

THE VIOLENCE AGAINST WOMEN ACT REAUTHORIZATION THE TRUTH ABOUT TITLE IX, SAFETY FOR INDIAN WOMEN

Myth: Native women are not in need of extra protections.

Fact: Existing law denies Native women equal access to justice, which is borne out by statistic after statistic: 34% of American Indian and Alaska Native women will be raped in their lifetimes; 39% will be subjected to domestic violence in their lifetimes; and on some reservations, Native women are murdered at more than ten times the national average

Myth: The Federal Government has no legal responsibility to protect Native women.

Fact: VAWA 2005 recognizes that the legal relationship between tribes and the U.S. creates a federal trust responsibility to assist tribes in safeguarding Indian women.

Myth: The tribal provisions in S.1925 would strip jurisdiction from federal or state authorities.

Fact: The provisions in S.1925 that passed the Senate with broad bipartisan support do not in any way alter or remove the current criminal jurisdiction of the United States or of any state. Rather, S.1925 restores concurrent tribal criminal jurisdiction over a very narrow set of crimes that statistics demonstrate are an egregious problem on Indian reservations.

Myth: Tribal jurisdiction exercised under Section 904 would violate Double Jeopardy.

Fact: Section 904 jurisdiction would be an exercise of inherent tribal authority, not a delegated Federal power, and would thus render the Double Jeopardy Clause inapplicable to sequential prosecutions of the same crime by the tribe and the Federal Government.

Myth: The Senate version of VAWA gives tribes criminal jurisdiction over all crimes committed by non-Indians on or off the reservation.

Fact: S.1925 provides a limited jurisdictional fix to address a narrow set of egregious crimes committed in Indian country: domestic violence, dating violence, and violations of protection orders. It does not extend to other crimes or to crimes committed beyond reservation boundaries.

Myth: The Senate version of VAWA would allow tribes to prosecute crimes between two non-Indians with no ties to the reservation.

Fact: Non-Indian on non-Indian crime that occurs on the reservation is within the exclusive jurisdiction of the State. The new tribal provisions in no way alter this century-old rule established by the Supreme Court in *U.S. v. McBratney*, 104 U.S. 621 (1881).

Myth: Congress does not have the authority to expand tribal jurisdiction.

Fact: The provisions in the Senate VAWA are well within Congressional authority. Congress' power to define the contours of tribal jurisdiction is a well-settled matter of U.S. Supreme Court law. The Court in *U.S. v. Lara*, 541 U.S. 193 (2004), held that the Constitution confers on Congress the power to enact legislation to limit restrictions on the scope of inherent tribal sovereign authority.

Myth: Section 904 would permit tribal prosecutions of all non-Indians.

Fact: Section 904 of S.1925 is limited to only crimes of domestic violence or dating violence committed in Indian country where the defendant is a spouse or established intimate partner of a tribal member. It does not permit tribal prosecutions unless the defendant has "sufficient ties to the Indian tribe," meaning he/she must either reside in the Indian country of the prosecuting

tribe, be employed in the Indian country of the prosecuting tribe, or be the spouse or intimate partner of a member of the prosecuting tribe.

Myth: S.1925 is unconstitutional because tribal courts are not bound by the U.S. Constitution.

Fact: Under Section 904, tribal courts must provide defendants with the same constitutional rights in tribal court as they would have in state court. Defendants would be entitled to the full panoply of constitutional protections, including due-process rights and an indigent defendant's right to appointed counsel (at the expense of the tribe) that meets federal constitutional standards. This includes the right to petition a federal court for habeas corpus to challenge any conviction and to stay detention prior to review, and explicit protection of "all other rights whose protection is necessary under the Constitution of the United States."

Myth: It is "un-American" to subject non-Indians to prosecution in tribal court because they are not allowed to participate in tribal political processes through the ballot box.

Fact: Political participation has never been considered a necessary precondition to the exercise of criminal jurisdiction under the concept of due process of law. For example, Indians were subjected to federal jurisdiction under the Federal Major Crimes Act of 1885 almost 40 years before most of them were made citizens or given the vote by the Citizenship Act of 1924. Moreover, due process certainly does not prevent either the federal government or the states from prosecuting either documented or undocumented aliens for crimes committed within the United States, despite the fact that neither can vote on the laws to which they are subjected.

Myth: Section 904 of S.1925 would subject non-Indians to tribal courts that systematically exclude non-Indians from the jury pool.

Fact: Section 904 of S.1925 contains explicit language that tribes exercising authority under these new provisions must draw from jury pools that reflect a fair cross-section of the community and do not systematically exclude any distinct group of people, including non-Indians.

Myth: The tribal civil jurisdiction provisions in Section 905 grant tribes new authority that they did not previously have.

Fact: The civil jurisdiction found in Section 905 already exists under the full faith & credit clauses of VAWA 2000. S.1925 simply clarifies the intent of this earlier reauthorization by making clear that tribes have full civil authority to issue and enforce protection orders against Indians and non-Indians alike regarding matters arising in Indian country.

Myth: The amendments to Title IX in the Senate VAWA are not needed because existing law—namely the Tribal Law & Order Act and the Indian Civil Rights Act—are sufficient to solve the epidemic of violence against Native women.

Fact: Current law does nothing to address the jurisdictional gap in Indian Country that leaves Native women without equal access to justice. In short, an Indian woman raped or beaten by her non-Indian husband often has nowhere to turn for protection under existing law. Tribal law enforcement has no authority to intervene because the perpetrator is a non-Indian; the State has no authority to intervene because the victim is an Indian; and the Federal Government—the body with exclusive jurisdiction—has neither the will nor the resources to intervene in misdemeanor level domestic violence cases.