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RESTORING JUSTICE: ADDRESSING VIOLENCE IN NATIVE COMMUNITIES THROUGH VAWA TITLE IX SPECIAL JURISDICTION

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
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RESTORING JUSTICE: ADDRESSING VIOLENCE IN NATIVE COMMUNITIES THROUGH VAWA TITLE IX SPECIAL JURISDICTION

WEDNESDAY, DECEMBER 8, 2021

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

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BRIAN SCHATZ, U.S. SENATOR FROM HAWAII

The CHAIRMAN. Good afternoon. This hearing will come to order.

The Senate Committee on Indian Affairs was established for the primary purpose of representing the legislative and oversight priorities of Native Americans. The Committee is the first stop in the Senate toward achieving these priorities and broadly fulfilling the United States' trust and treaty obligations.

The Congress is capable of forgetting these obligations. Our trust and treaty obligations are not just abstract promises; they are enshrined in the United States Constitution, the constitutional mandate that committee members carry with them as they go about their work in the Senate.

When it comes to the Violence Against Women Act, Congress does not have the luxury of forgetting this mandate. That is because every member of this Committee knows that public safety in Native communities is a problem. We have heard from tribal leaders, we have heard from law enforcement, and we have heard from the families of Native victims.

Their message is consistent: doing nothing is not an option. We have heard that message loud and clear in 2013, with the last VAWA reauthorization.

Almost a decade ago, this Committee came together on a bipartisan basis and voted to restore tribal criminal jurisdiction over non-Indians who commit domestic violence in Indian Country. That vote, one of the first that I took as a new member of the Senate and of this Committee, was Congress' first real step toward restoring justice for Native communities. Because before VAWA in 2013, when tribal law enforcement was called to the scene of a rime in Indian Country, the officer had to figure out the nature of the

crime, the status of the land where the crime occurred, whether the victim was an Indian, and whether the offender was an Indian.

That meant tribal law enforcement officers, often the first responders on a crime scene, had to complete a complicated mental checklist before deciding whether to arrest or detain a suspect. It is no wonder tribes had their hands tied when it came to maintaining public safety on their own lands.

The criminals exploited this jurisdictional maze, preying on Native women and children and putting tribal communities in harm's way. But under VAWA 2013, tribes that opt to exercise special domestic violence criminal jurisdiction can cut through the legal red tape to enforce protection orders and prosecute domestic violence crimes, all while safeguarding defendants' due process and constitutional rights.

For nearly a decade, tribes have made at least 396 arrests for VAWA-related crimes, and at least 133 subsequent convictions using special tribal jurisdiction. Despite the concerns of some, prior to the law passing, there had been zero valid habeas corpus petitions filed and zero, zero claims of due process violation.

So what we will hear today is a story of success. Each of our witnesses will underscore the importance of special jurisdiction for Indian Country. They will also lay out ways that Congress can help tribes and Native communities build on this success in the next VAWA reauthorization, closing jurisdictional gaps, creating parity, providing resources, and making sure that Native Americans are not invisible in public safety data. These are just a few of the commonsense bipartisan solutions that our Committee can and should work to advance.

That is one of the many reasons I am thankful for my partnership with Vice Chair Murkowski. She has been an extraordinary leader for Native people across the Country, in Indian Country, of course in Alaska, on behalf of Native Hawaiians, and especially in this case, on behalf of people who are victims of domestic violence. We will continue to work together to make sure Indian Country priorities are included in the Senate's coming Violence Against Women Act reauthorization.

Finally, before I turn to Vice Chair Murkowski, I would like to extend a special welcome and thanks to our witnesses for joining us today. I look forward to your testimony and our discussion.

Vice Chair Murkowski.

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

Senator MURKOWSKI. Thank you, Mr. Chairman.

Indeed, it is a genuine thank you. I want to thank you and your team for the very cooperative work that has gone into not only where we are in holding this very, very important hearing, but in the work that we have done in preparing this draft legislation that has been publicly now released. It has been a little bit of a long process. I think we would all like to move more quickly, but I think we also want to do good work. That is what this Committee is committed to doing.

So the focus today on what more we can be doing to ensure levels of protection for those who are subjected to violence in our Native

communities, what more we can be doing for Native women around the Country, this is a key priority for us. But how we knit this into the broader VAWA picture proposal is also very important.

You have outlined, Mr. Chairman, that sometimes these issues of tribal jurisdiction are confusing, they are esoteric. But I want to emphasize that the impacts on the ground in Native communities, particularly in places like very rural Alaska, they are very real, they are very tragic.

In 2019, we had the Attorney General come out to a small Native village. He looked around, he talked to the people, he left and he declared a law enforcement emergency. It was based on the fact that Alaska has the highest per capita crime rate in the Country. We face a unique jurisdictional landscape. But jurisdictional complexity should not deny safety or justice. That is what we have seen happening.

In 2013, Congress passed the Violence Against Women Act. In Title IX of VAWA 2013, as it is commonly called, Congress enacted what has been described as a partial Oliphant fix by recognizing the inherent authority of tribes to prosecute and punish certain domestic violence crimes committed by non-Indians against Indian women.

At that time, this Act was described as unprecedented. Some members of Congress and the news media pushed a narrative that tribal governments somehow would not be fair, they wouldn't safeguard the rights of non-Indian defendants, something that we all knew was far from the truth.

Mr. Chairman, as you have pointed out, eight years later the parade of horrible that so many had predicted did not happen. I am proud to report, as you have, and we are going to hear from our witnesses, despite all the horror stories, non-Indian defendants experienced a tribal justice system that treats them fairly and perhaps in some ways with more attention than the State or the Federal system.

That is why I believe we have a moral imperative here in Congress that we take action to further restore and improve the implementation of this special tribal criminal law jurisdiction over non-Indians who commit violent crimes in our Native communities. I firmly believe that by empowering tribal courts in this way, we can help combat this major public safety issue that affects Native people and Native children.

We know the statistics on this Committee, we say them a lot, but they bear repeating. American Indians and Alaska Natives are the victims of rape, sexual assault and domestic violence in numbers far out of proportion to the level that these crimes are committed outside of Native communities. Most often, these crimes are committed by non-Indian men.

In Alaska, the rates of violence experienced by Alaska Natives are horrific. There is no other word than horrific. According to a report prepared by the Indian Law and Order Commission, Alaska Native women are over-represented by nearly 250 percent among women domestic violence victims in our Country.

Most Native communities in rural Alaska have no local law enforcement physically present. One out of three Native communities, one out of three, has no local law enforcement that is physically

there. Think about what that means if you are a victim of violence in your home, if your children have been targeted, and there is no presence for law enforcement.

Currently, Alaska tribes, many of the tribes don't have the tools that they need to address this violence in their tribal communities. Only one Alaska tribe could potentially implement the special jurisdiction. This is wrong, and we have recognized that, and we have to make it right. We need to do it in a way that recognizes the unique jurisdictional situation that we have in Alaska.

We are a PL–280 State, Alaska is. The Alaska Native Claims Settlement Act, ANCSA, is going to be celebrating its 50th anniversary just this next week. It created a new and different approach to tribal land tenure from the lower 48 reservation system. I know it still comes as a surprise to some, but we have half the tribes in the entire Country, but we only have one Indian reservation in our State.

After the U.S. Supreme Court decision in the Venetie case in which the court held that ANSCA lands are not Indian Country, it became the State's duty, largely alone, to provide for public safety and justice for Alaska Natives. So we are in a situation that just isn't tenable right now.

But I am happy to report that we have an Alaska solution to this complex jurisdictional situation in our State, and we are calling it the Alaska Public Safety Empowerment Pilot Project. We are rolling it out as a part of the discussion draft text title for folks to see, give us your feedback on it. It builds on previous legislation that you have seen from me. It is the product of years, years of work, with tribal advocates and smart lawyers. We are going to be able to hear from Michelle Demmert as part of this panel. She has been a great help.

This pilot project will empower a limited number of Alaska tribes to exercise special criminal jurisdiction over certain crimes that occur in villages in Alaska. These tribes will have to meet certain criteria, including have a tribal justice system that can adequately safeguard the rights of defendants. I am absolutely confident, absolutely confident, that Alaska tribes are up to this task.

Overall, I think we have a unique opportunity here, working in a cooperative and bipartisan way to make a positive difference in the safety of our Native communities for Native women and children across our Country. I hope, I hope, Mr. Chairman, that we seize it.

Again, I want to thank the witnesses for participating today, especially Michelle Demmert, of the Alaska Native Women's Resource Center.

Mr. Chairman, thank you for helping in such a strong and constructive way to get us here today. Thank you.

The CHAIRMAN. Thank you, Vice Chair Murkowski.

Senator Tester would like to introduce one of the witnesses for us.

STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA

Senator TESTER. I have a real brief opening statement. First of all, I want to thank you, Mr. Chairman, and Ranking Member

Murkowski, for all of the good work that you have done on this Committee, particularly on this issue. There are seven people on the witness list today, two of them in person and welcome, and five of them virtually. So there is a wealth of information we can get.

I would also like to welcome the Montanans we have in the house today. I appreciate you folks being here.

It is very important to have this hearing. The Violence Against Women Act saves lives, plain and simple. The reauthorization of VAWA is long overdue. Without the reauthorization, the lifesaving resources that it offers are put to risk.

Tribal sovereignty needs to be in the forefront of these discussions around VAWA reauthorization, and rightfully so. Because when it comes to making decisions about Indian Country, tribes need to be the ones driving the bus.

This being said, it is my pleasure to introduce Chief Judge Stacie FourStar today, someone who knows about what it takes to make these critical decisions. She is a member of the Fort Peck Assiniboine and Sioux Tribes. She specializes in Indian law. While working in her home community, she has served as prosecutor, as associate judge, and now holds the office of Chief Judge of the Fort Peck Tribes.

She has been a key player in implementing VAWA for the tribes since it was accepted into a pilot program back in 2015. She knows what she is talking about, and I look forward to hearing from Chief FourStar and the other six witnesses here today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Tester.

Senator Luján, for an opening statement.

STATEMENT OF HON. BEN RAY LUJÁN,
U.S. SENATOR FROM NEW MEXICO

Senator LUJÁN. Thank you, Chair Schatz, and Vice Chair Murkowski, for holding this hearing to examine the tribal title of the Violence Against Women Act Reauthorization. Thank you to our witnesses for joining us today.

I would like to welcome Elizabeth Reese, Yunpovi, of Nambe Pueblo, and also introduce Governor Michael Chavarria, Santa Clara Pueblo.

Santa Clara Pueblo is the first and only pueblo or tribe in New Mexico to exercise special domestic violence criminal jurisdiction under the Violence Against Women Act. As governor from 2006 and 2008, and 2014 to 2021, Governor Chavarria oversaw the implementation of the criminal jurisdiction, creating a new tribal code in 2020 to meet Federal standards under VAWA, directing Federal grant funding to train judges and defense counsel and law enforcement personnel for this purpose.

It is my pleasure and honor to have you here today, Governor. I look forward to highlighting the pueblo's leadership in exercising this jurisdiction and how the Native Youth and Tribal Officer Protection Act I introduced today will fill in many of the gaps left in place by the 2013 VAWA.

Thank you, Chair, and I yield back.

The CHAIRMAN. Thank you, Senator Luján.

I will now turn to our witnesses. We have seven: Allison Randall, Principal Deputy Director, Office on Violence Against Women, in the U.S. Department of Justice; Wizipan Little Elk Garriott, Principal Deputy Assistant Secretary, Indian Affairs, of the U.S. Department of the Interior; J. Michael Chavarria, Governor, Santa Clara Pueblo, Espanola, New Mexico; Fawn Sharp, President, National Congress of American Indians; Stacie FourStar, Chief Judge, Fort Peck Assiniboine and Sioux Tribes, Poplar, Montana; Elizabeth Reese, Assistant Professor of Law, Stanford University; Michelle Demmert, Director, Law and Policy Center, Alaska Native Women's Resource Center, Fairbanks, Alaska.

I want to remind our witnesses that your full written testimony will be made part of the official hearing record. Please confine your remarks to five minutes exactly or less if you can.

Principal Deputy Director Randall, the Committee's rules, specifically (b), requires that if a Federal witness misses the Committee's 48-hour deadline for submission of testimony, the witness must state on the record why the testimony was late. Please be prepared to start your testimony with an explanation of why you were unable to comply with the Committee's rule.

Now we will recognize the witnesses, starting with Principal Deputy Director Randall.

STATEMENT OF ALLISON L. RANDALL, PRINCIPAL DEPUTY DIRECTOR, OFFICE ON VIOLENCE AGAINST WOMEN U.S. DEPARTMENT OF JUSTICE

Ms. RANDALL. Thank you so much, Chairman Schatz, Vice Chairman Murkowski, and esteemed members of the Committee.

My apologies, and please excuse the delayed submission of testimony, due to the lengthy inter-agency clearance process and the department's comprehensive review.

I am honored to be here to discuss implementation of special domestic violence criminal jurisdiction, how it has made a real difference in addressing violence against Native women, and how working together, we can continue to make progress in addressing these devastating crimes.

Prior to the Violence Against Women Act reauthorization of 2013, or VAWA 2013, even violent crimes committed by a non-Indian husband against his Indian wife in the presence of their Indian children, in their home on the Indian reservation, could not be prosecuted by the tribe. This lack of jurisdiction left many severe acts of domestic and dating violence unprosecuted and unpunished.

At the same time, Native American women continued to suffer unacceptably high rates of violence. More than half of American Indian and Alaska Native women have experienced physical violence by an intimate partner in their lifetimes.

Congress acted to bridge this critical enforcement gap when VAWA was reauthorized in 2013, by recognizing tribes' inherent power to exercise special domestic violence criminal jurisdiction, or SDVCJ, over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence, dating violence, or who violate certain protection orders in Indian Country.

Congress also required that participating tribes provide protections for defendants' rights and civil liberties.

In the years since 2013 has passed, 28 tribes have reported that they have implemented SDVCJ. VAWA 2013 has empowered these tribes to hold accountable long-time abusers who previously had evaded justice. The experience of the implementing tribes has demonstrated that tribal authorities can and do protect the rights of non-Indian defendants.

Seven years' experience has also shown that there are gaps in SDVCJ that undermine tribal efforts to protect victims and hold offenders accountable. The National Congress of American Indians' 2018 report on SDVCJ documents cases that could not be brought and charges that could not be filed due to these gaps.

The Department of Justice officials have heard from tribal leaders year after year at our annual Violence Against Indian Women consultation that tribes cannot prosecute co-occurring crimes, such as child abuse, assault on tribal officials, as well as sexual assault committed by non-Natives. The stories are heartbreaking.

That is the Department of Justice urges Congress to recognize tribal jurisdiction that will allow tribes to hold accountable non-Indian perpetrators of the crimes of sexual violence, sex trafficking, domestic violence against child victims, stalking, elder abuse, and assault against law enforcement officers when offenders commit such crimes on tribal territory.

I would also like to address the fact that tribes in Alaska face additional challenges in protecting victims and responding to offenders, the vast distances, remote locations, and an inability to exercise SDVCJ under the current legal framework. Given the high rates of violence experienced by Native women in Alaska, we are committed to working with the tribes and Congress to address these challenges and empower tribes in Alaska to confront the violence in their communities.

The Department continues to listen to tribes and support their exercise of SDVCJ. We have heard from tribal leaders that they need access to funds to support the day-to-day costs of SDVCJ. So today I am pleased to announce OVW is issuing 11 awards to implementing tribes to defray these costs. To further our commitment to finding solutions that work for Alaska Native tribes, I am also pleased to announce today that the Department's annual consultation will be held in Alaska next year.

In closing, SDVCJ has been a success. But many survivors have been left behind, and perpetrators not held fully accountable because of its limitations. Congress must act.

I appreciate the time and attention of this Committee, and look forward to answering your questions, and working with you on this crucial issue.

[The prepared statement of Ms. Randall follows:]

PREPARED STATEMENT OF ALLISON L. RANDALL, PRINCIPAL DEPUTY DIRECTOR, OFFICE ON VIOLENCE AGAINST WOMEN U.S. DEPARTMENT OF JUSTICE

Introduction

Thank you, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee for the opportunity to speak to you today. I am pleased to be here to discuss implementation of Special Domestic Violence Criminal Jurisdiction from 2013–2021, including successes achieved and lessons learned.

In the spring of 1994, I ran away from home and drove halfway across the country to a small town just outside Cherokee, North Carolina, where the Native American women who worked and were fellow residents at a domestic violence shelter saved my life. They embraced me, taught me, and encouraged me to give back to other survivors, sparking my lifelong dedication to reducing domestic and sexual violence. It is thanks to those Cherokee women that I sit before you today.

The U.S. Department of Justice's Office on Violence Against Women (OVW) assumes the day-to-day work of implementing VAWA, including supporting the exercise of Special Domestic Violence Criminal Jurisdiction by federally recognized tribes. The office leads the federal government's efforts to reduce violence against women and administer justice for and strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking. VAWA and subsequent legislation authorize four programs that are specifically designed for tribal communities: the Tribal Governments Program, the Tribal Sexual Assault Services Program, the Tribal Domestic Violence and Sexual Assault Coalitions Program, and the Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction Program (Tribal Jurisdiction Program). In fiscal year (FY) 2021, OVW awarded over $43 million under these tribal-specific grant programs. OVW also manages a Violence Against Women Tribal Special Assistant U.S. Attorney (SAUSA) special initiative, which funds tribal prosecutors who can bring cases in both tribal and federal court. The President's FY 2022 budget request includes an increase of over $46 million for OVW's tribal-specific grant programs, including $3 million for OVW's Violence Against Women Tribal SAUSA initiative.

OVW is proud to have a Deputy Director for Tribal Affairs, established by the 2005 reauthorization of the Violence Against Women Act to oversee administration of OVW's tribal funding, coordinate development of federal policy on violence against American Indian and Alaska Native women, and provide advice and technical assistance to Department officials. This position is currently held by Sherriann C. Moore, Rosebud Sicangu' Lakota, who, since 2017, also has led OVW's work hosting the Department's annual VAWA-mandated consultation with tribal leaders.

Domestic Violence and the Enforcement Gap in Indian Country

Criminal jurisdiction in Indian country generally is shared among the federal, state, and tribal governments, according to a matrix that takes into account the nature of the crime, whether the crime has victims or is victimless, whether the defendant is Indian or non-Indian, whether the victim is Indian or non-Indian, and sometimes other factors as well. In 1978, in *Oliphant v. Suquamish Indian Tribe*, the U.S. Supreme Court held that, absent express Congressional authorization, tribes lack jurisdiction over crimes committed by non-Indians.[1] The practical effect of this decision was that, prior to the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), even violent crimes committed by a non-Indian husband against his Indian wife, in the presence of their Indian children, in their home on the Indian reservation, could not be prosecuted by the tribe. Instead, these crimes fell under the criminal jurisdiction of the United States or, in some circumstances, of the state.

VAWA 2013 and Special Domestic Violence Criminal Jurisdiction

As a result of this jurisdictional framework, as well as other factors, Native American women have suffered some of the highest rates of violence at the hands of intimate partners in the United States. A National Institute of Justice analysis of 2010 survey data collected by the Centers for Disease Control and Prevention found that more than half (55.5 percent) of American Indian and Alaska Native women have experienced physical violence by an intimate partner in their lifetimes. As this study notes, among these victims, 90 percent have experienced such violence by a non-Indian intimate partner at least once in their lifetimes. Over their lifetimes, American Indian and Alaska Native women are about five times as likely as non-Hispanic White-only female victims to have experienced physical violence at the hands of an intimate partner who is of a different race.[2] The same analysis likewise found high rates of sexual violence against Native American women, concluding that more than 1 in 2 American Indian and Alaska Native women (56.1 percent) have experienced sexual violence in their lifetimes. American Indian and Alaska Native women are

[1] 435 U.S. 191 (1978).

[2] Andre B. Rosay, U.S. Dept. of Justice, Nat'l Inst. of Justice, Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey (May 2016) 21, 26, *https://www.ncjrs.gov/pdffiles1/nij/249736.pdf.*

three times as likely as non-Hispanic White women to have experienced sexual violence by a perpetrator who is of a different race. [3]

In VAWA 2013 (codified at 25 U.S.C. 1304), Congress recognized and affirmed tribes' inherent power to exercise "special domestic violence criminal jurisdiction," or SDVCJ, over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country. For the first time in decades, tribes therefore could prosecute non-Indian perpetrators of domestic violence and dating violence.

In broadening the set of persons who could potentially be prosecuted by tribes for these specific crimes, Congress required that participating tribes provide protections for a criminal defendant's rights and civil liberties that would be as robust in tribal court as they would be if the defendant were prosecuted in any state court. Specifically, in any case in which a term of imprisonment of any length may be imposed, the defendant is afforded all applicable rights under the Indian Civil Rights Act of 1968, all rights applicable to defendants charged with felony offenses under the Tribal Law and Order Act of 2010 (TLOA), and also the right to trial by an impartial jury chosen from a jury pool that reflects a fair cross-section of the community, including both Indians and non-Indians. The TLOA rights include providing each indigent defendant, at no cost to the defendant, the right to the assistance of a defense attorney licensed to practice law.

In addition, to give tribes time to prepare to meet the requirements of the statute, Section 1304 generally did not take effect until March 7, 2015, two years after VAWA 2013 was signed into law. In the interim, VAWA 2013 established a voluntary Pilot Project authorizing tribes to commence exercising SDVCJ on an accelerated basis, but only if the tribe could establish to the Attorney General's satisfaction that it had adequate safeguards in place to protect defendants' rights. Once the two-year Pilot Project concluded, other tribes were authorized to exercise SDVCJ without seeking the Attorney General's approval.

The Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence

After enactment, the Department moved quickly to implement the Pilot Project and thereby lay the groundwork for other tribes that would choose to implement SDVCJ. On February 6, 2014, the Department of Justice announced that the Pascua Yaqui Tribe of Arizona, the Tulalip Tribes of Washington, and the Confederated Tribes of the Umatilla Indian Reservation in Oregon were selected for the Pilot Project. On March 6, 2015, the Department announced the designation of two additional pilot tribes, the Sisseton Wahpeton Oyate of the Lake Traverse Reservation in South Dakota and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation in Montana.

The three original Pilot Project tribes achieved notable success implementing SDVCJ during the Pilot Project period from February 2014 through March 2015. Tribes worked closely with their local United States Attorneys' Offices to identify which cases were best prosecuted by the tribes and which were more suitable for federal prosecution, with the common goal of holding offenders accountable and keeping tribal communities safe. In this first year of implementation, the three pilot tribes had a total of 27 SDVCJ cases involving 23 separate offenders. Of the 27 cases, 11 were ultimately dismissed for jurisdictional or investigative reasons, 10 resulted in guilty pleas, 5 were referred for federal prosecution, and 1 offender was acquitted after a jury trial in tribal court. [4]

Intertribal Technical-Assistance Working Group on SDVCJ

In June 2013, the Department established the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG) so that tribes can exchange views, information, and advice about how they can best exercise SDVCJ, combat domestic violence, recognize victim's rights and safety needs, and fully protect defendants' rights. Since then, over 50 tribes have voluntarily joined the ITWG where tribes share their experiences implementing or preparing to implement SDVCJ, attend in-person meetings, and participate in numerous webinars on subjects such as jury pools and juror selection, defendants' rights, victims' rights, and prosecution skills. Through the ITWG, the Pilot Project tribes and other earlier implementing tribes have not only discussed challenges and successes with other tribes but also shared best practices, including their revised tribal codes, court rules,

[3] *Id.* at 13, 18.

[4] Press Release, U.S. Dept. of Justice, Director Tracy Toulou of the Office of Tribal Justice Testifies Before the Senate Committee on Indian Affairs Oversight Hearing on Draft Legislation to Protect Native Children and Promote Public Safety in Indian Country, (May 18. 2016), *https://www.justice.gov/opa/speech/director-tracy-toulouoffice-tribal-justice-testifies-senate-committee-indian-affairs-0.*

court forms, jury instructions, and other tools they have developed to implement SDVCJ. The Department continues to support the ITWG with training and technical assistance, including grant awards by OVW to the National Congress of American Indians (NCAI) to support the ITWG's ongoing work.

Ongoing Tribal Implementation of VAWA 2013

To date, 28 tribes have reported to NCAI that they have implemented SDVCJ.[5] Based on updates provided at an October 2021 meeting of the ITWG (which does not include data from all tribes that exercise SDVCJ), tribes reported the following aggregate statistics regarding their implementation of SDVCJ:

- 396 arrests (cases, not charges)
- 227 defendants
- 133 convictions (both guilty pleas and convictions following a bench or jury trial)
- 1 habeas petition (dismissed for lack of jurisdiction)

In March 2018, NCAI published *VAWA 2013's Special Domestic Violence Criminal Jurisdiction (SDVCJ) Five-Year Report*,[6] which summarizes how tribes implemented SDVCJ in the five years following VAWA 2013's enactment and analyzes its impact on tribal communities. The five-year report documented the implementing tribes' commitment to upholding the rights of non-Indian defendants. According to the NCAI statistics, of the 143 arrests for SDVCJ-related crimes, 52 percent resulted in convictions, while 18 percent of the cases resulted in acquittals or dismissals. Of the cases that were filed, 21 percent were dismissed or resulted in acquittals. As noted by NCAI, the rate of dismissals indicates that tribes do not proceed with prosecutions where they lack jurisdiction or sufficient evidence. Moreover, as of March 2018, of the six SDVCJ trials that had occurred-five jury trials and one bench trial-five ended in acquittal. The NCAI report quoted a former Attorney General of the Pascua Yaqui Tribe describing the tribe's first SDVCJ jury trial:

> Although we would have preferred a guilty verdict, this first full jury trial . . . proved our system works. A non-Indian was arrested and held by Pascua Yaqui law enforcement, he was represented by two attorneys, and a majority Yaqui jury, after hearing evidence presented by a tribal prosecutor, in front of an Indian judge, determined that the Tribe did not have jurisdiction in a fairly serious [domestic violence assault] case.[7]

The very fact that SDVCJ trials have resulted in acquittals suggests that, contrary to the fears of some opponents of SDVCJ, non-Indian offenders receive fair trials in tribal court. Similarly, the fact that only one SDVCJ defendant has filed a habeas petition challenging his tribal conviction is a testament to the tribes' ability to safeguard the rights of defendants. VAWA 2013 was designed to ensure that non-Indian offenders subject to tribal criminal jurisdiction could challenge the legality of their treatment in federal court. The statute requires that defendants are affirmatively notified of their right to petition for habeas review in federal court, and of their right to request that tribal detention be stayed during that review. Nonetheless, after six years of implementation by dozens of tribes involving hundreds of defendants, only one defendant has filed a habeas case.

Critically, statistics from implementing tribes indicate that many SDVCJ defendants have long histories with the police, underscoring how VAWA 2013 has empowered tribes to finally be able to hold accountable long-time abusers. NCAI's report found that, with 18 implementing tribes reporting, 85 SDVCJ defendants accounted for 378 prior contacts with tribal police before SDVCJ implementation—when the tribes were unable to hold non-Indian abusers accountable. For example, the Tulalip Tribes reported that their 17 SDVCJ defendants had a total of 171 contacts with tribal police in the years prior to SDVCJ implementation and their ultimate arrests. Similarly, the report found that 73 defendants arrested and convicted under SDVCJ had prior convictions or outstanding warrants, including documented histories of violent behavior.

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[5] Since the end of the pilot period, tribes are not required to notify the Department if they begin exercising SDVCJ, but NCAI, which receives funding from the Department to provide technical assistance to tribes implementing or planning to implement SDVCJ, tracks developments.

[6] The report is available at *https://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf*.

[7] In that case, while there was no question that the assault had occurred, the jury was not convinced that the relationship between the victim and the non-Indian defendant met the requirements for qualifying as "domestic violence" or "dating violence," as is necessary to trigger tribal jurisdiction under VAWA 2013.

