear criminal and civil cases under the existing TLOA and those that may come with increased jurisdiction.

About the Navajo Nation

The Navajo Nation covers over 27,000 square miles, a land area larger than 10 States. The Navajo Nation has over 300,000 enrolled members, of which approximately half reside within its territorial boundaries. The Navajo Nation administers and provides the full range of services to its citizens that any other sovereign government does.

The Navajo Nation has a democratic and stable, multi-branch, separated powers government that protects the rights of all persons coming within the jurisdiction of the Navajo Nation. It has a developed and sophisticated body of laws and court system. The Navajo Nation takes a serious approach to the regulation of the practice of law on the Navajo Nation to ensure quality and professionalism in those who practice in our courts.

Statistics

Violence against women is a problem everywhere. Violence against Native women is an especially acute crisis. The July 14, 2011 oversight hearing revealed the following frightful statistics: one out of three of our sisters, mothers, and daughters will be sexually assaulted in their lifetimes; forty percent will be victims of domestic violence; seventeen percent will be stalked; women in abusive relationships suffer from increasingly violent spirals of abuse; Native women are murdered at ten times the national average; Native women are two and a half times more likely to experience violence than other women; federal prosecutors decline to prosecute fifty-two percent of violent crimes in Indian country; approximately eighty percent of those who are abused are abused by non-Indians.

Jurisdiction

The current legal framework that deprives the Navajo Nation of its sovereign right to prosecute criminals and enforce civil judgments within its territory fails to support and protect our sisters, mothers and daughters.

The Navajo Nation desires to be more proactive in the fight to protect Navajo women, but it lacks the jurisdictional tools to launch effective enforcement activities. Most abusers are non-Indians. The U.S. Supreme Court in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), held that tribes no longer possessed the inherent authority to exercise criminal jurisdiction over non-Indians absent express Congressional authorization. As Assistant Attorney General Thomas Perrelli pointed out, a recent federal court decision even denied the authority of tribal courts to issue or enforce civil protection orders against non-Indians.

Our law enforcement and judicial establishments have, therefore, been stripped of the very tools necessary to address the epidemic of domestic and sexual violence on the Navajo Nation even as the federal government continues to decline to enforce or prosecute cases in Indian Country at unacceptable rates given the U.S. government's trust responsibility. The result is a disaster for our women and our communities and imperils our future. The trauma of abuse affects not only the victims themselves, but ripples throughout our communities, resulting in increased rates of substance abuse, suicide, and the perpetuation of the cycle of violence.

In order to deal with this crisis and its long ranging consequences, the Navajo Nation legal system must be empowered by Congress to exercise criminal jurisdiction over domestic and sexual violence and related crimes, such as stalking; and also must have its jurisdiction over related civil matters such as the ability to issue and enforce protection orders affirmed.

The Navajo Nation Bar Association, Inc. and the Regulation of the Practice of Law in the Navajo Nation

The practice of law on the Navajo Nation is tightly controlled. The Navajo Nation Bar Association is as professional and respectable as any state bar association. It assists in the maintenance of professionalism and competency of persons admitted to practice law in the Navajo Nation. Licensing and membership requires the passage a rigorous examination.

Any amendments to VAWA or the TLOA which expand tribal court authorities, but which condition such authority on the judges and prosecutors holding licenses in a jurisdiction of the United States, should explicitly recognize membership in the Navajo Nation Bar Association as fulfilling such a requirement or provide a mechanism whereby the Navajo Nation Bar Association might acquire such recognition.

Funding

In order to meet its trust responsibilities and to empower the Navajo Nation to protect its sisters, mothers, and daughters, any increase in authority should come increased funding or opportunities for funding for law enforcement and judicial operations. Funding should be based upon population and territorial size, to ensure that those tribes with the greatest and most urgent need receive the most funding.

Conclusion

Domestic violence continues to be a problem of epidemic proportions in the Navajo Nation. Domestic violence is a problem that affects not only the immediate victim, but those who witness it, their families, and their communities. The Navajo Nation's sophisticated government and court system place it in the unique position that it could enforce civil domestic and criminal domestic violence laws in a manner that respects individual civil rights, and in fact desires to do so, but lacks sufficient funding and the legal authority to enforce laws against the non-Indians who comprise approximately eighty percent of offenders.

The Navajo Nation urges Congressional authorization to enforce criminal domestic violence laws against non-Indians. The Navajo Nation urges clarification of its authority to issue and enforce protection orders and other civil domestic orders against non-Indians. The Navajo Nation requests recognition that a Navajo Nation license to practice law is equivalent to a state license. The Navajo Nation finally requests additional funding appropriated to the Navajo Nation based on the size of its population and territory.

PREPARED STATEMENT OF THE CHEROKEE NATION

Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee, thank you for convening this hearing and giving the Cherokee Nation the opportunity to submit testimony regarding the issues that Tribal Nations face in protecting, shielding, and safeguarding Native women. The Cherokee Nation is one of the largest Tribal Nations in the United States with more than 350,000 citizens and a 7,000-square-mile service area in northeastern Oklahoma.

It is well established that Native women are subject to violence at a much higher rate than any other group in the United States. National studies show that one out of three Native women will be raped during their lifetime, Native women are murdered at rates several times higher than the national average, and the men who are violent toward Native women are significantly more likely to avoid criminal punishment than those who abuse non-Native women. It is clear that something must be done to end the violent cycle plaguing Native communities and families.

Much of the attention paid to preventing violence against Native women is directed toward reservation communities. However, it is important to remember, as a result of the failed policies of the allotment era, the Cherokee Nation and other Tribal Nations in Oklahoma do not have reservations. The lingering effects of allotment created a confusing patchwork of "restricted" Indian land and non-Indian land within the fourteen county service area of the Cherokee Nation. This patchwork of Indian land and non-Indian land causes a myriad of problems that are unique to the Tribal Nations of eastern Oklahoma.

There is often confusion as to whether local, state, federal, or tribal law enforcement agencies possess criminal jurisdiction over land within the historic boundaries of the Cherokee Nation. Today, Cherokee Nation citizens that live on "restricted lands," are subject to tribal and federal criminal jurisdiction. On the other hand, tribal citizens that live off of restricted lands, but still within the fourteen counties of the Cherokee Nation, are subject to local and state criminal jurisdiction.

Presently, non-tribal law enforcement agencies and officers lack sufficient education on which land does and does not fall within their criminal jurisdiction. If local or state law enforcement officers learn that a Cherokee woman has been the victim of domestic violence, they often assume that Cherokee law enforcement officers have jurisdiction.

regardless of whether or not the violence took place on Indian or non-Indian lands. As a result, acts of violence against women often fall through the cracks and are never prosecuted.

There are eighty-six different law enforcement agencies that have varying levels of criminal jurisdiction within the boundaries of the Cherokee Nation's fourteen counties. As a result, the quality of law enforcement and protection for tribal citizens living on non-Indian land greatly varies depending on which community and county a family lives. For example, in Adair County, there are only seven deputy sheriffs, but in neighboring Cherokee county, there are twenty-three deputies. Unfortunately, the number of reports of violence against women far outweighs the law enforcement manpower in rural Adair County as compared to that of Cherokee County.

Because there are literally dozens of law enforcement agencies with criminal jurisdiction within the Cherokee Nation, it is very difficult to compile accurate data on violence against women and other criminal behavior. This differs from reservation communities, where there is often one centralized tribal law enforcement agency and a federal presence. Without accurate statistics, it is very difficult for the Cherokee Nation to develop targeted programs and efforts to protect women from violence.

Also, when Cherokee women seek assistance in escaping an abusive environment, they are often forced to relocate to non-Native communities. This can be difficult for many women, who are forced to reside in shelters and participate in programs that are not familiar with the many unique needs of Native women. As a result, women often choose to remain in abusive situations rather than relocate to an area that is geographically and culturally distant from their home communities.

While the Cherokee Nation faces many unique challenges in preventing violence against women, there are several ways Congress could assist the Tribal Nations of Oklahoma in their prevention efforts. Solutions include providing special funding for the purpose of educating local and state law enforcement, hiring local law enforcement agents specifically designated to respond to crimes against Natives, and assistance in compiling individual statistical reports from the dozens of law enforcement agencies within the Cherokee Nation.

Violence against Native women would be drastically reduced if the Cherokee Nation and other tribal governments were able to take Indian Law courses on the road, providing training to local law enforcement officers. Cherokee Nation covers a vast area in northeastern Oklahoma, so rather than expecting officers to report to a training destination, pay lodging, mileage, and per diem to obtain relevant Indian Law education, it would be beneficial to bring the education directly to local law enforcement agencies. In an ideal situation, tribal governments would provide training on subjects including cross deputization, prosecution of cases involving Natives, and how to determine whether property is restricted or state land.

If the Cherokee Nation was given proper funding to hire, orient and train officers, who would be stationed at local law enforcement agencies to specifically respond to crimes against natives, domestic violence, stalking, and sexual assault, there would be much less

variation in the quality of law enforcement from county to county. Additionally, the experience of the Native-designated officer would filter down to his co-workers and other law enforcement agencies, providing all law enforcement officers better knowledge of Native specific issues. This would also offer relief to the local law enforcement agency's manpower shortage, provide additional resources to victims, and offer an immediate gateway to gather criminal statistics in Indian Country.

Local law enforcement agencies are often willing to assist in providing Cherokee Nation officials with access to criminal statistics involving Natives, but the process of compiling information is costly and time consuming. If funding were provided to assist with the collection, compilation, and computation of criminal statistics involving Cherokee women, then resources would be much better utilized in preventing violence against Native women in the Cherokee Nation and Oklahoma.

It is important to remember the unique circumstances facing Native women within the Cherokee Nation and the rest of Oklahoma. While most of the issues facing Native women in Oklahoma mirror those from other parts of the country, the history of federal Indian policy in Oklahoma presents many challenges that are different from other areas. When formulating policy and legislation, Congress should not forget to consider the special needs of Native women in Oklahoma. Once again, the Cherokee Nation thanks the Chairman, Vice Chairman, and the Members of the Committee for their time and should you have any additional questions, please contact the Cherokee Nation Washington Office at (202) 393-7007.

PREPARED STATEMENT OF HON. CLIFFORD CULTEE, CHAIRMAN, LUMMI INDIAN NATION

Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee:

The Lummi Nation extends its appreciation to the Committee on Indian Affairs' interest in helping prevent and overcome the epidemic of violence against women and families in Indian Country.

THE ON-GOING CRISIS SITUATION FOR INDIAN WOMEN:

Generally, it is with dismay the Lummi Nation, like all of Indian Country, recognizes that men, in general, have become overly aggressive and violent against women of all ages and races, at all levels of the economic or socio-political ladder, and whether or not those very women are their wives, mothers, grandmothers, daughters, nieces, girlfriends, or family acquaintances. We recognize that this is a tragedy of history in that the United Nations has had to institute an international convention that advocates for the prevention of violence against women, as had the United States, the individual states, and the Indian Tribes.

We understand, and acknowledge, that many of the modern religions (developed over the past five thousand years) are guilty of helping institutionalize acceptance of high levels of discriminatory violence against

women. We understand that the "male dominance" advocated and practiced as central to those religions has caused massive grief for women, as reflected by the violent treatment they receive at the hands of males. As Indian communities, as Nations with their own aboriginal cosmologies and concepts of the sacred, we have recognized too late that the "new Christian religions" came into Indian Country loaded with this dogmatic, violent prejudice against women.

In general, our women, here at the Lummi Nation, are protectors of the tribal child's right to become a member of tribal society equipped with cultural integrity and traditional knowledge. The women, the mothers, help assure our children have a basic cultural awareness, and understanding of their tribal membership. However, most of those very mothers, and their children, live in high poverty, many are homeless, most are under-educated, under-trained in marketable job skills, under-employed, unemployed, suffer the highest infant mortalities and teenage suicide rates in the country. They are constantly exposed to high levels of alcoholism and drug addiction. They are subjected to very dysfunctional behaviors, and are usually at risk with the shortest life-expectancies in the United States. They live in socio-economic marginalization in the richest country in the world.

The children, in these families, become involved in high risk behaviors at a very early age. The practice of violence is one of the common denominators. According to self-studies of the Lummi Nation, on High Risk Behaviors, sixty to eighty percent of these youth are involved in behaviors that put them at daily risk of death. The parents, most often, are suffering as dysfunctional adults. The

fathers are often in absentee-father status, as unemployed/under-educated/under-trained adult men. Often the mothers are left to fend for the children and assure their survival. For Lummi, the majority of these children, especially the ones in single mother homes, will not live beyond age twenty-four.

The studies have shown that sixty to eighty percent of the children are involved in high risk behavior. This means they confront the realities of death on a regular basis each day. They live in a war for survival beyond twenty-four years of age. Forty percent of our population lives beyond forty- with a population age spread from 24 to 93 years of age. Statistically, it says that 60% will most likely not make it. The next 20% (the group at the margin of the findings of 60% to 80%) will struggle with their dysfunctionalities, alcoholism, drug addictions, and practiced abuses that victimize the women/girls within the impoverished, broken family. The remaining 20% (those that would have been a part of the 80% to 100% figures left over) are involved in tribal government and society and seek to help those that are suffering and barely surviving.

In order to help the girls and women, in the prevention of violent practices waged against them, we have to understand the daily circumstances that they live within. These women and girl experience traumatization from two on-going sources. There is the daily generational trauma of today. Then, there is the carryover of historical trauma. On the daily trauma, directly experienced by this generation are events like direct abuse and discrimination focused upon the women or girl (physical, emotional, economic, social, sexual, spiritual). They experience constant grief of the lost of siblings, friends, and even their own young children- taken by death or by child protective services because of their incapacity to care for them. They suffer extreme poverty, with half of our young

mothers with children (averaging four each, and each child fathered by a different male) being homeless, moving from one relative's home to another. Their children, then, experience lack of food, shelter, and facilities for proper hygiene.

