

## **KEY ISSUE: VIOLENCE AGAINST WOMEN'S REAUTHORIZATION ACT OF 2013**

### **KEY ISSUE:**

Increase VAWA funding and expand coverage for rape, sexual assault, murdered and missing victims and Native children. Indian country needs to be clearly defined in Alaska and funding needs to be provided to strengthen Alaska Tribal courts.

**SUMMARY OF THE ISSUES:** In 1978, the U.S. Supreme Court's holding in *Oliphant v. Suquamish* stripped Tribes of the right to arrest and prosecute non-Indians who commit crimes on Indian land.<sup>1</sup> Although Federal and some states have authority to arrest and prosecute offenders who commit crimes on the reservation, these outside entities often declined to prosecute these cases. As a result, many victims were without recourse and did not bother to report crimes because they knew little would be done. Crimes committed in Indian country by non-Indian offenders were for the most part not addressed.

### **VAWA 2013**

The Violence Against Women's Act ("VAWA 2013") was signed into law on March 7, 2013 and became effective October 1, 2013. This law recognizes the authority of Tribal courts and law enforcement officials to exercise their sovereign right to investigate, prosecute, convict and sentence (Indian and non-Indian) offenders who commit acts of domestic violence and dating violence. The law also reaffirms the Tribe's sovereign right to issue and enforce orders of protection. While VAWA 2013 expanded the jurisdictional authority of Tribal governments, State and Federal governments share concurrent jurisdiction and are still responsible for responding to and prosecuting these crimes on Indian land.

### **Special Tribal Prosecutorial Authority**

On February 20, 2014, three Tribes, the Pascua Yaqui, Confederated Tribes of Umatilla and the Tulalip Tribes were approved by the Attorney General to participate in a Department of Justice VAWA Pilot Project to exercise special Tribal prosecution provisions. A few months later, the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the Sisseton Wahpeton Oyate of the Lake Traverse Reservation were approved to participate in the pilot project. As of March 7, 2015, VAWA 2013's Special Tribal Prosecutorial Provisions became effective allowing any Tribe to exercise this authority without having to seek Federal approval, as long as, they are able to meet the statutory requirements of the law. Section 904 is a first step toward safer Indian communities and full Tribal criminal jurisdiction.

### **Challenges to Tribal Jurisdictional Authority**

Critics of VAWA argued that non-Indians would not receive a fair trial and that Section 904 infringes on a defendant's constitutional rights. As a result, the law was narrowly drawn: the crime must occur in Indian country; the victim of the crime must be native; and, the offender must have sufficient ties (living, working or has an intimate relationship) to the community. Section 904 also explicitly excluded Alaska Natives (with the exception of Metlakatla) until December 18, 2014, when President Obama signed S.1474, the Alaska Safe Families and Villages Act into law. The Act repealed Section 910 of VAWA 2013 extending jurisdiction over non-Indian offenders who commit acts of domestic violence in Indian country to Alaska Tribes. The new provisions became effective in March 2015.

---

<sup>1</sup> *Oliphant v. Suquamish*, 435 U.S. 191 (1978). (Indian tribal courts do not have inherent criminal jurisdiction to try and to punish non-Indians, and hence may not assume such jurisdiction unless specifically authorized to do so by Congress.)

## **Defendant's Rights under VAWA**

A Tribe must ensure that a defendant's rights are protected under the law. The Indian Civil Rights Act of 1968 contains similar provisions to those afforded individuals in the bill of rights, including, a provision for due process. The Tribal Law and Order Act of 2010 provided additional protections for defendant's rights by requiring law trained Tribal judges that are licensed to practice law; effective assistance of counsel for defendants; free, appointed, licensed attorneys for indigent defendants; publicly available Tribal criminal laws and ordinances; and, recorded criminal court proceedings. Jury pools must also include a cross-section of the community and not exclude non-Indians. Defendants must also be informed of their right to file a federal habeas corpus petition.

## **VAWA Deficiencies that Need to be Addressed**

- Does not apply to rape or sexual assault not connected to domestic violence related acts.
- Does not apply to sex trafficking.
- Does not account for or address issues related to murdered and missing Native women.
- Does not extend to crimes committed against Native children.
- Funding Disparities - many Tribes are unable to assume Special Prosecutorial Authority because of the costs associated with implementing these measures and the Federal funding that is provided is not adequate.
- Alaska specific challenges - Indian country isn't clearly defined in Alaska so it is difficult to implement the new legal authorities and Alaska Natives need funding to bolster their Tribal court systems.