Identified Gaps in SDVCJ

The NCAI's report also identified several areas where VAWA 2013 could be strengthened to improve public safety. The report noted that the omission of jurisdiction over other common forms of violence against women (*e.g.*, stalking, sexual assault, or sex trafficking) was a continual source of frustration for implementing tribes, which were often unable to prosecute crimes that co-occur with domestic violence. Similarly, the report highlighted that the narrow scope of criminal conduct that can be charged under SDVCJ has created safety concerns for tribal law enforcement, as the tribes lacked the ability to prosecute a defendant who assaults responding law enforcement officers or courtroom personnel.

Tribal leaders have repeatedly echoed these same concerns to the Department at our annual Violence Against Women Government-to-Government Tribal Consultation. Most of the tribes that testified about SDVCJ between the years 2016 and 2020 advocated to expand SDVCJ to include non-Indian perpetrators of sexual assault, sex trafficking, crimes against children and law enforcement officers, and property crimes, among other crimes.

One common theme from tribal leaders has been that domestic violence incidents often involve attendant crimes that should be prosecuted concurrently-including child abuse. For example, in 2016, a Board of Trustees Member of the Confederated Tribes of Umatilla Indian Reservation testified that "[c]hildren were present in all [SDVCJ] cases prosecuted at Umatilla with the exception of restraining order violation cases. All suspects had prior domestic violence incidents on their records. In the charges filed under the limited jurisdiction of VAWA 2013, there was probable cause for other attendant crimes. Domestic violence can also be directed at third parties, such as children, family members, boyfriends/girlfriends, or other persons that the primary victims have relationships with"-yet tribes cannot prosecute these crimes. Similarly, the Tribal Chairman of the Pascua Yaqui Tribe explained that "[m]any tribal communities contain multi-generational households with extended family members commonly sharing residences and childrearing duties. A restrictive definition does not allow for the prosecution of acts of domestic violence occurring against other, more distantly related children in the home. This gap in jurisdiction results in children from the extended family of the parties in the romantic relationship being exposed to the harms of domestic violence without the perpetrator being held accountable."

Of equal importance, many tribes have advocated for an expansion of SDVCJ to include non-Indian defendants who commit sexual assaults where there is no intimate partner relationship, including those who are strangers and do not maintain "substantial ties" to the tribe. In one instance, the Vice Chairman of the Nez Perce Tribe described how "A woman was taken off our reservation by two non-Native perpetrators and raped repeatedly over several days. Even if we had SDVCJ at that time, the tribe would not have been able to prosecute the offenders since they had no relationship to the victim because SDVCJ only applies to intimate partners." And the 2018 testimony of a Tribal Council Member of the Sault Ste. Marie Tribe of Chippewa Indians highlighted that gaps in tribal authority to prosecute sexual assaults committed by non-Indians have allowed some crimes to go unanswered: "In the last year, our tribe has had two instances of non-Native juveniles sexually assaulting their Native step-siblings. The tribe has no jurisdiction, so we requested the U.S. attorney to prosecute." The Department acknowledges the difficulty in prosecuting juveniles in federal court, especially if the defendants are very young, and it follows that tribes would want jurisdiction to address these crimes within their communities.

Finally, tribes have noted that VAWA left a gap by failing to recognize tribal criminal jurisdiction over crimes committed by SDVCJ defendants during and after their arrests by tribal authorities. For example, the Lieutenant Governor of the Gila River Indian River Community testified: "Our Department of Corrections is concerned about whether our tribal courts have the ability to bring additional criminal charges against a VAWA inmate who is already imprisoned. For example, if a VAWA inmate assaults staff or another inmate, will tribal courts have jurisdiction over that incident?"

The Department and tribes also have identified another shortcoming with VAWA 2013's recognition of tribal criminal jurisdiction: it did not expressly apply to tribes in Maine. Any new legislation should clarify that tribes in Maine may exercise this same jurisdiction so that a provision in the Maine Indian Claims Settlement Act does not continue to restrict tribes in that state from implementing SDVCJ.

Empowering Alaska Native Villages to Exercise SDVCJ

Tribes in Alaska face additional challenges in ensuring a strong criminal justice response to violence against women crimes due to vast distances, remote locations,

and the limited amount of Indian country in Alaska, a requirement for the exercise of SDVCJ under VAWA 2013. At the Department's 2021 Violence Against Women Government-to-Government Tribal Consultation, Vivian Korthuis, Chief Executive Officer for the Association of Village Council Presidents and a member of the Emmonak Tribe, testified from Bethel, AK about some of these challenges:

> We are located on the Yukon-Kuskokwim Delta in western Alaska and this is what I like to call extreme rural America. Our region is about the size of the State of Washington, and there are no roads connecting our 48 villages to each other or the rest of the state. The only way into our region is to either fly or [travel by] barge in the summertime. Transportation within our region is by small plane or boat in the summertime and snow machine on snow machine trails or the ice road in the wintertime.
>
> The rates of domestic violence in the south in our Tribal communities are 10 times higher than the rest of the United States. This is unacceptable. Last week at our executive board meeting, one of our board members, who is the council president of her Tribe, told me that she called the police to report a crime. Her village has no local law enforcement. Calls for help can be answered [by] one of the few state trooper posts in our region, hundreds of miles away. This time, her call for help was answered in Fairbanks, 453 miles away from her village. They took down her complaint and she never heard from them again.

According to the 2013 report of the Indian Law and Order Commission (ILOC), Alaska Native women are overrepresented in the domestic violence victim population by 250 percent.[8] In the state of Alaska, Alaska Native females comprise 7.5 percent of the population[9] but the ILOC found that Alaska Native women are 47 percent of reported rape victims in the state. The ILOC also stated that "the rate of sexual violence victimization among Alaska Native women was at least seven times the non-Native rate."[10]

When Congress recognized SDVCJ in VAWA 2013, it limited participating tribes to those that exercise jurisdiction over Indian country, which is defined as land within the limits of an Indian reservation, dependent Indian communities, and Indian allotments.[11] Although there are 229 federally recognized tribes in Alaska, when Congress passed the Alaska Native Claims Settlement Act (ANCSA) in 1971, it revoked the reservation status of lands set aside for all tribes in Alaska except the Annette Island Reservation of the Metlakatla Indian Community.[12] Then in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), the Supreme Court held that lands reacquired by the Native Village of Venetie through the ANCSA process did not fit within the definition of "dependent Indian community" under the Indian country statute. See 18 U.S.C. 1151(b). As a result, while there are still lands that would qualify as Indian country in Alaska, those lands are limited by ANSCA and the Venetie decision. As a consequence, tribes in Alaska have not been able to realize the benefits of SDVCJ in holding offenders accountable and keeping victims safe. This is despite the fact that American Indian and Alaskan Native (AIAN) women in Alaska endure staggering rates of violence, often in the most remote and sparsely populated regions of the country. By some estimates, almost 58 percent of AIAN women in Alaska experience interpersonal violence, sexual violence, or both during their lifetime.[13] The extreme climate and geography of Alaska coupled with a scarcity of resources means that AIAN victims in Alaska are in unimaginable danger. Creating a pilot project to extend SDVCJ to select Alaskan tribes could empower tribes in Alaska to confront the tremendous violence against women in their communities.

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[8] The Indian Law and Order Commission. A Road Map for Making Native America Safer: Report to the President & Congress of the United States. (November 2013) Available at: *https://www.aisc.ucla.edu/iloc/report/files/A__Roadmap__For__Making__Native__America__Safer-Full.pdf.*

[9] July 1, 2019 estimate from the American Community Survey conducted by the U.S. Census Bureau, Population Estimates Program. Available at: *https://www.census.gov/quickfacts/fact/table/AK/RHI325219#RHI325219.*

[10] *Supra* note 8.

[11] 18 U.S.C. § 1151.

[12] For example, land was taken into trust for some tribes in Alaska pursuant to the Indian Reorganization Act and those lands remain in trust status and are therefore Indian country and there are allotments in Alaska that may qualify as Indian country as well.

[13] Johnson, I. (2021). 2020 Statewide Alaska Victimization Survey Final Report. Justice Center, University of Alaska, Anchorage. Available at: *https://scholarworks.alaska.edu/bitstream/handle/11122/12259/2021-10%20AVS%202020%20Final%20Report.pdf?sequence=1&isAllowed=y.*

Support for Special Domestic Violence Criminal Jurisdiction for Tribes under VAWA

As emphasized in the President's recent Executive Order on Improving Public Safety and Criminal Justice of Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People, the Department is committed to helping tribes implement SDVCJ and stands ready to support tribes if Congress recognizes tribal criminal jurisdiction over non-Indian offenders who commit other crimes against Indian victims in tribal communities. Such legislation will allow participating tribes to hold accountable non-Indian perpetrators of sexual violence, sex trafficking, domestic violence against child victims, stalking, elder abuse, and assault against law enforcement officers when they commit such crimes on tribal territory.

To support tribes' implementation of this jurisdiction, the President's FY 2022 Budget would increase the funding level for OVW's Tribal Jurisdiction Program from $4 million to $5.5 million. This increased funding will help tribes defray the costs of implementation, including those associated with law enforcement, prosecution, court and probation systems, corrections and rehabilitation, victim services, indigent defense, and empaneling juries.

Conclusion

SDVCJ has been a success, but many survivors have been left behind by its limitations. I urge Congress to build upon tribes' effective implementation of SDVCJ under VAWA and recognize tribal criminal jurisdiction over additional crimes in order to expand access to justice for Native victims and improve public safety in Native communities. I appreciate the time and attention of this Committee and look forward to answering your questions and working with you on this crucial issue.

The CHAIRMAN. Thank you very much.

Principal Deputy Assistant Secretary Garriott, please proceed.

STATEMENT OF WIZIPAN LITTLE ELK GARRIOTT, PRINCIPAL DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. GARRIOTT. Hello, good afternoon, Chairman Schatz, Vice Chairman Murkowski. In my language I say, [phrase in Native tongue], I greet with you a good heart.

My name is Wizipan Little Elk Garriott. I serve as the Principal Deputy Assistant Secretary for Indian Affairs at the U.S. Department of the Interior. Thank you for the opportunity to present the Department's testimony supporting increased efforts to address violence in Indian Country through implementation of the Tribal Special Domestic Violence Criminal Jurisdiction Provisions in the Violence Against Women Act.

This is an issue that is close to my heart. Many of my relatives have experienced hurt and trauma including abuse as a child, domestic abuse, and even human trafficking at the hands of both Indian and non-Indian perpetrators. Sadly, living in fear is all too often the reality for many in Indian Country.

As members of this Committee are aware, American Indians and Alaska Natives are more than two times as likely to experience violent crimes and at least two times more likely to experience rape or sexual assault and crimes than all other ethnicities. Violence does not happen in a vacuum. This is why the Biden-Harris Administration and the Department support the expansion of tribal criminal jurisdiction beyond crimes of domestic violence as provided for in H.R. 1620, the Violence Against Women Act reauthorization.

In line with this commitment, the Department is working to reduce rates of domestic violence and violence against American Indian and Alaska Native people, collaborate with tribes and law enforcement agencies to equip tribes with the resources to respond to

violence at the community level, implement models of tribal restorative justice, provide violence prevention services to diminish cycles of violence, and directly assist tribes with solving active and unsolved missing persons and homicide cases.

Also working through the Bureau of Indian Affairs Office of Justice Services to implement the Missing and Murdered Indigenous Peoples Unit, and to fulfill the requirements of the Savanna's Act, the Not Invisible Act, and the President's Executive Order on Addressing the Crisis of Missing or Murdered Indigenous People.

Assisting the tribes with implementation of VAWA 2013 is another critical part of the Department's commitment to addressing this epidemic. To date, 28 tribal governments maintain domestic violence jurisdiction over non-Indians, and many more tribal governments are in varying stages of planning and implementation. The BIA OJS provides support to those tribes currently implementing VAWA as well as those with prospects for implementation.

Despite the successes of VAWA 2013, jurisdictional gaps persist across Indian Country. Many domestic violence cases involve children who are present in the home during alleged incidents. According to the Pascua Yaqui Tribe, from 2014 to 2017, 32 children, all under the age of 11, were exposed to violence, were victims, or reported the crime while it was in progress. Pascua Yaqui's numbers are not unique. They demonstrate the need for tribal criminal jurisdiction to be expanded to include crimes against children.

The time has come to honor tribal sovereignty and expand tribal criminal jurisdiction. H.R. 1620 provides for the expansion of tribal criminal jurisdiction beyond crimes of domestic violence to include crimes of dating violence, obstruction of justice, sexual violence, sex trafficking, stalking, and assault of law enforcement or correctional officers. Importantly, this legislation expands tribal criminal jurisdiction to crimes against children.

Since time immemorial, Native nations have maintained effective justice systems. Today, tribal governments of course continue to prove they are best suited. This is why the Department is pleased to support expansion of criminal jurisdiction to tribes in Maine and in Alaska. Due to the remote nature and limited resources of many Alaska Native villages, providing for public safety and law enforcement serv ices remains a big challenge. Many villages lack enforcement, and in many cases must wait days for law enforcement response to an incident. The Department understands and appreciates the unique jurisdictional and resource challenges faced by Alaska Native tribes.

The Administration and the Department are firmly committed to working with tribal governments and this Committee to meaningfully improve public safety and justice for all tribes.

Thank you for the opportunity to testify today. I would be happy to answer any questions the Committee may have.

[The prepared statement of Mr. Garriott follows:]

PREPARED STATEMENT OF WIZIPAN LITTLE ELK GARRIOTT, PRINCIPAL DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Hello and good afternoon Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Wizipan Garriott, and I serve as Principal Deputy Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department). Thank you for the opportunity to present the Department's testimony

at this important oversight hearing regarding the implementation of the Tribal special domestic violence criminal jurisdiction (SDVCJ) provisions in the Violence Against Women Act of 2013 (VAWA 2013).

As members of this Committee are aware, American Indians and Alaska Natives are two and a half times more likely to experience violent crimes and at least two times more likely to experience rape or sexual assault crimes in comparison to all other ethnicities, according to the U.S. Department of Justice Bureau of Justice Statistics. The Biden-Harris Administration is prioritizing our work to address the crisis of Missing and Murdered Indigenous Peoples and reduce the high rates of violence in Indian country.

In line with this commitment, the Department is working to (1) reduce rates of domestic violence and violence against American Indian and Alaska Native people across Indian country; (2) collaborate with Tribes and all law enforcement agencies to ensure that Tribes are equipped with resources to respond to violence at the community level; (3) implement models of tribal restorative justice that utilize tribal knowledge and traditions through the Tiwahe Initiative; (4) provide violence prevention services to interrupt long standing cycles of violence; (5) directly assist Tribes with solving active and unsolved missing persons and homicide cases through the Bureau of Indian Affairs Office of Justice Services (BIA–OJS) Missing and Murdered Unit; and (6) to fulfil the requirements of Savanna's Act, the Not Invisible Act of 2019, and the President's Executive Order 14053 on Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People, with the goal of improving federal collaboration on law enforcement and justice protocols in Indian country and improving tribal data collection and access to federal criminal databases.

Assisting Tribes with implementation of the special domestic violence criminal jurisdiction provisions in VAWA 2013 is another critical part of the Department's commitment to addressing the epidemic of violence in Indian country. The special domestic violence criminal jurisdiction provisions affirmed the inherent sovereign authority of Tribal governments to exercise criminal jurisdiction over certain non-Indians who violate protection orders or commit domestic or dating violence against Indians in Indian country. This limited restoration of inherent Tribal criminal jurisdiction over non-Indians on Tribal lands has allowed Tribal governments to significantly increase safety throughout Indian country and effectively find justice for victims.

To date, 28 Tribal governments maintain SDVCJ over non-Indians, and many more Tribal governments are in varying stages of planning to implement SDVCJ. BIA–OJS provides support to those Tribes currently implementing SDVCJ as well as those with prospects for implementation by providing funding for training and Tribal court positions focused on implementing SDVCJ. Since 2019, BIA–OJS has funded VAWA specific trainings for: Navajo Nation, Colorado River Indian Tribes, Pueblo of Santa Ana, Pauma Band of Mission Indians, Bay Mills Indian Community, Choctaw Nation, Passamaquoddy Nation, and five Tribes in Alaska, with a total of 3,370 participants taking part in the trainings. Since 2019, BIA–OJS has also funded 115 essential Tribal court positions focused on VAWA implementation including judges, prosecutors, probation officers, public defenders, special domestic violence clerks, victim specialists and batterer intervention specialists. Tribal courts have shown their ability to provide due process, effectively implement SDVCJ to hold offenders accountable, and protect tribal communities.

Of the 28 Tribal governments implementing VAWA 2013, the Pascua Yaqui Tribe was one of the first to exercise SDVCJ over non-Indians. The Pascua Yaqui Tribe has conducted 101 investigations of domestic violence perpetrated by 64 non-Indian defendants, resulting in 37 convictions. Similarly, the Confederated Tribes of Umatilla Indian Reservation, also a VAWA Pilot Tribe, has prosecuted 16 non-Indian defendants for domestic violence or protection order violations since implementing SDVCJ. Additionally, following the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), the Choctaw Nation of Oklahoma increased its SDVCJ cases from 5 to 54 cases in one year. The number of domestic violence cases investigated and prosecuted are significant across Indian country, and they highlight that these crimes were generally not prosecuted before the implementation of SDVCJ.

Despite the successes of SDVCJ, jurisdictional gaps continue to persist across Indian country. Domestic violence does not take place in isolation, and many SDVCJ cases involve children who were present in the house during the alleged incidents. For example, according to the Pascua Yaqui Tribe, a total of 32 children, all under the age of eleven, were exposed to violence, were victims, or reported the crime while it was in progress. Additionally, Muscogee Creek Nation reports that in FY 21 there were 47 incidents where children were present during the alleged abuse.

These numbers reported by the Pascua Yaqui Tribe and the Muscogee Creek Nation are not unique in Indian country, and they demonstrate the critical need for Tribal criminal jurisdiction to be expanded to include crimes against children, or crimes relating to child welfare in domestic violence situations.

The time has come to honor tribal sovereignty and expand tribal jurisdiction to crimes outside of domestic violence to further empower tribal justice systems to find justice for victims. The Department supports the expansion of Tribal criminal jurisdiction as provided for in H.R. 1620, the Violence Against Women Act Reauthorization Act of 2021. H.R. 1620 provides for the expansion of Tribal criminal jurisdiction beyond crimes of domestic violence, to include crimes of dating violence, obstruction of justice, sexual violence, sex trafficking, stalking, and assault of a law enforcement or corrections officer. Importantly, H.R. 1620 expands tribal criminal jurisdiction to crimes against children. SDVCJ has been critical to increasing public safety and justice across Indian country. Expanding Tribal criminal jurisdiction beyond domestic violence crimes will be a significant step toward ending the crisis of Missing and Murdered Indigenous Peoples. Tribal governments and courts have shown many times over that they are the ones best suited to effectively administer justice in Indian country, and the Department is committed to supporting Tribal efforts to ensure the safety of all American Indian and Alaska Native people.

To that end, the Department specifically supports the expansion of Tribal criminal jurisdiction to Tribes in Maine and Alaska. The Maine Indian Claims Settlement Act has been interpreted to restrict Tribes in Maine from exercising SDVCJ under VAWA 2013. H.R. 1620 clarifies that Tribes in Maine may exercise criminal jurisdiction.

Additionally, under VAWA 2013, to exercise SDVCJ a Tribe must have lands that meet the definition of "Indian country", including reservations, dependent Indian communities, and Indian allotments. See 25 U.S.C § 1304 (a); 18 U.S.C. § 1151. In Alaska v. Native Village of Venetie, 522 U.S. 520 (1998), the Supreme Court held that most Tribal lands in Alaska are not considered "Indian country" for jurisdiction purposes, and as a result presently almost all Tribes in Alaska cannot exercise SDVCJ.

H.R. 1620 provides for the creation of a pilot project to allow up to five Tribes in Alaska to implement special Tribal criminal jurisdiction, and defines "Indian country" to include "(1) Alaska Native-owned Townsites, Allotments, and former reservation lands acquired in fee by Alaska Native Village Corporations pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 33), and other lands transferred in fee to Native villages; and (2) all lands within any Alaska Native village with a population that is at least 75 percent Alaska Native" for purposes of the pilot project.

Alaska Native people suffer high rates of violence and due to the remote nature of many villages and limited resources, providing for public safety, law enforcement and justice services is a significant challenge. The Department supports the creation of a pilot project to permit Alaska Native Tribes to exercise special Tribal criminal jurisdiction to keep these communities safe.

H.R. 1620 responds to the demonstrated need for increased public safety in Alaska Native Villages to address high rates of domestic violence and related crimes, and to longstanding calls from Alaska Native Tribes for greater authority and local control to address the same. Of particular note, Section 106 of the bill specifically provides civil jurisdiction authority for Alaska Native Tribal courts to issue and enforce protection orders. The Department understands and appreciates the unique jurisdictional and resources challenges faced by Alaska Native Tribes and we stand ready to assist Alaska Native Tribes with implementing expanded jurisdictional authority that is tailored to the needs of Alaska Native Tribes.

This Administration is firmly committed to working with Tribal governments to meaningfully improve public safety and justice for all Tribes. Thank you for the opportunity to provide the Department's views on the implementation of VAWA's Tribal criminal jurisdiction provisions. We look forward to continuing to work with the Committee to support the ability of Tribal governments to keep their people safe and find justice for victims.

The CHAIRMAN. Thank you very much, Mr. Garriott.

Next, we have Governor Chavarria from the Santa Clara Pueblo.

STATEMENT OF HON. J. MICHAEL CHAVARRIA, GOVERNOR, SANTA CLARA PUEBLO

Mr. CHAVARRIA. [Greeting in Native tongue.] Good afternoon, and honor and respect, Chairman. In my Tewa language, I am asking permission to speak, sir.

The CHAIRMAN. You have our permission. We are honored to grant it.

Mr. CHAVARRIA. Thank you, Chairman. Thank you, Member Murkowski and members of the Committee for inviting me to testify addressing violence in Native American communities.

My name is Michael Chavarria. I serve as the Governor for Santa Clara Pueblo. I testify today on behalf of the Pueblo Santa Clara to share our experience in the hope that it will assist you and your staff in broadening the current protection provided in VAWA Title IX special jurisdiction. The current protections go far; however, they do not go far enough.

Specifically, law enforcement officers need to be protected when they respond to domestic violence calls. Currently, law enforcement officers are not included in VAWA Title IX special jurisdiction. Whenever law enforcement is called into extremely dangerous domestic violence situations, the Pueblo cannot protect our own officers when that perpetrator is a non-Native.

Specifically, children need to be protected as well from domestic violence. Currently, the protections of VAWA Title IX special jurisdiction only apply to past or present incident partner relationships. However, children are commonly victims of domestic violence.

Here is a real example of the need for protection for law enforcement. On February 11th, 2013, a Santa Clara tribal police officer responded to a domestic violence disturbance. The tribal member and a non-Native were living together in an intimate partner relationship within the Pueblo. Notified that a tribal member may be in danger, the tribal police went to the residence. While checking on that tribal member, a drunken non-Native individual assaulted the officer. The non-Native perpetrator was not prosecuted by the State or the Federal Government.

The Pueblo did its best to avoid the problem from happening again. The non-Native was excluded from entering the Pueblo. However, the Pueblo looked for a better solution. So in March of 2013, VAWA Title IX special jurisdiction was signed into law. Santa Clara Pueblo immediately saw VAWA as an opportunity to protect our community, our people. We signed up to exercise special domestic violence criminal jurisdiction over non-Native domestic violence perpetrators. With Federal funding, we began to meet the Federal standard to exercise this jurisdiction.

So in the summer of 2020, we were finally approved by both the Department of Interior and the Department of Justice to exercise that jurisdiction. Currently, we are the only tribe in New Mexico exercising this special jurisdiction. So it is critical that the definition of domestic violence victims in VAWA Title IX special jurisdiction should be expanded to include law enforcement officers and children.

Today in the real world, our police officers are still not sufficiently protected when they respond to these potentially dangerous domestic violence calls. Our children are not protected, either. The

special jurisdiction definitions require the intimate relationship. But if that provision of VAWA is broadened to protect law enforcement and children, we can then provide justice to our entire community.

So broadening the definition will protect our people. Thank you, Chairman, for VAWA, and for continuing the Federal funding which is very critical. I also submit my written testimony for the record, and I will stand for questions.

Thank you, Chairman, members of the Committee.

[The prepared statement of Mr. Chavarria follows:]

PREPARED STATEMENT OF HON. J. MICHAEL CHAVARRIA, GOVERNOR, SANTA CLARA PUEBLO

Introduction. Thank you Chairman Schatz, Ranking Member Murkowski, and Members of the Committee for holding this important oversight hearing on Addressing Violence in Native Communities through VAWA Title IX Special Jurisdiction. My name is J. Michael Chavarria and I am the Governor of the Pueblo of Santa Clara, also serving in the capacity of the Chairman for the Eight Northern Indian Pueblos Council and on the All Pueblo Council of Governors (APCG), which is comprised of the leaders of the nineteen Pueblos of New Mexico and Ysleta del Sur Pueblo in Texas. Together and individually, our communities are dedicated to improving the safety and welfare of our tribal citizens. I testify today in my capacity as the Santa Clara Governor.

I. Background on the Violence Against Women Act and Indian Country

Native women, men, and children living in Pueblo and Indian Country face almost daily challenges to their physical safety and mental well-being. The threats begin in the womb in the form of restricted access to maternal healthcare services, safe housing, and inadequate nutrition for fetal development, and continue into adolescence and adulthood in high rates of physical, emotional, and sexual violence, human trafficking, substance/mental abuse and suicide. When coupled with the jurisdictional issues that further complicate the delivery of limited public safety and victim services on tribal lands, particularly in regards to the Violence Against Women Act (VAWA), it becomes clear that additional resources and targeted political actions are urgently needed to protect our tribal citizens.

In the United States, the Federal Government has exclusive jurisdiction over cases of murder, sexual abuse, kidnapping, serious bodily assault, and certain other crimes committed in Indian Country pursuant to the Major Crimes Act, 18 U.S.C. § 1153. VAWA authorized tribal courts to exercise criminal jurisdiction over non-Native offenders who commit domestic or dating violence against Native victims on tribal lands-crimes that have been historically under-prosecuted in the United States. VAWA's Special Domestic Violence Criminal Jurisdiction is critical to ensuring that dangerous jurisdictional gaps are closed by allowing tribal law enforcement to exercise jurisdiction over non-indigenous offenders who commit certain crimes on tribal lands. VAWA has enabled tribal nations to further justice in such cases by removing cumbersome jurisdictional barriers from tribal courts. This special jurisdiction also honors our tribal sovereignty by helping us to build our internal justice capacities.

VAWA authorization expired in February 2019. It is the position of our Pueblo that any reauthorization should include expanded tribal jurisdiction over crimes against children, law enforcement personnel, or sexual assault crimes committed by strangers to provide increased safety and access to justice services for Native victims of crime. A strong, dependable local law enforcement is critical for victims of crime to feel like they have support and an opportunity to attain justice. A permanent reauthorization of VAWA is vital to continuing these efforts.

II. Permanently Reauthorize the Violence Against Women Act with Expanded Tribal Jurisdiction over Non-Indian Offenders to Protect Native Youth and Tribal Officers

VAWA has directly contributed to the increased safety and access to justice services for victims of crime in Indian Country. The Act authorized tribal courts to exercise criminal jurisdiction over non-Indian offenders who committed domestic or dating violence against Indian victims on tribal lands—crimes that have been historically under-prosecuted in Indian Country. These protections apply to equally to Native women and men. According to the National Congress of American Indians'

"Special Domestic Violence Criminal Jurisdiction Five-Year Report," approximately 43 percent of Native men and 55 percent of Native women experience physical abuse from an intimate partner in their lifetime.[1] VAWA has enabled tribal nations to further justice in such cases by removing cumbersome jurisdictional barriers from tribal courts. Unfortunately, VAWA reauthorization lapsed almost three years ago and still has not been renewed.