Many of these young mothers have a dream that their "knight in shining armor" is just around the corner. It is the "Cinderella Myth" that they fall victim to. The "knight" or "warrior" comes and is kind in the beginning. As the relationship expands over time he begins to show his dominance, practice his verbal & physical aggression, and institute intimidation to assure the victim's (e.g., mother's or daughter's or step-daughter) silence. He demands that she prove her love and father his child. She does. He moves on to the next common law wife and becomes an absentee-father. These women seek safety, shelter, security, and crave protection. But, most often, they find themselves to be always the victim, with no way out. Many battle with drugs and alcohol that started as their escape from reality and suffering and ended up as a one way path to slow suicide (for them and their immediate family institute). This is the daily learning experience of their young children.

Piled on top of all this is the carry over effect of the Peace Policy of the United States that sought to "Kill the Indian to Save the Man." This policy, as a matter of federal institution, destroyed the original land ownership patterns of Indian Country, eliminated their extended family system and replaced it with the nuclear family unit, eliminated their traditional forms of housing, eliminated their tribal languages, traditional culture/cosmology/spirituality, eliminated traditional governance, wiped out their traditional foods & medicines, and destroyed their traditional role-models that were valued in political/societal and ceremonial leadership. It wiped out the place of the elders/grandparents in the raising and influence over the children. It sought to make every man, woman, and child a

complete individual that was repulsed by any form of tribalism or tribal knowledge & practices. Today, the tragic memories of the boarding or missionary school experiences are passed on from one generation to the next. Those experiences became symbolic of the treatment of the Indian as a tribal person that has been beat down psychologically, psychiatrically, sociologically, and theologically.

A common theme through this whole maze of experience has been the suffering the women and their children. As modern tribal governments we have police protection, court systems, counselors, probation officers, and various social services (especially the Child Protective Services) that get involved when a woman calls in for assistance from domestic violence. The traumatized male, in the home, acting as father/step-father/spouse, practices violence against the woman. He is removed. She is dependent upon his earning capacity. He is allowed to go back into the home. The cycle repeats with each time he comes under stress, or needs an alcohol or drug fix. The various twelve step programs available do not meet often enough to end this cycle of violence. Even when the man is incarcerated, eventually he returns. Often he simply remains a repeat offender, as the female continues to be the most immediate victim.

NEW APPROACHES ARE NEEDED:

The tribal government works with various federal, state, county, city, and tribal agencies, departments, programs, and services that seek to provide assistance to the "woman" as a citizen, as a minority, as a mother, as a homeless person, as a person needing charity for securing food, as a victim, as an uneducated person, as a untrained and not employable person, as a victim needing medical or dental services or emergency services, or mental health counselling, or social services and protection for their children. There is a lot of potential help that is scattered throughout the different governments. Some

help is available today, other forms are there tomorrow, and some takes longer times than the emergency time period allows for the mother to endure. For example, some drug addicted homeless mothers decide to seek rehabilitation/dry out services now, right at this moment when they are not beaten or under the influence but it takes weeks to get them to a facility. By that time they gave up again. When a person is starving then they need to be feed now, not by promise to give them food in the distant future.

This is why we advocate that it is time to design and built a "Women with Children Only Housing Complex." The goal of the facility is to provide that mother, and her dependent children, a safe home to live and recover and plan for their healthy, safe future. No husbands, not wayward fathers would be allowed to live there. He had his chance. This is their chance, that of the mother and her children. The facility would be surrounded by fencing and a guard at the gate at all hours, all days.

In this facility the mother and children have a safe home. In here they get financial assistance and counseling. In here they get mental health counseling. In here they get educational support/financial aid/tutoring/counseling. They get help with all their bills and learn how to run and maintain a home. They have access to immediate police protection and priority consideration for protection orders from the court. The center would have a tutorial center that provides access to modern technology for school work (of the mother and children); to overcome the technological divide evident in Indian Country. All levels of the school system would be engaged in the process of saving this mother, her children, as a family unit. Child Protective Services would be trained and mandated to help stabilize the family unit. Tribal elders, and stabilized grandparents, would be routinely encouraged to engage with the family unit.

These families, and individual members, would be taught about the tribe's history and culture to encourage pride in tribalism and survival. Day care and child/baby-sitting services would be coordinated and dependent upon volunteerism & sharing.

The mother would be encouraged to stay in the multi-family facilities until the day comes that she is qualified to enter the work force. We would seek to conduct interviews to determine her future potential- in job training or formal education. The goal is to match her up with training & education programs that shall equip her for socio-economic survival- as a person, as a mother, as the head of the family. She may go after vocational training for two years or her AA. Or, she may seek a BA or BS four year degree, or her master's degree. Added to these "years" of incubating in education/training, is a year for on-the-job experience, as a transition to self-support. Once she reaches this level then she would move out into other tribal housing or wherever her job skills take her.

The tribal commitment would be to conduct its "staffing/personnel" studies to determine each and every job that a "mother" as an educated or trained person could occupy under an Indian Preference Program. . The Tribe would have to plan for the time these women can enter the work force. And, it would have to help design a "relocation" financial support program to assure that the mother and children can transition out of the dependent housing status to individual homes of their own.

All the federal levels of assistance that can help women & children that go through the tribe would need to be flexible enough so as to work with the tribe along these projected lines of innovative treatment & prevention. The tribe, as a self-determining and self-governing tribe, needs to be able to exercise more discretion in utilizing federal programs, funds, and services for the most maximum, long-term effect and benefit for women. This approach, above,

focuses upon the single mothers because it is their children that are often on the streets, wayward, out of school, poverty stricken, and being placed under great peer pressure to use alcohol, drugs, and practice violence as they get recruited into the gangs. If we change the mother into a role-model then she will have a positive effect on her children as they mature. But, she cannot do it on her own.

There has to be clarity as to who is being the immediate, identifiable target for help. Let me give an example. A non-profit provided funds for the Lummi Nation to help eliminate poverty from those suffering the most. This venture has produced projects that help the impoverished tribal members in general, including all men and women, and their families. But, the directive was to address the 25% that were the lowest on the economic ladder. Those people

were single mothers with children, as an identifiable socio-economic unit. They should have been the primary focus. But, the project has taken a more generalized approach that seeks to service anyone that is not gainfully employed. It is a form of willful ignorance, as we practice overlooking those with the direst needs. It may be that these women and children are stripped of so much that it takes more effort to help them than it would to simply help the unemployed tribal person (male or female). But, that is a part of the problem—the inability or choice not to address the whole person.

It is our belief that it is time to take the mother and her children out of the crime scene and into the environments of a safe haven that shall nurture their long-term survival inter-generationally. We recognize that the Congress had enacted the Tribal Law and Order Act and has authorized and mandated interdepartmental coordination of programs and services. We do need to challenge DOJ, DOI, and HHS to review this proposal for consideration and planning. All across Indian Country, on all the Indian Reservations, there is a

need for a solution that can be repeated over and over again. As long as we allow the mothers to be continuously victimized then their children remain vulnerable to recruitment into the drug trade and gang activity. We can no longer afford to allow the mothers to be chronic, habitual victims. We have to turn the mothers into the positive role-models that they deserve to become. This will take coordination. By failing to come up with long-term solutions, we end up only further victimizing the victims, as they suffer under the delusion that we can help but won't. We end up adding to their cycle of abuse and victimhood.

Hy'shqe to the Committee for receiving our written testimony on this important subject.

PREPARED STATEMENT OF JANA L. WALKER, SENIOR ATTORNEY, INDIAN LAW
RESOURCE CENTER

Chairman Akaka and distinguished members of the Committee. The Indian Law Resource Center, a non-profit legal organization, respectfully submits this testimony to be included in the record of the Committee's oversight hearing on violence against Native women.

Founded in 1978 by American Indians, the Indian Law Resource Center assists indigenous peoples to combat racism and oppression, realize their human rights, protect their lands and environment, and achieve sustainable economic development and genuine self-government. The Center works throughout the Americas to overcome the devastating problems that threaten Native peoples by advancing the rule of law, by establishing national and international legal standards that preserve their human rights and dignity, and by providing legal assistance without charge to indigenous peoples fighting to protect their lands and ways of life. One of our overall goals is to promote and protect the human rights of indigenous peoples, especially those human rights recognized in international law.

On July 14, 2011, the Center's staff listened to the sobering testimony of the witnesses sitting before the Committee. Sadly, the epidemic rates of sexual and physical violence being committed against Native women in the United States are not new to Native women and communities—1 in 3 Native women will be raped in their lifetime and 6 in 10 will be physically assaulted. While the rates presented during the hearing can only be described as staggering, the actual incidence of violence against Native women is most likely even higher due to improper and under-reporting.

At the root of this violence are restrictions on the inherent jurisdiction of federally recognized American Indian and Alaska Native villages (Native nations) over their respective territories. The major legal barriers obstructing the ability of Native nations to enhance the safety of women living within their jurisdictional authority include:

- a. The assumption of federal jurisdiction over certain felony crimes under the Major Crimes Act (1885);

- b. The removal of criminal jurisdiction over non-Indians by the U.S. Supreme Court in *Oliphant v. Suquamish Tribe* (1978);
- c. The imposition of a one-year, per offense, sentencing limitation upon tribal courts by the U.S. Congress through passage of the Indian Civil Rights Act (1968);¹
- d. The transfer of criminal jurisdiction from the United States to certain state governments by the U.S. Congress through passage of Public Law 53-250 and other similar legislation (1953); and
- e. The failure to fulfill treaties signed by the United States with Native nations as recognized by the court in *Elk v. United States* in 2009.

These federal laws and decisions of the United States Supreme Court have created a jurisdictional maze, involving federal, tribal, and state governments and requiring a case-by-case analysis of the location of each crime, race of the perpetrator and victim, and the type of crime. The complexity of this jurisdictional arrangement contributes to violations of women's human rights, because it treats Native women differently from all other women and causes confusion over who has the authority to respond to, investigate, and prosecute violence against Native women. In no other jurisdiction within the United States does a government lack the legal authority to prosecute violent criminal offenses illegal under its own laws.

Restrictions on the criminal authority of Native nations deny Native women who are victims of sexual and domestic violence on tribal lands meaningful access to justice. It is believed that 85% of the violence against Native women is perpetrated by non-Natives, many of whom are very aware that they may commit violence against Native women without fear of punishment. The erosion of tribal criminal authority over all persons committing crimes within their jurisdictions, coupled with a shameful record of investigation, prosecution, and punishment of these crimes by federal and state governments, has directly resulted in the disproportionate rates of violence against Native women.

The truth of the matter is that many violent crimes continue to go unprosecuted in Indian country. According to a recent United States Government Accountability Office study, from 2005 through 2009, U.S. attorneys failed to prosecute 52% of all violent criminal cases, 67% of sexual abuse cases, and 46% of assault cases occurring on Indian lands.² As these numbers indicate, Native women are routinely denied their right to adequate judicial recourse. This treatment separates Native women from other groups under the law. The United States' restriction of tribal criminal authority combined with its failure to effectively police and prosecute these violent crimes violates its obligation to act with due diligence to protect Native women from violence and punish perpetrators.

Enforcement inequalities permit perpetrators to act with impunity on Native nation lands and have the effect of condoning violence against Native women and denying them the right to equal protection under both United States and international law. The rights to personal security and freedom from fear are internationally recognized human rights. If the United States ignores

¹ *But see* P.L. No. 111-211 (2010) (expanding tribal court sentencing authority under ICRA to three years when specific conditions are met).

² United States Government Accountability Office. U.S. Department of Justice Derogations of Indian Country Criminal Matters 3 (December 13, 2010).

ongoing systemic problems relating to crimes in Indian country, it does so in violation of various international principles and of the human rights of Native women under international law.

This Committee recently convened an oversight hearing on the domestic policy implications of the United Nations Declaration on the Rights of Indigenous Peoples, recognizing that action is needed to ensure that federal laws and policies are consistent with the rights expressed in the Declaration. It was less than a year ago, on December 16, 2010, that President Obama announced the United States' support of the Declaration. Significantly, Article 22(2) of the Declaration speaks directly and unequivocally to the United States' obligation to ensure the safety of Native women: "States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination."³

Unacceptably high rates of violence against Native women also violate several international human rights treaties. Article 5, Section B, of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), states that regardless of race, all peoples should be guaranteed their right to "security of person and protection by the State against violence or bodily harm." However, the current epidemic of violence against Native women in the United States, perpetuated by systemic inequality and confusion, not only violates this provision of ICERD, but also other provisions of ICERD by denying Native women freedom from racial discrimination (Article 2), equal protection under the law (Article 5(a)), and access to effective judicial remedies (Article 6).

Having ratified ICERD in 1994, the United States must strive to ensure that its domestic laws and policies do not violate these provisions. In 2008, the UN Committee on the Elimination of Racial Discrimination (CERD) criticized the United States sharply for failing to meet its obligations under ICERD to prevent and punish violence against Native women. The Committee's Concluding Observations and Report stated:

The Committee also notes with concern that the alleged insufficient will of federal and state authorities to take action with regard to such violence and abuse often deprives victims belonging to racial, ethnic and national minorities, and in particular Native American women, of their right to access to justice and the right to obtain adequate reparation or satisfaction for damages suffered. (Articles 5(b) and 6).³

The Committee's Concluding Observations and Report explicitly recommended that the United States increase its efforts to prevent and prosecute perpetrators of violence against Indian women, including promptly, independently, and thoroughly investigating reports of rape and other sexual violence against Indian women.⁴

³ Committee on the Elimination of Racial Discrimination, Concluding Observations United States of America, CERD/C/USA/CO/6 (Feb. 2008) at ¶ 26, available at <http://www.indianlaw.org/sites/indianlaw.org/files/CERD-recommendations.pdf>.

⁴ *Id.*

Additionally, the United States is one of 167 states that have ratified another international treaty, the International Covenant on Civil and Political Rights (ICCPR). Article 3 of the ICCPR explicitly states that the civil and political rights guaranteed under the ICCPR apply to *both* men and women. In living lives impacted by daily violence, Native women are thwarted in their ability to fulfill many of their civil and political rights guaranteed in the ICCPR. As the preamble of the ICCPR asserts, "in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and *freedom from fear* and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights." (emphasis added).

