S. 1925 VAWA REAUTHORIZATION

BRINGS FEDERAL ASSAULT STATUTES INTO THE 21ST CENTURY

Beginning in the 1980’s a cultural shift was launched with the recognition that wife battering was not a private affair within the four walls of a home. With the education of criminal justice personnel by the movement for battered women, state laws were passed making domestic violence a crime. Within many states the belief that a husband had the absolute right to discipline his wife and children was replaced with recognition that domestic violence is a public safety issue. The door started to close on a time when police were trained to mediate “domestic disputes,” and prosecutors were told not to file these “no-win” cases.

As the primary prosecutor of major crimes violations on tribal lands, it is imperative that the federal government have the same range of tools as state and local prosecutors to achieve justice. Yet unfortunately, Federal criminal law has not developed over time to provide the same protection for Native women. While the devastating consequences of domestic violence against Native women and tribal communities are no less compelling, Federal laws have not provided the same response over the last three decades. Empowering tribal governments to address domestic violence locally and amending the Federal Criminal Code to make it more consistent with State laws will ensure that abusers acting on Indian lands will be subject to similar potential punishments.

Appropriate Penalties to Signal Domestic Violence is Serious Crime.
Existing Federal law subjects non-Indian offenders who abuse Native women on Indian lands to no more than a potential six-month misdemeanor for assault or assault-and-battery offenses. However, few federal prosecutors have the time or resources to handle many misdemeanor cases. In 2006, U.S. Attorneys prosecuted only 24 misdemeanor cases arising in Indian country, and only 21 in 2007.

A Federal prosecutor typically can charge a felony offense against an Indian or a non-Indian defendant only when the victim’s injuries rise to the level of “serious bodily injury,” which may require life-threatening injury or permanent disfigurement. As a result, in assaults involving strangling or suffocating, substantial (but not serious) bodily injury, and striking, beating, or wounding — Federal prosecutors often find that they cannot seek sentences in excess of six months. When these misdemeanor cases committed by non-Indians go unprosecuted, the victim and the tribal community have nowhere to turn for justice. The offenders become emboldened and the level of violence increases in their attacks.

S. 1925 addresses this problem by increasing the maximum sentence from six months to one year for an assault by striking, beating, or wounding. 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. S. 1925 fills 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.

S. 1925 also amends the Code to provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling or suffocating. 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, S. 1925 simplifies the Major Crimes Act 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 or suffocating — as well as assault with intent to commit a felony other than murder, which is punishable by a maximum ten-year sentence.

**Equal Consequences for Domestic Violence Crimes: Off and On Tribal Lands.**

These outdated Federal statutes represent just a few of the many systemic barriers separating Native women from all other women in the United States. These measures, taken together, have the potential to greatly improve the safety of women in tribal communities. They will equip Federal and tribal law-enforcement agencies, working in partnership, with appropriate legal consequences to hold all domestic violence abusers accountable for their crimes.