VAWA marked an historic step forward for tribal nations in protecting Indian victims from non-Indian offenders in cases of domestic violence on tribal lands. Tragically, the existing law does not cover crimes against children, law enforcement personnel, or sexual assault crimes committed by strangers. As a result, some of the most vulnerable members of our communities and those who serve to protect them are unable to enforce their rights in tribal courts. Intimate partner violence is a scourge that VAWA has helped to address but much remains to be done to protect our people. The next reauthorization of the Act should be permanent and include expanded tribal jurisdiction over these crimes to provide increased safety and access to justice services for victims of crime, specifically by closing existing loopholes in the law to protect our Native youth and tribal law enforcement personnel.

III. Pueblo of Santa Clara's Experience with Exercising VAWA Special Domestic Violence Criminal Jurisdiction (SDVCJ)

The Pueblo of Santa Clara has long fought to protect our members through the exercise of criminal jurisdiction on our lands. It has been a process of over seven years for our Pueblo to progress from planning, to meeting federal standards, to implementation of SDVCJ. To illuminate our work in this area, I would like to share the following history with the Committee.

On February 11, 2013, while living within the household of a Santa Clara Pueblo member, a non-Indian individual allegedly assaulted his live-in partner and then assaulted the Tribal Police officer who responded to the domestic violence emergency call. Neither the State of New Mexico nor federal law enforcement authorities prosecuted the domestic violence case against the Tribal Police officer. Incidents of domestic violence are among the most volatile situations that a tribal police officer can respond to. The inability of our tribal justice systems to prosecute crimes against officers is a matter of grave public safety concern.

In March 2013, shortly after the above domestic violence incident, President Barack Obama signed the Violence Against Women Act Reauthorization Act of 2013. Our Tribal Council viewed Title IX of the law on "Safety for Indian Women" as a means to accomplish the goals of protecting the community from domestic violence with its affirmation of the Pueblo's inherent power to exercise criminal jurisdiction over all persons. Through a series of resolutions, Tribal Council approved full implementation of VAWA on Pueblo lands as soon as federal funding could be secured. We raised our strong desire to exercise SDVCJ with the President, our New Mexico congressional delegation, and federal agencies involved in public safety in Indian Country, such as the Departments of Interior and Justice. Ultimately, our Pueblo joined the VAWA Pilot Project, a Department of Justice funded program to help interested tribal nations implement SDVCJ.

In November 2013, our Tribal Council adopted Resolution No. 2013–60 allowing for emergency exclusions of non-members with due process to reduce crime on Pueblo lands, including incidences of domestic violence. Our Pueblo also had to adopt certain measures and take concrete actions to meet federal standards for implementation of VAWA. These were administratively burdensome and, in many instances, costly to undertake. Yet, for our Pueblo the time and financial expenditures were challenges that we necessarily took on to advance our public safety.

One example of the costs of meeting federal implementation standards is in facilities. The infrastructure for justice services must satisfy certain requirements as part of demonstrating the adequacy of our tribal justice systems to carry out VAWA responsibilities. We applied for and were awarded $1,998,406 (2016–IP–BX–0013) through the Department of Justice's Office of Tribal Justice and the Bureau of Justice Administration for the renovation and expansion of our courthouse. Facilities standards we had to meet included: a secure, healthy facility with closed files; a detention room for alleged offenders; expanded public seating; a community education room; a jury box; jury deliberation room; modern recording devices; fire and safety upgrades; and disability accessibility.

Within the courthouse, we are required to maintain federal services standards. Through the Office on Violence Against Women (OVW) we were awarded $239,074

[1] National Congress of American Indians, Special Domestic Violence Criminal Jurisdiction Five-Year Report at 1 (March 20, 2018), available at *http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf.*

in funding (2016–SD–AX–K001) to meet applicable requirements. We used the funds, in part, to draft our SDVCJ Domestic Violence Code, which was approved by the Departments of Justice and the Interior on July 9, 2020. The funds could also be used to meet federal standards for VAWA training and hiring of contract prosecutors and defense attorneys; travel for covered purposes; training of courthouse staff; juror fees; juror education; and education sessions for the public.

It took us approximately seven years from the initial planning to full implementation of the federal standards to exercise SDVCJ on our lands. However, that being said, our Pueblo has not met all of its goals nor spent its budget as it relates to domestic violence prevention and prosecution under VAWA. This is due in substantial part to the outbreak of the COVID–19 pandemic. Our Pueblo entered a 20-month lockdown, which has had the side effect of greatly reducing crime within our exterior boundaries. Only members or those with a license to live on Pueblo lands are being allowed into the community at this time.

On July 30, 2020, a Tribal Police officer responded to a domestic violence disturbance within the Pueblo. The case involved a 19 month old child in the care of the grandmother and mother. The grandmother alleged that the mother had assaulted and strangled her over a dispute regarding the care of the child. It was eventually verified by the officer that the mother of the child was Indian. It was also confirmed that, if the mother had been non-Indian, the child would not have been protected by SDVCJ as the child would not qualify as being in an intimate relationship as defined by VAWA Title IX Special Jurisdiction. The definition of domestic violence victims in VAWA Title IX Special Jurisdiction must be expanded to close this dangerous gap and cover our children.

The National Congress of American Indians reported in its March 7, 2019, testimony to the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security that:

> The tribes implementing SDVCJ report that children have been involved as victims or witnesses in SDVCJ cases nearly 60 percent of the time. These children have been assaulted or have faced physical intimidation and threats, are living in fear, and are at risk for developing school-related problems, medical illnesses, post-traumatic stress disorder, and other impairments. However, federal law currently limits SDVCJ to crimes committed only against intimate partners or persons covered by a qualifying protection order. The common scenario reported by tribes is that they are only able to charge a non-Indian batterer for violence against the mother, and can do nothing about violence against the children. Instead, tribes are only able to refer these cases to state or federal authorities, who may or may not pursue them.

This is unacceptable and must be addressed by an expansion of VAWA Title IX Special Jurisdiction pursuant to broadened definitions that account for children in domestic violence situations.

We have used the time during the pandemic to assess successes and gaps in VAWA SDVCJ implementation, as well as review our operational costs and plan for the future. A need that clearly emerged is for additional federal support for our Pueblo in exercising SDVCJ. Specifically in covering the costs of appellate proceedings, incarceration, and medical care. We applied for additional funds to advance these activities under the OVW FY 2022 Support for Tribes Exercising SDVCJ Initiative in November 2021. Even with our success at implementing SDVCJ much more work remains to be done.

IV. Additional Federal Support Needed for Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction

We believe that all tribal nations should have the opportunity to enhance the safety of their tribal members by exercising the SDVCJ authorized under VAWA. Too many tribal nations, however, lack the resources, infrastructure, personnel, and training to carry out these activities on their own. Additional federal funding and resources are urgently needed particularly as the desire to participate in VAWA's SDVCJ and related support services is strong and only growing.

Additional federal funds are also needed to supplement the budget for the OVW tribal program with the area of greatest unmet need. Effectively addressing the public safety crisis in Indian Country requires a holistic approach. We must address tribal court jurisdiction over non-Indian offenders and the lack of economic opportunities that contribute to social despair and interpersonal violence. We must address the lack of a quality and structurally sound educational infrastructure in many tribal communities and the high rates of substance abuse among Native youth. We must address under-resourcing of tribal law enforcement entities and the rise in major crimes across Indian Country. Each of these issues influences the others and

shapes the public safety landscape of a tribal community. We, therefore, recommend that additional federal resources be allocated to areas of greatest need to advance the interests of Indian Country.

Our tribal citizens need to be safe in their home communities, and our tribal governments are the best situated to provide the necessary services. Accessing the necessary resources, however, continues to present challenges. Many tribal nations are daunted by the application process and the perquisites needed to qualify for the program. Others are uncertain about how to engage in the infrastructure building process to carry out their VAWA responsibilities. As a result, the OVW has encountered the distressing situation in which there is a documented need for assistance, readily available federal funds, but low applicant participation.

Relatedly, on an administrative note, we recommend that the OVW streamline the application process so that it is more responsive to the internal capabilities of each tribal nation. Reduced and/or more flexible application requirements would help lighten the administrative burden on all tribal nations while also making the program more accessible to smaller and financially restricted tribal governments. This should be accompanied by a reissuance of solicitation the OVW solicitation to exercise this jurisdiction would enable more tribal nations to receive support for these critical services. To the extent permitted by law, the reissuance of the solicitation should include targeted education and outreach to geographic regions that have thus far been unrepresented in the application process.

V. Create a Line Item for the Establishment of New Tribal Justice Departments

The Pueblo of Santa Clara has a robust tribal justice department and Tribal Court system. We have invested significant tribal funds in the establishment and continued development of our tribal justice services. We are also grateful for the federal funds that have enabled us to expand in recent years in relation to VAWA, as described herein. With the additional resources made possible by these federal dollars, we have been able to enrich the exercise of our statutory and sovereign jurisdiction over non-Indians who commit crimes of domestic violence against Indians on our land.

Many tribal nations, however, do not have tribal justice departments and lack the resources to establish programs on their own. While a plethora of federal resources exist to assist tribal nations that have established law enforcement agencies or a tribal court, very few-if any-federal funds are available to facilitate the start-up process. This is particularly true in the Department of Justice where existing tribal justice services are a prerequisite to qualify for both strategic planning and competitive grants. Having experienced the benefits of operating our own tribal justice department and tribal court system, we stand with other tribal nations who wish to exercise this fundamental aspect of tribal sovereignty but lack the immediate resources to accomplish their goals. We, thus, recommend as an ancillary factor to the successful expansion and implementation of VAWA Title IX that a line item within the Department of Justice to create a special program to assist tribal nations in the establishment and development of new tribal courts and justice services, including law enforcement departments be advanced in the FY 2022 budget and going forward.

Conclusion. Thank you for the opportunity to testify on VAWA Title IX Special Jurisdiction and its role in addressing violence in tribal communities. Title IX Special Jurisdiction is a vital authority to exercising tribal sovereignty and restoring justice on tribal lands in cases of domestic violence. Yet, over the years of its initial implementation hard lessons are being learned that this Congress is now tasked with remedying. Top among these is the fact that gaps in VAWA jurisdiction continue to leave our tribal police officers and children exposed. Title IX Special Jurisdiction must be broadened to close these points of exposure and strengthen public safety in Indian Country-the welfare of our most vulnerable members and communities depends on it. On behalf of the Pueblo of Santa Clara, kuunda and thank you.

The CHAIRMAN. Thank you, Governor.

Next, we have Fawn Sharp, President of the National Congress of American Indians.

STATEMENT OF HON. FAWN SHARP, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Ms. SHARP. [Greeting in Native tongue.] Chairman Schatz, Vice Chairman Murkowski and members of the Senate Committee on

Indian Affairs, on behalf of the National Congress of American Indians, I would like to thank you for holding this hearing on the success of the 2013 Violence Against Women Act, and the critical need to reauthorization VAWA with strong tribal provisions.

My name is Fawn Sharp, Vice President of the Quinault Indian Nation and President of NCAI. We welcome the opportunity to work with the Committee to pass bipartisan legislation that continues to build on VAWA's success and includes four priorities for VAWA reauthorization.

Number one, amend 25 U.S.C. Section 1304 to fill the current jurisdictional gaps. Number two, ensure and reaffirm that all 574 tribal nations can exercise criminal jurisdiction through VAWA. Number three, reauthorize VAWA's tribal grant programs and create a reimbursement program for exercising tribal nations. And fourth and finally, create a permanent authorization for the U.S. Department of Justice's tribal access to the National Crime Information program.

These four priorities build off of the 2013 VAWA reauthorization and further acknowledge the inherent tribal sovereignty and tribal jurisdiction to protect the safety and security of Indian Country. In the eight years since Congress reauthorized VAWA, we have seen tribal nations combat domestic violence against Indian women, while protecting non-Indian rights in an impartial tribal forum. By exercising their inherent sovereignty and jurisdiction, many tribal nations have increased safety and justice for victims who had previously seen little of either.

Currently, 28 tribal nations are exercising VAWA's special domestic violence criminal jurisdiction, and in eight years, these nations have made 396 arrests, prosecuted 227 defendants, leading to 133 convictions. In 2016, the Department of Justice stated that these programs have allowed tribal nations to respond to long-time abusers who previously had evaded justice.

It has also revealed places where the Federal administrative policies, practices, resources and tools needed to be strengthened to enhance justice for victims of sexual violence, children, elders and law enforcement. Tribal nations report that children have been involved as victims or witnesses in nearly 60 percent of these cases. These children have been assaulted or have faced physical intimidation and threats, are living in fear and are at risk for developing school-related problems, medical illness, post-traumatic stress disorder, and other impairments.

However, Federal law currently limits these cases to crimes against intimate partners, or persons covered by a qualifying protection order. This common scenario reported by tribal nations is that they are only able to charge a non-Indian for violence against the mother, and can do absolutely nothing about violence committed against the children.

Similarly, tribal nations lack jurisdiction to charge a non-Indian offender for crimes that may occur within the context of the criminal justice process itself, such as resisting arrest, assaulting an office, witness tampering or obstructing justice. Tribal nations are also unable to prosecute crimes of sexual assault, trafficking, and stalking.

In addition to the gaps, not all 574 tribal nations were included in VAWA 2013. Tribal nations in Alaska and Maine must be expressly included in this next reauthorization to protect their citizens and communities.

Before I conclude my testimony, I want to share a case from the Sioux Ste Marie Tribe of Chippewa Indians that illustrates how tribal jurisdictional gaps have real consequences. In the case, a non-Indian man in a relationship with an Indian woman moved in with her and her 16-year-old daughter on the reservation. The man began making unwanted sexual advances toward the 16-year-old daughter and groped her. The tribal nation charged him with domestic abuse against the mother and attempted to tie the daughter's sexual assault to the mother's case. The tribal court had no choice but to dismiss the charges for lack of criminal jurisdiction.

Soon after, he kidnapped a 14-year-old Indian child, took her off the reservation and repeatedly raped her. This horrific crime could have been prevented if the tribal nation had the ability to exercise criminal jurisdiction in the first place.

Removing the gaps in tribal jurisdiction and ensuring all 574 tribal nations can exercise jurisdiction, and providing the resources and tools for implementation together can dramatically change the environment in Indian Country by empowering tribal sovereignty and safety.

Please join us in sending this message that domestic violence, sexual assault, child abuse, elder abuse, stalking and trafficking will not be tolerated on our tribal lands. We look forward to working with each of you to pass a bipartisan VAWA bill that includes strong tribal provisions.

[Phrase in Native tongue].

[The prepared statement of Ms. Sharp follows:]

PREPARED STATEMENT OF HON. FAWN SHARP, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Chairman Schatz, Vice Chairman Murkowski, and members of the Senate Committee on Indian Affairs, on behalf of the National Congress of American Indians (NCAI), I am pleased to present testimony to the Committee on the success of the 2013 Violence Against Women Act (VAWA) and the critical need to reauthorize VAWA with strong tribal provisions now. NCAI is the oldest and largest national organization representing American Indian and Alaska Native tribal governments in the United States. NCAI is steadfastly dedicated to protecting the rights of Tribal Nations to achieve self-determination and self-sufficiency, and to the safety and security of all persons who reside within or visit Indian Country.

In 2000, NCAI's member Tribal Nations adopted resolution STP–00–081, establishing the NCAI Task Force on Violence Against Native Women. Since that time, the Task Force has worked to identify needed policy reforms at the tribal and federal levels. NCAI has been actively involved in the development of the tribal provisions of VAWA in the past reauthorizations of the bill. Each time VAWA has been reauthorized, it has included important provisions aimed at improving safety and justice for Indian women. We welcome the opportunity to work with the Committee to pass bipartisan legislation that continues to build on VAWA's success and promise. At this time, we would like to share four priorities for the upcoming bipartisan VAWA reauthorization:

1. Include amendments to 25 U.S.C. § 1304 that will fill jurisdictional gaps and ensure that the tribal criminal jurisdiction provision included in VAWA 2013 fully achieves its purpose;

2. Ensure and reaffirm that all 574 Tribal Nations can exercise criminal jurisdiction through VAWA;

3. Reauthorize VAWA's tribal grant programs and create a reimbursement program for exercising Tribal Nations; and

4. Create a permanent authorization for U.S. Department of Justice's Tribal Access to National Crime Information Program.

Building on Success and Filling Jurisdictional Gaps

Eight years ago, when Congress passed VAWA 2013, it included a provision, known as Special Domestic Violence Criminal Jurisdiction (SDVCJ), that reaffirmed the inherent sovereign authority of Indian Tribal Governments to exercise criminal jurisdiction over certain non-Indians who violate qualifying protection orders or commit domestic or dating violence against Indian victims on tribal lands.[1] Since passage of VAWA 2013, NCAI has been providing technical assistance to the Tribal Nations that are implementing the law. We have included as an attachment to this testimony a detailed report that analyzes the impacts of VAWA 2013's landmark tribal jurisdiction provision.

This examination of Tribal Nations' exercise of SDVCJ shows that VAWA is working as Congress intended. The law has enhanced the ability of Tribal Nations to combat domestic violence against Indian women, while at the same time protecting non-Indians' rights in impartial, tribal forums.[2] By exercising SDVCJ, many Tribal Nations have increased safety and justice for victims who had previously seen little of either. Currently there are 28 Tribal Nations exercising SDVCJ throughout the United States. Since 2013, Tribal Nations have made 396 arrests and prosecuted 227 defendants, which has led to 133 convictions. As the Department of Justice (DOJ) testified before the Senate Committee on Indian Affairs in 2016, SDVCJ has allowed Tribal Nations to "respond to long-time abusers who previously had evaded justice"[3] and has given hope to victims and communities that safety can be restored.

The implementation of SDVCJ has had additional positive outcomes. For many Tribal Nations, it has led to much-needed community conversations about domestic violence. For others it has provided an impetus to comprehensively update tribal criminal codes. Implementation of SDVCJ has also resulted in increased collaboration among Tribal Nations and between the local, state, federal, and tribal governments. It has also revealed, however, places where federal administrative policies and practices needed to be strengthened to enhance justice, and it has shown where the jurisdictional framework continues to leave victims-including victims of sexual violence, children, elders, and law enforcement—vulnerable.

The Tribal Nations implementing SDVCJ report that children have been involved as victims or witnesses in SDVCJ cases nearly 60 percent of the time. These children have been assaulted or have faced physical intimidation and threats, are living in fear, and are at risk for developing schoolrelated problems, medical illnesses, post-traumatic stress disorder, and other impairments.[4] However, federal law currently limits SDVCJ to crimes committed only against intimate partners or persons covered by a qualifying protection order. The common scenario reported by Tribal Nations is that they are only able to charge a non-Indian batterer for violence against the mother, and can do nothing about violence against the children. Instead, Tribal Nations are only able to refer these cases to state or federal authorities, who may not pursue them.

This frustration is further compounded by the prevalence and severity of this problem. According to DOJ, American Indian and Alaska Native children suffer exposure to violence at rates higher than any other race in the United States.[5] This violence has immediate and long-term effects, including: increased rates of altered neurological development; poor physical and mental health; poor school performance; substance abuse; and overrepresentation in the juvenile justice system. Children who experience abuse and neglect are at higher risk for depression, suicidal

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[1] 25 U.S.C. § 1304.

[2] See Angela R. Riley, Crime and Governance in Indian Country, 63 UCLA L. REV. 1564, 1572 (2016) ("[I]mplementation has been a success in several respects. Tribes have provided defendants with the requisite procedural protections, and the preliminary data reveal that the laws are improving the safety and security of reservation residents.").

[3] Tracy Toulou, "Director Tracy Toulou of the Office of Tribal Justice Testifies Before the Senate Committee on Indian Affairs Oversight Hearing on Draft Legislation to Protect Native Children and Promote Public Safety in Indian Country," (May 18. 2016), *https://www.justice.gov/opa/speech/director-tracy-toulou-office-tribal-justice-testifiessenate-committee-indian-affairs-0.*

[4] *See* U.S. Department of Justice, ATTORNEY GENERAL'S ADVISORY COMMITTEE ON AMERICAN INDIAN AND ALASKA NATIVE CHILDREN EXPOSED TO VIOLENCE, REPORT OF THE ADVISORY COMMITTEE ON AMERICAN INDIAN AND ALASKA NATIVE CHILDREN EXPOSED TO VIOLENCE: ENDING VIOLENCE SO CHILDREN CAN THRIVE (Nov. 2014).

[5] Id.

thoughts, and suicide attempts. Indian youth have the highest rate of suicide among all ethnic groups in the U.S., and suicide is the second-leading cause of death (after accidental injury) for Indian youth aged 15–24.[6] Due to exposure to violence, Indian children experience post-traumatic stress disorder at a rate of 22%-the same levels as Iraq and Afghanistan war veterans and triple the rate of the rest of the population.[7]

Title IX in H.R. 1620—the Violence Against Women Act Reauthorization Act of 2021 reaffirms tribal jurisdiction over certain non-Indians who commit crimes against Indian children in Indian Country. NCAI supports the strong tribal provisions in the House-passed bill.

H.R. 1620 Title IX would also address another significant gap in VAWA 2013. Since SDVCJ is limited to domestic violence, dating violence, and protection order violations, Tribal Nations lack jurisdiction to charge a non-Indian offender for crimes that may occur within the context of the criminal justice process. These crimes might include resisting arrest, assaulting an officer, witness tampering, juror intimidation, or obstruction of justice. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian SDVCJ defendants that they are unable to prosecute. Domestic violence cases are both the most common and the most dangerous calls that law enforcement responds to creating an obvious public safety concern. Tribal Nations are also not able to prosecute attendant crimes. In the course of investigations, tribal law enforcement officers often discover evidence of drug crimes or property crimes, but these cannot be included in the prosecution.

Tribal Nations are also unable to prosecute crimes of sexual assault, trafficking, and stalking. A 2016 study from the National Institute for Justice (NIJ), found that approximately 56 percent of Indian women experience sexual violence within their lifetime, with 1 in 7 experiencing it in the past year.[8] Nearly 1 in 2 report being stalked.[9] Contrary to the general population where rape, sexual assault, and intimate partner violence are usually intra-racial, Indian women are more likely to be raped or assaulted by someone of a different race. 96 percent of Indian women and 89 percent of male victims in the NIJ study reported being victimized by a non-Indian.[10] Indian victims of sexual violence are three times as likely to have experienced sexual violence by an interracial perpetrator as non- Hispanic White victims.[11] Similarly, Indian stalking victims are nearly 4 times as likely to be stalked by someone of a different race, with 89 percent of female stalking victims and 90 percent of male stalking victims reporting inter-racial victimization.[12] The higher rate of inter-racial violence would not necessarily be significant if it were not for the jurisdictional complexities unique to Indian Country and the limitations imposed by federal law on tribal authority to hold non-Indians accountable for crimes they commit on tribal lands.

A recent example from the Sault Sainte Marie Tribe of Chippewa Indians, located in Michigan, illustrates how these gaps in the law have real consequences for Indian victims. A non-Indian man in an intimate relationship with a tribal citizen moved in with her and her 16 year-old daughter. After the man began making unwanted sexual advances on the girl, sending inappropriate text messages, and on one occasion groping the daughter. The Tribal Nation charged the defendant with domestic abuse and attempted to tie the sexual assault against the daughter to a pattern of abuse against the mother. The tribal court dismissed the charges for lack of jurisdiction and the defendant left the victim's home. Four months later, he was arrested by city police for kidnapping and repeatedly raping a 14 year-old tribal citizen. This kidnapping and rape of a child could have been prevented if the Tribal Nation had the ability to exercise jurisdiction in the first case.

H.R. 1620 Title IX also include sexual assault, stalking, and trafficking crimes committed by non-Indians. NCAI strongly urges the inclusion of this language in the bipartisan Senate VAWA bill.

NCAI adopted resolutions SPO–16–037 and ECWS–19–005, calling for full reaffirmation of tribal authority to address crime on tribal lands and for Congress to reauthorize VAWA with key tribal provisions (attached). As this Congress moves forward with reauthorization of VAWA, NCAI urges this Committee to include language in Title IX that would help ensure that the life-saving provisions of VAWA 2013 are

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[6] SAMHSA, National Survey on Drug Use and Health, 2003.

[7] AG Advisory Committee, supra, note 12, at 38.

[8] Andre B. Rosay, Nat'l Inst. of Justice, Violence Against American Indian and Alaska Native Women and Men: 2010Findings from the National Intimate Partner and Sexual Violence Survey, U.S. Dep't of Justice 11 (2016), available at*https://www.ncjrs.gov/pdffiles1/nij/249736.pdf.*

[9] *See Id.*, at 59

[10] *Id.*, at 18.

[11] *Id.*, at 29.

[12] *Id.*, at 32.

more broadly available to protect victims of violence in tribal communities. NCAI calls on all members of this Committee to co-sponsor a bipartisan Senate VAWA bill. The Indian women, children, and elders in your states and across the U.S. cannot wait any longer for justice.

Ensuring all 574 Tribal Nations Have the Ability to Exercise Criminal Jurisdiction Under VAWA

VAWA's 2013 reauthorization did not cover all 574 Tribal Nations and left out Tribal Nations located in the state of Maine and the state of Alaska. This must be rectified in VAWA's next reauthorization. In the case of Maine, VAWA 2013 failed to expressly mention Tribal Nations located in the state. Maine has claimed that due to the Maine Indian Claims Settlement Act, the failure to expressly include Maine in VAWA 2013 prevents Tribal Nations in Maine from exercising SDVCJ. Tribal Nations located in Maine and tribal domestic violence coalitions have worked to educate state policymakers on VAWA and the need to reaffirm tribal jurisdiction over non-Indian perpetrators. In 2019 the Maine legislature passed a bill to reaffirm some domestic violence criminal jurisdiction over non-Indians for two of the four Tribal Nations located in Maine. Title IX in H.R. 1620 fixes this problem by expressly including all Tribal Nations located in Maine and would reaffirm their inherent jurisdiction over crimes covered in 2013 VAWA and future VAWA reauthorizations.

In the case of Alaska, due to the way SDVCJ is constructed, tribal jurisdiction only extends to "Indian country." "Indian country" is a legal term meaning that the land that is held in trust by the federal government for the Indian Tribal Government and is where Tribal Nations can exercise SDVCJ. Under the Supreme Court's 1998 decision in *Venetie* only 1 of the 229 Tribal Nations located in Alaska have land considered to be "Indian country" under the Alaska Native Claims Settlement Act. [13]

While there is tremendous diversity among all Tribal Nations, it is worth noting that many of the 229 Tribal Nations in Alaska experience extreme conditions that differ significantly from Tribal Nations outside Alaska. Most of the Alaska Native villages are located in remote areas that are often inaccessible by road and have no local law enforcement presence. The Tribal Law and Order Commission found that "Alaska Department of Public Safety (ADPS) officers have primary responsibility for law enforcement in rural Alaska, but ADPS provides for only 1.0–1.4 field officers per million acres." [14] Without a strong law enforcement presence, crime regularly occurs with impunity. Victims live in small, close-knit communities where access to basic criminal justice services are non-existent and health care is often provided remotely through telemedicine technology. Providing comprehensive services and justice to victims in these circumstances presents unique challenges. In many of these communities, tribal citizens receive services in informal ways. Domestic violence victims, for example, may be offered shelter in a home that is a known "safe house" in the village or they and their children must be flown out of the village for their own safety. As this Committee moves forward with VAWA reauthorization, we encourage you to work closely with tribal leaders from Alaska Native Villages to include provisions that will address the needs of Alaska Native victims.

NCAI, along with Tribal Nations in Maine and Alaska, have called on Congress to reaffirm their jurisdiction over non-Indians so they can offer Indian victims the same protections that are currently afforded to victims located in the 48 other states.

VAWA's Tribal Grant Programs and the Need to Establish a Reimbursement Program

In addition to the challenges created by jurisdictional complexities and limits on tribal authority, the safety of Indian women continues to be undermined by a lack of resources for victim services and tribal criminal justice systems. In previous reauthorizations of VAWA, Congress has created several new grant programs for Indian Tribes including the Grants to Tribal Governments Program, the Tribal Sexual Assault Services Program, the Tribal Coalitions Program, and the Tribal Jurisdiction Program. These programs have made a significant difference in tribal communities and should be reauthorized, however, these programs are simply not sufficient alone to meet the substantial needs in Indian Country.