On June 3, 2011, the epidemic of violence against Native women was highlighted in a report by the United Nations Special Rapporteur on Violence Against Women. In her report to the U.N. Council on Human Rights, the Special Rapporteur strongly recommended that the United States reconsider existing systemic legal barriers, including limitations on the criminal authority of tribal governments, in order to improve its protection of Native women. This Fall, the report is expected to be presented to the U.N. General Assembly in New York City.

In the past few years, the United States has made some strides in its fight to prevent violence against Native women, but more changes are needed. For example, while Native nations have concurrent criminal authority with the federal government under the Major Crimes Act and may prosecute crimes committed by Indians,⁵ under the recently amended Indian Civil Rights Act (ICRA), tribal courts can sentence Indian offenders only to prison terms not greater than three years per offense (with a total of nine years for consecutive sentences for separate offenses) and a fine of up to \$15,000.⁶ This enhanced sentencing authority can only be exercised when certain protections are provided to the accused. While a tremendous step forward for some Native nations, the reality is that most do not have the resources to meet the requirements under the Act and are thus effectively still limited to the one year sentencing cap under ICRA. Fully funding and ensuring the implementation of the Act, particularly the provision of training and cooperation among tribal, state, and federal agencies, is important. It may take a significant amount of time before Native nations are able to take advantage of this enhanced sentencing authority. As a result, when a Native commits violence against a Native woman, the Native nation can prosecute the offender, but the woman victim will still be denied a just and effective remedy.

Often, various federal laws and policies still perpetuate, instead of reduce, violence against Native women. This is quite apparent in United States federal court decisions regarding protection orders. In *Town of Castle Rock, Colo. v. Gonzales*, the United States Supreme Court held that the United States Constitution does not require state law enforcement to investigate or enforce alleged violations of domestic violence protection orders.⁷ Thus, state law enforcement

⁵ 18 U.S.C.A. §§ 1152, 1153; see also *United States v. Kagano*, 118 U.S. 375 (1886) (upholding the constitutionality of the Major Crimes Act).

⁶ The Tribal Law and Order Act, enacted in July 2010, increased tribal court sentencing authority from up to one year in prison and a \$5,000 fine to the current enhanced standards if certain requirements are met.

⁷ 545 U.S. 748 (2005).

chooses whether to enforce these orders, and may always choose not to.⁸ Such decisions by local law enforcement leave Native women vulnerable to ongoing violence by domestic abusers,

Federal courts have further undermined the safety of Indian women by holding that tribal courts do not have jurisdiction to issue domestic violence protection orders requested by a non-member Native woman against her non-Native husband.⁹ In *Martinez*, the federal district court held that the tribal court did not have the authority to issue the protection order because the issuance of the order was not necessary to protect tribal self-government and the non-Native's conduct was not a menace to the safety and welfare of the Tribe. The *Martinez* decision fails to recognize the current reality of life within a Native community and the importance of tribal courts to maintaining law and order in Native communities. Non-member Indians and non-Indians as well as member Indians live within the territorial boundaries of most Native communities. The tribal court may be the most responsive institution to meet the needs of the residents of the community (Native communities are often located in rural areas, physically distant from state courts and police stations). Orders of protection can be a strong tool to prevent future violence, but they are only as strong as their recognition and enforcement. Federal law undermining the integrity of civil protection orders is especially harmful to Native women. Because of the limited criminal authority of tribal governments, often the only recourse that a Native woman has against an abuser is a civil protection order. It is critical that, when Native women call the police to report that a respondent is violating a protection order, they should be able to anticipate that the police will actually show up.

As members of this Committee have recognized, systemic problems continue to perpetuate a cycle of violence against Native women, who have few places to turn to for help. This needs to change. Now is the time to begin identifying solutions that will directly and substantially protect the lives and safety of Native American women. Our recommendations include:

1. Increasing the criminal authority of Native nations to prosecute all persons, including non-Indians, who commit sexual and domestic violence against Native women in Indian country and Alaska Native villages;
2. Removing inequitable limitations on tribal sentencing of perpetrators who commit crimes against Native women and children;¹⁰
3. Increasing federal technical and financial support to Native nations to enhance their response to violence against Native women;

⁸ *Id.*

⁹ See, e.g., *Martinez v. Martinez*, Case No. C08-5503 FDB, Order Denying Defendants' Motions to Dismiss and Granting Plaintiff Declaratory and Injunctive Relief (W.D. Wash. Dec. 16, 2008).

¹⁰ While the Tribal Law and Order Act (2010) improved tribal sentencing power by lengthening maximum jail time from one to three years when specific conditions are met, this is not enough considering typical state court sentences for comparable crimes committed against women outside Indian country.

4. Creating a grant program to provide federal support to non-profit, non-governmental American Indian and Alaska Native women's organizations to provide services to survivors of domestic and sexual violence;
5. Creating a grant program to provide federal support to non-profit, non-governmental American Indian and Alaska Native women's organizations to build shelters and transitional housing for Native women who are survivors of domestic and sexual violence;
6. Fully funding and ensuring the implementation of the Tribal Law and Order Act, particularly with respect to the obligation of federal prosecutors to share information on declinations of Indian country cases and the provision of training for and cooperation among tribal, state, and federal agencies;
7. Creating a forum for dialogue, collaboration, and cooperation among tribal courts, federal courts, and state courts on the issue of violence against Native women on Indian lands and how the jurisdictional scheme under United States law unjustly discriminates against them; and
8. Launching a national initiative in consultation with Native nations to examine and implement reforms to increase the safety of Native women living within tribal lands under concurrent tribal state jurisdictional authority, including the speedy response to the request by Native nations for the United States Department of Justice to reassume federal criminal jurisdiction.

In closing, we wish to recognize the efforts of the National Congress of American Indians (NCAI), specifically the strong and sustained efforts by its Task Force to End Violence Against Women, in making the safety of Native women a priority, not only in Indian country, but also on the Hill and in international fora. We are hopeful that all of these efforts have started a critical process of change—a step in the right direction—that is desperately needed and needed now. Ensuring all citizens are safe and secure, including Native women, is not an option but a human right that must be upheld.

We appreciate greatly this Committee's attention to protecting Native women. At your request, we would welcome the opportunity to answer any questions you may have or provide additional information on violence against Native women.

PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI)
TASK FORCE ON VIOLENCE AGAINST WOMEN

Since the establishment of the National Congress of American Indians (NCAI) Task Force on Violence Against Women (“the Task Force”) in 2003, enhancing the safety of Indian women has been one of the highest priorities of NCAI. Over the last eight years, NCAI has provided updates and briefing sessions during each of its national conferences (which occur three times each year) to review emerging issues, inform membership, and establish action plans to engage our national organization in efforts to create the necessary changes essential to the safety of Indian women.

While the comments offered by the Task Force draw directly from eight years of experience, active members of the Task Force have been engaged in the movement for the safety of Native women since the late 1980s. It is these dedicated tribal leaders and advocates that provide the continuity that is the strength of this social movement calling for an end to violence against Indian women.

Although some specifics have changed over this period of time, the fundamental barriers that prevent Indian tribes from safeguarding the lives of Indian women have not. Provided below are longstanding tribal leader concerns followed by an Appendix that contains specific language offered to address these concerns and enhance the safety of Indian women through the VAWA 2011 reauthorization. We hope that the Senate Judiciary Committee will carefully consider these concerns and our proposed solutions. There is an urgent need to address these barriers—American Indian women fleeing violence can wait no longer.

TRIBAL PRIORITIES FOR THE REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT

- **Restore tribal criminal jurisdiction over all persons.** Until 1978, it was settled doctrine that Indian tribes retained all sovereign powers not expressly abrogated by Congress, which included criminal jurisdiction over non-Indians. Yet, the U.S. Supreme Court’s decision in *Oliphant v. Suquamish Tribe* changed that, and rejected decades of precedent in the process, when it stripped Indian nations of their authority to prosecute non-Indians that commit crimes on tribal lands. This decision—and the jurisdictional gap it created—has had grave consequences for Indian women in that it has frequently left them without criminal recourse when their perpetrators are non-Indians. Congress should restore optional, concurrent tribal criminal jurisdiction over non-Indian perpetrators of domestic violence, sexual assault, and related crimes that are committed within the exterior boundaries of the reservation.

During the recent Department of Justice's (DOJ) tribal consultation in Milwaukee, tribal leaders provided numerous examples of the broad impact and negative consequences this gap continues to have upon tribal communities. Domestic violence is a pattern of abuse occurring over time that frequently escalates in severity and frequency. It is essential that the pattern be recognized early so that the ongoing—and often daily—misdemeanor level violent acts can be addressed before they increase in severity. Unfortunately, the current jurisdictional scheme has created a situation in which federal and state justice officials are inadequately responding to this pattern of domestic violence, while tribes often lack the authority and/or resources to respond at all. The NCAI Task Force recommends that Congress support Indian tribes in their efforts to respond to perpetrators of domestic and dating violence against Indian women by restoring concurrent criminal authority of all federally recognized Indian tribes over all persons committing such offenses on tribal lands.

The NCAI Task Force also urges that any jurisdictional fix restoring criminal jurisdiction of Indian tribes over non-Indians be inclusive of tribes located within PL 280 states or those similarly situated. Moreover, Congress should address the unique circumstances of land claims settlement tribes (e.g., tribes located in Maine) when contemplating any potential jurisdictional fix in the upcoming VAWA reauthorization. These tribes should have an equal opportunity to exercise concurrent jurisdiction over non-Indian perpetrators who commit acts of violence against their women and disrupt tribal communities.

The Task Force does not believe that the restoration of tribal criminal jurisdiction over non-Indian perpetrators of violence against women should be contingent on new sources of federal funding to pay for it. That being said, we recognize that expanded tribal jurisdictional authority will inevitably put additional financial strains on tribal governments. Any proposed jurisdictional fix will undoubtedly require tribes to provide added due process protections for defendants, which will come at great cost. As such, the Task Force recommends increasing the resources available to those tribes who opt to exercise criminal jurisdiction over non-Indians by either creating new funding streams for tribal justice systems or increasing appropriations for existing ones.

In keeping with the policy of tribal self-determination and maximum tribal control over the internal matters and governance of a tribe, the Task Force feels strongly that the specific elements of criminal offenses subject to tribal jurisdiction under the proposal outlined above should be defined by tribal law, not federal law. As sovereigns, tribes must be given the opportunity to define their own criminal offenses according to their own respective cultures and beliefs, and in line with their codes of justice. All persons entering reservation lands shall be required to abide by the laws of the tribe, as established by the tribe.

- **Clarify tribal civil jurisdiction over non-Indians.** The *Martinez v. Martinez* decision handed down by the U.S. District Court for the Western District of Washington in 2008 muddied the waters when it held that an Indian tribe lacked authority to enter a protection order for a non-member Indian against a non-Indian

residing on non-Indian fee land within the reservation. As such, the Task Force urges Congress to pass new legislation that would clarify that every tribe has full civil jurisdiction to issue and enforce protection orders involving all persons, Indian and non-Indian alike.

- **Create new federal offenses to combat violence against women.** At DOI's recent tribal consultation in Milwaukee, tribal leaders and representatives told gut-wrenching stories about the violence against women that occurs in their communities. One story involved a domestic violence episode that resulted in a shattered eye socket and attempted strangulation, yet, the perpetrator was not held accountable. These incidents occur far too often in tribal communities and the federal government needs to be doing more to live up to its trust responsibility to safeguard the lives of Native women. That is why the Task Force supports creation of a new, freestanding statute that would: 1) provide a five-year offense for assaulting a spouse, intimate partner, or dating partner, resulting in substantial bodily injury; and 2) provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate. This new statute should be analogous to 18 U.S.C. 117 in that it should apply to crimes committed throughout Indian country and within Public Law 280 jurisdictions and those similarly situated, regardless of the Indian or non-Indian status of the defendant or the victim.

While the ideal scenario would be for tribes to be able to prosecute such heinous crimes that occur on tribal lands, the reality is that the limitations placed on tribal sentencing authority by the Indian Civil Rights Act (ICRA) makes it impossible for tribes to adequately punish offenders for this level of offenses.

- **Create services program for Native women.** Given the inadequate law enforcement response to violence against Native women, Native victims often find themselves going days, weeks, months, and even years without justice. This population of victims "waiting to be served" can no longer be ignored. NCAI recommends that Congress create an "above the cap" reserve in the Victims of Crime Act (VOCA), or alternatively, a 10% VOCA tribal set-aside, that would fund tribal government programs and non-profit, non-governmental tribal organizations that provide services to Native women victimized by domestic and/or sexual violence within the jurisdictional boundaries of an Indian reservation or Alaska Native Village. During the recent Milwaukee tribal consultation, tribal leaders and representatives provided vivid portrayals of Indian victims in need of help being forced to hide from their abusers under boats, in smokehouses where fish is cured, in abandoned cars, etc. Consultation participants provided numerous examples of women trying to escape violent situations and/or the threat of such violence. The current crisis calls for provision of desperately needed life-saving services created by tribal providers specifically for Native victims. The epidemic of violence against Native women necessitates far more than the inadequate services currently available to them.
- **Establish comprehensive funding streams to support sexual assault services for Native women.** In 2005, Congress created the Sexual Assault Services Program (SASP) to provide services to victims of sexual assault. Unfortunately, the statute currently contains ambiguous language that has denied access to SASP funds to tribal

sexual assault service providers. Congress should amend SASP: 1) to increase support for culturally appropriate services designed for Native women by tribal providers; and 2) clarify that tribal service providers outside of and within the jurisdiction of an Indian tribe are eligible to apply to state entities administering SASP formula funding from USDQI.

