**SUPPORT S. 1925**
THE VIOLENCE AGAINST WOMEN ACT REAUTHORIZATION
STOPPING THE EPIDEMIC OF VIOLENCE AGAINST NATIVE WOMEN

In 1978, the Supreme Court held that federal laws and policies divested tribes of criminal authority over non-Indians. This decision has plagued Indian country ever since, and has led to the crisis of domestic and sexual violence facing tribal communities today. Race should not play a role in bringing an abuser or sexual offender to justice. **S. 1925 will recognize and affirm tribal authority to prosecute misdemeanor cases of domestic violence by all offenders, regardless of race. This will prevent domestic violence from escalating, and begin to reverse the epidemic of violence against Native women.**

**Violence against Native women has reached epidemic proportions.** Native women are 2.5 times more likely than other U.S. women to be battered or raped: 34% of Native women will be raped in their lifetimes and 39% will face domestic violence. This statistical reality leaves young Native women wondering not “if” they will be raped, but “when.”

Like most of the U.S., interracial marriage and cohabitation of mixed races has played out in Indian country. In 1978, it may have been rare for a non-Indian to intermarry with an Indian. However, the U.S. Census Bureau recently reported that 50% of all Native American married women have non-Indian husbands, and thousands of other Native American women cohabit with, are divorced from, or share children in common with non-Indian men.

**Current law is inadequate to stop Reservation domestic and dating violence.** The DOJ has found the current system of justice, in which tribal governments have no authority over non-Indians, “inadequate to stop the pattern of escalating violence against Native women.” In many cases, the federal government has exclusive responsibility to investigate and prosecute major and minor on-reservation crimes committed by non-Indians. Federal law enforcement resources are often far away and stretched thin.

Despite this responsibility, a 2010 GAO Report found that U.S. Attorneys declined to prosecute 67% of sexual abuse and related matters that occurred in Indian country from 2005-2009. With regard to misdemeanor crimes, in 2006, U.S. Attorneys prosecuted only 24 misdemeanor crimes in Indian country, and only 21 in 2007. Again, the U.S. has EXCLUSIVE authority to investigate and prosecute misdemeanor crimes by non-Indians against Indians.

Tribal leaders, police officers, and prosecutors have testified to patterns of escalating violence that goes unaddressed, with beating after beating, each more severe than the last, ultimately leading to death or severe physical injury. An NIJ-funded analysis of death

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4 The exception to this rule being crimes committed in Indian country within states governed by Public Law 83-280, which transferred the federal government’s criminal enforcement authority on tribal lands to the state government in a handful of select states.
certificates found that, on some reservations, Native women are murdered at a rate more than ten times the national average.

Tribal governments — police, prosecutors, and courts — have the most at stake and should be authorized to address all crimes of domestic violence within Indian lands. Under current law, they lack this authority. Changing the law to acknowledge tribal authority to stop these initial acts of domestic violence will prevent escalated attacks, such as aggravated assault, rape, and murder.

The U.S. Supreme Court has approved similar congressional affirmations of “inherent tribal power”. The Court in *U.S. v. Lara*, 541 U.S. 193 (2004), found that Congress has the authority to “recognize and affirm” the “inherent” authority of an Indian tribe. The Court held that the Constitution confers on Congress plenary power to enact legislation to limit and relax restrictions on tribal sovereign authority.

The legislation at issue in *Lara* was an amendment to the Indian Civil Rights Act (ICRA) that “recognized and affirmed” the “inherent” criminal authority of Indian tribes over non-member Indians (Indians from a different tribe). In upholding congressional power to enact this law, the Court reasoned that the law involved no interference with the power or authority of a State, nor raised questions of due process or equal protection. In addition, the law involved “recognition and affirmation” of tribal authority over non-member Indians, whom are not eligible to participate in tribal politics.

S. 1925 affirms carefully tailored/limited authority over non-Indians. Like the ICRA amendment at issue in Lara, no power is taken from the federal or state governments. Tribal power will be concurrent. S. 1925 limits tribal authority to crimes of domestic violence, dating violence, and violations of protection orders. Tribal court sentencing authority is limited to three years per offense. Full Constitutional protections are extended to the non-Indian defendants—including effective assistance of counsel and indigent counsel—and any case prosecuted under this tribal authority will be subject to tribal appellate and federal habeas review.

Further, S. 1925, Section 904 requires the defendant have “sufficient ties to the Indian tribe.” According to S.1925, the tribe must prove that any defendant being prosecuted under Section 904 either: resides in the Indian country of the prosecuting tribe, is employed in the Indian country of the prosecuting tribe, or is either the spouse or intimate partner of a member of the prosecuting tribe. Individuals who live, work, and/or maintain intimate relationships in Indian country should not be allowed to violate tribal laws with impunity just because of their non-tribal member status.

The S. 1925, Title IX amendments have been the subject of Senate hearings. The key tribal provisions of S.1925 are contained in S. 1763, the SAVE Native Women Act. The U.S. Senate Committee on Indian Affairs (SCIA), the committee of jurisdiction over Indian issues and tribal jurisdiction, held a legislative hearing on S.1763 and has held numerous oversight hearings to examine issues of violence against Native women, including complex jurisdictional issues on tribal lands.

For more information, please contact NCAI Staff Attorney, Katy Jackman at kjackman@ncai.org.