In addition to reauthorizing the current VAWA grants, the Committee should include a tribal reimbursement program for SDVCJ implementing Tribal Nations.

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[13] *See Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520.

[14] A Roadmap for Making Native America Safer: Report to the President and Congress of the United States (November 2013), available at *http://www.aisc.ucla.edu/iloc/report/*.

When Tribal Nations apply for the current Tribal Jurisdiction Program, they are unable to predict several factors related to SDVCJ implementation, for example how many crimes will occur over the next grant period or medical cost of non-Indians in tribal custody. Tribal and Bureau of Indian Affairs (BIA) detention facilities general rely on the Indian Health Service (IHS) to provide health care to inmates. This is not usually an option for non-Indian defendants since they are generally ineligible for care at IHS. Neither the BIA nor the IHS receive appropriated funds for non-Indian correctional health care purposes. Although the federal government provides health care in Bureau of Prisons (BOP) and Immigration and Customs Enforcement (ICE) detention facilities using Public Health Service Commissioned Corps Officers, none of these personnel work in BIA jails. Questions remain about who has the obligation to cover these costs and where health services will be provided. For Tribal Nations that have their own corrections facilities, or contract directly with county facilities to arrange for detention, detention-related healthcare costs are a significant challenge.

One of the non-Indian SDVCJ defendants at Eastern Band of Cherokee Indians, for example, required extensive medical care while in tribal custody, which ended up costing the Tribal Nation more than $60,000. These types of costs are simply prohibitive for many Tribal Nations, and several have reported that the uncertainty about health care for non-Indian inmates is why the Tribal Nations are not proceeding with implementation SDVCJ.

The Office on Violence Against Women allows a limited amount of inmate health care costs to be included in their grant program to support SDVCJ implementation, but few implementing Tribal Nations have received these grants and as mentioned earlier these costs are hard to predict. Therefore, Congress must include a reimbursement program for Tribal Nations in the next reauthorization of VAWA, to cover the wide ranging and unpredictable costs and provide a path forward for more Tribal Nations to protect their communities.

While we understand that it is likely outside the scope of what will be addressed in a VAWA reauthorization bill, Congress must amend the Victims of Crime Act (VOCA) and ensure that Tribal Nations have a permanent set aside from the Crime Victims Fund (CVF), which would provide much-needed funding to provide services and compensation to victims of violence in tribal communities. The tribal needs for VOCA funding is discussed in greater detail in testimony that NCAI submitted in conjunction with an oversight hearing held by the Senate Committee on Indian Affairs in 2015 on "Addressing the Need for Victim Services in Indian Country" (attached). In 2018 appropriators included a tribal set aside out of the CVF, which they have continued doing for the last four years. This funding has been incredibly helpful to victims and survivors across in Indian Country; however, the funding relies on appropriators including the set aside on an annual basis. Tribal Nations were happy to see the Senate pass a VOCA funding fix 100 to 0 this year and it is now the time for Congress to pass the next VOCA fix to establish a permanent tribal set aside in the bill.

DOJ's TAP Program

VAWA 2005 and the Tribal Law & Order Act of 2010 both included provisions directing the Attorney General to permit Indian Tribes to enter information into and obtain information from federal criminal information databases. This has been a long-standing issue that Tribal Nations have raised for years. In response to these concerns, in 2015 DOJ announced the Tribal Access Program for National Crime Information (TAP), which provides eligible Tribal Nations with access to the Criminal Justice Information Services systems. There are now 108 Tribal Nations participating in TAP, which will greatly facilitate their ability to enter protection orders and criminal history into the federal databases.

Because DOJ is using existing funding for the TAP program, eligibility is currently limited to Tribal Nations with a sex offender registry or with a full-time tribal law enforcement agency. There are many Tribal Nations, particularly in Public Law-280 jurisdictions like California and Alaska, however, who do not meet these criteria but who do have tribal courts that issue protection orders. For these protection orders to be effective and protect victims, the issuing Tribal Nation needs to be able to enter them into the protection order file of the National Crime Information Center. A dedicated funding stream should be created for expanding the TAP program and making it available to all interested Tribal Nations who meet the requirement. All Tribal Nations should have the ability to access federal databases not only for the purpose of obtaining criminal history information for criminal or civil law purposes, but also for entering protection orders and other relevant information, including National Instant Criminal Background Check System disqualifying events, into the databases. NCAI support the TAP language included in Title IX of

H.R. 1620 and urges the Senate to include the language in the bipartisan Senate VAWA bill.

Conclusion

Public safety has been the leading concern of tribal leaders throughout the country for several years. NCAI strongly encourages Congress to take action on all of the fronts that we have identified above. Taken together-removing the gaps in tribal jurisdiction, ensuring all 574 Tribal Nations can exercise criminal jurisdiction under VAWA to protect everyone in tribal communities, ensuring there are resources available for VAWA implementation and victim services, and expanding tribal access to federal criminal databases-we can dramatically change the environment for criminal activity on Indian reservations. Our goal and our mission is to send the message that domestic violence, sexual assault, child abuse, elder abuse, stalking, and trafficking will not be tolerated on tribal lands. This effort will bring great benefits to tribal communities and our neighbors in public safety, but also in health, productivity, economic development, and the well-being of our people. We thank you in advance, and look forward to working with each of you to pass a bipartisan VAWA bill that includes all of strong and necessary tribal provisions above.

Attachments have been retained in the Committee files.

The CHAIRMAN. Thank you very much.

Chief Judge FourStar, please proceed.

STATEMENT OF HON. STACIE FOURSTAR, CHIEF JUDGE, FORT PECK ASSINIBOINE AND SIOUX TRIBES

Ms. FOURSTAR. [Greeting in Native tongue.] Good day, my relatives. My name is Stacie FourStar. I am the Chief Judge of the Fort Peck Assiniboine and Sioux Tribes. Thank you, Chairman, Vice Chairman and Committee members, for holding this hearing today.

I am providing testimony on behalf of the reauthorization of VAWA. Fort Peck has implemented since March of 2015. Initially, we were one of five pilot tribes.

Prior to 2013, we had consistently had reports of domestic violence of non-Indians on Indians being under-prosecuted or not prosecuted at all. The crime is a domestic violence, it is a Federal misdemeanor. And the Federal Government did not have the time to prosecute those crimes, because of major crimes that had been occurring on the Fort Peck Indian Reservation.

So since we have implemented VAWA, we have had many successes. We have had a couple challenges. But I want to highlight some of those successes through my testimony.

I will give you a little bit of stats and data. We have had 45 VAWA cases under special jurisdiction since 2015, with a total of 37 defendants. We have re-offenders and defendants with multiple charges. The criminal charges are partner family member assault and violations of criminal protection orders.

The Fort Peck Tribes have conducted two jury trials that consisted of Indian and non-Indian jurors. We have had two acquittals from those two jury trials. We have had nine guilty pleas on the record and defendants have actually opted into diversionary programs that have been offered through the restorative justice measures that the Fort Peck Tribes have implemented.

Although we cannot prosecute crimes against children when they are involved with the domestic situation between a non-Indian and Indian, we do keep the stats on that as well. So of those 45 cases, we have had 21 cases that involved children that we were unable to prosecute, but we could offer services to those families. We have

also had 19 cases that reported drug and/or alcohol use that was involved with the primary offenses. We have had reports of law enforcement that have been engaged with the non-Indian defendant and unable to prosecute those crimes as well.

Some of the specific successes that we have had at Fort Peck, they have been funded through grant programs through the Federal Government. We have a SAUSA, a Special Assistant U.S. Attorney, who is primarily here to prosecute the domestic violence crimes, along with coordinating between the tribes and the U.S. Attorney's office. We also have a public defender's office with an attorney on staff who is able to be appointed as counsel for the defendant, not only for non-Indians but for Indians as well. That was a change that we made along with our implementation.

We also have grant programs that have funded DV data collection, software programs for case management. We have an offender accountability program. We have civil legal advocate services for victims and their families. And we have had an overwhelming response to the jury pools. We have a jury pool system that has been put in place along with the county representatives. We have had great communication; we have had willingness of participation. So the jury trials do represent a fair cross-section of our communities on the Fort Peck Indian Reservation.

Fort Peck Tribal Court maintains a website; it is FPTC.org. I would like you all to take the opportunity to look at that, to look at the tribal laws, to see what we have available open to the public at no cost.

The tribal-State relationships that we have built and maintain along with VAWA have only begun to open up more opportunities for both jurisdictions, tribal and State. The Fort Peck Tribes have had a successful cross-deputization law enforcement agreement in place since 1999. This agreement is with the county sheriff's department, Montana Highway Patrol, and the City of Wolf Point, along with the Fort Peck Tribal law enforcement officers. This agreement has allowed us to enforce each other's laws and to provide aid to one another. The agreement has also assisted with the smooth transition of the special jurisdiction on the Fort Peck Indian Reservation.

Montana has established the first Native American Domestic Violence Fatality Review Team. I would also ask that those of you, please take a look at that and see the statistics that are overwhelming in Montana alone.

In closing, I understand that authorizing tribes' special jurisdiction over non-Indians is only one portion of the VAWA reauthorization. But it is a vital instrument to public safety and to effectively addressing domestic violence in Indian Country. Now is the time to move forward collectively.

Thank you. [Phrase in Native tongue].

[The prepared statement of Ms. FourStar follows:]

PREPARED STATEMENT OF HON. STACIE FOURSTAR, CHIEF JUDGE, FORT PECK ASSINIBOINE AND SIOUX TRIBES

I would like to thank the Chairman, Vice Chairman and committee members for holding this hearing. I am Stacie FourStar, a tribal member of the Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation in Montana, and I serve as the Chief Judge for the Fort Peck Tribes. Today I am providing testimony on behalf of

the Fort Peck Tribes in support of the reauthorization of VAWA. The Fort Peck Tribes have been exercising special domestic violence criminal jurisdiction (SDVCJ) since 2015. Initially, we were one of five Indian tribes to attain full pilot project status under VAWA 2013.

The testimony will focus on:

- The historical context of domestic violence issues on the Fort Peck Indian Reservation prior to VAWA 2013 and the jurisdictional maze
- The successes and challenges of SDVCJ on the Fort Peck Indian Reservation
- Restorative justice measures and programs that have been implemented to enhance SDVCJ
- Tribal-state relationships and the Fort Peck Tribes Cross Deputization Agreement

The Historical Context

Fort Peck Indian Reservation spans over four counties in northeast Montana. With over 2 million acres of land base, the reservation closely borders Canada and North Dakota. There are over 14,000 enrolled tribal members with half of them residing on the reservation. The total population of people living within the exterior boundaries of the reservation is 14,000, comprised of one-half Indian and one-half non-Indian persons.

Prior to VAWA 2013, Fort Peck Tribes had no authority to prosecute crimes committed by non-Indian persons. A non-Indian spouse could abuse their Indian spouse and there was no criminal consequence. The Tribe had no jurisdiction to prosecute the non-Indian and the State cannot prosecute the non-Indian because the victim is Indian. There were instances of non-Indians being arrested and charged by the State for a crime of disorderly conduct just to get the abuser away from the victim and allow the abuser time to cool off while the victim sought protective services. Only the federal government had jurisdiction to prosecute a crime of domestic violence between a non-Indian and Indian on the reservation. The charge of DV is a federal misdemeanor, meaning it was of low to no priority with the U.S. Attorney's Office.

Since 2015, the Fort Peck Tribes have worked with stakeholders locally and nationally to develop a comprehensive approach to domestic violence and specifically to the special domestic violence criminal jurisdiction over non-Indians. The Fort Peck Tribes provide an attorney for defendants through our Public Defender's office and have on staff a law trained judge to sit on all VAWA cases. The Fort Peck Tribes have a jury pool that consists of Indian and non-Indian jurors that represent a fair cross section of our communities.

The implementation of SDVCJ under VAWA 2013 has allowed the Fort Peck Tribes to create a domestic violence orientated restorative justice model that has improved local relationships, as well as the Tribe's relationship with state and federal entities.

Successes and Challenges of SDVCJ

The Fort Peck Tribes have prosecuted 45 VAWA cases under SDVCJ since March 2015, with a total of 37 defendants. We have repeat offenders and defendants with multiple charges. The criminal charges under SDVCJ are partner family member assault (PFMA) and violations of protection orders. The Fort Peck Tribes have conducted two jury trials that resulted in two acquittals. We have nine guilty pleas on the record and defendants who have opted into diversionary programs or deferred prosecution.

Although we cannot prosecute crimes against non-Indians when children are involved with the domestic violence cases, we do track the data based on law enforcement reporting. Of the 45 VAWA cases prosecuted, there were 21 cases involving children that could not be prosecuted. There were also 19 cases that reported drugs and/or alcohol involved with the primary offenses. Since the Fort Peck Tribes have implemented SDVCJ under VAWA 2013, we have had no federal referrals and no federal declinations to prosecute non-Indians for domestic violence crimes committed on the reservation.

Successes of VAWA implementation with the Fort Peck Tribes are highlighted through our restorative justice initiatives. Under our Justice for Families grant, we provide services to defendants through an offender accountability program and we provide legal services to victims at no cost. The Fort Peck tribal court developed a domestic violence docket in order to give priority in court scheduling to all DV cases.

Fort Peck Tribes have a Special Assistant U.S. Attorney (SAUSA) assigned to VAWA criminal cases and coordinates as a liaison between the Tribes and the U.S. Attorney's Office. Effectively eliminating the need for federal prosecution of non-Indian perpetrator DV crimes, allowing the USAO to focus on major crimes on the

Fort Peck Indian Reservation. A grant was also obtained to purchase case management software for the prosecutor's office and collect data for DV matters. An employee was hired to develop and execute training for law enforcement and create a plan of coordinated community response to domestic violence.

Another success is the ability of the Fort Peck Tribes to provide effective assistance of counsel to all domestic violence defendants at no cost to the defendant. We have a Public Defender office with an attorney who is appointed to represent all non-Indian SDVCJ defendants, and they can also represent Indian DV defendants.

The Fort Peck Tribes developed a jury pool system with the assistance of the local county government to ensure that we have a fair representation of our community members, Indian and non-Indian, to serve as jurors for VAWA trials. We have had great participation from the non-Indian residents of the reservation who have willingly answered juror questionnaires and have appeared for jury duty.

Fort Peck Tribes participate in the Tribal Access Program (TAP) which gives us the ability to share information with other jurisdictions and provide assistance to them in a timely manner. The Fort Peck Tribal Court maintains a website *www.fptc.org* that houses the Comprehensive Code of Justice (CCOJ) that includes all tribal laws of the Fort Peck Tribes. It is open to the public and contains a wealth of information.

Challenges the Fort Peck Tribes have encountered are medical costs of incarcerated non-Indians. Fort Peck Tribes maintain a tribal jail through a 638 contract with the Bureau of Indian Affairs. Our first VAWA defendant accumulated over $60,000 in medical expenses due to his pre-existing health conditions. The Tribe covered the costs but have continued to explore other options to assist with medical care of non-Indian defendants. We also utilize alternatives to incarceration, such as house arrest or release with conditions.

Restorative Justice Measures

Fort Peck Tribes are active in pursuing restorative justice measures by implementing programs to assist with offender rehabilitation and victim advocacy services. Since 2015, the Fort Peck Tribal Court has applied for and received federal funding of approximately 2.5 million toward specific domestic violence initiatives to include prosecution under SDVCJ, data collection of DV crimes, case management software, training for law enforcement, coordinated community response to DV, offender accountability, victim legal services and the creation of a domestic violence docket. Most of our restorative justice implementations are highlighted under the successes of SDVCJ.

The Fort Peck Tribes work toward rehabilitation of families and partner relationships to enable individuals to have the tools to break the cycle of domestic violence.

Tribal-State Relationships

Since 1999, the Fort Peck Tribes have had a successful cross deputization agreement between the Tribes' law enforcement, the county Sheriff's department, the Montana Highway Patrol and the city of Wolf Point. The agreement has allowed a smooth transition with SDVCJ and empowered tribal and state jurisdictions to enforce each other laws and provide aid to one another.

Montana established the nation's first Native American Domestic Violence fatality review team (NADVFRT). The team began reviewing cases in 2014. As I member of the team, I see and hear first-hand the devastating and lifetime affects domestic violence has on the family and communities. Fort Peck alone has had five homicides (2007–2016) reviewed by the Montana DV fatality review commission and the NADVFRT.

The fatality review commission seeks to reduce homicides caused by family violence and identify gaps in protecting domestic violence victims. The commission released a report in 2017, showing that Native Americans remain victims of intimate partner homicide at a disproportionate rate in Montana. Natives are approximately 7 percent of the state's population, but make up 16 percent of intimate partner homicides and 15 percent of intimate partner victims.

In closing, I understand that authorizing Tribes special jurisdiction over non-Indians is only one portion of the VAWA reauthorization but it is a vital instrument to public safety and to effectively addressing domestic violence in Indian Country. Now is the time to move forward collectively. Thank you for your time and attention.

The CHAIRMAN. Thank you, Judge FourStar.

Professor Reese, please proceed with your testimony.

STATEMENT OF ELIZABETH A. REESE, PROFESSOR, STANFORD LAW SCHOOL

Ms. REESE. Kunda wo ha, thank you, to the Chairman and Members of the Committee for inviting me to testify today. Navi towa hahweh Yunpoví. Navi Americana hahweh Elizabeth Reese. Nah Nambé Owingeh we ang oh mu.

My name is Elizabeth Reese, Yunpoví, and I am from the Pueblo of Nambé. I hold degrees in political science and political theory from Yale and from the University of Cambridge and a law degree from Harvard. I am now a law professor at Stanford, where I teach and write about trial law, Federal Indian law, constitutional law, and civil rights law.

But I was asked to testify here today not only because of my academic expertise but because of my professional experience. Before becoming an academic, I was an attorney at the National Congress of American Indians, where I worked closely with the first tribes who were implementing expanded criminal jurisdiction under VAWA 2013.

I talked on a regular basis with the tribal prosecutors, judges, and defense counsel. I explained the intricacies of this law, its requirements, its limitations, more times than I can count. I tracked data from the implementing tribes and listened first-hand to the harrowing stories about what it was like to be on the front lines of those prosecutions. Then I took all of that and I wrote it up into the five-year report published in 2018 that has been cited so many times today already.

In my written testimony I discuss at length many of the key takeaways from that report, including the need to increase VAWA's funding as well as its scope to other crimes against women. But in my remarks today, however, I will focus on why it makes particular sense to expand VAWA to adjacent criminal conduct and respond to some concerns about the constitutional rights of non-Indians in tribal courts.

To begin, currently tribes cannot charge defendants with any of the crimes that happen alongside the domestic violent event that they are actually prosecuting, such as violence against children, drug possession, assault on law enforcement, or just a simple DUI that happens while fleeing the scene.

Expansion to adjacent crimes would create a more equitable system for prosecutors and defense counsel to navigate. That is because the vast majority of criminal cases in the United States are resolved not at trial, but by plea-bargaining. One of the most common tools that prosecutors and defense counsel have when negotiating a plea is that there are often multiple charges of criminal conduct. Taking a serious or minor offense off the table allows the two sides to arrive at a result that they can both live with.

Without the full power to charge an offender with all of the crimes that they are suspected of committing, both sides are stuck with just that one offense, domestic violence, a charge which is notoriously difficult to prosecute in court, because it relies on the cooperation of often highly traumatized and reticent witnesses.

Violent crime is messy. Granting tribes the power to prosecute just one kind of crime simply doesn't reflect the reality of how

crime happens or the tools that people in the criminal justice system need to do their jobs.

Now, despite the truly unacceptable levels of violence against Native women, change has been slow, in part due to concern about the rights of non-Indians in tribal courts. To that, I have two responses. The first is to clarify the law on this matter since these concerns are rooted in several fundamental misunderstandings of the law.

To begin, although the Constitution itself does not apply to tribal governments, the Indian Civil Rights Act particularly as amended by the Tribal Law and Order Act and VAWA 2013 extends all of the relevant constitutional protections in a criminal court proceeding to non-Indian defendants. Congress created these protections and provided the powerful remedy of habeas corpus. As such, non-Indian defendants in tribal court already enjoy the same protection from unlawful detentions as they would in any other American court.

That leads me to my second response to those who may be worried about the fairness or adequacy of the justice system that tribes are running. That is a simple reminder that tribal governments are American governments, too, and that as such, they are no less worthy of our trust, respect and dignity. Like any other government in this Country, tribes are just a group of your fellow American citizens, simply trying their best to do what is best for the people that they are responsible for. They are not perfect.

But we ought to shy away from the continued unbefitting distrust of tribal governments as somehow more inherently suspect or less capable of dispensing equal justice. They, must like you, are trying in good faith to make and enforce laws that help people thrive and protect them from harm. It is high time that we trusted them to do that.

I look forward to questions from the Committee.

[The prepared statement of Ms. Reese follows:]

PREPARED STATEMENT OF ELIZABETH A. REESE, PROFESSOR, STANFORD LAW SCHOOL

Kunda wo ha, (thank you), to the Chairman and Members of the Committee for inviting me to testify today. Navi towa hahweh Yunpoví. Navi Americana hahweh Elizabeth Reese. Nah Nambé Owingeh we ang oh mu. My name is Elizabeth Reese, Yunpoví, and I am from the Pueblo of Nambé. I hold degrees in political science and political theory from Yale and the University of Cambridge and a law degree from Harvard. I am an Assistant Professor of Law at Stanford Law School, where I teach and write about American Indian tribal law, federal Indian law, federal constitutional law, and civil rights law.

I was asked to testify here today not only because of my academic expertise but because of my professional experience. Before becoming an academic, I worked as an attorney at the National Congress of American Indians (NCAI), where I was the primary attorney responsible for coordinating NCAI's work providing technical assistance to the tribal governments across the country that were working to implement the Violence Against Women Reauthorization Act of 2013's (VAWA 2013) expanded criminal jurisdiction over domestic violence cases involving non-Indians.

I am here today to tell you what I know about the successes of what has come to be known as VAWA 2013's Special Domestic Violence Criminal Jurisdiction (SDVCJ), the need to do more, and to offer my expert opinion on the legal questions that cloud and complicate this picture.

I. VAWA 2013 SDVCJ's Successes

In my role at NCAI, I worked closely with the first tribes who were implementing expanded criminal jurisdiction under VAWA 2013. While I worked particularly closely with the handful of tribes who were receiving the DOJ grant funding that

had been appropriated along with VAWA 2013 for implementation, it was also my job to support the rest of the tribes throughout the country who were taking on the task of these prosecutions entirely at their own expense. I talked on a regular basis with tribal prosecutors, judges, and defense counsel from across the country from tribes that were at every stage of the implementation process. I helped advise tribes as they rewrote their legal codes to comply with this statute. I explained the intricacies of this law, its requirements, and its limitations more times than I can count. I tracked data from the implementing tribes and listened firsthand to the harrowing stories about what it was like to be on the front lines of these prosecutions. And then, on the five-year anniversary of VAWA 2013, I wrote it all up into a comprehensive report documenting the one-year pilot project, and the first three years after the statue took nation-wide effect.[1] In that report, I worked with colleagues and collaborating organizations to agree on a set of detailed substantive findings that broadly supported the effectiveness of the law at achieving its key goal-allowing tribes to prosecute domestic violence offenders. When I wrote that report in March of 2018, NCAI was only aware of 18 tribes exercising expanded criminal jurisdiction, and there had been 143 arrests of 128 defendants which led to 74 convictions. As of September 2021, that number has increased to 28 tribes who have made at least 396 arrests of 227 defendants, leading to 133 convictions.[2]

Not only were the tribes able to do all of this work to bring justice to their communities, but they were able to do so while carefully safeguarding the rights of non-Indian defendants. As I heard about time and again, many tribes provide far beyond the floor of what is required of them. In many instances, non-Indian defendants in tribal courts experience a justice system that has far more time for them, and that treats them and their families with more individualized services and, frankly, care, than they are used to receiving in the state or federal system. For example, tribes in the initial few years sent 51 percent of the non-Indian defendants to batterer intervention or another rehabilitation program.[3]

A particular case from the Alabama Coushatta Tribe of Texas sticks out to me. When I spoke with the tribal prosecutor, she described the non-Indian defendant in that case—not as an outsider—but as a community member, and the mother of five tribal children. She spoke about how hard she tried to keep the woman's case in tribal court. In tribal court, she would be able to work out a plea deal that addressed her underlying drug problem and provided her with mental health counseling. This plan kept her clean and out of jail, building toward reuniting her with her children. If the same defendant was prosecuted in state court, not only would that kind of care be resource or time prohibitive, but she would have likely received a longer sentence due to her criminal history with drug possession.[4]

Moreover, the law had the perhaps unintended effect of creating an impetus for positive reforms, creative legal innovations with benefits beyond the borders of Indian Country,[5] collaboration, and communication across tribal governments as well as other sovereigns.[6] However, the report also carefully documented the many ways in which VAWA 2013 did not go far enough and the frustrations that tribal governments had with the current limitations in the law.

II. The Need To Do More To Protect Native Women

Since VAWA 2013 was passed, the National Institute of Justice issued a 2016 report showing that the problem was even worse than we thought. The rates of domestic and sexual violence against American Indian and Alaska Native women are staggering. More than 4 in 5 American Indian and Alaska Native women—84.3 percent—have experienced intimate partner violence, sexual violence, or stalking in their lifetimes. And the vast majority of them experience violence at the hands of a non-Native perpetrator, including 96 percent of victims of sexual violence and 89

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[1] NAT'L CONG. OF AM. INDIANS, VAWA 2013'S SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION FIVE–YEAR REPORT (2018) [hereinafter VAWA 2013 REPORT].

[2] Email from Esther Labrado, Legal Manager and Policy Lead—Legal & Governance, National Congress of American Indians, to author (Dec. 6, 2021, 11:33 AM) (on file with author).

[3] VAWA 2013 REPORT at 20.

[4] *Id.* at 21.

[5] *Id.* at 61–70 (describing tribal courts' different implementation and code choices as "laboratories of justice"); see Elizabeth Reese, The Other American Law, 73 STAN. L. REV. 55, 588–594 (2021) (explaining how the decision to interpret VAWA 2013's requirement that tribal jury pools represent a fair cross section of their communities, including non-Indians, as allowing for tribal flexibility to use lists of non-Indian community members such as spouses, employees, and lessees rather than simply non-Indian residents as an innovative idea with applications to other geographic areas throughout the United States that struggle with diversifying their jury pools).

[6] VAWA 2013 REPORT at 32–37 (discussing tribal law reforms—particularly in the realm of victims' rights and safety—as well as the increased collaboration between tribes and stronger relationships built with state and federal partners).

percent of stalking victims. American Indian and Alaska Native women are 5 times more likely to experience violence by an interracial partner as non-Hispanic white women, and 1.7 times more likely than white women to have experienced violence in the past year.[7] VAWA 2013 and the financial supports provided therein was only the beginning of what is needed to address this problem.

A. Increase Funding to Support Tribal Governments

The number one reason that more tribal governments are not prosecuting under VAWA 2013 is because they cannot afford it. Criminal justice systems are very expensive. And tribal governments throughout this country are struggling financially without anything close to adequate support from the federal government.[8] I would be happy to return to this committee another time to provide testimony on the historical roots, demographic realities, and legal complexities[9] that all compound to create the untenable status quo of how tribal governments are funded—it is indeed an unsustainable reality that ought to trouble us all. However, for now, all I will say is that for many tribal communities, it is not that they lack the will or ability, it is that the cost of reworking or ramping up the scale of their criminal justice systems is daunting. In order to prosecute under VAWA 2013, many tribes must rework their codes, hire additional prosecutors, defense attorneys, and judges, contract for incarceration and inmate healthcare, and make countless other changes to comply with law.[10] Take a look at the cost to a state or the federal government for each arrest, prosecution, police officer, judge, jail, healthcare costs for detainees, transportation, and everything in between all the way down to keeping the lights on. It is just as expensive for tribes to grow their justice systems and take on this work as any other government. We ought to be thinking about budgetary support on those terms.