- **Amend definition of “rural”.** American Indian tribes were considered eligible entities as under the QVW Rural Grant Program until the 2005 amendments to the definitions of “rural area” and “rural community.” The program was redesigned in a manner that bases eligibility upon the number of state counties served. Under the current definition, many tribes that once relied upon this critical source of funding are no longer eligible. Congress should amend the definition of “rural” to once again be inclusive of all American Indian and Alaska Native tribes. The NCAI Task Force recommends that the definition of rural be amended by adding “and Indian tribes” to the current definition of rural.
- **Increase support for Indian tribes sharing concurrent state criminal jurisdiction.** In 1953, in violation of the federal trust responsibility and without consultation with Indian nations, the United States Congress passed Public Law 83-280 (PL 280), which delegates certain federal criminal jurisdiction over Indians on Indian lands to some states. While this delegation of authority did not alter the jurisdictional authority of Indian nations in those states, it has had a devastating impact on the development of tribal justice systems and the safety of Indian women. It has resulted in drastically decreased federal funding and support for tribal justice programs within PL 280 states. The NCAI Task Force recommends that Congress create a national training and education initiative to increase the response of violence against Indian women by tribes located in PL 280 states or similarly situated jurisdictions. Specifically, the proposed initiative should include: conducting an annual training conference to enhance the response of tribal governments to domestic and sexual violence; offering regional trainings for Indian tribes to strategize on ways to overcome barriers created by PL 280; mandating that all technical assistance provided to Indian tribes that share concurrent jurisdiction with the state(s) in which they reside be relevant and specifically designed to strengthen tribal law enforcement response, prosecution, courts, health, and advocacy services for Native women within that unique jurisdictional scheme.
- **Increase support for Tribal Domestic and Sexual Assault Coalitions.** The training and assistance that tribal coalitions provide to Indian tribes and tribal communities is essential to enhancing the safety of Native women. Several individuals testified on the importance of these services at the recent DOJ tribal consultation in Milwaukee. Currently, funding for tribal coalitions are eligible for discretionary funding, but this funding is wholly inadequate and unstable when compared to their state and territorial counterparts, which receive formula funding on an annual basis. The Task Force supports stabilizing tribal coalition funding to prevent further funding cutbacks and/or closures of tribal coalitions. Specifically, the Task Force urges Congress to support not only increases in current funding to allow growth in areas where currently no tribal coalitions exist, but also to support the

overall paradigm shift from a competitive tribal coalition grant program to an annual formula award.

Thank you for the opportunity to submit these comments, and please review our recommended language for the upcoming VAWA reauthorization in Appendix I. The NCAI Task Force on Violence Against Women looks forward to a continued partnership on these issues moving forward. Together, we can reverse the current pattern of violence against Native women and the institutionalized barriers that obstruct their safety.

APPENDIX I

Recommended language for Reauthorization of VAWA Title IX, Safety for Indian Women.
(Proposed changes/additions to current Title IX language are italicized and highlighted).

Findings—Section 901

In Section 901, the NCAI Task Force recommends broadening the findings to acknowledge the current lack of federal accountability to prosecute crimes of violence against Indian women. While we recognize and commend the Obama Administration's dedication and commitment to increasing the safety of Native women, the current jurisdictional scheme nonetheless has resulted in a flawed system in which the federal government has consistently failed to deliver justice to Native women and tribes often lack authority to fill in the gaps.

SEC. 901. FINDINGS.

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) *In fiscal years 2005 through 2009, U.S. Attorneys' Offices declined to prosecute 50 percent of the Indian country matters referred to them; 67 percent of those declined were sexual abuse and related matters;*
- (6) Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and
- (7) 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.

Consultation—Section 903

In recent years, government-to-government consultation between tribal nations and the United States has proven extremely helpful in identifying tribal concerns about the safety of American Indian and Alaska Native women (Indian women). The proposed amendments to Section 903 would lengthen the notice period required to be provided to tribes as to the date and location of the consultation. This advance notice would provide tribal leaders with more time to make the arrangements necessary to attend, including securing formal approval to attend on behalf of the tribe, making travel arrangements, and preparing polished written statements. The proposed changes would also require the Secretary of the Interior to participate in the annual OVW consultation, in addition to the Secretary of Health and Human Services and the Attorney General. The Attorney General would also be required, for the first time, to submit an annual report to assist Congress in systematically assessing the recommendations made by federally recognized tribes and the actions taken by the federal government to address those recommendations.

SEC. 903. CONSULTATION.

(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, the Secretary of the Department of Interior, 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 stalkings; *and sex trafficking;*

(3) strengthening the Federal response to such violent crimes.

(c) *The Attorney General shall submit an annual report to Congress on the annual consultation mandated by subsection (a) that contains—*

(1) the recommendations made under subsection (b) by Indian tribes;

(2) actions taken within the past year to respond to current or prior recommendations made under subsection (b); and

(3) plans to continue working in coordination and collaboration with Indian tribes and the Departments of Health and Human Services and Interior to address the recommendations made under subsection (b).

(d) NOTICE.—The Attorney General shall notify tribal leaders of the date, time, and location of the consultation mandated by subsection (a) no less than 120 days prior to the consultation.

Analysis and Research—Section 904

Section 904 was enacted to address the lack of research on violence against Indian women and to develop a more detailed understanding of this violence and its effect on Indian women across the social spectrum and throughout their lifetimes. The proposed amendment to the baseline study mandated by sec. 904 would correct the inadvertent exclusion of Alaska Native villages in the study, ensure a timely process by requiring both a progress and a final report, and authorize adequate appropriations to fund this very important research.

In order to fully understand the impact of current efforts to end violence against Indian women and to develop strategic approaches to curtail future violence, it has become clear that more research is needed on sex offenders. Current research does not distinguish sex offenders by race, making it difficult—if not impossible—to know exactly how many non-Indian sex offenders may fall into the jurisdictional void of Indian country or if non-Indian sex offenders may be intentionally operating within Indian country knowing: 1) that tribes lack criminal jurisdiction over them, and 2) that federal criminal enforcement is rare for such crimes. The proposed amendments would complement the baseline study by authorizing additional research on sex offenders.

Specifically, the proposed amendments would direct 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 study on sex offenders who have committed offenses against Indian women within federal jurisdiction, including research and analysis on (i) whether the offender has committed sex offenses or related crimes on prior occasions; (ii) the type(s) of sex offenses in which the offender has engaged; (iii) the location where the sex offense occurred; (iv) whether the offender was under the influence of alcohol or drugs when the sex offense occurred; (v) whether the offender utilized alcohol or drugs to facilitate the sex offense; (vi) whether the offender utilized a weapon at any time during the commission of the sex offense; (vii) the sex, race, Indian status, and age of the

victim(s); (viii) the sex, race, Indian status, and age of the offender; (ix) the existence of court order restraining offender's conduct at time that offense was committed; and (x) the final sentence imposed.

The proposed amendments would require a final report that documents the results of the study to be submitted to the Senate Committee on Indian Affairs, the Senate Committee on the Judiciary, and the House Committee on the Judiciary. Such a report would provide accountability and ensure a timely process for completion. The new language also recognizes the significance and cost of the research by authorizing adequate funding.

SEC. 904. ANALYSIS AND RESEARCH ON VIOLENCE AGAINST INDIAN WOMEN.

(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 in Indian country *and Alaska Native Villages*.

(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.

H. R. 3402—120

(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.

(3) 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 recommendation 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.

(4) REPORTS.—

(A) 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.

(B) *Not later than 4 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 final report of the study that presents the findings mandated under subsection (2)(A).*

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years 2012 through 2014, to remain available until expended.

(b) INJURY STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Indian Health Service and the Centers for Disease Control and Prevention, shall conduct a study to obtain a national projection of—

(A) the incidence of injuries and homicides resulting from domestic violence, dating violence, sexual assault, or stalking committed against American Indian and Alaska Native women; and

(B) the cost of providing health care for the injuries described in subparagraph (A).

(2) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary of Health and Human Services 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 findings made in the study and recommends health care strategies for reducing the incidence and cost of the injuries described in paragraph (1).

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$500,000 for each of fiscal years 2012 through 2014, to remain available until expended.

(c) RESEARCH ON SEX OFFENDERS.—

(1) IN GENERAL.—The Attorney General shall conduct—

(A) a national study of sex offenders charged and convicted of federal sex offense crimes that occurred on tribal lands which shall include, but is not limited to, research and analysis of—

(i) whether the offender has committed sex offenses or related crimes on prior occasions;

(ii) the type(s) of sex offenses in which the offender has engaged;

(iii) the location where the sex offense occurred;

(iv) whether the offender was under the influence of alcohol or drugs when the sex offense occurred;

(v) whether the offender utilized alcohol or drugs to facilitate the sex offense;

(vi) whether the offender utilized a weapon at any time during the commission of the sex offense;

(vii) the sex, race, Indian status, and age of the victim(s);

(viii) the sex, race, Indian status, and age of the offender;

(ix) the existence of court order restraining offender's conduct at time that offense was committed; and

(x) the final sentence imposed upon the offender.

(2) REPORT.—Not later than four 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 documents the results of the study under this section.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$500,000 for each of fiscal years 2012 through 2017, to remain available until expended.

Tracking Violence Against Indian Women—Section 905

The ability to access federal criminal databases enables tribes to protect their communities, and Section 905 is a tremendous step forward in creating safety for Indian women. Section 905(a) of VAWA 2005 requires the Attorney General to permit tribal 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. Section 233 of the recently enacted Tribal

Law and Order Act expands this authority to all crimes. The implementation of these laws, however, has proven more complicated than originally thought.

The National Crime Information Center (NCIC) is a centralized database of criminal information housed at the Criminal Justice Information Services (CJIS) center in Clarksburg, West Virginia. The NCIC interfaces with various local, state, tribal, federal, and international criminal justice systems.¹ It contains a vast amount of criminal justice information about stolen properties, fugitives, criminal records, and missing persons, and has been labeled by Congress as "the single most important avenue of cooperation among law enforcement agencies."²

When participating agencies submit information to the NCIC, that information is stored in a CJIS databank, where it is subsequently made available to respond to queries made by other participating agencies.³ However, gaining access as a participating agency can be problematic. A law enforcement agency must first possess an Originating Agency Identifier (ORI) number assigned by the FBI. To obtain an ORI, the agency's access must be authorized under Title 28, United States Code, Section 534, and the agency must meet several criteria set forth in the federal regulations.⁴

In addition to meeting these federal requirements, tribal law enforcement authorities also have to meet the requirements set forth by the state within which the agency is located. As such, even tribes issued an ORI number for meeting the FBI's criteria may be denied access at the state level, and thus, denied access entirely.

Finally, even if tribes do obtain an ORI number and meet the state criteria, they often have neither the infrastructure nor the funding to maintain their own control access terminal. These terminals are expensive to maintain and tribes are required to have personnel to staff them at all times. In short, many tribal law enforcement agencies have neither the resources nor the technical expertise necessary to run these systems on their own.

Denial of full access to these basic criminal information databases prevents tribal law enforcement officers from fulfilling the most routine duties, like searching for prior orders of protection or running fingerprint scans, placing them and the communities they serve in grave danger.

Because implementation of Section 905(a) has proven more complicated than originally thought, the proposed amendments allow the Attorney General to fund \$ pilot projects to provide selected tribes

¹ *Applying Security Practices to Justice Information Sharing*, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, at 3-21 (2004) available at: <http://oajp.gov/documents/ajsp/ ApplyingSecurityPractices.pdf>.

² National Crime Information Center (NCIC) -- FBI Information Systems, available at <http://www.fis.org/fcp/ogoncy/itkj/fbi/ncic.htm>; National Law Enforcement Cooperation Act of 1990, Pub. L. No. 101-647 §612, 104 Stat. 4823 (1990) (codified at 28 U.S.C. §534 note).

³ *Applying Security Practices to Justice Information Sharing*, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, at 3-24 (2004) available at: <http://oajp.gov/documents/ajsp/ ApplyingSecurityPractices.pdf>.

⁴ The regulations require that the agency be a governmental agency and meet the definition of a criminal justice agency as contained in the Department of Justice Regulations on Criminal Justice Information Systems, 28 C.F.R. Part 26, Subpart A (2003), "Criminal justice agency" is defined as "(1) courts; and (2) a governmental agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice." 28 C.F.R. § 26.3(e) (2006). "State and Federal Inspector General offices are [also] included" in the regulatory definition. *Id.*

direct access to enter information into federal criminal information databases and to obtain information from said databases, instead of having to go through state or local terminals to enter/obtain information. These pilot projects will allow for a concrete examination of the implementation process, as the Department of Justice and tribes are forced to examine the flaws in the current system and improve it moving forward.

Additionally, the proposed amendments to Section 905 seek to facilitate implementation of the national tribal sex offender registry first authorized in 2005. Since five years have passed since the initial authorization of creation of a national tribal sex offender registry, new language would establish a timeline by which the Attorney General would be required to contract with interested tribes, tribal organizations, or tribal nonprofit organizations to develop and maintain the registry. There has been speculation about the usefulness of such a national registry given the separate registration and notification requirements imposed by the Adam Walsh Child Safety and Protection Act of 2006 (AWA). However, because PL 280 tribes are prohibited from opting in as Sex Offender Registration and Notification Act (SORNA) jurisdictions under the AWA, creation of the national tribal sex offender registry is still of vital importance to these tribes, and it will remain so unless and until the AWA is amended. Under the proposed amendments, the Attorney General would also be required to consult with tribes on the process for establishing and managing the national tribal registry. Finally, the Attorney General would have to submit a progress report to Congress within two years of enactment of the legislation. This reporting requirement increases safety for Indian women by enhancing Congress' ability to monitor creation and management of a national tribal sex offender registry.

SEC. 905. TRACKING OF VIOLENCE AGAINST INDIAN WOMEN.

(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:

H. R. 3402—121

“(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.”

(b) TRIBAL REGISTRY.—

(1) ESTABLISHMENT.—*Within 1 year of the date of enactment of this Act, 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 2012 through 2017, to remain available until expended.