## **VAWA 2005 Gains**

- Tribal title
- No match required from Tribes on funds
- Consultation
- Analysis and Research
- Tracking
- Grants to Tribal Government Programs
- Tribal Deputy Director appointed
- Habitual Offender Act
- New Standard 10% Set Aside

## **VAWA 2013 Gains**

- Tribal coalitions
- Consultation (requires 120 days' notice of date, time and location)
- Criminal Jurisdiction over non-Indians
- Civil Jurisdiction clarification
- Sex Trafficking

\*\*\*Consultation – 120 days' notice requirement, Secretary of Interior is required to attend Annual Consultation, AG is required to submit an Annual Report to Congress, Sex Trafficking is added to the list of issues to be addressed during consultation.

## **VAWA 2018 Platform – National Platform for Action**

Reflect on the gains, reflect on how the movement was organized, discuss future challenges, and discuss issues we can unite on.

- Safety in Alaska
- Disparities in funding
- Address Sexual Assault
- Address Sex Trafficking
- Address Murdered & Missing
- Environmental Justice and Safety of Native women
- International UN Recommendations
- Support for Tribal Women's Coalition

## **Senate Committee on Homeland Security and Governmental Affairs**

- Monday, September 23, 2013 held a hearing on human trafficking
- National Indigenous Women's Resource Center testified
- Oil and Fracking Pipelines "Man Camps" have given rise to predator economics.
- Trafficking of Native children to the highest bidder (lawyers making \$25,000 - \$100,000) dollars
- VAWA 2013, Tribal Title IX was amended to add sex trafficking to the list of purpose areas.

## **Victims of Crime Act (VOCA) - Survive Act**

- VOCA fund is derived from fines and penalties paid by offenders at the federal level and is largely distributed to states through a formula grant.
- \$2.5 Billion in Funds is collected on a yearly basis but none of the money flows to Indian country.
- Tribes want a formal Tribal set aside (10%) by way of a formal amendment to the Victims of Crime Act and a mechanism in place so that the money will be directly distributed to them by the Office for Victims of Crime and not through the states.
- Last year, the funding increased three fold so the other stakeholders are supportive of Tribes asking for funding.
- The fund currently has a reserve of \$8 Billion.
- Barrasso introduced legislation in July to provide for a 5% or \$130 million set aside for Tribes.
- Senate Appropriators provided for \$50 million for Tribes but there is not a companion bill in the House.
- Focus on ending the funding disparity for Native victims and request that money be more equitably distributed so that communities that need it the most have access to these funds.

## **OBJECTIVES/GOALS:**

### 1. *Address funding disparities*

Implementing VAWA requires money that many Tribes do not have. Federal funding for VAWA 2013 has enhanced local collaborative responses to domestic violence-related crimes and to services to domestic violence victims. However, reductions in federal spending undermine VAWA's successes. During these difficult budget times, continued support of adequate funding to prevent and address domestic violence, sexual assault, dating violence, and stalking is critical. When victims reach out for help, many are in life-threatening situations and must be able to find

immediate safety and support. Federal sequestration threatens an already struggling community of domestic violence programs and services for victims. Advocate for greater funding.

2. *Address Sexual Assault and Rape*

VAWA 2013's provisions only cover sexual assault and rape if they are a result of an act of domestic violence. Native women are battered, stalked and raped in much greater proportions than any other population, with the potential for rape of native women at 34%. Advocate for greater protections for these victims by expanding coverage of VAWA to include rape, sexual assault, sex trafficking and murdered and missing Native women.

3. *Acting on Task Force Recommendations*

Attorney General's Task Force on American Indian and Alaska Native Children Exposed to Violence recommends expansion of jurisdiction over non-Indians to include child abuse.

4. *Tribal Set-Aside for VOCA Funds*

Tribes want a formal Tribal set aside (10%) by way of a formal amendment to the Victims of Crime Act and a mechanism in place so that the money will be directly distributed to them by the Office for Victims of Crime and not through the states.