Therefore, not only is it my recommendation that this committee consider proposing legislation that reaffirms the grant funding to support tribes who are seeking to implement SDVCJ, but I suggest increasing it. And what they need is not another competitive grant program for discrete and limited projects, but additional, steady streams of funding that more tribes can use to do things like hire additional staff, expand infrastructure, and generally keep the lights on.

B. Expand the Scope of Tribal Jurisdiction Over Non-Indians Under VAWA

1. It Is Senseless and Dangerous to Keep Tribes from Prosecuting the Many Similar Crimes Against Native Women

I also suggest expanding the number of offenses available under the statute. Having the power to prosecute such a limited set of offenses and limited kind of offenders forces a senseless and frustrating powerlessness upon tribal governments. While prosecuting domestic and dating violence cases, tribes consistently come across other kinds of similar, but not covered crimes, or crimes that happen alongside their VAWA SDVCJ cases.[11] Tribes have the knowledge, will, and capacity to do something about these crimes, and lack only the permission. This powerlessness can have tragic and preventable consequences.

As it was told to me by the victim advocates and court officials at Sault Ste. Marie Tribe, a non-Indian man who was dating a tribal member made unwanted sexual advances on her 16- year-old daughter. He sent inappropriate text messages and stood outside their house. On one occasion he groped the daughter and told her not to tell anyone. When mother and daughter came forward asking for help, the tribe tried to charge the defendant with domestic abuse- attempting to characterize the

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[7] NAT'L INST. OF JUST., VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN: 2010 FINDINGS FROM THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (May 2016).

[8] *See* U.S. COMM'N ON CIVIL RIGHTS, A QUIET CRISIS: FEDERAL FUNDING SHORTFALL AND UNMET NEEDS IN INDIAN COUNTRY (July 2003).

[9] Tribes are unable to effectively collect funds the primary way that most governments are able to, through taxes, thanks to a series of legal decisions and policy choices. They are unable to collect property taxes since reservation lands are held in trust by the federal government. Tribes are able to use sales and excise taxes to a limited degree, though their efforts to impose such taxes over non-Indians are often challenged through litigation, *Atkinson v. Shirley*, 532 U.S. 645 (2001), or de-facto limited by the imposition of concurrent state taxation, *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989); *Tulalip Tribes v. Washington*, 349 F. Supp. 3d 1046 (W.D. Wash. 2018). The urgent need for tribal economic development responds to this need for alternative funds. *See* Matthew L.M. Fletcher, *In Pursuit of Tribal Economic Development as a Substitute for Reservation Tax Revenue*, 80 N.D. L. REV. 759, 771–74 (2004).

[10] VAWA 2013 REPORT at 29–30.

[11] *Id.* at 22 (discussing a workplace sexual assault case that Pascua Yaqui was unable to charge although the assailant had sufficient ties to the community because it was not within the context of a prior romantic relationship).

sexual assault against the daughter as part of a pattern of abusing her mother. But, the tribal court, mindful of limits of the law, dismissed the charges for lack of jurisdiction since the girl was not in a domestic or dating relationship with the defendant. Four months later, he was arrested by county police for kidnapping and repeatedly raping another 14-year-old tribal member at an off-reservation hotel.[12] This rape was preventable. The tribe knew that this individual was a danger to the community—particularly to young girls—and had victims willing to come forward. The only thing stopping them from protecting their community was they lacked the precise permission of the United States Congress. Federal law has not yet said that it is ok for the local police, prospectors, and judges to do anything about these crimes being done to their own people-that happen right in front of them. So they have to sit back and do nothing.

2. It Is Ineffective, Inefficient, and Problematic to Prevent Tribes from Charging and Negotiating Plea Bargains That Include Adjacent Criminal Conduct

At the very least, Congress ought to expand tribal criminal jurisdiction to include similar crimes that go to the heart of the violence against women that this law is intended to address, such as sexual assault, stalking, and sex trafficking, and the kinds of crimes that are the most common adjacent offenses. These offenses often occur along with the domestic violence or dating violence crimes that tribes already have jurisdiction over. Across the initial few years of VAWA 2013 cases documented in my report, for example, 58 percent of incidents involved children,[13] and 51 percent of incidents involved drugs or alcohol.[14] But currently, tribes cannot charge defendants with many of these co-occurring offenses, including violence against children, drug possession, or assault on law enforcement.[15]

An expansion to adjacent crimes would create a more equitable system for prosecutors and defense counsel to navigate. The vast majority of criminal cases in the United States are resolved, not at trial, but by plea bargaining. One of the most common tools that prosecutors and defense counsel have when negotiating a plea is that there are often multiple charges of criminal conduct brought. Taking one or another more serious or minor offense off the table allows the two sides to arrive at a result they can both live with. Without the full power to charge an offender with all of the crimes they are suspected of committing, both sides are stuck with just the one charge: domestic violence, a charge which is notoriously difficult to prove in court and which relies on the cooperation of often highly traumatized and reticent witnesses. Crimes such as a DUI when fleeing the scene of a domestic assault or an assault on the arresting police officer are often easier, simpler, and less difficult options for prosecutors to work with, particularly because they are less traumatizing for domestic violence victims.[16] Violent crime rarely unfolds in a neat fashion such that only one crime fits the set of events and everyone is on the same page about the alleged offender's guilt and the appropriate punishment. Granting tribes the power to prosecute only one kind of crime simply doesn't reflect the reality of how crime happens or the tools people in the criminal justice system use to do their jobs. As one attorney from a prosecuting tribe described it to me, forcing attorneys to work within such a limited legal framework is akin to requiring them to do their jobs "with one hand tied behind their back."[17]

In truth, Congress should simply restore full concurrent jurisdiction over non-Indian defendants for tribal governments, keeping in mind that the 1-to-3-year sentencing limitations put in place by the Tribal Law and Order Act already do a tremendous amount of work to limit what tribes can do when it comes to the most serious offenses.[18] That would be clearer and eminently more workable. And it would be safer and far more effective because it would be informed by the realities of how criminal cases are investigated and prosecuted. Think of the officers who show up on the scene to answer an 9-1-1 call, when the facts of what happened aren't yet clear. Having the authority to conduct an open-ended investigation helps those officers to do their jobs. But that's not what happens in Indian Country. Instead, the officer's authority or what court needs to issue a warrant can turn on things like Indian status or even a couple's relationship status. As Justice Kavanaugh—quoting a group of U.S. Attorneys describing this system last summer—said at a Supreme Court oral argument recently, the jurisdictional system in Indian Country is an "in-

[12] *Id.* at 24–25.
[13] *Id.* at 24.
[14] *Id.* at 26.
[15] *Id.* at 23.
[16] *Id.* at 26–27 (describing instances of such adjacent crimes going unprosecuted and the difficulties it creates for tribal prosecutors).
[17] *Id.* at 22.
[18] 25 U.S.C. § 1302(a)(7), (b).

defensible morass of complex, conflicting, and illogical commands layered in over decades via congressional policies and court decisions and without the consent of tribal nations."[19]

III. The Legal Foundation for Tribal Criminal Jurisdiction Over Non-Indians and the Processes and Rights That Protect Non-Indian Defendants

Despite this "morass," and the truly unacceptable levels of violence against Native women, change has been slow. When the prospect of expanding tribal criminal jurisdiction as a potential solution for this untenable status quo has been raised in the past, I know that there has been concern for the rights of non-Indians being tried in tribal courts, or the underlying constitutional validity of congressional action. I have encountered reticence about tribal courts prosecuting non-Indians, because of concern that they would not have the protections of the federal Constitution in tribal courts. To that, I have two responses. The first is to clarify the law on this matter since these concerns are rooted in several fundamental misunderstandings of the law. The second is a simple reminder that tribal governments are American governments too, and as such they are no less worthy of our trust, respect, and dignity.

A. No Further Protections or Oversight is Necessary: VAWA 2013 Already Ensures That Non-Indian Defendants in Tribal Courts are Protected by Constitutionally Equivalent Rights

To begin with, the Indian Civil Rights Act (ICRA), particularly as amended by the Tribal Law and Order Act (TLOA) and VAWA 2013, extends all of the relevant constitutional protections in a criminal court proceeding to non-Indian defendants.[20] The Supreme Court recently described the provisions contained in ICRA as "require[ing] tribes to ensure 'due process of law,'. . . accord[ing] defendants specific procedural safeguards resembling those contained in the Bill of Rights and the Fourteenth Amendment."[21] These protections include the basic right to due process of law;[22] freedom from illegal or warrantless search or seizure;[23] a prohibition on double jeopardy;[24] a right against self-incrimination;[25] the right to a speedy trial and to confront witnesses;[26] the right to a jury trial;[27] the right to indigent defense;[28] the right to effective assistance of counsel;[29] the prohibition on bills of attainders;[30] and the right not to be subjected to cruel or unusual punishment, excessive fines, or excessive bail.[31]

Congress has created these protections and provided the remedy of habeas corpus.[32] Tribes are also legally required to notify all their detainees of their right to file a habeas petition to contest their detention as a violation of their rights.[33] Just like the equivalent guarantees in the Constitution, these protections exist on the books, ready to spring into action when they are transgressed and then invoked by an aggrieved citizen. Nothing else beyond the legal promise of the right and the provision of a remedy is needed to ensure that tribes are adequately providing the rights that they are required to under the law. Indeed, no more than we do to make sure that the county courts in Illinois are complying with the federal constitutional rights they are required to afford their defendants. Both systems already work the same way. The writ of habeas corpus is available in both instances,[34] and so defendants are able to contest any violation of their equivalent constitutional rights protections that result in unlawful detention, just as they would a contest a similar viola-

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[19] Transcript of Oral Argument at 56, *Cooley v. United States*, 593 U.S. ____ (2021) (Kavanaugh, J.) (No. 19–1414) (quoting Brief for Former United States Attorneys as Amici Curiae Supporting Petitioner at 8–9).

[20] 25 U.S.C. §§ 1302–1304.

[21] *U.S. v. Bryant,* 579 U.S. 140, 156–57 (2016). The Court went on to conclude that: "Proceedings in compliance with ICRA, Congress determined, and we agree, sufficiently ensure the reliability of tribalcourt convictions." *Id.* at 157.

[22] 25 U.S.C. § 1302(a)(8).

[23] 25 U.S.C. § 1302(a)(2).

[24] 25 U.S.C. § 1302(a)(3).

[25] 25 U.S.C. § 1302(a)(4).

[26] 25 U.S.C. § 1302(a)(6).

[27] 25 U.S.C. §§ 1302(a)(10), 1304(d)(3).

[28] 25 U.S.C. § 1302(c)(2).

[29] 25 U.S.C. § 1302(c)(1).

[30] 25 U.S.C. § 1302(a)(9).

[31] 25 U.S.C. § 1302(a)(2).

[32] 25 U.S.C. § 1303

[33] 25 U.S.C. § 1304(e)

[34] 25 U.S.C. § 1303 (extending the writ of habeas corpus to any person to test the legality of detention ordered by an Indian tribe); U.S. Const. art. I, § 9, cl. 2; 28 U.S.C. § 2254(a).

tion of their constitutional rights in state court.[35] We can trust that tribal court systems take just as seriously their duty to interpret and provide adequate rights protections to defendants,[36] when they are raised immediately or in the course of a direct appeal. And we can certainly trust that people don't want to stay in prison, particularly when their rights have been violated. If there were rampant rights violations in tribal courts, we can rest assured that we would know about it.

B. Tribal Governments Deserve to Be Trusted to Do Their Part Alongside Other American Governments to Protect Native Women

My second response to those who may be worried about the fairness or adequacy of the justice systems that tribes are running, is to share what I came to realize while working so closely with tribal governments throughout this country. It is at once so obvious and yet unfortunately still so profound that it has become a large part of my academic career to extend this insight to every corner of American law: Indian Tribes are simply governments, just like any other in this country. They are composed—not of "outsiders"—but entirely of your fellow American citizens. Like any other government, they are trying their best to do what is best for the people they are responsible for. They are trying to make laws and programs that help people thrive and protect them from harm. They are not perfect. They are simply a group of American citizens doing their best to shape laws and build systems that they and their families will have to live by and be brought to justice under when they cause harm. And it is high time we trusted them to do that.

When equivalent rights protections are already readily available under existing federal law, requiring any additional federal agency oversight of tribal governance, or earlier federal court intervention beyond what we require of states is a waste of federal and tribal resources. When a state is accused of violating a criminal defendant's Constitutional rights, defendants are required to raise the issue first in state court to give them the first opportunity to address and rectify it.[37] To subject tribal governments to any more supervision or scrutiny than we do the other governments in this country is nothing more than a paternalistic impulse rooted in colonially tinged distrust of tribal governments as somehow more suspect or less capable of dispensing equal justice.[38] The "jurisdictional maze" of Indian Country and lack of adequate protections for public safety already makes Indian people feel like "second-class citizens."[39] We should be weary of any programmatic change which would likewise communicate that their governments are second-class governments.

C. Congress Has the Power to Restore Tribal Criminal Jurisdiction Over Non-Indians

Finally, there is the question of Congress' power to authorize broader exercise of tribal criminal jurisdiction. It is settled law that tribal sovereignty, including the power to prosecute all persons who commit crimes within their territories, is inherent.[40] It is built into the government of the tribe, with permanent and deep roots in their very existence as a government in their own right, as pre-colonial self-governing peoples. However, it is also settled law, that Congress-as a matter of both constitutional power and colonial necessity—has plenary power over the scope of

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[35] 28 U.S.C. § 2254(a).

[36] Mark D. Rosen, Multiple Authoritative Interpreters of Quasi-Constitutional Federal Law: Of Tribal Courts and the Indian Civil Rights Act, 69 FORDHAM L. REV. 479, 522 (2000) ("Additional evidence demonstrates that tribal courts take their task of construing ICRA seriously. This evidence is the attentiveness tribal courts give to federal court precedents when construing ICRA's sister terms in the Bill of Rights, as well as the tendency of tribal courts to depart from federal interpretations only after articulating good reasons to do so. Indeed, analysis of the case law reveals that tribal courts have assimilated many Anglo constitutional values even though they have given the provisions varying applications.").

[37] 28 U.S.C. § 2254(b) (describing the state court exhaustion requirement in habeas corpus petitions for violations of constitutional rights).

[38] Moreover, evidence suggests such concerns are completely unwarranted. In a study of tribal court civil cases involving non-Indian defendants, Professor Bethany Berger found that tribal courts were nonetheless even-handed and fair. Bethany Berger, Justice and the Outsider: Jurisdiction Over Nonmembers in Tribal Legal Systems, 37 ARIZ. ST. L.J. 1047 (2005); see also Rosen, supra note 36.

[39] INDIAN L. & ORDER COMM'N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER: REPORT TO THE PRESIDENT & CONGRESS OF THE UNITED STATES v, viii-ix (Nov. 2013) (describing the "jurisdictional maze" in Indian Country that makes Indian people "second-class citizens" when it comes to protection from crime, particularly because the local police & law enforcement most closely connected to Indian Country are helpless to prosecute a great deal of the crimes that they encounter).

[40] *United States v. Wheeler*, 435 U.S. 313, 322–23 (1978).

that sovereignty.[41] Just as with state sovereignty, Congress cannot create or destroy tribal sovereignty, but federal power can limit its exercise.[42] But Congress can, just as easily—and without complicating the source of that underlying authority—remove the barrier placed on that power. Congress did just that in VAWA 2013, and in the "Duro Fix,"[43] which restored tribal power to prosecute non-member Indians. When the Supreme Court examined Congress' decision to allow tribes to exercise more of their original inherent authority to prosecute crimes committed on their territory, it described that action as simply Congress "removing restrictions imposed on the tribes' inherent sovereignty,"[44] and it upheld Congress' power to do so under the Constitution.[45]

Then, as here, Congress has not only the power to do something but the responsibility.

Forty-three years ago, when the Supreme Court decided *Oliphant v. Suquamish*—the case that removed tribal criminal jurisdiction over non-Indians—the opinion's final paragraph acknowledged three important things. First, that the concerns about tribal courts that motivated parts of their decision might not even be well founded, particularly after the passage of ICRA. Second, that their decision might have drastic consequences for the "prevalence of crime" on reservations. And finally, that it would be up to Congress to fix the mess they made, if that indeed happened.[46]

And here we are, still largely sitting in this mess 43 years later, after decades of Native women paying the highest price for the Supreme Court's decision and Congress' inaction. It is time to get out of the way and let tribal governments do as much as they can in the fight to protect Native women. Our reasons for keeping them out of it are rooted in fear, distrust, and assumptions about their capacity to soundly administer the law that all ought to be long since in our past.

The CHAIRMAN. Thank you very much, Professor Reese.

Last, we have Michelle Demmert, Director of the Law and Policy Center, Alaska Native Women's Resource Center, in Fairbanks, Alaska. Please proceed.

STATEMENT OF MICHELLE DEMMERT, DIRECTOR, LAW AND POLICY CENTER, ALASKA NATIVE WOMEN'S RESOURCE CENTER

Ms. DEMMERT. Good afternoon. My name is Michelle Demmert. I am an enrolled citizen and the former chief justice of Central Council Tlingit and Haida Indian Tribes of Alaska Supreme Court, and serve as the law and policy director for the Alaska Native Women's Resource Center.

The rates of violence experienced by Alaska Natives are shocking. Alaska ranks as one of the most dangerous places in the Nation for women

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[41] *Lone Wolf v. Hitchcock,* 187 U.S. 553, 565 (1903); *United States v. Kagama*, 118 U.S. 375, 380 (1886).

[42] Although there are, of course, many ways—including provisions of the Constitution itself—which limit the exercise of state sovereignty, federal law also recognizes that Congress' power to limit the scope of state courts' jurisdiction. In *Tafflin v. Levitt*, the Supreme Court held that though state courts otherwise have "inherent authority, and are presumptively competent, to adjudicate claims," they can "by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests" be "divested of jurisdiction to hear [certain claims.]" 493 U.S. 455, 458, 460 (1990) (quoting *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981)).

[43] 25 U.S.C. § 1301(2).

[44] *United States v. Lara*, 541 U.S. 193, 207 (2004).

[45] *Lara*, 541 U.S. at 210.

[46] "We recognize that some Indian tribal court systems have become increasingly sophisticated and resemble in many respects their state counterparts. We also acknowledge that with the passage of the Indian Civil Rights Act of 1968, which extends certain basic procedural rights to anyone tried in Indian tribal court, many of the dangers that might have accompanied the exercise by tribal courts of criminal jurisdiction over non-Indians only a few decades ago have disappeared. Finally, we are not unaware of the prevalence of non-Indian crime on today's reservations which the tribes forcefully argue requires the ability to try non-Indians. But these are considerations for Congress to weigh in deciding whether Indian tribes should finally be authorized to try non-Indians." *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 211–12 (1978).

This is especially true for Alaska Native women. While Alaska Natives comprise approximately 90 percent of the State's population, the Alaska Criminal Justice Commission reports that 46 percent of reported felony level sex offenses involve Alaska Natives. Given the many barriers to reporting, we see this as an underestimate.

Available data suggests that among other Indian tribes, Alaska Native women suffer the highest rates of domestic and sexual violence in the Country. Alaska has the highest number of missing indigenous persons, too.

As of August 2021, 40 percent of the missing Alaska Native and American Indian people in NamUs were from Alaska. These missing women are the devastating manifestations of centuries of oppression and broken systems that have failed to protect Native women and children from birth to death for generations.

The combined impact of P.L. 280, the Supreme Court's Venetie decision, and the timing of historical events in Alaska leave us Natives dependent on the State for public safety and justice. My written testimony discusses the legal framework in Alaska. Today, I will focus on what this legal framework means for Alaska Natives.

It can be difficult to understand a place in America where you cannot call 911 for a quick response within minutes. Such is the case in Alaska. We do not have a centralized 911 system, and the State criminal justice and victim services are located in a handful of urban areas, making them more theoretical than real in rural Alaska.

Many villages lack law enforcement. We might have to leave a message and wait hours and days and sometimes weeks for a necessary response. Sometimes a response is nothing more than a phone call saying that it doesn't rise to the level for an investigation. Because we lack the necessary resources and the infrastructure to manage these issues on our own, our children, our children are often our first responders, and our tribal leaders and advocates act as law enforcement and preserve crime scenes.

I would like to share two examples. In a homicide case, it took 11 hours for law enforcement to appear. The 13-year-old victim's body laid outside across the street from the family's home. Sometimes these crime scenes are like this for days on end. We have lost our loved ones and are powerless to do anything more than sit vigil, protecting a crime scene until law enforcement arrives.

In a 2018 case, in a small, remote interior village, a victim waited 17 days to get out of the village to safety. During this time, the victim was treated at the clinic, called Alaska State troopers located in a hub community one hour away by plane. The weather was unflyable for three weeks. In addition, she could not get to a regional medical clinic for further treatment, and law enforcement could not get into the community for an investigative report.

The circumstances described are repeated throughout remote Alaska. They will continue until our local governments have the authority and resources they need to address public safety.

As you have heard, many tribes outside Alaska have successfully exercised jurisdiction over non-Indians who abuse Native women since the passage of VAWA in 2013. Indian tribes in Alaska were

effectively excluded from that legislation because of the use of the term Indian Country, which Alaska tribes lack.

We have called on Congress to remove the legal barriers denying Alaska Native victims of violence access to justice from their own tribal governments. We are encouraged by current efforts to do so. We support the creation of the pilot project in Alaska.

Specifically, we recommend the creation, with Department of Justice support, of an Alaska-specific inter-tribal Special Domestic Violence Court Jurisdiction working group, a planning phase with robust technical assistance for code drafting, training, and court capacity building, and sufficient financial support for costs related to both planning and implementation.

We strongly support proposed amendments to VAWA 2013 related to improvements for Special Domestic Violence Court Jurisdiction. Thank you, thank you for releasing the discussion draft today. It represents an important step forward, and we appreciate the bipartisan work of the Chairman and Vice Chairman Murkowski to reform the outdated Federal laws that prevent tribal nations, including those in Alaska, from protecting our communities.

In the Tlingit language, we have no words or descriptions for violence within a family home. Restoring and enhancing local tribal governmental capacity to respond to violence against women provides greater local control, safety, accountability and transparency. As a result, we will have safer communities, and a pathway for long-lasting justice.

I look forward to providing additional feedback to the Committee on the discussion draft.

Gunalchéesh. Háw'aa. Thank you.

[The prepared statement of Ms. Demmert follows:]

PREPARED STATEMENT OF MICHELLE DEMMERT, DIRECTOR, LAW AND POLICY CENTER, ALASKA NATIVE WOMEN'S RESOURCE CENTER

My name is Michelle Demmert, and I am an enrolled citizen and the former Chief Justice of Central Council Tlingit and Haida Indian Tribes of Alaska's Supreme Court (Tlingit & Haida) and serve as the Law and Policy Director for the Alaska Native Women's Resource Center (AKNWRC).

The Alaska Native Women's Resource Center is a nonprofit organization dedicated to ending violence against women in partnership with Alaska's 229 tribes and allied organizations.

My nation, Tlingit & Haida, is a federally recognized tribal government with over 33,000 citizens worldwide, and has an active, government-to-government relationship with the United States. The Tribe serves 18 villages and communities spread over 43,000 square miles within Southeast Alaska. More than 7,000 tribal citizens reside in Juneau, with several thousand more located in Anchorage. Beyond that, a significant number of tribal citizens reside in Washington State (more than 6,000), and smaller numbers stretch into Oregon and the rest of the world. Tlingit & Haida tribal citizens are among the largest, most isolated, and most geographically dispersed tribal populations nationwide. In Southeast Alaska, where the Tribe provides the majority of its services, most communities have no roads in or out and must rely on planes and boats for both day-to-day needs and emergencies. The majority of Alaska's 229 tribes are similarly isolated.

The AKNWRC is a member of the National Congress of American Indians' Task Force on Violence Against Women. Since its establishment in 2003, the NCAI Task Force, which I cochaired from 2017–2020, has assisted Indian tribes in advocating for national legislative and policy reforms to strengthen tribal government authority and access increased resources to safeguard the lives of American Indian and Alaska Native women.

Thank you for inviting me to testify on behalf of the AKNWRC on the essential role of the Violence Against Women Act (VAWA) in supporting Alaska Native vic-

tims of domestic and sexual violence and strengthening the response of Indian tribes in Alaska to these crimes in villages across Alaska.

The challenges confronting Alaska Indian tribes in creating safe villages for our citizens, specifically women, are distinct from any other sovereign in the United States-Indian tribes, States, Territories, or the federal government. In this testimony, I will provide a brief explanation of how systemic barriers within the state of Alaska undermine safety for Alaska Natives and exacerbate an already dire situation for many Alaska Native women. I will also discuss how the tribal provisions in VAWA 2013 have left Alaska Natives further behind. Finally, I will address how the Violence Against Women Reauthorization Act, H.R. 1620 and recommended reforms included in the Alaska Tribal Public Safety Empowerment Act introduced last session, S. 2616, present a path forward that begin to address the unique challenges in Alaska and will ultimately bring greater safety to Alaska Native women.

Systemic Legal Barriers Confronting Alaska Indian Tribes

The 2013 Indian Law and Order Commission (ILOC) issued the Report, "A Roadmap for Making Native America Safer" and devoted a chapter to the unique issues in Alaska.[1] The Report found that the absence of an effective justice system has disproportionately harmed Alaska Native women who are continually targeted for all forms of violence.

An instructive statement contained in the ILOC report concludes:

> "The strongly centralized law enforcement and justice systems of the State of Alaska . . . do not serve local and Native communities adequately, if at all. The Commission believes that devolving authority to Alaska Native communities is essential for addressing local crime. Their governments are best positioned to effectively arrest, prosecute, and punish, and they should have the authority to do so-or to work out voluntary agreements with each other, and with local governments and the State on mutually beneficial terms."
>
> —Indian Law and Order Commission Report, 2013

We are encouraged that Congress is considering legislation that recognizes that restoring safety for Alaska Native women requires empowering Alaska Native tribal governments. This is consistent with recommendations that have been made for decades to remove barriers in federal law that limit the authority of tribal justice systems to address violence in tribal communities. Unfortunately, Congressional efforts over the last 10 years to empower tribal governments—including VAWA 2013 and the Tribal Law & Order Act of 2010—have left Alaska tribes behind. Alaska tribes are treated differently under U.S. law largely because of the timing of Alaska statehood and the unique structure of the Alaska Native Claims Settlement Act.

The Alaska Territory was purchased by the United States from Russia in 1867. Three short years later, Congress prohibited the President from "treating" with tribal governments.[2] As a result, there are no treaties with tribes in Alaska. Instead, between 1891–1936 reserves in Alaska were established by Executive Order, or in the case of the Annette Islands reserve, by act of Congress.

Alaska was a territory for almost a century before becoming a state during a time known as the Termination Era of federal Indian policy (mid-1940s to mid-1960s).[3] The Termination Era was a period of policymaking focused on ending federal obligations to Indian tribes with the ultimate aim of dissolving tribal governance structures and lands and fully assimilating Native people into the dominant culture. The policy has been widely repudiated, but many of today's challenges are the direct result of Termination Era actions that have never been undone. Public Law 83–280 (1953) (PL 280) was enacted during the Termination Era and transferred to certain states federal criminal jurisdiction over Indians living on tribal lands. Before PL 280 was enacted, the federal and tribal governments shared jurisdiction, exclusive of the states, over almost all civil and criminal matters involving Indians on tribal lands. A month after Alaska became a state in 1958,[4] the provisions of PL 280 were extended to Alaska as a "mandatory" state.

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[1] A Roadmap for Making Native America Safer: Report to the President and Congress of the United States (November 2013), available at *http://www.aisc.ucla.edu/iloc/report/*.

[2] 25 U.S.C. § 71. During this time, it is notable that the Civil War had just ended, and the country was in the process of the "Reconstruction Era," a time which the United States was reintegrating into the Union the states that had seceded and determining the legal status of African Americans. Alaska Territory was a far-off world not part of this focus.

[3] 68 Stat. 795; Pub. L. 85–615, § 1, Aug. 8, 1958.