(3) CONSULTATION.—*The Attorney General shall consult with Indian Tribes on the process for establishing and managing the national tribal registry mandated under subsection (b).*

(4) REPORTS.—

(A) *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*

Judiciary of the House of Representatives a report that describes the actions taken to implement subsection (b), including—

- (i) details about the contract, including the contractor, the services to be provided, and the timeframe for completion;
 - (ii) information provided to tribes regarding the national tribal registry; and
 - (iii) any other information regarding the establishment of the national tribal registry.
- (B) The Attorney General shall submit an annual report to Indian Tribes at the annual consultation mandated by Section 905(a) regarding the progress on establishment of the national tribal registry mandated under subsection (b).

(c) PILOT PROJECTS.—

(1) IN GENERAL.—To implement Section 905(a), the Attorney General shall fund five pilot projects to provide selected Indian Tribes direct access to enter information into Federal criminal information databases and to obtain information from the databases.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years 2012 through 2017, to remain available until expended.

Grants to Indian Tribal Governments—Section 906

As the most impoverished group in the United States, tribes often lack the resources to adequately address violence against Indian women. Combine that with the fact that tribes face the highest rates of violence against women in the nation and you're left with a situation in which tribal programs are acutely underfunded and are often unable to cover budget gaps. The proposed amendments to Section 906 clarify the importance of timely disbursement of funds to tribal programs to ensure that essential services are not delayed or terminated. Further, the proposed amendments seek to ensure that tribal programs receive the technical assistance they need once they have access to funds.

SEC. 906. GRANTS TO INDIAN TRIBAL GOVERNMENTS.

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

“SEC. 2007. GRANTS TO INDIAN TRIBAL GOVERNMENTS.

“(a) GRANTS.—The Attorney General may make grants to Indian tribal governments and tribal organizations 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, and sex trafficking 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, and trafficked for the purposes of sexually exploitation;
- “(5) work in cooperation with the community to develop education and prevention strategies directed toward issues of domestic violence, sexual assault, dating violence, and stalking and sex trafficking 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;

and

“(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.

“(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 located 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, if such programs or organizations do not exist in the tribal community the applicant may meet the requirement of this subsection through consultation with women in the community to be served.~~

“(c) DISBURSEMENT OF FUNDS.—~~Grants made under this section shall be disbursed to grantees within 90 days of congressional authorization of appropriation to carry out this section.~~

“(d) TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—Not later than 6 months after the date of receipt of funding for this program, the Director of the Office on Violence Against Women shall set aside and disperse not less than 5 percent of the total amount of the funds made available under this section for the purpose of entering into cooperative agreements with qualified tribal organizations to provide technical assistance and training to Indian tribes to address violence against Indian women. Such training and technical assistance shall be specifically designed to address the unique legal and jurisdictional status, geographic circumstances, and governmental systems of the Indian tribes receiving funds under this section.

(2) QUALIFIED TRIBAL ORGANIZATION.—For purposes of paragraph (1), a qualified tribal organization is a tribal organization with demonstrated experience in providing training and technical assistance to Indian tribes in addressing violence against Indian women.

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to grants made on or after October 1, 2012.

Tribal Deputy at OVW—Section 907

With 565 tribes to serve, it is imperative that the OVW Tribal Unit be adequately staffed— especially given the complicated nature of criminal authority in Indian country, the severity of the crimes committed against Indian women, and the epidemic rates of violence against Indian women. The proposed amendments to Sec. 907 would ensure that the tribal unit is appropriately staffed and the Tribal Deputy has the resources necessary to perform her statutory obligations. The creation of a new Policy Advisor within the tribal unit will provide expertise in the unique government-to-government relationship the United States has with tribes. A new Grants Administrator position would supervise the grant managers and oversee the administration of grants in a timely and efficient manner.

SEC. 907. TRIBAL DEPUTY IN THE OFFICE ON VIOLENCE AGAINST WOMEN.

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:

“SEC. 2008. TRIBAL DEPUTY.

“(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) oversee 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 more than 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), ~~or the Violence Against Women Act of 2005 (xxx)~~ 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; and

~~“(F) development and implementation of tribal codes, protocols, and policies to enhance the response to domestic violence, sexual assault, dating violence, and stalking against Indian women;~~

“(d) PERSONNEL.—The Attorney General shall provide to the Office on Violence Against Women such personnel as is necessary to help the Tribal Deputy fulfill the duties set forth by subsection (b), including at least—

“(1) one Policy Advisor with substantial experience in federal Indian law or in assisting Indian tribes in enhancing their response to violence against Indian women; and

~~“(2) not less than five Grants Program Managers.”~~

Enhanced Criminal Law Resources and Domestic Assault by an Habitual Offender—Sections 908 and 909

Sections 908 and 909 treat domestic violence, sexual assault, dating violence, and stalking as serious infractions and enhance penalties for violent crimes committed with a gun or in circumstances where the offender has two or more previous convictions for domestic violence. Because domestic and sexual violence often escalate over time in intensity and frequency, these sections were intended to deter these crimes and, ideally, end the violence before it increased. In adopting these sections, Congress did not intend for courts to look into the underlying misdemeanor convictions, but only to apply the enhanced penalties if the perpetrator used a gun or had several prior convictions.

Unfortunately, these provisions, especially Section 908, appear to have been under-used due to confusion on the part of law enforcement and judicial personnel about their existence and operation. The proposed amendments would enhance training for all tribal law enforcement and judicial personnel to ensure coordination among law enforcement and judicial personnel and facilitate better implementation of both sections.

SEC. 908. ENHANCED CRIMINAL LAW RESOURCES.

(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”;

(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;”.

~~(c) TRAINING PROGRAMS.—~~

~~(1) IN GENERAL.—The Attorney General, in coordination with the Secretary of the Interior, shall ensure, through the establishment of a new training program or by supplementing existing training programs, that all tribal law enforcement and judicial personnel have access to training on how to enforce subsection (a).~~

~~(2) POLICIES AND PROTOCOL.—Within one year of enactment of this Act, the Attorney General, in coordination with the Secretary of Interior and in consultation with Indian Tribes, shall develop standardized policies and protocol for the enforcement of subsection (a).~~

SEC. 909. DOMESTIC ASSAULT BY AN HABITUAL OFFENDER.

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

“§ 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.”.

Restoring Tribal Jurisdiction over Non-Indians—Section 910

There are 565 tribes in the United States, including more than 200 Alaska Native villages, that retain sovereign authority over their lands and peoples. Each Tribe is responsible for the safety of its citizens, which includes protection of Indian women from violence. However, the ability of tribes to ensure the safety of and provide a meaningful remedy to women in Indian country and Alaska Native villages is undermined by the limitations that the United States has placed on the inherent jurisdictional authority of tribal governments.

Federal law prohibits tribes from prosecuting non-Indian offenders committing crimes against Indians on Indian lands. This limitation on tribal court authority is particularly devastating to Indian women, who suffer from violence at a rate two and a half times greater than that of any other population in the United States. One in three Indian women will be raped in her lifetime; four in five will be victims of a violent assault. Even more startling is the statistic that non-Indian offenders commit an estimated 88% of all violent crimes against Indian women.⁵

Congress is acutely aware of the epidemic of violence against Indian women and enacted Title IX of the Violence Against Women Act, which specifically addresses Safety for Indian Women, in response to this national crisis in 2005.⁶ In Title IX, Congress made specific findings that “Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women; and 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.”⁷ These findings highlight a systemic contradiction of federal Indian law that prevents tribes from responding to violence committed against Indian women: Tribal governments are directly responsible for holding perpetrators of violence in Indian country accountable, yet they do not have jurisdictional authority to do so when the offender is non-Indian.

⁵ Patricia Tjaden & Nancy Thoanna, U.S. Dep’t of Justice, *Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey* 22 (2000). *See also* Lawrence A. Greenfield & Steven K. Smith, U.S. Dep’t of Justice, *American Indians and Crime* 8 (1999) (noting that among American Indian victims, “75% of the intimate victimizations and 25% of the family victimizations involved an offender of a different race,” a much higher percentage than among victims of all races as a whole).

⁶ P.L. No. 109-162 § 901 (2006).

⁷ *Id.*

It is important to highlight that this was not always the case. Until 1978, tribes retained all sovereign powers not expressly abrogated by Congress. Like all other local governments in the United States, tribal governments exercised criminal jurisdiction over all persons within their territories. Yet, the U.S. Supreme Court's decision in *Oliphant v. Suquamish Tribe* changed that. In *Oliphant*, the Supreme Court rejected decades of precedent and ruled that tribes have no criminal jurisdiction over non-Indians and may not prosecute or punish non-Indians that commit crimes on tribal lands.⁸ As a result, tribal governments must rely on federal officials (or state officials in some circumstances, namely in states under PL 280 jurisdiction)⁹ to investigate and prosecute crimes committed by non-Indians against Indians and against tribal property.

For a variety of reasons, the United States does not prosecute many of the crimes committed by non-Indians against Indians in Indian country. According to a recent GAO study, from 2005 through 2009, U.S. attorneys failed to prosecute 52% of all violent criminal cases, 67% of sexual abuse cases, and 46% of assault cases occurring on Indian lands.¹⁰ Similarly, in 2008, the Justice Department acknowledged that it prosecuted 24 misdemeanor reservation crimes in 2006, and only 21 misdemeanors reservation crimes in 2008. Low prosecution rates have encouraged non-Indian perpetrators to target Indian reservations. Testimony provided before the Senate Committee on Indian Affairs has reported that serial rapists prey on women in Indian country because they know they will not be prosecuted. If the United States does not prosecute a non-Indian, the offender goes free, as he is not subject to prosecution by a tribal or state court. Unpunished, offenders often reoffend and commit more heinous crimes.

It has been more than 30 years since the *Oliphant* decision, and one of its most tragic results has been to shield non-Indian perpetrators from criminal accountability at the expense of the safety of Indian women. The proposed sec. 910 would restore safety in tribal communities by recognizing tribal authority over non-Indians who commit a finite set of domestic and sexual violence related crimes against Indians, however, it would not repeal, abrogate, or supercede existing federal law in any way. The provisions of the Indian Civil Rights Act safeguarding the rights of the accused would apply to this limited restoration of criminal jurisdiction over non-Indians, and, state courts would retain jurisdiction over crimes committed by non-Indians against non-Indians and victimless crimes.

SEC. 910. TRIBAL JURISDICTION OVER DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING.

(a) *IN GENERAL.*—Congress hereby affirms that the inherent sovereign authority of a federally recognized Indian tribe includes the authority to enforce and adjudicate any crime of domestic violence, dating violence, sexual assault, or stalking, as defined by tribal law, committed by or against any Indian person on land under the jurisdiction of the tribe.

(b) Any person prosecuted in a tribal court pursuant to this subsection shall have all of the rights guaranteed under the Indian Civil Rights Act, as amended, and shall have the right to expedited habeas corpus review in federal district court to ensure that all tribal court proceedings are consistent with this subsection.

(c) *IMPACT ON CURRENT LAW.*—This statute in no way repeals, abrogates, or supersedes any of the following statutes:

- (1) The Indian General Crimes Act (18 U.S.C. 1152);
- (2) The Indian Major Crimes Act (18 U.S.C. 1153);
- (3) Public Law 93-280 (18 U.S.C. 1162 and 25 U.S.C. 1322); or
- (4) Any other provision of federal law.

⁸ *Oliphant v. Suquamish*, 435 U.S. 191 (1978).

⁹ P.L. 280, § 7, 67 Stat. 588, 590 (1953). In P.L. 280 states, the state government has exclusive criminal jurisdiction over non-Indians and felony jurisdiction over Indians, jurisdiction which is normally exercised by the federal government over crimes on Indian lands.

¹⁰ United States Government Accountability Office, U.S. Department of Justice Declinations of Indian Country Criminal Matters 3 (December 13, 2010).

PREPARED STATEMENT OF THE NATIONAL INDIAN HEALTH BOARD

The National Indian Health Board (NIHB) serves all 565 Federally-recognized Tribes, both those that operate their own health care delivery systems through contracting and compacting, and those receiving health care directly from the Indian Health Service (IHS). Located in Washington DC on Capitol Hill, the NIHB, a non-profit organization, provides a variety of services to Tribes, area Indian health

boards, Tribal organizations, federal agencies, and private foundations. NIHB's services include advocacy, policy formation and analysis, legislative and regulatory tracking, direct and timely communication with tribes, research on Indian health issues, program development and assessment, training and technical assistance programs, and project management.

The Senate Committee on Indian Affairs oversight hearing of July 14, 2011 highlighted some important initiatives under the Tribal Law and Order Act ("TLOA" or "the Act"). The testimony covered areas that have seen successful efforts in the prevention and treatment of sexual assault and domestic violence. The testimony also revealed areas that need more attention in the form of legislative fixes, better cooperation and coordination, or greater understanding. NIHB believes that the success of the Tribal Law and Order Act must be bolstered with additional actions on the part of Congress and the agencies charged with implementation of the Act.

Because NIHB's focus is on health care, our comments mainly address the ongoing implementation activities of the health care portions of the Act. Our concerns break down into five main areas, with sub-areas in four of the five main areas. These areas of concern are as follows:

- 1) Have health care providers received the training they need? (for screening and treating domestic violence/sexual assault; for collection, storage and documentation of evidence)
- 2) Do facilities have the necessary equipment? (for screening and treating domestic violence/sexual assault; for collection, storage and documentation of evidence)
- 3) Do facilities have the necessary personnel? (for screening and treating domestic violence/sexual assault; for collection, storage and documentation of evidence)
- 4) Do facilities have the necessary physical space to conduct all of the activities required under the act? (for example, storage areas for evidence, separate areas for victims to be treated)
- 5) Are the procedures in place culturally appropriate?

At their core, most of the issues are questions of funding. While NIHB feels very encouraged by the passage of the Tribal Law and Order Act, it is, as many have pointed out, a first step. This first step must be followed by additional and equally determined steps to fund the Act. NIHB believes that the leadership and dedication shown by committee members in passing the Act may also provide a powerful call to action to the Congress regarding funding. We ask and hope for Committee members' continued leadership and advocacy in this all-important task.

Although NIHB believes that funding is a major issue, we would like to develop the record on some specific points of concern regarding the health care portions of the TLOA. Director of the Division of Behavioral Health, Indian Health Service, Rose Weahkee testified (in her written testimony) that the Domestic Violence Prevention Initiative (DVPI) held 37 training events (reported events) in the period starting August 2010 through January 2011 (see page 6 of Ms. Weahkee's testimony). Ms. Weahkee testified that 442 participants attended. Although NIHB believes that the DVPI has made very valuable contributions, it must be noted that there are 880 federally employed physicians serving in Indian Health by IHS' own count (see <http://www.ihs.gov/PublicAffairs/IHSBrochure/Workforce.asp>). This means that even if all 442 participants in the training were physicians, only half of the physicians serving the target population would have accessed DVPI training. These numbers highlight the larger issue of training needed for all providers of care, including nurses, intake personnel, and technicians.

As DVPI provided incomplete coverage in terms of participation, it also provided incomplete coverage in terms of topics covered. The training sessions included training on domestic violence, reporting for child abuse, child maltreatment, dating violence, and bullying. Many providers will need training in the collection, storage and documentation of evidence. The effort to combat sexual assault and domestic violence must be comprehensive. If some areas are neglected, the entire initiative is likely to suffer setbacks. If perpetrators know they will not be held accountable for their deeds, deterrence is undermined. If deterrence is undermined, a powerful tool to address the problem of violence against women will be lost.

NIHB wants to again express and underscore that we do not fault DVPI for any gaps in coverage. We point out these gaps in coverage to illustrate the need for additional programs and funding. The challenges seen in the training context are very likely to be repeated in other aspects of implementation of the health care portions of the TLOA.

NIHB urges the Committee to follow up the July 14, 2011 oversight hearing with an additional hearing once additional data sets and reports are gathered and submitted. NIHB anticipates that the study from the Comptroller General (looking at the capability of IHS and Tribal programs to collect, maintain, and secure evidence) may prove helpful in mapping out a plan for funding and establishing the need for such support.

Thank you for your consideration of these comments.

PREPARED STATEMENT OF JOLANDA E. INGRAM, B.A., J.D., EXECUTIVE DIRECTOR,
NIWHONGWH XW E:NA:WH STOP THE VIOLENCE COALITION, INC.

Dear Senate Committee on Indian Affairs:

My name is Jolanda Ingram and I am an enrolled member of the Smith River Rancheria (Tolowa) in northern California. I have been residing and working on the Hoopa Valley Indian Reservation in northern California for almost 10 years. The non-profit that I work for has been providing services to Native women victims of sexual assault, stalking, domestic violence and dating violence for the past 9 years. We see approximately 120 women victims of these crimes per year. Our population in eastern Humboldt County is around 3,000. We opened the first native shelter in all of California in January of 2004.

Our program was operating with VAWA funding up until we hired a man who sexually harassed the staff and youth participating in our summer youth film project. Once he was terminated he was hired by the Hoopa Valley Tribe to be their Property & Procurement Officer and was able to gain the ear of the Hoopa Tribal Council and then made a complaint to the Office On Violence Against Women and our funding was slowly shut off without ever having an opportunity to be heard. We did not receive any continuation funding and was in line to receive two economic recovery grants from OVW but that was stopped based upon the excuse that we were under OIG investigation. We pursued a different line of funding from SAMHSA (American Indians in Recovery Program) to pay for transitional living and recovery support services from California Rural Indian Health Board and Chairman Leonard Masten wrote a letter to them stating that our non-profit could not legally operate on the reservation. Our non-profit has been certified by the Director of Commerce for the Hoopa Tribe, Daniel Jordan, as a non-profit in good standing for the past 8 years. Our final day of operation will be 7/31/2011 due to this ongoing situation which has lasted over 2 years.

The native women in this community will no longer have a safe place to go. This is exactly what the perpetrators of violence on our reservation wanted. They have succeeded in shutting down a good program.

I believe that it is critical that the federal government continue to fund non-profits in Indian country, with or without the political support of the Tribes. Tribal Councils are subject to the political forces that shape their decisionmaking and often that goes against the best interests of our women and children. It is not politically correct to correct people who have done wrong.

There is no justice for Native women in the current situation. Even with the progress that VAWA has made, we are still be undermined by politics. I urge the Senate Committee to take some appropriate action to rectify this situation by allowing non-profits to continue to be funded.

PREPARED STATEMENT OF HON. KIRK E. FRANCIS, CHIEF, PENOBSCOT INDIAN NATION

Unprosecuted Rape of a Native Woman

When a sexual assault happens to a Native woman, especially by a non-native, history is repeating itself, unchanged since European contact.

Amnesty International's Maze of Injustice report of 2007 has reported that sexual assault on Native women happens 2 to 3 times more often than those incidents of assault on non-native women and talks about how Indian Country has been failed by the Justice system when responding to Violence against Native Women.

The lack of jurisdiction for Indian Tribes to hold offenders accountable in crimes committed on the Nation's territories is part of the problem. This particular crime happened off reservation so the accountability is on State systems.

The lack of accountability of local, county, state and federal justice systems to hold non-native offenders crimes against native people off reservation is another way that Native's are re-victimized.

This story is of one Native woman sexually assaulted off reservation and the refusal of the justice system to hold the offender accountable.

On August 20, 2004 a 25 year old native woman, staying in Bar Harbor, Maine spent an evening, as a lot of young people do, at a local bar with friends. A man tried to carry on a conversation with her and she declined to talk to him, eventually she did and even accepted an invitation to step outside in the air.

Once outside, he suggested they take a walk along the waterfront that hundreds if not thousands of visitors flock to each year, coming to this quaint New England town, seen as a perfect place for family and an ideal Maine destination spot for decades.

She never imagined that in this very visible area in the center of this affluent, world renowned town that she would be in danger. She was so wrong.

As they stood at the park overlooking the expensive watercraft, berthed by the rich, he forced her to the ground and raped her.

The terror that she experienced as he forced her to submit to him is indescribable. There was no way to know what would happen if she resisted, would he kill her? Totally helpless to fight his strength and power, she had to endure the forced invasion of her body.

She has endured the effects that would define who she would be for years to come. Depressed, ashamed, humiliated, fearful of all men, unable to form a healthy relationships and fear of social interactions. Certainly she would wonder about pregnancy, STD, HIV/AIDS.

Her Mother says:

As a mother, it's instinctive to protect our children and to always think that you're going to be there to keep them from harm.

When that harm you've strive so hard to keep at bay does touch the life of your child and you weren't there to protect them leaves a parent in a gut wrenching state. It doesn't only touch your child's life; it seeps into every member of your family as well. I've struggled to comprehend the act of violence that came in the form of rape that's touched my child's life. Helplessness and the many thoughts of what I should have done to prevented this, or what I should do. I felt like I couldn't even be of comfort to my child as I watched her daily struggling with fear, depression and anger. Watching her go into rages and it seemed like it was a lost cause. During my daughter's struggles, she found comfort in drugs which lead to her addiction to them. Another helplessness that I had to watch her endure as she coped with the addiction and kicking it.

I've often wondered if this man who raped my daughter went about his daily life and if he ever thought of what he did. Did he feel ashamed? Did it keep him awake late at night? My thoughts of what his upbringing was, did he live a life of watching maybe his parent doing harm to another person? Was this all normal to him?

My husband and I, we've worked hard at bringing up our children to be kind to others, have respect for others. Harming someone wasn't good and we didn't allow that in our home.

It's a nightmare when it happens in a family. It disrupts lives and the road to things getting back to normal is a long road. I can honestly say it's taken many years for my daughter to reach a state of mind where she feels safe, where she's confident in herself and deals with the fear of being alone. I wouldn't wish all the things that my daughter has gone through on anyone or any family.

We made several trips to Hancock County to the District Attorney's office. The first time my daughter had to go before the Grand Jury so they could make a ruling on her behalf. Well they heard my daughter's side and ruled to indict this man, but by that time he had left the State of Maine, so there was a warrant out for his arrest.

It took several years before he was found and was held. We were glad when that happened and thought finally something was going to be done. We got another call from the D.A.'s office and we met with them. We were hopeful that we would hear something positive, they would tell us he was going to be extradited back to stand trial. It didn't turn out that way, instead the meeting was about why they wouldn't bring him back, that there didn't seem to be enough to go to trial, etc. and endless stories about cases that looked promising but were lost. They wanted her to drop her case, which wasn't what we wanted to hear. So this trip turned out to be a disappointment and as a person seeking justice, it makes you lose faith and respect for those that sit in higher places that are supposed to be looking out for people like us.

It left us all feeling that what happened to my daughter wasn't of any importance and the man gets to walk away free. He walks away to commit more rapes and disrupt more lives.

My daughter has voiced that even if she doesn't win this case against him, she would be satisfied with some justice of him admitting to the crime and acknowledging it. She wants to have a say, and let him know how much he had disrupted her life and the struggles she had to overcome. **(PBM)**

As the years went by she has sought help of professionals and that has allowed her to start healing, but hasn't lessened the impact the experience on her as a Native woman, or allowed her to enjoy a social life that others her age enjoy without fear.

The rape was reported to the local police in Bar Harbor and the assailant arrested. He was indicted by a Grand Jury and held for trial. He fled the area. Former District Attorney Michael Povitch's office in Hancock County, where Bar Harbor is located, notified her in Jan 2010, he had been found and the office was *considering extraditing him* back for trial.

On June 30, 2010, several months of unanswered calls and e-mails later, The Victim Witness Advocate called with an appointment.

Assistant District Attorney Mary Kellett told her that the office was reluctant to go forward with the case as they didn't think they could get a conviction.

The only one showing compassion for the victim's feelings was the arresting officer, Sharon Worcester of BHPD. ADA Kellett was outright rude and victim blaming. She stated it would cost a lot of money to extradite the assailant to Maine and it would not be *economically feasible* to do so for what she considered a weak case, wouldn't the victim consider dropping her desire to have the case prosecuted.

This Hancock County ADA has brought many cases to trial and lost yet now has one with both physical and medical evidence and refuses. The Grand Jury found sufficient evidence to bring the offender to trial, but not the DA; we believe they have based their decisions on money rather than facts of a case.

Refusal to hold an offender accountable has caused this victim additional trauma by sending her the message that money to extradite is more important than the well being of a native woman that was raped in their town. To the victim and others this would appear to send the decades old message of: native women are less than worthy of time and finances to hold a non-native offender accountable.

There would be publicity around the case which could have a negative impact on the visitors to the Bar Harbor Region. One wonders about the impact negative press would have on the visitors if it were disclosed that the town is not a safe place for women or being in the town square opens one up for rape, especially if they happen to be Native, the message here is that it is somehow the victim's fault that someone would rape them. One wonders what the same instance of rape happening to a rich, white resident of the area by a native would garner for attention.

A reporter from the Bangor Daily News looked at doing a report on this case, and the number of assaults perpetrated upon Native women versus non-natives, but it seems it did not rise to the level of importance there either, as this victim has waited for over a year to see that story but has been given lip service with "I am so busy" or "my Editor keeps sending me on *important* stories" excuses! It would be better if she would tell it like it is, "You are not worthy of our time" or "the Bangor Daily doesn't want to rock any political boats".

From a friend:

"Another rape unsolved, Oh I am sorry, in this case the rape was solved but an unwilling town failed to follow through and bring it to justice. It is because rape doesn't happen in this town or is it of the appearance of not having such things happen in this tourist town? No it can't be. look again, this rapist was arrested and the charges brought to the Grand Jury almost seven years ago. The problem is all the evidence was there and was proven without a doubt but the rapist fled. The rapist had fled to Florida and the DA did not extradite him to Maine. The DA from Bar Harbor had drilled into the victims head that she did not have a chance if the case went to court. The DA over stepped his bounds by telling the victim she has no chance in this case. The victim has been dealing with this since the incident occurred in 2004. Her suffering from depression and fear of trusting others has diminished her self esteem and her ability to cope with daily life activities. The family has tried to seek justice for the physical violation of their daughters being and has tried to help her. It has been a long hard road over these past years and unsuccessful due to limited financial resources. I guess this case needs a powerful representative who will listen . . . Has justice been served? No! For the past few years we have been trying to get this case re-opened and brought to justice and bring this individual to justice. It has been discussed with a newspaper reporter that informed the family they would write a commentary about the trauma of seeking justice for a violation on this victim and put it to rest. We have yet to see any write up. When we

attempt to follow up and question the delays we are informed of how busy they are.

Give me a break!! This is telling me that this is not important enough to be newsworthy. (EJG)

No one knows where this rapist is, the opportunity for him to rape again is magnified by his ability to escape responsibility in this case

We need to look beyond judicial economics and to consider safety of abused women, children, and men, especially in cases having to do with domestic violence and sexual assault, *if they are assaulted the offender will be held accountable.*

If we, as Native women and victims of crime are asking that offenders be held accountable it seems reasonable that we would also demand, that the legal and justice systems also be held accountable. **What is the Message?**

It was brought to my attention that a citizen of the Penobscot Nation has been victimized in the worst way.

A 25 year old woman who was out with friends in Bar Harbor met a guy and had a conversation which turned into taking a walk, not through some dark alley or through the woods but to a park in one of the most affluent towns in America. In this park the woman was forced to the ground and raped.

This disgusting crime was reported and the offender was indicted by a grand jury for his crime and then fled. The offender was located yet to date no decision has been made to return him to Maine to answer for this crime, it has been six years. Rather inquiry after inquiry by the victim has done nothing to bring this man to justice, instead the victim has had to listen to prominent people within the legal system tell her that they did not think "that they could win".

Well to the victim it is not about winning and losing, I would dare say that no one ever wins in these situations. For her it is about being heard, for him to have to explain his actions, for someone to say this is not ok.

Victims of this type of crime understand that they will again be victimized in the process as they will be asked what they were wearing, how many drinks they had, etc. . . . But for this victim I commend her courage to stand up to all of that and ask for her day in court and face the issue openly.

I believe this is what we are all entitled to and that is being denied, by denying we are, as a society, sending a message of silencing victims of rape, creating a situation where the message to the victim is one of minimizing the incident.