[4] Public Law 85–508 (July 7, 1958).The statehood act was signed into law by the President on July 7, 1958. On January 3, 1959, the President signed the official proclamation admitting Alaska as the 49th state.

At the time of statehood, Alaska had several "Executive Order" Reservations and Native townsites, which were set aside for the benefit and use of "Indians" or "Eskimos." The Alaska Natives were active in advancing their rights and engaged in governance with the Alaska Native Brotherhood (1912) and the Alaska Native Sisterhood (1915). Through their efforts, the first civil rights act in the country was adopted while Alaska was still a Territory.[5] In the 1960s, land rights became a primary issue in Alaska. With the discovery of oil, the federal government wanted to end any question of land status for Natives and gain access to the rich oil reserves.

The Alaska Native Claims Settlement Act (ANCSA)[6] came at the tail end of the Termination Era. ANCSA created a new and novel approach to tribal land tenure. Rather than recognize sovereign tribal lands, ANCSA created for-profit corporations and transferred tribal lands in fee to these entities to manage more than 40 million acres of land. ANCSA divided the state into 12 regional corporations and over 200 village corporations that would identify with their regional corporation. Many of these villages had corresponding tribal village governments but, with the passage of ANCSA, no meaningful or recognized land base. After ANCSA, the only remaining Alaska reservation is the Annette Island Reserve in Southeast Alaska.[7]

Following the enactment of ANCSA, several decades of confusion about the status and territorial authority of Alaska tribal governments ensued. Ultimately, the tribal status of Alaska Natives was confirmed, but the jurisdiction of the tribes was severely limited by *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), a case in which the U.S. Supreme Court held that the lands transferred by ANCSA do not meet the definition of "Indian country" under federal law. As a practical matter, this decision has meant that with the exception of the Annette Island Reservation, there is virtually no recognized "Indian country" in Alaska.[8]

As a term in federal law, "Indian country" defines a confined area of territorial jurisdiction tied to a tribe. The term "Indian country" means:

> "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of- way running through the same."[9]

Most federal programs and statutes reference eligibility of "Indian country" for certain programs. While federal programs have expanded their definitions for Alaska Native tribes to take advantage of most programs as "dependent Indian communities," the lack of true legally defined "Indian country" and corresponding defined jurisdiction, continues to create a dangerous situation in Alaska and for tribal governments to protect their women and children.

In addition, without lands recognized as "Indian country," Alaska tribes have very little ability to tax or engage in economic development opportunities that may be available to tribes outside Alaska. Alaska tribes have also been deprived of consistent and predictable tribal court federal appropriations. As a result, Alaska tribes lack the revenue typically available to other tribal governments to fund and sustain essential government infrastructure and services such as a court or police force. All Alaska tribes are in a similar position and must find innovative ways to raise government revenue and to leverage other resources to sustain their tribal courts, public safety, and victim services. Because of this resource dilemma, available grants for developing and sustaining programs are a matter of life or death for Alaska Native women and tribes.

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[5] House Bill 14, the Antidiscrimination Act of 1945.

[6] 43 U.S.C. 1601 *et. seq*. (1971).

[7] 18 U.S.C. § 1162 (Except as otherwise provided in sections 1154 and 1156 of this title,; 28 U.S.C. § 1360.Pursuant to ANCSA, two Native corporations were established for the Neets'aii Gwich'in, one in Venetie, and one in Arctic Village. In 1973, those corporations elected to make use of a provision in ANCSA allowing Native corporations to take title to former reservation lands set aside for Indians prior to 1971, in return for forgoing the statute's monetary payments and transfers of non-reservation land. See § 1618(b). The United States conveyed fee simple title to the land constituting the former Venetie Reservation to the two corporations as tenants in common; thereafter, the corporations transferred title to the land to the Native Village of Venetie Tribal Government (the Tribe). However, the analysis of their land status is beyond the scope of this discussion.

[8] The Venetie decision did not address whether other lands in Alaska, including Indian allotments and Native townsites, are "Indian country."

[9] 18 U.S.C. § 1151.

The combined impact of PL 280 and the *Venetie* decision leave Alaska Natives dependent on the state of Alaska for public safety and justice. Alaska tribal communities are at the mercy of the state to provide justice services. Unfortunately, state services are centered in a handful of Alaskan urban areas, making them more theoretical than real in rural Alaska. The Indian Law and Order Commission found that "Alaska Department of Public Safety (ADPS) officers have primary responsibility for law enforcement in rural Alaska, but ADPS provides for only 1.0–1.4 field officers per million acres."[10] Without a meaningful law enforcement presence, crime regularly occurs with impunity. In addition, the maze of jurisdictional issues, the remote nature of many tribal communities, and other systemic barriers in Alaska create extremely dangerous conditions for Alaska Native women across the entire state, and especially those living in our small, remote resource-poor communities. Without the extension of state services and resources to address the disparities in rural tribal communities, the State of Alaska has failed Alaska Native women, children, and families.

It is nearly impossible to convey this situation and the traumatic hardships constantly faced by Alaska Native women and families to people, lawmakers, and leaders who have not visited rural Alaska. They cannot envision a place in America where you cannot call 911 and have a response within minutes. But in Alaska, we do not have a centralized 911 system—if we need services, we have to determine who to call—do we need emergency medical help or law enforcement services? We often do not have a police presence in the Village and rely on state troopers stationed many air miles away. We might have to leave a message and wait hours, days, and sadly weeks for a necessary response. Sometimes the response is nothing more than a phone call saying that it doesn't rise to the level warranting an investigation. The message we receive repeatedly is that the state justice system devalues us as Native women. In a highly publicized case, Justin Scott Schneider, an Anchorage man, violently attacked a Native woman. Schneider was charged with kidnapping, strangling the victim until she became unconscious then masturbating on her. This man pled guilty and yet served no jail time.[11] Why would we trust such a system to help us?

Again, the current crisis and spectrum of violence committed against Alaska Native women is a result of systemic barriers created through historic laws and policies of federal Indian law. Alaska Indian tribes lack and desperately need access to both tribal and state justice services. Many tribes have no advocacy services, law enforcement, no 911, no state official they could conceive of raising a complaint to, given the separation of geography, language, and culture. The jurisdictional barriers in Alaska create extremely dangerous conditions for our small, remote communities. The dire and life-threatening circumstance can be overcome through legislative reforms and adequate funding of Indian tribes in Alaska to respond to violence against women. We have beautiful communities, cultures and people that deserve the resources that all other communities have available.

The Spectrum of Violence Against Alaska Native Women

The rates of violence experienced by Alaska Natives are horrific. Alaska often ranks as the most dangerous place in the nation for women.[12] This is particularly true for Alaska Native women.[13] The ILOC found that Alaska Native women are overrepresented and have the highest rates of victimization for any population of women by 250 percent. While Alaska Natives comprise approximately 19 percent of the state population, according to a 2017 report from the Alaska Criminal Justice Commission, 46 percent of reported felony level sex offenses involved Alaska Natives.[14] Among other Indian Tribes, Alaska Native women suffer the highest rates of domestic and sexual violence in the country.[15]

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[10] A Roadmap for Making Native America Safer: Report to the President and Congress of the United States (November 2013), available at *http://www.aisc.ucla.edu/iloc/report/*.

[11] *https://www.cnn.com/2018/09/21/us/alaska-assault-man-no-sentence/index.html* While this crime occurred in an urban area, this sentence shows how access to justice fails our tribal people.

[12] *See*, e.g., "Missing or murdered? In America's deadliest state, one family is still searching for answers," USA Today, June 25, 2019, available at *https://www.usatoday.com/in-depth/news/nation/2019/06/25/deadliest-statewomen-alaska-rape-and-murder-too-common-domestic-violence-rape-murder-me-too-men/1500893001/*.

[13] "Alaska Native Women Suffer the Highest Sexual Assault Rates in the Country," The Crime Report, Feb. 2, 2021, available at *https://thecrimereport.org/2021/02/05/alaska-native-women-suffer-highest-sexual-assault-rates-in-thecountry/*

[14] Alaska Criminal Justice Commission, "Sex Offenses: A Report to the Alaska State Legislature," April 5, 2019, pg. 10.

[15] A Roadmap for Making Native America Safer: Report to the President and Congress of the United States at 41 (November 2013), available at *http://www.aisc.ucla.edu/iloc/report/*.

The outrage and anguish of the Native families who have lost loved ones to violence—whose mothers, daughters, sisters, and aunties have disappeared or been murdered—has recently propelled a conversation about missing and murdered indigenous women to the national level. But these deaths, these missing women, are the devastating manifestation of centuries of oppression and broken systems that have failed to protect Native women and children from birth to death for generations. Alaska has the highest number of missing Indigenous persons. As of August 2021, out of the 743 missing Alaska Native and American Indian people in the National Missing and Unidentified Persons System (NamUs), 292 of those were from Alaska.[16] Alaska is considered one of the most violent states, with Anchorage as one of the most violent cities.[17]

Domestic violence and sexual assault survivors in Alaska Native villages are often left without any means to seek help and justice for the crimes against them because many villages lack advocacy services and law enforcement. When law enforcement finally arrives, sometimes the evidence is stale, or the chain of custody can no longer meet applicable legal standards, and the case cannot be prosecuted. In addition, tribal victims of domestic violence may need to leave their home village to seek safety for themselves and their children.

We have 229 federally recognized tribes and nearly 40 percent lack full time law enforcement, so when a crime occurs, we have to wait hours, sometimes days and in extreme weather situations, weeks. We also lack the necessary authority and infrastructure to manage these issues on our own. As a result, with the challenges of travel during extreme weather, our children are often our first responders, and our tribal leaders and advocates act as law enforcement and preserve crime scenes. In many communities, women self-organize to provide informal safe houses for women in danger from domestic violence. When state law enforcement does appear, there is such distrust of them, and the investigations are often done poorly by these state officials and can take years to see a result, if ever. Some examples:

- In a homicide case, it took 11 hours for law enforcement to appear. The body of the 13-year-old victim laid outside across the street from the family home. Sometimes these crime scenes are like this for days on end. We have lost our loved ones and are powerless to do anything more than protect a crime scene until law enforcement arrives.
- Another example is a rape that occurred more than 5 years ago. The rape kit was finally tested, and a perpetrator was found. This is extraordinary- the vast majority of rape victims have no access to a forensic exam- and could be seen as a success story. But the delays in testing the rape kit meant that the small community lived in fear for years knowing that there was a rapist among them. Now that a perpetrator was charged, more than five years later, the victim/survivor who had worked to move on and rebuild her life is now asked to endure the trial that she had thought would never happen.
- In a 2018 case in a small remote interior village, a victim waited 17 days to get out of the village to safety. During this time, the victim was treated at the clinic and called law enforcement (Alaska State Troopers) located in a hub community one hour away by plane. The weather was unflyable for 3 weeks and the victim could not get a charter plane to pick her up so she could go to a neighboring village to visit relatives. In addition, she could not get to a regional medical clinic for further treatment, and law enforcement could not get into the community for an investigative report. There was no safe home or safe housing available and so she waited, afraid that her partner would find out that she was trying to leave. Whether a tribe has advocacy services or public safety personnel makes a difference if victims have support and someone to call for help.
- For more than 6 hours the Village of Kake was in lockdown mode because of an active shooter incident until law enforcement arrived and took the person into custody.
- A 14-year-old girl was raped by a young man in a village without law enforcement. Everyone in the girl's family (and village), especially the child, was scared and had to wait several months for the troopers to make an arrest. In the meantime, the alleged rapist lived two doors down from her home. Eventually, there was an arrest, but it was unknown if there was ever a prosecution.

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[16] *https://namus.nij.ojp.gov/sites/g/files/xyckuh336/files/media/document/namus-stats-ai__an-report-august-2021.pdf*

[17] When Men Murder Women 4 (Violence Policy Center 2019).Missing and Murdered Indigenous Women and Girls 12. The Seattle-based Urban Indian Health Institute reports that Alaska is among the top ten states with the highest number of missing and murdered AI/AN.(Seattle Urban Indian Health Institute 2018).

None of these communities had law enforcement within their communities.

Studies such as the National Institute of Justice, *Research Report on the Violence Against American Indian and Native Women and Men*, document the dire safety circumstances confronting Native victims of domestic and sexual violence. Nationally, 38 percent of Native victims are unable to receive necessary services compared to 15 percent of non-Hispanic white female victims.[18] Given the remote location of many Alaska Native communities, this disparity is certainly even more pronounced in Alaska. The young woman described above waited in fear for more than two weeks to get to safety. The circumstances described above are repeated in variation ad nauseam throughout remote Alaska. These are the daily harms perpetuated by the exclusion of tribes in Alaska from exercising special domestic violence criminal jurisdiction.

The Exclusion of Indian Tribes in Alaska from Exercising Special Domestic Violence Criminal Jurisdiction

Many tribes, since the passage of VAWA 2013, have successfully exercised jurisdiction over non-Indians who abuse Native women. Unfortunately, when VAWA was reauthorized in 2013, Indian tribes in Alaska were effectively excluded and denied the life-saving benefits of exercising Special Domestic Violence Criminal Jurisdiction (SDVCJ). We have called on Congress to remove the legal barriers denying Alaska Native victims of violence access to justice from their own tribal governments, and we are encouraged by current efforts to do so.

I had the privilege of working with many of the tribes exercising SDVCJ as part of the Intertribal Working Group on Special Domestic Violence Criminal Jurisdiction established by the U.S. Department of Justice. These tribes have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families. They have done so while upholding the due process rights of all defendants in tribal courts. Unfortunately, the same access to safety and justice is denied to Alaska Native victims of domestic violence because section 904 of VAWA 2013 limits the restored exercise of the special domestic violence criminal jurisdiction to tribes to certain crimes committed in "Indian country."

Yet, while the federal law continues to tie the hands of Alaska tribal governments, the State does not have the resources to provide the level of justice needed in tribal communities. And ultimately, the State is not the local, tribal authority. From a 2016 NIJ report, we learned that American Indian and Alaska Native women are 3 times more likely to experience sexual violence by an interracial perpetrator than non-Hispanic White-only females.[19] Alaska Indian tribes need to be able to exercise special domestic violence criminal jurisdiction to address these staggering statistics by providing protection for the lives of their women, children, and families.

Proposed Amendments of H.R. 1620 and the Alaska Safety Empowerment Act

We are pleased to see and support the proposed tribal amendments for Alaska Indian tribes included in the House, Violence Against Women Reauthorization Act, H.R. 1620, and the previously introduced Alaska Tribal Public Safety Empowerment Act and urge the Senate to introduce a companion or similar bill to reauthorize VAWA.

H.R. 1620 begins to address the jurisdictional challenges and dire circumstances facing Alaska Native women. It recognizes a tribe's territorial jurisdiction equivalent to the corresponding village corporation's land base and traditional territory. Alaska's own Representative Don Young voted in favor of H.R. 1620's expanded jurisdictional definition of the pilot project to include "all lands within any Alaska Native village with a population that is at least 75 percent Alaska Native." In addition, removing the requirement of "Indian country" to enforce a protection order would assist Alaska Tribal villages and strengthen their efforts to enforce protection order violations without confusion.

We understand that the jurisdictional situation in Alaska is complex, and we support the creation of a Pilot Project in Alaska so that more than just 1 of the 229 federally recognized tribes can exercise Special Criminal Jurisdiction (SCJ). The pilot project could be conducted similarly to the implementation of SDVCJ after the passage of VAWA 2013. We recommend:

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[18] Rosay, André B., "Violence Against American Indian and Alaska Native Women and Men," NIJ Journal 277 (2016): 38–45, available at *http://nij.gov/journals/277/Pages/violence-against-american-indians-alaska-natives.aspx.*

[19] *Id.* at 18.

1) the creation, with DOJ support, of an Alaska specific Intertribal SDVCJ Working Group;

2) a planning phase with robust technical assistance to assist with code drafting, training, and court capacity building; and

3) appropriate financial support for costs related to both planning and implementation.

Until the unique legal framework in Alaska is addressed, Alaska Tribes, except Metlakatla, are largely left without inclusion in this important legislation that recognizes the inherent authority of a tribe to prosecute violent crimes against women. Authority alone, however, will not solve the problem. While federal funding for tribal justice systems nationally has never been close to what is needed to provide a base level of services, it has been virtually non-existent in Alaska. Alaska Native villages need resources to develop their criminal justice infrastructure.

Limitations of VAWA 2013 Special Domestic Violence Criminal Jurisdiction

I would also like to address the need for amendments to VAWA 2013's SDVCJ provisions more generally. Despite the successes of special domestic violence criminal jurisdiction, there are gaps in the law. Under VAWA 2013, tribal prosecutors are unable to charge defendants for crimes related to abuse or endangerment of a child; for sexual assault, stalking or trafficking committed by a stranger or acquaintance; or for crimes that a defendant might commit within the criminal justice system like assault of an officer, resisting arrest, obstruction of justice, or perjury.

The tribes prosecuting non-Indians report that children are involved in their cases as victims and witnesses over 60 percent of the time. These children deserve justice. A 2016 study from the National Institute for Justice (NIJ), found that approximately 56 percent of Native women experience sexual violence within their lifetime, with 1 in 7 experiencing it in the past year.[20] Nearly 1 in 2 report being stalked.[21]

Unlike the general population where rape, sexual assault, and intimate partner violence are usually intra-racial, Native women are more likely to be raped or assaulted by someone of a different race. NIJ found that 96 percent of Native women and 89 percent of male victims reported being victimized by a non-Indian.[22] Native victims of sexual violence are three times as likely to have experienced sexual violence by an interracial perpetrator as non-Hispanic White victims.[23] Similarly, Native stalking victims are nearly 4 times as likely to be stalked by someone of a different race, with 89 percent of female stalking victims and 90 percent of male stalking victims reporting inter-racial victimization.[24]

Provisions contained in H.R. 1620 would amend 25 U.S.C. 1304 to include sexual assault, stalking, and trafficking crimes committed in Indian Country. It would untie the hands of tribal governments and allow them to extend the same protections to victims of sexual violence and stalking as are available to domestic violence victims. All victims of sexual violence, child abuse, stalking, trafficking, and assaults against law enforcement officers deserve the same protections that Congress afforded to domestic violence victims in VAWA 2013, including victims in Alaska Native villages.

The United States has a federal Indian trust responsibility to the first people of the United States. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes. Indian tribes in Alaska have a desperate need for the reforms included in H.R. 1620 to address the continued legacy of the spectrum of violence committed against Alaska Native women since the U.S. asserted authority over our Nations.

We strongly support the amendments to VAWA 2013 that recognize:

- Native children and law enforcement personnel involved in domestic violence incidents on tribal lands are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013;

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[20] Andre B. Rosay, Nat'l Inst. of Justice, Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey, U.S. Dep't of Justice 11 (2016), available at *https://www.ncjrs.gov/pdffiles1/nij/249736.pdf.*

[21] *Id.*, at 29.

[22] *Id.*, at 18.

[23] *Id.*, at 29.

[24] *Id.*, at 32.

- the need to close another loophole in the SDVCJ provision of VAWA 2013 to ensure that Tribes have authority to prosecute sexual assault, sex trafficking, and stalking crimes; and
- most significantly to Alaska Native women and victims of domestic violence the importance of filling the gaps in jurisdiction that continue to leave Native women and children in Alaska without adequate protection on tribal lands.

Tribal Access Program

HR 1620 included a permanent authorization for the DOJ's Tribal Access Program (TAP). TAP has provided law enforcement and tribes with direct access to more effectively serve and protect their nation's citizens by ensuring the exchange of critical data across the Criminal Justice Information Services (CJIS) systems and other national crime information systems. While the program has grown tremendously during the few years of its existence, there are still challenges for Alaska tribes who often lack the necessary infrastructure to meet CJIS's requirements. In addition, we need a legislative fix that addresses the concerns of CJIS about tribal access to federal databases for Tribal governmental purposes. Currently, access may be authorized through federal statutes providing some access for certain situations to tribes and then deferring to state law to define and provide access. Tribes should be able to utilize the databases as any other governmental agency. I will first address the needs of Alaska tribes and then go into the amendments needed for all tribes.

First, Alaska tribes should be able to participate in TAP through an Intertribal structure if that is what they choose. For example, two or more participating Tribes should be authorized to participate jointly in the TAP program.[25] For many tribes, pooling resources or establishing intertribal court systems is an effective and efficient way to meet the needs of their communities. Any Tribes that want to join the pilot program and TAP as an inter-tribal consortium should be able to do so freely by meeting the general requirements and entering an MOU. The currently authorizing structure of TAP precludes most Intertribal groups, especially if the designated agency is a non-profit, that would organize together in Alaska. CJIS, the Federal Bureau of Investigations, and National Crime Information Center should be challenged to find a solution that works for the needs of Alaska Native communities and be solution oriented rather than just protecting an archaic system.

In addition, American Indian and Alaska Tribes should be able to legislate access to TAP databases to address the needs of their governments just as the federal and state governments do. We need to amend federal law to authorize the sharing of this information with tribal governments for any legitimate purpose. Federal laws allow tribes to investigate people who will work with children, but it does not allow access for people who work with our elders or vulnerable adults. Similarly, most tribes require elected officials, and key personnel to obtain background checks. A state can legislate to authorize this access; in contrast a tribe does not have direct access and often has to use channelers or use Lexis/Nexus. Many states are legislating around data entry and collection of MMIW issues. A tribe that wanted to do the same would be unable to fully implement their laws, because no general federal statute gives tribes this level of access and determination. An amendment is needed to 28 USC 534, which is an appropriations statute from the '90s that has been codified and provides the means for states to legislate the purposes for which background checks can be done. A simple fix is to amend 28 USC 534 by adding "tribal" after state and other database statutes that include "state" but leave out tribes. Also, the TAP program needs permanent funding to ensure it is not discontinued.

We strongly support the amendments to VAWA 2013 that provide for:

- access of all tribes to the TAP;
- creation of a dedicated permanent funding stream for expanding the TAP program;
- tribal access to federal databases not only to obtain criminal history information for criminal or civil law purposes, but also for entering protection orders, missing person reports, and other relevant information into the database, such as NICS disqualifying events;
- allow tribes to legislate to authorize direct access to databases for any legitimate purpose, such as data entry and collection of MMIW related issues by amending 28 USC 534 to add "tribal";

[25] A Tribal organization (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)) should be able to be the designated agency for the purposes of TAP.

- creation of tribal technical assistance programs and regional training for tribal judges and law enforcement to access, use, input information into the NCIC and other national databases;
- creation of a multidisciplinary task force with significant tribal participation (not less than 70 percent); to identify the outstanding barriers tribes face in acquiring full access to federal criminal history; and
- requiring the federal agencies responsible for these database systems to develop options for all tribes and their designated agency regardless of whether they have law enforcement or participate in the Adam Walsh Act.

Bureau of Prisons Pilot Project

The Bureau of Prisons (BOP) pilot project [26] should be expanded and made permanent. The Tribal Law and Order Act provided for the use of the federal prisons to house inmates convicted of certain crimes with longer sentences imposed. However, by the time tribes were able to exercise the TLOA measures, the BOP pilot project was nearly over. In addition, it was limited to violent crimes and sentences greater than one year and one day. With the passage and implementation of VAWA 2013, the ITWG Tribes have raised issues and challenges around detaining SDVCJ defendants in tribal or BIA facilities using self-governance funds and providing health care for non-Indian defendants. Expanding the BOP pilot program to cover SDVCJ defendants, in addition to the other felony level crimes previously covered, would significantly help tribes in keeping their communities safe.

Conclusion

Since the enactment of VAWA in 1995, each reauthorization of VAWA, has resulted in significant victories in support of the tribal authority and secured resources needed for increasing the safety of Native women across the United States. The AKNWRC strongly supports reauthorization of the Violence Against Women Act and H.R. 1620, which passed the House on March 17, 2021. Indian tribes have consistently called for the amendments and important lifesaving enhancements contained in H.R. 1620. We urge the Senate Committee on Indian Affairs to support the introduction of a companion or similar bill in the Senate.

There is a unique opportunity to recognize these issues and make corrections to the laws. In Lingít Yoo X'at ngi, the Tlingit Language, as with other language groups in Alaska, we had no words or description for violence within a family home. We had traditional forms of justice that kept our community in check and women valued as the life-giver of the family. We had community justice, which we are now returning to. Restoring and enhancing local, tribal governmental capacity to respond to violence against women provides greater local control, safety, accountability, and transparency. As a result, we will have safer communities and a pathway for long-lasting justice. We believe it is critical that we work together to change laws, policies, and that the federal government creates additional funding opportunities to address and eradicate the disproportionate violence against our women.

We encourage you to continue these reforms to restore the safety of Native women and all victims of domestic and sexual violence and their right to live in peace within their villages. Our tribal governments are the frontline, and we need the federal government to uphold its responsibilities to assist us in safeguarding the lives of Native people by respecting our inherent authority while also adequately funding its trust and treaty responsibilities.

Gunalchéesh! Háw'aa! Thank You!

Attachments have been retained in the Committee files.

The CHAIRMAN. I have been in politics for more than 20 years now. I have been to a lot of hearings. This was maybe the most impressive panel that I have ever heard. So I want to thank each of the individual testifiers for their clarity, for their advocacy, and for helping us to build the legislative record.

Mr. Garriott, can you talk about cross-deputization? By the way, I am going to ask a lot of questions, so I would like everybody to be as brief as possible. Talk about cross-deputization, why it works and why it seems to be increasing as a practiced.

[26] 25 U.S.C. 1302 (2010).

Mr. GARRIOTT. Thank you, Chairman. Cross-deputization, as many know, there is a maze that is incredibly difficult to understand and even more incredibly difficult to implement for law enforcement around jurisdiction. On one side of the line, depending on the victim, depending on the jurisdiction, depending on the perpetrator, it might be tribal jurisdiction. On another side of the line, it might be State jurisdiction.

Cross-deputization allows tribes and State law enforcement to be deputized in another jurisdiction so that they can eliminate those jurisdictional gaps. It is a practice that is gaining more and more increased use by tribes. I think that is an incredible testament to the effectiveness and the solutions that it can offer.

The CHAIRMAN. Thank you very much.

Ms. Randall, we know there have been zero valid habeas corpus petitions filed, and zero due process claims since 2013. Tell me, has special jurisdiction been a success?

Ms. RANDALL. Absolutely, Senator. It has been a success for those individuals who have finally gotten the justice that they need, as well as for the communities that can interrupt perpetrators who may have been acting with impunity.

Significantly, it has been a success in protecting defendants' rights as well. As you noted, with no valid habeas cases, as well as the rates of acquittals and dismissals show how careful tribes have been with implementation. That is why this Committee must expand recognition to other crimes.

The CHAIRMAN. Thank you. And a follow-up on this issue, Professor Reese. Just for the record, is special criminal jurisdiction constitutional?

Ms. REESE. Thank you. Absolutely.

When I am asked that question, I think about it on two levels. First, whether or not Congress sort of has the power to do this, and the answer to that question is absolutely, Congress has the power to do that, especially since the Supreme Court decision in United States v. Lara affirmed that tribal sovereignty is inherent, and that Congress has the ability to reaffirm the existence of inherent sovereignty by passing legislation which reauthorizes tribes to exercise a power, even if they previously were not authorizing based on a Supreme Court decision. In this case, and also in Lara, Oliphant. So absolutely, you have the power to do this.

As similarly discussed in Lara, the only other question would be if it implicates any other constitutional rights concerns. But we have known for several hundred years now that the Constitution does not apply to tribal governments in the same way. So that is also not an issue.

But going above and beyond that, Congress has also created equivalent constitutional rights protections through this statute. So those sorts of underlying concerns are also protected, and incorporated into this law, even though that constitutional question itself isn't really implicated.

The CHAIRMAN. At the risk of being redundant, I want to ask you to really make this point as clear as possible to anyone who is watching this hearing what the Indian Civil Rights Act does for defendants and for the justice system in Indian Country. Because you mentioned it in your testimony, you are referring to it now.

But I think it is a really key point as it relates to due process, as a matter of principle and as a matter of law. I would like you to flesh it out just a little bit.