Native women are sexually assaulted at two times the rate of the average American and the prosecution disparities are about the same in finding justice, no wonder the unreported incidents continue to grow.

In this case there has been little to no interest by the media about a rape that occurred in one of America's favorite places, this is also very typical in Sexual assault cases against Native women, it simply does not rise to the level of importance for the media as evidenced by a reporter's comment of "my editor keeps sending me on important issues" to explain the lack of coverage.

This incident however has nothing to do with race as this could have been anyone's daughter, mother or sister as these offenders typically do not discriminate but in this case the system seems to be and unfortunately this follows National trends for this issue, as a State we have to do better.

Our culture is a matriarchal society with clan mothers, our communities are dependent on the strength of our women and their well being, so this did not just create one victim but affects our entire community.

Other governments tell us that we have limited jurisdiction over non Native offenders especially on off reservation crimes. So who does prosecute these offenders if not us?

Those who claim to have responsibility need to uphold it and vigorously fight for this young lady. It has been six years since this crime occurred and despite resources and how hard it will be to win action needs to be taken not just for this one victim but to send a message that you will not come to our State and sexually assault our women, if you leave we will pursue you.

I think it is time for mandatory extradition for peoples charged or indicted for this crime and will pursue making that a reality for all citizens of our State, this crime for the victim is one that re occurs within her every day and we just have to be better than that. Our goal as leaders and the system has to be to create and maintain healthy communities; in our culture no people play a more important role than our women.

I call on the Hancock County District Attorneys office to get serious about protecting our citizens, stop being afraid of conviction rates and get concerned about allowing victims to be heard and heal.

That's what we need to stand for as communities and as a State or we will never heal but promote more of these acts by sending the message to offenders that their offense is not a serious matter by this State's non action in bringing this man to stand and held accountable.

PREPARED STATEMENT OF ESTA SOLER, FOUNDER/PRESIDENT, FUTURES WITHOUT VIOLENCE

Chairman Akaka and Vice Chairman Barrasso, thank you for your attention and efforts to address the epidemic of violence against American Indian and Alaska Native women. As your Committee considers policy responses, it is important to recognize the serious health impacts of violence and abuse in Indian Country, and the opportunity the health setting offers for early identification and primary prevention of violence and abuse. Most American Indian and Alaska Native individuals are seen at some point by health care providers and health care providers are often the first responders to this type of violence.

For over 20 years, Futures Without Violence has been improving the health care response to domestic violence through public policy reform and health education and prevention efforts, and for more than 10 years, we have been working with American Indian and Alaska Native partners to create early intervention opportunities specifically in Indian Country. In addition to describing the health impacts of violence, my statement will describe two federal model programs that can be replicated and supported by this Committee.

Health Impact of Violence

We focus on the health impact of domestic violence since it extends far beyond the traumatic injuries. An extensive body of literature has demonstrated that women are at increased risk for chronic health conditions including heart disease, stroke, cervical

cancer, chronic pain syndrome, arthritis, back pain, depressed immune function, ulcers, irritable bowel syndrome, and asthma. Domestic violence is associated with increased risk of substance abuse, tobacco use, sexual risk behaviors, mental health problems, and weight problems. Victimization can limit the ability of women to effectively manage chronic illnesses such as diabetes and hypertension.

Domestic violence increases the risk of several behavioral health problems among female adults including depression, post-traumatic stress disorder (PTSD), suicide, substance abuse, and drinking during pregnancy. DV also interferes with a woman's reproductive health choices and is associated with significantly higher risk of sexually transmitted infections including HIV, unintended pregnancies, pregnancy complications, postpartum depression and poor infant health.

IHS/ACF Domestic Violence Project

With funding from the Indian Health Service (IHS) and the Administration for Children and Families (ACF), the IHS/ACF Domestic Violence Project was instituted from 2002-2009. *Futures Without Violence*, in partnership with faculty from Sacred Circle, the U.S. DHHS designated National Resource Center to End Violence Against Native Women, and *Mending the Sacred Hoop*, worked with more than 100 Indian, Tribal and Urban health care facilities as well as domestic violence (DV) advocacy programs. Over the course of the Initiative, thousands of health care providers and community advocates were trained, and model policies and tools were developed to better address abuse and prevent violence. One result was the dramatically increased screening rates for DV.

The IHS/ACF Domestic Violence Project supported the development of a Government Performance Results Act (GPRA) measure requiring that every IHS facility conduct routine screening, intervention and referral for intimate partner violence with women aged 15 to 40. When first measured in 2004, only four percent of women in the Indian Health Service were screened by their providers for DV. As a result of this project, the DV screening rate climbed to 48 percent in 2009 – a 12-fold increase that significantly surpasses the national screening goal.

The screening tools and methods developed by the initiative informed the Institute of Medicine *Clinical Preventive Services for Women: Closing the Gaps* report this month that recommended preventive health services include screening and counseling for all women and adolescent girls for interpersonal and domestic violence in culturally sensitive and supportive manner. If screening and counseling for intimate partner violence is included as a basic preventive health service in the U.S. by the Department

of Health and Human Services, the lessons learned from this work with Indian, Tribal, and Urban health care providers will be very valuable.

Other positive outcomes from the IHS/ACF model included: developing community-wide domestic violence response teams that include staff from health care, judicial, law enforcement, community programs and Tribal councils; developing patient education materials including two posters targeting men and boys with prevention messages specific to domestic violence; tailoring the Electronic Health Record to integrate domestic violence routine assessment and implementation of screening reminders; raising public awareness and promoting social norm change through community walks, billboard campaigns, candlelight vigils, radio/TV shows, public service announcements, and staff participation in health fairs, rodeos and pow wows; helping victims of domestic violence and sexual assault get the help they need to support their healing from the abuse and promote their health and wellness.

While the IHS/ACF model program has ended, the lessons can and should still be used and the model replicated. This kind of model program is complementary to the need to have more sexual assault nurse examiners (SANEs) and other trained first responders in place at health facilities, along with equipment and rape kits to collect forensic evidence. In fact, routine assessment for domestic violence and sexual assault can often identify women who may otherwise not contact the police, or go directly to emergency health services following a sexual assault.

For these women, a routine screen by their provider inquiring about their experience with domestic violence, sexual assault, and reproductive coercion (birth control sabotage or pregnancy coercion), and current safety may be the best way to improve health and safety. Providers can help patients connect the impact of abuse on their patient's current and future health, connect them to community victim advocates, or on-site support staff for next steps, including safety planning.

Violence Against Women Act -- Project Connect

Since FY 2009, the U.S. Department of Health and Human Services Office on Women's Health has administered Project Connect: A Coordinated Public Health Initiative to Prevent Violence Against Women, developed from two authorized Violence Against Women Act (VAWA) programs, "*Grants to Foster Public Health Responses to Intimate Partner Violence and Sexual Violence*" and "*Training and Education of Health Professionals on How to Respond to Violence and Abuse.*"

Through this program, two Southern California tribes have focused on adolescent health programs to provide anticipatory guidance on building healthy relationships, and home visitation programs that help meet new federal benchmarks on domestic violence.

The focus on integrating violence and abuse assessment and response for children and early adolescents is timely as a recent nationwide study of children's exposure to violence found that each year more than 15 million children in the United States are exposed to violence in their homes. More than sixty percent of the children surveyed for this study were exposed to violence within the past year, either as victims or as witnesses; by the time children are 17 years old, one-third will have witnessed domestic violence.

The consequences of children's exposure to domestic violence are well-documented. Children who witness domestic violence display a host of problematic behaviors at far greater rates than children not exposed to violence. These include being more likely to become a perpetrator of such abuse (for boys) as well as higher rates of violence, aggression, suicide, school failure and mental health problems. The effects of witnessing abuse on children may be equal to, or in some cases worse, than the direct experience of being abused. However, it also is important to note that many children who witness adult domestic violence do just fine. Often the reason is the child's strong relationship with her or his mother, even if that mother is experiencing abuse, because it serves as a protective factor. Home visitation programs are thus critical in identifying these children, helping them be safe and cope with what they have witnessed, linking abused mothers to helpful community resources, and supporting strong relationships between mother and child.

Summary

The integration of identification and response to violence and abuse in public health programs provide a key opportunity to reduce the negative health outcomes of violence and empower adults and adolescents to seek supportive services to prevent future injuries. Programs such as Project Connect and the IHS/ACF Initiative should be used as models and expanded to address the epidemic of violence facing American Indian and Alaskan Native women.

PREPARED STATEMENT OF SUZANNE KOEPLINGER, EXECUTIVE DIRECTOR, MINNESOTA INDIAN WOMEN'S RESOURCE CENTER

In late 2009, the Minnesota Indian Women's Resource Center (MIWRC) published *Shattered Hearts: the commercial sexual exploitation of American Indian women and girls in Minnesota*. This was the first research in the country to analyze the scope of sexual exploitation of American Indian women and girls in our country. Since the release of the report, MIWRC has created culturally based interventions to work with Native women and girls who are victimized by sex traffickers and pimps. We have developed a keen insight into the vulnerability factors, gateways to entry, barriers to exit this traumatizing lifestyle, and effective interventions to heal the victims. We provide the following recommendations to the Senate Indian Affairs Committee for consideration as Congress moves to reauthorize the Trafficking Victims Protection and Reauthorization Act (TVPRA) in the current session.

- We support the Wyden/Cornyn language incorporated into the TVPRA 2011 (S 1301) allocating specific funds to serve domestic sex trafficked minors, and the \$5 million in the President's budget for HHS/Runaway and Homeless Youth bill to serve trafficked youth. We urge specifically that additional funding be directed to serve trafficked American Indian youth in urban areas. The vast majority of young victims, either runaway, throwaway, homeless or at risk due to

gang violence, need safe, culturally based long term housing to help them break away from the pimps and safely rebuild their lives. Federal funds to serve domestic minor sex trafficking victims is a critical need in this country.

- Eliminate the requirement for law enforcement certification for domestic sex trafficking victims to qualify for services funded by federal dollars. In the Minneapolis American Indian community, none of the girls who come to our programs are willing to report these crimes or cooperate with law enforcement, yet they are disclosing sexual exploitation beginning at the age of 7 years old in some cases and continuing into their teen years. The lack of credible data on the scope of sex trafficking is directly related to the requirement of law enforcement certification. Once young victims are given a safe place to sleep with support systems in place, they may be willing to cooperate with law enforcement, but they must first begin to feel safe and heal from the traumas they have endured. Providing these services must be within the capacity of culturally based programs in urban areas and on reservations. A training program that certifies front line advocates to collect data on rates of domestic minor sex trafficking will both enrich the service providers ability to intervene with trafficked youth and create more reliable data tracking systems to facilitate better understanding of the scope of the problem nation-wide.
- Eliminate the HHS sub contract with the U.S. Conference of Catholic Bishops to provide service funds to trafficked victims. These are victims of repeated rape, many of them are children, and many display heavy drug and alcohol addictions and mental illness resulting from their traumas. The real need on the ground for holistic services is compromised by having a faith based intermediary as grant maker. A neutral party should be contracted with.

We believe the depth of sexual exploitation of American Indians is only now beginning to be uncovered. Historical trauma and multi-generational grief and loss, compounded by high rates of poverty and sexual violence make American Indians extremely vulnerable to sexual predators. Your help is needed in providing the culturally appropriate care they need. My sincere thanks for your concern for these women and children.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO
CARMEN O'LEARY

To your first question as to why Tribes do not have access to the Crime Victims Fund financed by offenders who commit crimes in federal jurisdiction my answer follows. It is my understanding that only the states receive this funding and it is disbursed through their programs. I understand that the law is written in that manner and will need to be refined to include Tribes.

In answer to the second question: The ideal would be to disburse the funding in grants to the Tribes similar to how it is given to the states. This would make it more accessible to those who suffer from the consequences of crimes in Tribal nations. A cap is set on the Crime Victims Fund which was set up through the Victims of Crime Act. A VOCA tribal set aside of 10% could be set to fund Tribal Government or nonprofit Tribal organizations to provide the same level of services to native victims so they may also have access to these life saving services.

The other question of the normalization of violence in our communities from Vice Chairman Barrasso has many answers. As you heard no stable funding exists that is ongoing from year to year so programs set up to address the problem come and go and with them the knowledge and ability to address the problem in a structured and systematic manner goes too. Services to this large group of women need to be stabilized and the Crime Victim Fund is the most likely source of this revenue. New appropriations of money would not be necessary as the grant funds could come by designating a percentage of the existing income to fund the Tribal programs.

A portion of the history of this "normalization" has come from a lack of accountability by too many federal programs, such as the lack of prosecution to the neglect of enforcing the rules. In my testimony I gave an example of this lack of accountability by relating the situation in which a Bureau of Indian Affairs Education Line Officer and a staff member under her supervision both wrote letters of support for a pedophile in a federal court sentencing hearing. The victims (multiple children over two decades) of this pedophile were all students in schools of the Bureau of Indian Affairs. There have been no repercussions for either of these federal employees. They do not answer to the community and complaints of their actions are not heard within the federal system with any accountability. That is but one example of the federal responsibility which has "normalized" this behavior.

Little or no effort has been made to implement training for teachers in the school system on how to respond to victims of violence and sexual assault. If the students were having cardiac events at the same rate that they are being violated, every employee would be certified to note the signs and have C.P.R. training. The federal system, the state system and now the local area systems do not respond. I know we cannot pinpoint any one agency but given that I am addressing those who impact the federal system I am talking about how that has been normalized and the local Tribal entities are hampered in their ability to address these serious problems.

Thank you for allowing me to voice the concerns and let me know if you need further information or if I can help in anyway.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO
ROSE WEAHKEE, PH.D.

Question 1. Several witnesses have provided testimony for this hearing stating that violence in Indian communities has become the norm. As a result, a generation of children is learning that violent behavior is an acceptable way to cope with frus-

trations or problems. How are these children supposed to “unlearn” this behavior, particularly where it is prevalent throughout a community?