Ms. REESE. Absolutely. It guarantees a long list of equivalent protections that are guaranteed to the rest of the citizens of the United States in courts of law. So I will go ahead and list out these protections that the Indian Civil Rights Act, the Tribal Law and Order Act and VAWA 2013 sort of when combined guarantee to non-Indian defendants.

That includes the protection to the basic right to due process of law, the freedom from an illegal or warrantless search or seizure, the prohibition against double jeopardy, the right against self-incrimination, the right to a speedy trial and confront witnesses, the right to a jury trial, the right to indigent defense, the right to effective assistance of counsel, the prohibition on bills of attainder, the right to not be subject to cruel or unusual punishment, excessive fines or fees.

This is the entire gamut of the things that the Constitution does to protect the rights of defendants when they are being prosecuted for a crime. That is the full list of the things that were written up into this statute to protect non-Indian defendants in this court system. Any time that one of those things, if it were to happen, result in an unlawful detention or incarceration of someone, they are protected by the writ of habeas corpus.

The CHAIRMAN. Thank you very much.

My final question before an additional round, Mr. Garriott, we have heard about the high cost of implementation. I am wondering what the Department is doing to assist tribes in implementation. All of this is great as authorizing language. But it does seem to me, it doesn't seem to me, it is obvious to me, that it is a resource question, too. It is a how do you cover the jurisdictions that are so vast. I am thinking about Alaska in particular, but really in Indian Country everywhere you have this problem of staffing, of having a person on the ground.

How do you help? How can you help?

Mr. GARRIOTT. Mr. Chairman, thank you for the question. As you have touched on, resources is an issue and a challenge that we hear all the time from our tribal partners and those that we work with on the ground.

Thus far, since 2019, we have funded 115 tribal court positions, which includes tribal judges, prosecutors and other court personnel across the Country to help tribes have some of the resources they need on the implementation side.

I would also point to our Fiscal Year 2022 budget request, which is a total of $507 million, which represents an increase of $58 million over Fiscal Year 2021. A big part of this budget request puts boots on the ground and it will begin assisting tribes to better provide law enforcement for their communities and better protect their citizens.

The CHAIRMAN. Thank you very much.

Senator Cortez Masto?

STATEMENT OF HON. CATHERINE CORTEZ MASTO, U.S. SENATOR FROM NEVADA

Senator CORTEZ MASTO. Thank you, Mr. Chairman, and to the Ranking Member, I cannot thank you enough for having this conversation today on such an important issue.

It is so clear that the Violence Against Woman Act needs to be passed and a Special Domestic Violence Criminal Jurisdiction is essential to protecting our Native communities. I strongly believe that Congress must not only reauthorize VAWA, but strengthen it to ensure that tribes can effectively prosecute crimes against women, children, and law enforcement in Indian Country. So I am going to focus my questions around that.

But I want to follow up on what Chairman Schatz started with. Let me ask this question. President Sharp, how many more tribes do you think would be interested in implementing special criminal jurisdiction if they have the resources and support that they need to do so? I am curious if you have an answer for that.

Ms. SHARP. Yes, I would say out of the 574 tribal nations, the remaining, which is hundreds of tribal nations, would be interested, if we had the resources.

Senator CORTEZ MASTO. Right. And my understanding is there is only, is it 28 now that have the ability?

Ms. SHARP. Yes.

Senator CORTEZ MASTO. Okay, so we need more, we need to do more.

Let me ask you this. You heard what Principal Deputy Assistant Secretary Garriott said. Do you think, based on the resources that he says are available, that that is enough? What more should we be considering in Congress to provide the resources that are necessary to give more of our tribal nations across the Country the opportunity to protect their own?

Ms. SHARP. Yes. In just listening to his response, clearly, we don't have even close to the scale of resources necessary to implement the spirit and intent of what Congress is trying to accomplish here. One can only look to the U.S. Commission on Civil Rights, a report called Broken Promises that was delivered to Congress almost three years now. They detailed not one Federal agency is living up to its trust responsibility. We are woefully and chronically underfunded across every sector including our criminal justice system.

So we definitely have a large-scale need in Indian Country to implement VAWA.

Senator CORTEZ MASTO. Thank you.

Ms. Demmert, in your testimony you mentioned that children have been involved as victims or witnesses in Special Domestic Violence Criminal Jurisdiction cases nearly 60 percent of the time. To me, that is just unacceptable that children are falling through the cracks of laws meant to combat violence in Indian Country.

When it comes to the safety and the health of our Native children, how important is it for Congress to expand the current special tribal jurisdiction to cover more crimes? Can you talk a little bit about what crimes that are not covered that in essence are where children are victims that we should be looking to protect their interests?

Ms. DEMMERT. Thank you for the question, Senator Cortez Masto.

I don't believe I said that about children, I said our children are first responders. Fortunately, I did work for a tribe that implemented domestic violence jurisdiction back in 2013 as one of the first three tribes.

In that, our children, in our first year, I think we had 11 cases, and in 9 of those cases children were victims of violence. In one case, we had a child who was trying to get, as a first responder, trying to get the father off of her mother and the child was tossed aside and had to, I believe probably called for the police.

That is just an example. All of these cases frequently involved children being present and being participants of the violence that is committed against the mother.

In another case, we had a case where the mother was held hostage for a few days, and a knife was being thrown at her. He made her, the mother held a child in her arms while he threw knives at her. Fortunately, that case ended up being picked up by the U.S. Attorneys Office. So the child did see justice.

But in so many other cases, there is not justice. In Alaska, in particular, I just want to bring it back to that, our children are the first responders, have to call for help, and we don't have law enforcement. Often, we have volunteer medics.

So the parade of horribles are horrible. But we have beautiful communities that we want to protect and safeguard. So gunalchéesh for the question. I hope I answered it.

Senator CORTEZ MASTO. You did. Thank you.

Let me talk a little bit, and you touched on this as well. I know from my time as attorney general that domestic violence calls are some of the most dangerous calls that police officers can respond to as well. Director Randall, your testimony discusses the very real safety concerns that tribal law enforcement officers have when they are responding to these kinds of calls.

Right now, what happens if a tribal officer is responding to a domestic violence call, and the non-Indian suspect attacks the officer?

Ms. RANDALL. Without jurisdiction, the Federal Government must respond. This can really empower perpetrators to commit acts of violence, knowing that a Federal response could be hours away. In the case of Alaska, responses could be days away.

As you note, these are dangerous calls for law enforcement officers. This is a crucial part of VAWA to include.

Senator CORTEZ MASTO. To include coverage of protection?

Ms. RANDALL. To include coverage of protection, absolutely.

Senator CORTEZ MASTO. Thank you.

Secretary Garriott, your testimony mentions that expanding tribal criminal jurisdiction beyond domestic violence crimes would be a significant step toward ending the crisis of missing and murdered indigenous women and children. Can you talk a little bit about this? How will reauthorizing and strengthening VAWA help ensure we are using all available tools that we need to keep Native women and children safe?

Mr. GARRIOTT. Thank you for the question. This is an issue that is of particular concern and is very important to the Secretary and to the Department.

Expanding criminal jurisdiction to cover a wide variety of crimes, as we have heard, is incredibly important, not only for children and for law enforcement, but also expanding the crimes to include not just coverage of protection orders and domestic violence, but sex trafficking and others, dating violence and other crimes as well.

As we know, there is no one simple kind of crime. We need to have full coverage to ensure that our tribes, our law enforcement officers, children, have full protection.

Senator CORTEZ MASTO. [Presiding.] Thank you. And thank you, again, this is an incredible panel. I so appreciate your advocacy on such an important issue that needs to pass Congress.

Standing in for the Chair, I am going to call on Senator Smith who is next. She is joining us virtually.

STATEMENT OF HON. TINA SMITH,
U.S. SENATOR FROM MINNESOTA

Senator SMITH. Yes, that is right. Thank you, Chair Cortez Masto. Thanks to all of you. I am just so grateful for this important panel.

I want to start by thanking Chair Schatz and Vice Chair Murkowski for your work on this bipartisan agreement to reauthorize the tribal provisions of the Violence Against Women Act.

I also want to thank you, them, for including my Justice for Native Survivors of Sexual Violence Act, which would expand tribal criminal jurisdiction to include crimes of dating and sexual violence, sex trafficking, stalking, and obstruction of justice by non-Native offenders on tribal lands. The many conversations I have had with folks in Minnesota have convinced me that this measure is really essential to addressing the crisis, really the epidemic of violence against Native women.

I would like to focus my questions on that. I will start with you, President Sharp. It is so good to see you again, even virtually.

We of course both know that more than four in five Native women experience violence in their lifetimes. Many of them are victimized by non-Native offenders. This ongoing crisis of missing and murdered indigenous women and people across the Country is so, so severe.

I believe that my Justice for Native Survivors of Sexual Violence Act, which is included in this bipartisan agreement, would help to address this. Could I ask you to speak to that? Could you talk to how that expanded tribal jurisdiction would help tribes to address the crisis of missing and murdered indigenous women?

I want to say, since I have been running today, forgive me if I am asking a question that is repetitive of others' questions. But I really want to have a chance to visit with you about this.

Ms. SHARP. Yes, absolutely. First of all, I want to thank you for your leadership and your ability to see from our perspective the real threat that all of these issues that you are seeking to address mean to us. It is quite remarkable to have someone with your level of advocacy around such critical issues.

So yes, this would definitely go a long way to help. The way in which it would help the missing and murdered indigenous women's crisis, I think is important for everyone to understand, our women

and our girls are being targeted by perpetrators. They know there is a weakness. They know there is a void, a jurisdictional void.

So those girls who are targeted for trafficking, those women who not only have dating relationships but absolute strangers that come onto tribal lands, as well as law enforcement who seek to protect them, these provisions would ensure that those gaps in our missing and murdered indigenous women's crisis would be met, that we would be able to fill those gaps and ensure that we have justice in these critical areas. Because we are being targeted.

So thank you for your leadership and recognizing that and trying to help solve that with us. [Phrase in Native tongue].

Senator SMITH. Thank you. I think people don't realize the extent to which Native women live in a justice-free zone, where they are targeted. It is no accident; it is a feature of our system that Native women are targeted in this way. It is our obligation, our moral obligation to address that. I appreciate your comments.

Governor Chavarria, it is good to see you. As a New Mexico-born Senator, I am so happy to see the visual behind you as well. Greetings to you, and everybody at Santa Clara.

I was wondering if you could talk about how the expanded jurisdiction your tribe implemented has helped you to address the crisis of missing and murdered indigenous people. Could you comment on how the expanded jurisdiction in this bipartisan agreement would help to further address this challenge?

Mr. CHAVARRIA. Thank you, Chairman, members of the Committee, Senator, I appreciate that question.

What is very important is that have to we recognize the VAWA reauthorization, when it expired, we did a permanent authorization as was mentioned by the witnesses here to expand that tribal jurisdiction over the crimes against our children. Here in Santa Clara, we currently have multiple generations living in one household, that includes grandpa and grandma.

And also law enforcement personnel, sexual assault crimes committed by strangers [indiscernible] safety, that access to the justice services for victims of crime is very essential.

So it is important that all the discussions happening today will help fulfill the life safety and welfare of our entire community within our pueblo community. Without that, it makes it challenging. So you have that opportunity right now to help us within our judicial system, our law enforcement but also as our tribal government to implement this for the life safety and welfare of our entire community, Senator.

Senator SMITH. Thank you very much. I want to just say how grateful I am for Senator Ben Ray Luján's leadership on this issue as well. I don't know if Senator Luján has had an opportunity to ask his questions yet. But I want to nod to his leadership. We are so grateful for him.

Madam Chair, I will yield back if you have others in line. I have one other question if you don't.

Senator MURKOWSKI. [Presiding.] I think we have a full slate, Senator Smith. Thank you for your interest in this. We appreciate it.

Senator SMITH. Thank you.

Senator MURKOWSKI. Thank you.

I am going to jump in here if I may, as I am next in line. This is directed to you, Michelle. Thank you again for your ongoing leadership, not only over the years but over the decades as you are working to protect vulnerable Native women throughout the State of Alaska.

We have heard continuously here about the gaps that need to be addressed. I think there is no better area to look at the chasm that exists when it comes to the inability to protect, currently protect people in so many of our Native villages.

You have some unique experience within the DOJ intertribal working group for the lower 48 tribes. So you have had an opportunity to observe, down in the lower 48, and then extrapolate how we can make things better in Alaska. Resources, obviously, are important. Funding is important for training. Funding is important on so many levels.

What more can we be doing specifically in enhancing our efforts? Is it supporting the intertribal participation in the pilots to accommodate economies of scale? Is it building across jurisdictional collaboration? I am kind of second guessing that it might be all of the above. But if you can speak to what more we can be doing specifically to address these gaps there in Alaska.

Ms. DEMMERT. [Phrase in Native tongue], Chair Murkowski. We so appreciate your leadership in this bill as well as other important bills such as the Boarding School Bill.

As to your question, thank you so much for it. It is all of the above. Think about it. Since statehood over 60 years ago, P.L. 280 has been in effect, meaning the State has had jurisdiction. What has happened, we as indigenous women have been horrifically unsafe. We have some of the worst DV rates, the worst murder rates, the highest missing Native rates. Our victims are too often left without any justice, or it is delayed and that revictimizes us.

I am a survivor of childhood sexual assault from someone that was abused in boarding schools. The State has had 62 years to show their competencies. Give us time and similar resources; don't tie our hands. We have beautiful communities, beautiful traditions and deserve better.

We are State and Federal citizens, in addition to our tribal citizenship. Principal Deputy Director Randall explained in her testimony how successful the ITWG is. The tribes can exchange views, information, and advice about how they can best exercise Special Domestic Violence Court Jurisdiction, combat domestic violence, attend meetings, webinars, share ideas, materials, challenges, and best practices.

In ITWG, I participated as a point of contact for one of the first three tribes. It was a wealth of information. Virginia Davis at NCAI and others like her were amazing. The support they provided in the dialogue that we exchanged was simply one of a kind and should be replicated whenever possible.

Gunalchéesh, Senator Murkowski. You are just so appreciated.

Senator MURKOWSKI. As you are, gunalchéesh.

Let me direct my next question to our Principal Deputy Assistant Secretary Garriott. It was good to see the BIA disbursing about $30 million to tribes in P.L. 280 States, even though BIA doesn't exe-

cute the 638 contracts and the compacts for public safety and justice.

What I am hoping to learn is how we can navigate some of these roadblocks to public safety and access that we have in Alaska, recognizing that we are a P.L. 280 State. Is there some kind of an internal policy out there that doesn't allow BIA to receive public safety and justice funding in States like Alaska that are P.L. 280? I am trying to figure out this funding piece of it. Because in addition to serving on the authorizing, I am also on the appropriating side of this. So help me out.

Mr. GARRIOTT. Absolutely, and thank you, Vice Chairman.

As somebody who has been to Alaska several times, I understand a lot of the unique challenges. It is good to see my home State Senator. I thought I knew rural, coming from South Dakota, but it is a different ball game up in Alaska.

As you noted, resources are a challenge. One thing that I would point to is that there is a line item within our budget that is specifically reserved for funding P.L. 280 court systems. In 2019, that was funded at $13 million, and in 2021, it was funded at $15 million.

In addition to that, we continue to provide training and technical assistance to assist Native villages in standing up their own court systems. Right now, about 130 of the 229 villages have court systems. We are looking to continue our work to help those villages stand up their court systems.

Senator MURKOWSKI. I will have further questions, Mr. Chairman. Thank you.

The CHAIRMAN. [Presiding.] Senator Cantwell.

STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman. I definitely want to thank you and Senator Murkowski both for holding this important hearing.

Washington State has one of the highest numbers of murdered and missing indigenous women. I definitely always applaud the Seattle Indian Health Board for their work on this, and my colleagues who are here today, who have fought so hard on getting legislation implemented.

I think we are here because we still see the crisis, and we still see that we are, I think, the issue is short of resources. I think that what we are saying is we have identified this problem; we want to do something about it. We have put some resources on the table, but I think we are now finding that the resources are not enough.

So I would like to hear from Ms. Randall, definitely want you to come to Washington State, if you will, and meet with our various law enforcement communities. I would like to hear from you and NCAI President Fawn Sharp about what is the real crisis at hand. Is it resources? Is it the tribal court system? What is it that we need at this moment to further accelerate helping to protect women in Indian Country?

Ms. RANDALL. Thank you, Senator. I would be honored to visit and sit with folks. The Department of Justice sees the need for really broad response to MMIP. After the Tribal Nations summit,

our Deputy Attorney General set up a steering committee across DOJ that will include both grant-making and prosecution. We need that holistic response.

It is also important that when we are talking about tribal problems that we are meeting them with tribal solutions. So consulting with the tribes has got to be a really key part of making important and strategic decisions going forward.

We are coordinating, of course, with the Not Invisible Act Commission and bringing, I think, significant resources to bear. The Department has requested additional funding in the President's budget. We look forward to our work together to identify strategic specific resources.

Senator CANTWELL. President Sharp?

Ms. SHARP. Yes, good to see you virtually, Senator. Thank you for the question.

I think you raise an important connection. When you consider missing and murdered indigenous women and the boarding school crisis that we are seeing, as well as these issues of violence against our women and girls, it is all related. It is generation after generation of tribal nations not only not securing the resources that the United States should uphold pursuant to treaties and its trust responsibility, but our own inability to raise revenues through systems of taxation.

As we are entering sort of a post-COVID time of redefining our economies, and trying to restore our economies, it is critically important that Congress consider not only supporting and honoring our treaty and trust responsibility, but the economic agenda that tribal nations see for providing the resources that we should be doing as an attribute of our inherent sovereignty. We have all kinds of recommendations related to tax policy, economic policy, international trade related to green and renewable energy.

Indian Country is a target-rich environment to unlock an economy. But we just need the support of Congress. Thank you.

Senator CANTWELL. Thank you. I assume you are referring to the issues of prosecution on tribal reservations. But there is nothing that is holding us back from larger prosecutions of these crimes involving, that aren't actually occurring on the reservation land. Is that correct?

Ms. SHARP. That is absolutely correct, yes.

Senator CANTWELL. Ms. Randall, do you have a comment about that?

Ms. RANDALL. I can't comment on any ongoing prosecutions. I know that my colleagues at the Executive Office of the U.S. Attorneys have been investing significant resources into these cases.

Senator CANTWELL. I haven't drilled down on every detail, but I am pretty sure the reason why the Seattle Indian Health Board did this study and analysis is because, and we have one of the highest rates of missing and murdered indigenous women, is that it is right there in Puget Sound. And they just happen to be, a very large percentage of them, Alaska Natives.

So this is a population that doesn't live on tribal land, and yet they have become victims of these horrific crimes. So I would love for you to come to Seattle. Maybe Senator Murkowski and I will join you and we will do something to bring focus to this.

But separate, we definitely get the separate issue, because have all been involved with VAWA and the more empowering of DOJ working with Indian Country on tribal courts and that process, to make sure that Federal law is enforced on Indian Country land. We get that.

But for us, this is a multi-pronged issue, and again, obviously impacting non-Native American women as well. Being on a corridor like I–5 helps accelerate some of these problems.

So we would love to figure out ways to take the next step here and the enforcement of this law.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cantwell.

Senator Hoeven?

STATEMENT OF HON. JOHN HOEVEN,
U.S. SENATOR FROM NORTH DAKOTA

Senator HOEVEN. Thank you, Mr. Chairman.

Deputy Director Randall, in your experience, how have the provisions included in the 2013 reauthorization of VAWA been beneficial for tribes?

Ms. RANDALL. Yes, Senator, they have been beneficial by allowing tribes to often hold repeat offenders accountable. Tulalip has an example where the perpetrator had had 19 prior contacts with tribal police before SDVCJ was passed. So this helped solve, this helps keep the whole community safe in addition to finding justice for those survivors.

Senator HOEVEN. Under the 2013 VAWA, what is covered under the SDVCJ? What does that include?

Ms. RANDALL. Domestic violence, dating violence, and certain protection orders.

Senator HOEVEN. Are there areas of criminal jurisdiction that you believe should be expanded for tribes, and if so, why?

Ms. RANDALL. Yes, Senator. As we have heard so compellingly today, crimes that occur often in conjunction with domestic violence, such as crimes against children, are crucial to be able to prosecute. Also sexual assault, sex trafficking, assault of law enforcement.

Senator HOEVEN. Thank you.

Assistant Secretary Little Elk Garriott, I understand there are currently 28 tribes that have implemented VAWA Special Domestic Violence Criminal Jurisdiction, SDVCJ. In your experience, what considerations does a tribe undertake when determining whether to elect this jurisdiction?

Mr. GARRIOTT. Thank you. When a tribe decides to assert this jurisdiction, there are a number of provisions and actions that it has to take from its standpoint, including making sure that its law-and-order code is in place, and that it meets those requirements. And that also, it has access to the resources that it needs.

Our part at Indian Affairs really focuses around technical assistance and training to assist those tribes in standing up their court system so that they can implement those provisions.

Senator HOEVEN. Why aren't there more tribes that have adopted this jurisdiction?

Mr. GARRIOTT. Anecdotally, we can say that it is a large undertaking, and that again, ensuring that when a tribe makes this decision that they have the resources, also the political will. And again, ensuring that they are feeling comfortable from a tribal government perspective to stand this up, that their court is fully staffed and has adequate resources that it needs.

Senator HOEVEN. So is it primarily resources? Do you expect more tribe to do it?

Mr. GARRIOTT. Resources is definitely a challenge. We have continued to provide training and there has been a tremendous response. We have provided training to over 3,300 participants. There are a number of tribes that are contemplating this. I don't have the exact number. But I think as we have heard some of the other witnesses eloquently discuss, there is a definite and strong desire for tribes to begin going down this road and asserting their inherent jurisdiction.

Senator HOEVEN. For Governor Chavarria, as a tribe that has implemented Special Domestic Violence Criminal Jurisdiction, could you talk about your tribe's experiences with the implementation?

Mr. CHAVARRIA. Thank you, Chairman, and members of the Committee. At Santa Clara Pueblo, we opted in because for generations we recognized the damage done by domestic violence. It was very critical to understand, Chairman, Senator, that it makes our tribal court into a Federal court system. So because of those reasons, it took Santa Clara a number of years to implement VAWA, because we had to adopted similar measures to take concrete actions to meet the Federal standard for implementation of VAWA.

These were all administrative, burdensome, and costly to undertake. As one example, we had to implement standards for updating our facilities. Unfortunately, Senator, we had a mobile home and it was mouse infested. So we h ad to reach out to the Department of Justice Office of Tribal Justice and Bureau of Justice Administration for some funds to renovate and expand our courthouse.

The facility standard that we had to meet in order to implement VAWA was we had to have a secure, healthy facility with [indiscernible], a detention room for alleged offenders, expand our public seating, our community education room, our jury [indiscernible] and jury deliberation room, modern recording devices, fire and safety upgrades, and disability accessibility.

So those are the reasons why those take time and are challenging for tribes to implement this. Because the issue is to include Federal funding. Without Federal funding, it is very important, because we had to use funding to hire legally trained prosecutors, defense attorneys.

Again, build these facilities, so that we are meeting the Federal requirement of turning our tribal courthouse into a Federal courthouse, into the very important initiative to protect the life saving welfare of our entire community, Senator.

Senator HOEVEN. Thank you, Governor. That is a very striking background you have there. I just wanted to compliment you on it.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Luján.

Senator LUJÁN. And Senator Hoeven, we will invite you to New Mexico, sir. We will take you there personally. With your permission, Governor, we will do that. I look forward to getting you out to New Mexico, sir.

I was proud to introduce the Native Youth and Tribal Officer Protection Act to provide more support and authority under Special Domestic Violence Criminal Jurisdiction over non-Indians in domestic violence situations involving children and tribal law enforcement. The bill will help pueblos and tribes like Santa Clara make their communities safer and reduce violence against their most vulnerable members.

Governor Chavarria, yes or no, is it true that the pueblos still cannot prosecute crimes against children and tribal law enforcement officers when non-Indians commit domestic violence?

Mr. CHAVARRIA. Yes, Chairman, and members of the Committee.

Senator LUJÁN. And Governor Chavarria, yes or no, is it true that neither the State nor Federal law enforcement authorities prosecuted a domestic violence case on the pueblo when a non-Indian assaulted a responding tribal officer?

Mr. CHAVARRIA. Yes, Chairman, and members of the Committee.

Senator LUJÁN. Chief Judge FourStar, yes or no, does the Fort Peck Assiniboine and Sioux Tribe have domestic violence cases come before tribal courts that they could not prosecute because of the limited VAWA jurisdiction over children and tribal officers?

Ms. FOURSTAR. Yes, that is true.

Senator LUJÁN. And Governor Chavarria, yes or no, would you agree that legislation is needed to expand special criminal jurisdictions for tribal courts to be able to prosecute non-Indians that commit domestic violence crimes on tribal lands against children and tribal law enforcement?

Mr. CHAVARRIA. Yes, Chairman, and members of the Committee.

Senator LUJÁN. Governor Chavarria, yes or no, did your pueblo need to seek additional Federal funding outside the VAWA grant program to meet Federal standards to implement special criminal jurisdiction?

Mr. CHAVARRIA. Yes, Chairman, and members of the Committee.

Senator LUJÁN. And Professor Reese, would you agree that additional Federal funding is critical for tribal public safety generally, and particularly for tribes that opt to exercise VAWA special criminal jurisdiction?

Ms. REESE. Absolutely.

Senator LUJÁN. And Ms. Randall, yes or no, in tribal consultation, have tribes cited the need to amend VAWA to increase funding to exercise Special Domestic Violence Criminal Jurisdiction, and help more tribes participate in the program?

Ms. RANDALL. Yes, they have, Senator.

Senator LUJÁN. President Sharp, the 2018 NCAI report on Five Years of Special Domestic Violence Criminal Jurisdiction notes that implementation of the law revealed serious limitations in the law. President Sharp, yes or no, does the report note that current statute prevents tribes from prosecuting crimes against children and law enforcement?

Ms. SHARP. Yes.

Senator LUJÁN. And President Sharp, yes or no, do you believe expanding tribes' ability to prosecute crimes against children and tribal law enforcement is a needed expansion of the 2013 VAWA law?

Ms. SHARP. Yes.

Senator LUJÁN. Governor Chavarria, I wanted to give you a minute or so just to explain some of the additional challenges that you have faced that you hope that additional VAWA legislation or reauthorization should be able to cover.

Mr. CHAVARRIA. Chairman, members of the Committee, yes, and for a long time, Senator, we recognized the damage of domestic violence. Without Federal aid and protection for funding to build up our internal capacity to protect our law enforcement officers, grandma, grandpa, entire households, including myself. As a tribal governor, I also respond to these calls, because it impacts our entire community.

So it is very critical, Chairman and members of the Committee, that we expand the current VAWA to include all the officers, tribal officials, children, grandpa and grandma, to include our tribal court system to have that jurisdiction to prosecute these non-Native offenders within our tribal court system.

We cannot have a lawless community. That hurts all of us. So this is very critical, Senator, that we continue to help you look at, to include the Indian Civil Rights Act and the Domestic Violence Section, again mandate the requirements that are costly. With the support of Federal funding, Senator, our pueblo is undertaking the training of victim advocates, law enforcement, prosecutors, public defenders. With that said, Senator, members of the Committee, this is all Federal funding that is critical that we can meet these challenges to implement this to the full standard.

Senator LUJÁN. Thank you, Governor Chavarria, and thank you, Chair. I yield back.

The CHAIRMAN. Thank you. Senator Daines?

STATEMENT OF HON. STEVE DAINES, U.S. SENATOR FROM MONTANA

Senator DAINES. Chairman Schatz, thank you, Vice Chair Murkowski, for holding this very important hearing on the Violence Against Women Act as it relates to the tribal provisions. It is a topic of great importance for so many Montanans, including myself.

Thank you, Chief Judge FourStar, for joining us from Poplar, Montana. We have a couple of great Montanans here today, from Fort Belknap, I see Terry Brockie back there, and I think it is Tuffy Helgeson back there, if I can see him behind his cowboy hat. Welcome. Good to have you here.