Childhood exposure to violence is a major public health problem in American Indian and Alaska Native (AI/AN) communities. According to Social Learning Theory¹ violence is conceptualized as a behavior learned during childhood within the family of origin.² The working hypothesis is that violence is learned in this environment as a model for conflict resolution, which may then manifest as bullying and interpersonal, domestic and sexual violence in adulthood. In addition, research suggests that children exposed to violence are more likely engage in harmful or risky behaviors as adults.³ Intensive and prolonged stress can lead to a variety of short- and long-term negative health effects including alcoholism, depression, eating disorders, heart disease, cancer, and other chronic diseases.⁴

Interventions aimed at the “unlearning” of violent behaviors have been the subject of vigorous scientific debate for decades. In general, a comprehensive approach is necessary, using a variety of community-driven public health education, prevention, intervention, and treatment strategies. These can include community awareness and education events focused on culturally-based and positive alternatives to violence in conflict resolution, promotion of healthy communication techniques, bullying and teen dating violence prevention, preservation of the family unit through strength-based intervention, early identification and intervention in cases of child maltreatment, and treatment focused on substituting maladaptive coping strategies with constructive ones. The Adverse Childhood Experiences (ACE) Study demonstrated that the impacts of trauma are cumulative, and that unaddressed trauma underlies a wide range of problems.⁵ Since Adverse Childhood Experiences are more likely to occur in AI/AN communities and studies strongly suggest a reliable relationship between ACE and certain diseases common among AI/AN populations, prevention should be a primary focus.

The Domestic Violence Prevention Initiative (DVPI), enabled by the Omnibus Appropriations Act, 2009 (P.L. 111–8) and the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (Division A, P.L. 111–88), implemented a nationally-coordinated effort aimed at promoting evidence-based and practice-based models in the context of community-driven, culturally-appropriate prevention and treatment approaches to domestic and sexual violence. Evidence-based models are those that have been formally evaluated and replicated and found to be effective; practice-based models are those informed by local clinical practice and found to be efficacious but have not been formally evaluated. The DVPI funds projects that provide a range of prevention activities such as bullying prevention and school education programs. Funded projects also provide community education and increase capacity for domestic and sexual violence awareness and intervention through increased training related to victim advocacy, development of community response teams, policy development, and program implementation and treatment for batterers.

The DVPI has awarded a total of 65 projects that include Indian Health Service (IHS), Tribally, and Urban operated programs. In the first year of the program, the DVPI resulted in 37,737 screenings for domestic violence (73 percent of eligible patients) and over 2,000 children received direct services including case management, crisis intervention, advocacy, medical treatment and counseling.

Over 2,500 participants were trained at 178 training events. Attendees included multidisciplinary and health professionals as well non-medical personnel including educational and child care staff, law enforcement and Tribal leaders and elders. Topics included general education related to violence prevention, children’s issues, dating violence, and bullying among others. In addition, more than 18,000 community members were reached through DVPI-funded community educational events.

The national DVPI conference was conducted from July 6–8, 2011 in Albuquerque, New Mexico. Over 140 DVPI program and IHS staff attended the conference which included community awareness planning, engaging men in violence prevention, impact of violence on children, incorporation of traditional healing, and teen dating awareness, among other topics.

¹Bandura, A. (1973). *Aggression: A social learning analysis*. Englewood Cliffs, NJ: Prentice-Hall.

²Early Childhood Matters (2011). Bernard van Leer Foundation.

³*Ibid.*

⁴McEwen, B.S. (2008). Central effects of stress hormones in health and disease: Understanding the protective and damaging effects of stress and stress mediators. *Eur J Pharm* 583(2–3):174–185.

⁵Felitti et al. (1998). Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults: The Adverse Childhood Experiences (ACE) Study. *Am J Prev Med* 14(4):245–258.

Children and adults can learn and develop new skills and behaviors through evidenced-based practices such as Dialectical Behavior Therapy (DBT). DBT is a skill based treatment, which seeks to teach and refine skills in changing behavioral, emotional, and thinking patterns associated with maladaptive coping strategies. DBT seeks to decrease interpersonal chaos, labile emotions, impulsiveness, and cognitive dysregulation; and DBT seeks to increase emotional regulation, interpersonal effectiveness, distress tolerance, and core mindfulness skills. DBT can be effective in Indian communities because it can help children unlearn the notion that use of violence is an acceptable form of dealing with frustration or problems. The IHS currently funds 11 Youth Regional Treatment Centers (YRTCs) and 127 Methamphetamine and Suicide Prevention Initiative (MSPI) projects. A significant number of YRTCs and MSPI programs have implemented DBT for a variety of mental health issues.

Question 2. Child sexual abuse occurs in too many communities and Indian Country is not immune. In fact, Ms. O'Leary provided written testimony about students and former students of a Bureau of Indian Education school who were victims of a pedophile. Do you think that this kind of abuse can become cyclical—that victims can be traumatized to the point where they themselves become perpetrators?

Answer. All too often, children are victims of violence, crime, and abuse. This victimization may take the form of bullying, physical assault, child maltreatment, or sexual abuse. Children may also witness such events in their homes, schools, and communities. Research has shown that exposure to traumatic events early in life can have many negative effects throughout childhood and adolescence, and into adulthood. The ACE Study found a strong relationship between traumatic events experienced in childhood as reported in adulthood and chronic physical illness such as heart disease, and mental health problems such as depression.⁶ Treatment may be improved by targeting specific risk factors for intervention and making better use of risk management resources in the community, while preserving the most restrictive treatment options for the highest risk offenders.⁷ However, research does not support the hypothesis that victims of pedophiles are more likely to become sexual perpetrators themselves.

Question 3. What is Indian Health Service doing to break this cycle of abuse?

Answer. The IHS is committed to disrupting and otherwise minimizing risk associated with child abuse by developing and implementing the program and coordination efforts necessary to effectively prevent and address domestic violence, sexual assault, and child maltreatment in Indian Country. Some effective approaches include practice-based and evidence-based parenting and parent-child attachment programs, parenting education and support, effective mental health and substance abuse treatment for parents and caregivers, early identification and treatment among children (i.e., mental health consultation in childcare, pediatric screening), treatment for identified trauma, home visitation programs, and case management.

The IHS Government Performance and Results Act Measure for domestic violence denotes the percentage of AI/AN female patients ages 15–40 who have been screened for domestic and intimate partner violence during the year. Since 2008, the IHS has far exceeded the target screening rate for each year.

Through the DVPI, the IHS works to expand and strengthen the Tribal and Urban responses to domestic violence and sexual assault. There are a total of 65 IHS, Tribal, and Urban operated DVPI Programs that address prevention, intervention, treatment, awareness, training, policy development and community response and coordination for domestic violence and sexual assault. Eight of the 65 programs focus on Sexual Assault Nurse Examiner, Sexual Assault Forensic Examiner, and Sexual Assault Response Team (SANE/SAFE/SART) programs, and the training of medical personnel in conducting proper and thorough forensic medical exams.

The first IHS Sexual Assault Policy was established on March 23, 2011. The policy establishes a uniform standard of care for sexual assault victims seeking clinical services in IHS operated hospitals. The policy includes guidance on the collection of forensic evidence, which aligns with the criminal justice system response and subpoena regulations. The IHS is presently developing a policy implementation and monitoring plan to ensure that the policy is implemented consistently throughout the IHS system. The IHS consulted with Tribal Leaders and Urban Indian Health Directors on the Sexual Assault Policy and reviewed comments for incorporation in future revisions. A comprehensive domestic violence and elder abuse policy, similar

⁶Centers for Disease Control and Prevention, (2010). *Mortality and Morbidity Weekly Report*, 59, 1609–1613.

⁷Parks GA. and Bard, DE. (2006) Risk factors for adolescent sex offender recidivism: evaluation of predictive factors and comparison of three groups based upon victim type. *Oct;18(4):319–42.*

in scope and specificity to the IHS Sexual Assault Policy, are currently being developed.

The IHS will offer (7) Sexual Assault Response Team (SART) and (7) Sexual Assault Examiner (SAE) training sessions to all 45 IHS and Tribal hospitals in Calendar Year 2012. Clinical skills training will be conducted in a simulation laboratory and any medical provider who has completed SAE training will be eligible to attend. Forensic equipment, including cameras, storage cases, tripods, laptops configured with telemedicine software, and colposcopes (where needed), will be purchased for all of the 45 IHS and Tribal hospitals. Efforts to purchase forensic equipment and to expand the SANE/SAFE/SART trainings to include all of the IHS hospitals, clinics, and health stations are underway.

The IHS and the Department of Justice Office on Victims of Crime (OVC) entered into a partnership involving the Federal Bureau of Investigations (FBI) and the Department of the Interior. This partnership, entitled the Sexual Assault Nurse Examiner-Sexual Assault Response Team (SANE-SART) AI/AN Initiative, is funded through the OVC. Using evidence-based practices involving SANEs, SARTs, and victim-centered law enforcement practices, the initiative will support victim recovery, satisfaction, and cooperation with the Federal criminal justice system, as well as supporting victims' of sexual assault and the Tribal communities' need for justice.

The IHS is updating the IHS Child Maltreatment Policy through a policy workgroup of IHS professionals with extensive field experience in providing direct services to abused and neglected AI/AN children. The Policy will address local child maltreatment and child sexual abuse policies and procedures for IHS operated hospitals and clinics. The IHS will hold a minimum of 6 regional trainings on child maltreatment in Calendar Year 2012. The IHS will work with the local U.S. Assistant Attorney's Office, the FBI, the Bureau of Indian Affairs law enforcement and social services, Tribal law enforcement and prosecutors, community victim services, and State agencies to provide trainings specific to State and local laws. These trainings will focus on multidisciplinary approaches for the evaluation and treatment of suspected child maltreatment cases.

Question 4. Victims of sexual crimes need treatment locations that are safe. However, there are potential risks that offenders could threaten the safety of these victims at Indian hospitals or clinics. What is the Indian Health Service doing to keep such victims safe at the Indian hospitals and clinics?

Answer. Chapter 29 of the Indian Health Manual outlines policies required to protect the identity of sexual assault victims and ensure patient confidentiality. The policy provides guidance for victim safety and privacy. Each local healthcare facility determines the procedures to ensure safety and privacy (Indian Health Manual, Chapter 29 3-29.2). Additionally, sexual assault patients must be given priority as emergency cases and be provided with a private treatment room. Furthermore, arrangements must be made so that sexual assault patients will not have to wait in the main waiting area.

The SAFE or SANE is responsible for being aware of the scope and limitations of confidentiality related to information they gather during the examination process. Confidentiality is intricately linked to the scope of patients' consent. The SAFE or SANE, other members of a SART, and other collaborating responders are responsible for informing victims of the scope of confidentiality and must be cautious not to exceed the limits of the victim's consent to share information in each case. Furthermore, the victim must be offered the support and services of a victim advocate while in the hospital. The victim advocate is responsible for informing victims about their rights before, during, and after the examination process, ensuring the victim's interests are represented and that their wishes are respected. If the victim accepts, and the victim advocate is available, arrangements must be made for a victim advocate to accompany the patient during the examination.

The IHS must make reasonable efforts to limit the disclosure of patient health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request and to those persons or classes of persons to which access is needed. All records must be handled in accordance with the Privacy Act (5 U.S.C. 552a) and the Health Insurance Portability and Accountability Act Privacy Rule (45 CFR 164) and all other applicable laws and rules.

All IHS hospitals offering on-site sexual assault examinations must have a process that allows medical providers to notify law enforcement of the sexual assault without identifying the adolescent or the adult victim or the suspect (if permissible under applicable law). In this case the report to law enforcement must avoid providing any identifying information, and the evidence kit must be identified as an "anonymous forensic evidence kit."

Question 5. The Committee has received prior testimony that drug abuse can lead to more violence committed against women and children in Indian Country. As part of the Indian Health Care Improvement Act, the Secretary of Health and Human Services is required to coordinate with the Secretary of the Interior and the Attorney General to establish a prescription drug monitoring program (PDMP) at Indian health facilities. What is the status of that program?

Answer. Data from the 2009 National Survey on Drug Use and Health show that the AI/AN population leads all other ethnic groups in past 30-day misuse of prescription-type drugs. In response, IHS has developed and established a number of initiatives to curb substance abuse and dependence. The IHS partnered with the North Dakota PDMP to secure \$100,000 for required programming of an open source data transmission solution from the IHS Resource and Patient Management System to States using communication formats developed by the American Society for Automation in Pharmacy (ASAP), versions (4.0) and (4.1). The resulting agreement included software initialization, testing, troubleshooting, and institution of routine reporting to the State PDMP for all Federal sites within the States of North Dakota, South Dakota, and Minnesota. The IHS has also partnered with the Bureau of Justice Assistance (BJA) to secure an additional \$35,000 to program the three remaining programming solutions—ASAP 1995, ASAP 2005, and version 3.0. The IHS has requested and the BJA has granted that one IHS, Tribal, or Urban (I/T/U) site from each State with a unique ASAP version, vendor, or unique data set requirement may be used as a test site. The BJA will allow States with large numbers of I/T/U facilities to be assigned a second test site. The resulting data transmission solutions will be made available to all I/T/U facilities nationwide.

To date, these partnerships have enabled the IHS to secure funding; identify required data reporting elements; recruit and hire vendors to conduct software programming, testing, and troubleshooting; and develop the required security protocols for transmission and receipt of data. The IHS and its partners are engaged in ongoing efforts to execute necessary sharing agreements, initiate reporting at test sites, distribute the resulting software to all Federal and Urban Indian health programs, provide export software to requesting Tribal sites, and educate patients and staff about the need for data submission to State PDMPs to improve clinical care.

Each State maintains its own PDMP data requirements. These requirements are similar but not identical between States, thus making data exchange challenging. The IHS must ensure that its participation in each individual State PDMP is consistent with Federal law. For example, IHS is authorized under Federal law to share prescription drug data with public health authorities authorized by law to collect and receive such information. However, not all State PDMPs have been established as public health authorities. Some PDMPs have been established with law enforcement, rather than public health, as their primary mandate.