I will tell you, before I make the rest of my comments and ask my questions, I am proud to sit here as a supporter of the VAWA reauthorization of 2013. I remember having women from Indian Country coming into my office and sitting down and telling me their story. It was very persuasive and helpful in coming to my own decision to vote in favor of the VAWA reauthorization of 2013.

I think VAWA has been a critical piece of legislation in combatting the missing and murdered indigenous women crisis. In fact, I am encouraged by the bipartisan work that is being done in the

Committee and the current direction of the negotiations. It has been hung up a few times, and I think we have to get these tribal provisions right, and I think we are headed in the right direction.

That said, I will tell you it is disheartening to see some partisan politics going on with the underlying bill, to push an unconstitutional version that was passed by the House. Democrats by extension are holding up any hope at a bipartisan deal with the underlying bill by pushing it and pushing an unconstitutional version that was passed by the House. The reason is because there are provisions there that will attempt to strip Montanans of their second amendment rights. The larger package that passed the U.S. House in March contains language that would stifle Montanans right to keep and bear arms.

The current conversation circulating around VAWA includes President Biden's unconstitutional gun control agenda surrounding the so-called boyfriend loophole. As H.R. 1620 shows, the apparent cost of closing this new loophole is to, number one, enact retroactive lifetime gun bans for misdemeanor offenses, two, create Federal ex parte gun bans, and three, fund and train police agencies to seize guns from these new retroactively prohibited gun owners.

Should a misdemeanor stand as the line crossed for an individual to lose a constitutional right? That is an important question. Should Americans be deprived of a constitutional right without first facing their accuser in a court of law? This current language would essentially create red flag gun confiscation orders in States that have never passed on by adding an ex parte gun ban to restraining order laws, meaning an individual could lose their right to bear arms without even knowing it.

On top of that, this bill subsidizes the prosecution misdemeanor gun bans, and enforcement of these newly co-opted gun confiscation laws. We don't need more infringements on the right to keep and bear arms. We need to restore it. There was a recent Wall Street Journal article just from September about 50 percent of new gun buyers are women. Historically it has been about 10 to 20 percent for decades, until the last two years, 50 percent approximately of all new U.S. gun buyers are women. There is a reason for that. They want to be able to protect themselves.

Women do not need more gun control. Gun rights are women's rights. Yet my colleagues are using an important piece of legislation I believe is a Trojan horse for gun control legislation that otherwise would never, ever be passed. It is imperative that we as a legislative body put some of these pet projects aside. Let's remove this language from VAWA and get back to the bipartisan nature of the conversation and negotiations, and let's get VAWA reauthorized again.

Chief Judge FourStar, what are some of the biggest challenges combatting violence against women in Indian Country?

Ms. FOURSTAR. The challenges that we have experienced at Fort Peck is [no audio].

Senator DAINES. Judge, we have lost your sound.

Ms. FOURSTAR. Can you hear me okay now?

Senator DAINES. Yes, we can hear you fine. Thank you.

Ms. FOURSTAR. Some of the challenges that we have experienced at Fort Peck is incarceration, incarceration that may be justice to

some but not all. So Fort Peck has looked at other alternatives. We do have our own jail. It is a 638 program. It is a tribal jail, but it is facilitated for long term incarceration.

But with VAWA, it isn't so much incarceration that seems to be at the forefront of what our victims are telling us as they are coming in. It is restorative justice, it is rehabilitation. Because they all remain members of the community, and they have families. They want the family unit to remain together.

So that is why we have focused on more of the alternatives to sentencing. But the challenge that we did have at the very beginning was medical costs for those that were incarcerated. It wasn't the issue of incarcerating or providing for them. It was just the medical costs that came with pre-existing health conditions prior to them being in our custody.

But as some of the other members have mentioned, funding is always an issue. But I have to say at Fort Peck funding wasn't the issue for us, because we had already started with the Tribal Law and Order Act in becoming compliant with that. So we already had a lot of those effective assistance of counsel, attorney prosecutor, we had a lot of those in place.

So it was just a matter of how fast we could move with it. Thank you, Senator.

Senator DAINES. Chief Judge FourStar, thank you. Thank you for your service there at Poplar, and also for your continued progress in the 638 transition. Thank you, Chairman Schatz.

The CHAIRMAN. Senator Rounds.

STATEMENT OF HON. MIKE ROUNDS,
U.S. SENATOR FROM SOUTH DAKOTA

Senator ROUNDS. Thank you, Mr. Chairman.

First, I want to thank all of you for being with us here today. I would like to especially thank our distinguished witness from the great State of South Dakota, Principal Deputy Assistant Secretary Little Elk. It is good to see you, and I am very pleased to see you here with us today. I look forward to hearing about your experiences and your insight into how VAWA has impacted our tribes and Native communities in South Dakota and elsewhere as well, as you have been here and learned.

My first question, though, is for Chief Judge FourStar. I understand some reauthorization efforts for the Violence Against Women Act have discussed the value of expanding tribal jurisdiction over non-members for additional crimes. In your experience presiding over cases in your tribal court system, would expanded jurisdiction help or hinder your tribe's capacity to handle an increased caseload?

Ms. FOURSTAR. Definitely help. To expand it to include children, law enforcement, we have even talked about drugs and alcohol. To be able to provide the services that are needed for the offenders, the victims and all of those that are affected by the crimes.

With the expansion, it wouldn't put any undue hardships on the Fort Peck Tribes. It is just going to elevate what we can do for our communities. Because at the present time, although we can provide services, we can't necessarily provide the defendant with the of-

fender accountability that they may need in regard to what has been occurring with the children.

With the law enforcement, I just want to say really quick that with our cross-deputization agreement, it has been successful, it has been in effect since 1999. We have offered the SLEC, the Special Law Enforcement Commission, the criminal justice force, so that those that are cross deputized who enforce tribal law with this commission, they are able to fall under the umbrella of a Federal prosecution if needed, if they are to be assaulted.

That is one of the gap-fillers that we have attempted to use at Fort Peck, because we cannot prosecute those crimes when law enforcement is involved with a non-Indian offender. Thank you, Senator.

Senator ROUNDS. Thank you.

Assistant Secretary Little Elk, you have been in this new role now for a few months. I would like to get your perspective on common barriers the Department sees with regard to the tribe's ability to implement Special Domestic Violence Criminal Jurisdiction. As I understand it, in South Dakota, only the Sisseton Wahpeton Oyate and the Standing Rock Sioux Tribe have taken the steps to implement this special jurisdiction.

I know you touched on it a little bit earlier, but I am just curious, with regard to our local tribes, why haven't other tribes in our home State implemented this expanded jurisdiction? What do you see as options that might make it more available to them?

Mr. GARRIOTT. Without taking the risk of speaking on behalf of our tribes in South Dakota, I can only speak from limited experience. But overall, from a national perspective, I think that one of the things that we consistently hear from tribes through various tribal consultations, including the tribal budget advisory committee and other forums in which we get to engage and hear directly from tribal leaders, is the resource challenges.

This is one of the reasons why in our Fiscal Year 2022 budget request we have asked for an additional $58 million for justice services for a total of $507 million overall. The bulk of that, those resources, of that request, really goes toward increased staffing for law enforcement services on the ground, with an additional $5 million for tribal courts and tribal court O&M areas.

Again, anecdotally, I think that many tribes are moving or looking to make sure that their law enforcement services, that their detention centers and that their court systems are adequately staffed, and fully functional before taking on additional, before asserting additional sovereignty and jurisdiction to take on the provisions in VAWA.

Senator ROUNDS. Thank you, sir. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Moran.

STATEMENT OF HON. JERRY MORAN,
U.S. SENATOR FROM KANSAS

Senator MORAN. Chairman Schatz, thank you. Thank you and Ranking Member Murkowski for holding this oversight hearing. I supported VAWA in 2013 and I look forward to building on the tribal provisions that were contained in it. I thank our witnesses for being here today.

I am the ranking member of the Commerce Justice Science Appropriations Subcommittee. The importance in this arena is the Department of Justice. I would like to direct my questions in regard to some of the appropriation issues.

Senator Cortez Masto asked one of the issues I was interested in. The nearest FBI field office to a field in Kansas is not quite 90 minutes away. I appreciate your question and I appreciate the information received from the answers.

But distance is always a problem for us in Kansas. Our tribal lands are not located close to any cities. So it is a significant challenge.

This is a question I would direct to any and all. Let me start with Ms. Randall. I will ask you this question first. You mentioned the President's request for increasing funding at the Office of Violence Against Women's tribal-specific grant programs by $46 million. What gaps have you identified that that additional funding would fill?

Ms. RANDALL. Thank you, Senator. One really targeted piece of funding would be for tribal special U.S. attorneys. That prosecutorial role is a gap that we would like to fill. We would provide more funding for tribal governments overall. That is to implement everything from victim services to supporting tribal law enforcement.

I think also very important is tribal jurisdiction. We do have a specific program to help tribes implement, tribes who haven't started yet to implement that jurisdiction, to do so.

Senator MORAN. Ms. Randall, you mentioned also in your written testimony that the Fiscal Year 2022 CJS bill includes new funding for tribal special assistant U.S. attorneys. You mentioned that is something still on the want list. But perhaps you can discuss with me a little more about the importance of this program.

Ms. RANDALL. Absolutely. Tribal special U.S. attorneys are cross designated to be able to bring cases with a tribal expertise in the Federal court, working incredibly closely as members of the U.S. attorney team. We have seen in many States that this allows the Federal Government, through this program, to bring significantly more prosecutions than we might be able to otherwise, and to have the expertise of the tribal prosecutor who has been cross designated.

Senator MORAN. I assume that tribal law and Federal law and State law regarding tribes is a significant specialty, not that every attorney would know. I certainly would know that those who have experience either as tribal members or strong association with tribes would have a better understanding of cultural and other issues that would be of significant importance.

Does the U.S. attorney in this circumstance, does a U.S. attorney select those individuals that work for the U.S. attorney?

Ms. RANDALL. You are exceeding my specialized area of expertise, Senator. We would love to take that back and make sure that we have all the right details for you.

Senator MORAN. Okay. I would be glad to hear more.

I would point out that Senator Schatz and Senator Murkowski are members, as you would know, of the subcommittee that appropriates that we are talking about. I look forward to working with

them as we continue our efforts first to get this fiscal year completed and as we look forward to next year.

Thank you for your answer.

Ms. RANDALL. Thank you.

The CHAIRMAN. Senator Moran, full disclosure, the Vice Chair and I were just praising you behind your back.

[Laughter.]

Senator MORAN. I am surprised at your willingness to admit that.

[Laughter.]

The CHAIRMAN. Vice Chair Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. To our colleague who is so adeptly spearheading CJS, thank you. We will work on these initiatives.

I wanted to ask just one final question to Professor Reese. But first, Ms. Randall, I want to acknowledge the announcement you have made saying we are going to have this consultation, the annual consultation in Alaska. We look forward to welcoming you and being part of those. Thank you for that.

Ms. Randall, we have all cited your report. Thank you for dealing with some of the concerns that so many had expressed following VAWA 2013. Despite the statistics, despite the report, there is still that doubt. You used the word distrust. I think there is still some concern. I certainly hear it in Alaska when we talk about the prospects for the pilot that we have outlined in our draft legislation.

I really appreciate that you have succinctly stated that, look, first what we have to do is clarify the law because concerns are rooted in, you say, several fundamental misunderstandings of that law. I think that is correct. The second is a simple reminder that tribal governments are American governments, too, worthy of our trust and dignity.

Your final statement is worth repeating. For those who would suggest that we shouldn't be moving forward with this special jurisdiction, Professor Reese states, "Our reasons for keeping them out of it are rooted in fear, distrust, and assumptions about their capacity to soundly administer the law that all ought to be long since in our past." I certainly agree with them. But I know we are still dealing with some of these ghosts of the past.

So I would ask, and it is directed to you, Professor Reese, but I would also be willing to hear from our Administration witnesses as well, as to what else is it that we have to do to gain the trust, to assure that there is a level of capacity that can be met? Certainly with our proposal in the Alaska project, there is an effort where the attorney general works with the tribes to determine those that will be able to provide systems that fully protect defendants' rights under Federal law. There are protections that we feel we have incorporated, but still we meet this resistance.

Is it just fear of the unknown, even though these have been in place for eight years? What more do we need to do? Because I have some convincing with some colleagues who are not sure that this is going to be too experimental, that this justice will be too experimental.

My response right now is, in many cases there is no justice. That is the experiment that is happening, is no justice. So I am willing

to engage in some pilot projects that maybe push things out a little bit more beyond people's comfort zone. Because right now, right now, people, women, are vulnerable. They are being destroyed because we don't have these protections. So we have to do something different.

Help me out with how we get beyond the distrust of this. I will turn to you, Professor, first.

Ms. REESE. Absolutely. Thank you for the question and for the kind remarks about my testimony.

I would say that you could do several things, one of which is to take them to Indian Country, take them to Judge Stacie's courtroom and show off the amazing room that she is doing to provide justice for the people of her community. Because I think really seeing Indian Country in action, and justice in action, does so much more to generate that kind of trust than all of the possible rights protections and laws that we could write up, when really if what we are talking about is just skepticism that is more deeply rooted, as you have said. So I would suggest that, if possible.

But I would also, as you also said, right now there is no justice. So of course, certainly trying something is necessary.

But also to remind folks not to hold tribal governments to an unfair and unrealistically high standard of perfection before we let them try out justice over fellow American citizens. I think if we expect them to be something that is in effect like perfect, infallible, always delivering perfect rights, that is not fair. That is not the way court systems in the United States work. What happens in State courts as well is that there are laws on the books that ensure that citizens are protected when they mess up. That is how laws and protections work. It is to make sure that citizens are protected because courts aren't perfect.

So I think the same thing is in place in Indian Country. We have these laws to protect and recognize that courts won't be perfect all the time. They are run by people. But they are necessary for justice.

Senator MURKOWSKI. And we have in fact in place the Federal protections that are already afforded in law. It is not as if there is no due process that is at play here.

Mr. Chairman, thank you so much for this hearing, and for all of the witnesses. To your point, I think it has been extraordinarily testimony that the Committee has received. I look forward to working with all of my colleagues as we work to advance this restoration of justice through VAWA. Thank you.

The CHAIRMAN. Thank you, Vice Chair Murkowski. I want to thank the staff, I want to thank the advocates, I want to thank the leaders in Indian Country, our testifiers, the Administration, everybody who is moving forward with this legislation. We are on our way.

If there are no more questions for our witnesses, witnesses may also submit follow-up written questions for the record. The hearing record will be open for two weeks.

I want to thank all of the witnesses for their time and their testimony.

This hearing is adjourned.

[Whereupon, at 4:34 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE PORT GAMBLE S'KLALLAM TRIBE

Chairman Schatz, Vice Chairman Murkowski, and members of the Senate Committee on Indian Affairs, my name is Jeromy Sullivan and as the Chairman of the Port Gamble S'Klallam Tribe (Tribe) I am pleased to offer testimony on the 2013 Violence Against Women Act (VAWA) and the urgent need to reauthorize VAWA with stronger provisions for Tribal Nations. The Tribe also supports and endorses the testimony provided by the National Congress of American Indians (NCAI), including the four priorities NCAI identified for the upcoming bipartisan VAWA reauthorization:

1. Include amendments to the Special Domestic Violence Criminal Jurisdiction (SDVCJ), 25 U.S.C. § 1304, that will fill jurisdictional gaps and ensure that the provision fully achieves its purpose.

2. Ensure and reaffirm that all 574 Tribal Nations can exercise criminal jurisdiction through VAWA.

3. Reauthorize VA W A's Tribal grant programs and create a reimbursement program for Tribal Nations exercising SDVCJ.

4. Create a permanent authorization for the U.S. Department of Justice's (DOJ) Tribal Access Program for National Crime Information (TAP).

Background

The Port Gamble S'Klallam Tribe is a sovereign Tribal Nation comprised of over 1,342 citizens located on the northern tip of the Kitsap Peninsula in Northwest Washington State. The 1855 Point No Point Treaty reserved hunting, fishing, and gathering rights for our Tribe, and the United States agreed to respect our Tribal sovereignty and to protect and provide for the well-being of our people. The United States, therefore, has both treaty and trust obligations to protect our lands and resources and provide for the health and well-being of our citizens, obligations that are even more solemn when discussing the safety of our Tribal women and girls.

Filling Jurisdictional Gaps

As the NCAI noted in its testimony, the SDVCJ included in VAWA 2013 reaffirmed the inherent sovereign authority of Tribal Nations to exercise criminal jurisdiction over non-Indian offenders who commit certain domestic violence crimes against Indian people on Tribal lands. This change in federal law has made real differences in Indian Country, including tangential benefits such as increased collaboration among Tribal Nations and between local, state, federal, and Tribal governments. With SDVCJ, no longer can many abusers come onto Tribal lands and evade justice.

However, the intervening years since 2013 have revealed jurisdictional gaps in the law. Currently, federal law restricts SDVCJ to extend only to non-Indians who commit crimes against intimate partners or persons covered by a qualifying protection order. In an all-too-frequent scenario, this means that Tribal Nations can prosecute an individual for violence against a mother, but can do nothing about the associated violence against her children. In over half.—nearly 60 percent—of SDVCJ cases, children are victims or witnesses. Under current federal law, Tribal Nations are not able to offer those children protection or justice by prosecuting the offender. This only compounds the already-severe rates of exposure to violence among Native children, who experience post-traumatic stress disorder at a rate comparable to war veterans and triple the rate of the rest of the population.

Our children are not the only ones left without justice under VAWA 2013. Under the current law, Tribal Nations are unable to pursue crimes such as sexual assault, trafficking, and stalking—nor are we able to protect Tribal police officers and the very integrity of our criminal justice systems. Unlike other populations, Native people are much more likely to experience interracial (as opposed to intra-racial) sexual violence, which puts heightened emphasis on the need for Tribal Nations to have

the ability to prosecute non-Indian offenders. Many of the crimes Native people face—over half ofNative women experience sexual violence in their lifetimes, while nearly half report being stalked-do not fit neatly into a SDVCJ category, leaving Tribal Nations powerless to hold anyone accountable.

Even for those crimes that do fall within the current scope of SDVCJ, Tribal Nations are unable to prosecute non-Indians for crimes incident to the criminal justice process, such as assaulting a Tribal police officer or witness tampering. This erodes the integrity of Tribal justice systems and our ability to secure a fair and robust process for our citizens.

We join the NCAI in strongly urging the inclusion of provisions addressing these jurisdictional gaps in the bipartisan Senate VAWA bill.

Ensuring and Reaffirming all 574 Tribal Nations' Ability to Exercise SDVCJ

An unfortunate consequence of VAWA 2013 has stemmed from the interpretation of its language to exclude certain Tribal Nations and geographic regions. As the NCAI discussed in its testimony, Tribal Nations in Maine and Alaska have been unable to exercise SDVCJ due to this issue.

We join the NCAI in calling on Congress to reaffirm all Tribal Nations' ability to exercise SDVCJ over non-Indian offenders so that Tribal Nations in Maine and Alaska can offer victims the same protections already afforded to victims in the other 48 states.

Reimbursing Tribal Nations for Exercising SDVCJ

In addition to the aforementioned challenges, a continuing lack of resources for Tribal criminal justice systems and victim services undermines the ability to protect Tribal citizens. Tribal Nations face unique issues in raising governmental resources because—unlike other forms of government—we lack a traditional tax base. The grant programs created in previous reauthorizations of VAWA have helped, but are still insufficient to meet the substantial needs in Indian Country.

Cost is a major factor deterring Tribal Nations from implementing SDVJC out of concern for unpredictable costs, such as health care for non-Indian inmates in Tribal custody that Tribal programs are unable to provide due to their non-Indian status. A reimbursement fund would help fulfill the United States' trust and treaty obligations by helping more Tribal Nations assume criminal jurisdiction over non-Indians in order to improve the safety of our communities and our ability to protect our most vulnerable citizens.

Along with the NCAI, we support the creation of a fund that would reimburse Tribal Nations for expenses incurred in exercising and implementing SDVJC. We also endorse the NCAI's proposal to amend the Victims of Crime Act (VOCA) to ensure that Tribal Nations have a permanent set-aside from the Crime Victims Fund (CVF), which would provide much-needed services and compensation to victims of violence in Tribal communities.

Ensuring All Tribal Nations' Permanent Access to National Crime Information

In 2015, DOJ announced the Tribal Access Program for National Crime Information (TAP), which provides eligible Tribal Nations with the ability to enter and obtain information from federal criminal information databases. There are now 108 Tribal Nations participating in TAP, and with this access Tribal Nations can enter protection orders and criminal history into federal databases.

However, more should be done to ensure that all Tribal Nations are able to access the databases. Current law restricts access to Tribal Nations with a sex offender registry or with a fulltime Tribal law enforcement agency, but many Tribal Nations—especially those in Public Law 280 jurisdictions like California and Alaska—do not meet these criteria but nevertheless operate Tribal courts that issue protection orders. The orders cannot be expected to effectively protect victims if they do not appear in the appropriate federal criminal database.

Funding is one limitation to expanding TAP access. We join the NCAI in calling for the creation of a dedicated funding stream for expanding the TAP program and making it available to all interested Tribal Nations to access both for obtaining and for entering information.

Conclusion

We all want safe communities. Our mission in endorsing the NCAI's testimony is to make sure Tribal sovereignty is recognized and Tribal governments have the tools we need to ensure safe communities and protect our vulnerable citizens. The Port Gamble S'Klallam Tribe thanks the Committee for the work it is doing for Indian Country on these important issues.

PREPARED STATEMENT OF THE UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we are pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of the SCIA Oversight Hearing, "Restoring Justice: Addressing Violence in Native Communities through VAWA Title IX Special Jurisdiction." Given the urgency around reauthorizing the Violence Against Women Act (VAWA) with provisions that close critical gaps in Tribal Special Domestic Violence Criminal Jurisdiction (SDVCJ), we appreciate the convening of this hearing and the recently released bipartisan discussion draft of Title IX provisions. USET SPF joins SCIA Leadership in calling for the immediate Senate passage of a bill that contains these vital features, ensuring that the United States fulfills more of its trust and treaty obligations to Tribal Nations by better recognizing our inherent sovereignty.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.[1] USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

For far too long, the United States has neglected its public safety obligations to Tribal Nations—both by failing to recognize and promote our inherent sovereign authorities, as well as failing to devote adequate resources to law enforcement and judicial infrastructure. This has created a crisis in Indian Country, as our people go missing and are murdered, and are denied the opportunity for safe and healthy communities enjoyed by other Americans. Now, with the reauthorization of VAWA years overdue, Tribal Nations face critical gaps in the exercise of SDVCJ, to the detriment of our people and public safety. While we ultimately seek the restoration of full criminal jurisdiction over our lands, Title IX represents important advancements toward a future in which our children, women, elders, and all Native people can live in healthy, vibrant communities without fear of violence knowing that justice will be served.

High Rate of Crime in Indian Country is Directly Attributable to U.S. Policy

As you are well aware, Indian Country currently faces some of the highest rates of crime, with Tribal citizens 2.5 times more likely to become victims of violent crime and Native women, in particular, subject to higher rates of domestic violence and abuse. Many of the perpetrators of these crimes are non-Native people. The reasons behind the increased crime in Indian Country are complicated, but the United States holds much of the responsibility and that is at the root of today's challenges.

Historical Trauma Caused by United States Policies and Actions

Increased crime in Indian Country flows, first and foremost, from the shameful policies of the United States. The United States spent centuries working to eradicate Tribal Nations and cultures, and its policies of termination and assimilation have caused ongoing trauma for Native people. As a result of these policies, the federal government prohibited exercise of our cultural practices, kidnapped our children, and took actions to limit the exercise of our inherent sovereign rights and authorities. Dehumanization of Native people over time is a tool to justify harms done to us—including colonizing our land. It marginalizes us in a way that makes us invisible within our own lands. And the larger society is desensitized to us, turning a blind eye to its role in continued injustices to our people and our governments.

[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe-Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Failure of United States to Recognize Tribal Nations' Sovereign Criminal Jurisdiction

A primary reason for increased crime in Indian Country is the gap in jurisdiction stemming from the United States' failure to recognize our inherent criminal jurisdiction, allowing those who seek to do harm to hide in the darkness away from justice. When Tribal Nations are barred from prosecuting offenders and the federal government fails in the execution of its obligations, criminals are free to offend repeatedly. This gap is the United States' own doing.

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples, pre-dating the founding of the Republic. A critical aspect of our inherent sovereignty is jurisdiction over our land and people, including inherent jurisdiction over crimes. Early Supreme Court decisions recognized this broad jurisdictional authority. *See, e.g., United States v. Wheeler*, 435 U.S. 313 (1978); *Ex parte Crow Dog*, 109 U.S. 556 (1883). And Tribal Nations exercised jurisdiction over everyone who set foot on our lands, in parity with other units of government.

But the United States has slowly chipped away at Tribal Nations' jurisdiction. At first, it found ways to put restrictions on the exercise of our inherent rights and authorities. And eventually, as its power grew, the United States shifted from acknowledging Tribal Nations' inherent rights and authorities to treating these rights and authorizes as grants from the United States. With this shift in mindset, recognition of our inherent sovereignty diminished, including our jurisdictional authorities.

For example, in the 1978 decision of *Oliphant v. Suquamish Indian Tribe*, the Supreme Court struck what may be the biggest and most harmful blow to Tribal Nations' criminal jurisdiction. In that case, it held Tribal Nations lacked criminal jurisdiction over non-Native people, even for crimes committed within Indian Country. 435 U.S. 191 (1978). It based this harmful decision on the faulty reasoning that-while Supreme Court precedent recognizes that Tribal Nations possess aspects of our inherent sovereignty unless expressly divested—in the case of criminal jurisdiction over non-Native people the exercise of such inherent sovereignty was simply impractical for the United States. It said that, while Tribal Nations' jurisdiction flows from our inherent sovereignty, continued existence of criminal jurisdiction over non-Native people would be "inconsistent" with Tribal Nations' status, where our inherent sovereignty is now "constrained so as not to conflict with the interests of [the United States'] overriding sovereignty." *Id.* at 208–10. Not only is this decision immoral and harmful, it is also illogical, as other units of government, such as states, exercise criminal jurisdiction over non-citizens present in their boundaries as a matter of routine. It is this very exercise of jurisdiction that keeps everyone safe—something that is clearly in the United States' best interests. Following *Oliphant*, Tribal Nations were barred from exercising criminal jurisdiction over non-Native peoples' crimes on our own land and against our own people—an authority held by virtually every other unit of government in this country.

Congress, in the Indian Civil Rights Act, also acted to restrict Tribal Nations' criminal jurisdiction. Under the Indian Civil Rights Act, regardless of the crime, Tribal Nations were prohibited from imposing more than one year of incarceration and a $5,000 fine for an offense. 25 U.S.C. § 1302(a)(7)(B). After this statute was enacted, Tribal Nations were not able to exercise criminal jurisdiction even over our own people in excess of the relatively low penalty amounts. Some have even argued the Major Crimes Act bars Tribal Nations' jurisdiction over serious crimes committed by our own people.

The United States justifies its failure to recognize Tribal Nations' inherent sovereign power with legal fictions that satisfy its own interests. The federal government has continually moved to deny our authority, as it sought to build systems to reflect its assumed supremacy. It does not have this authority, and there are very real and practical consequences of the United States' wrongful taking of Tribal Nations' criminal jurisdiction; including leaving a vacuum that allows crime to grow unabated and the very need for the legislation this body is considering.

These failures on behalf of the United States must be addressed in order to resolve the issue of crime in Indian Country and enable Tribal Nations to exercise our inherent authority as governments to care for our people. The benefits of safe, healthy, and prosperous Tribal communities stretch far beyond Indian Country. By recognizing Tribal Nations' inherent criminal jurisdiction over our land, the United States would facilitate our ability to function side-by-side with other sovereign entities in the fight to keep all Americans safe.

Chronically Unmet Trust and Treaty Obligations

The federal government's trust and treaty obligations are the result of the millions of acres of land and extensive resources ceded to the U.S.—oftentimes by force—in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity, including those related to public safety in Indian Country. At no point has the government fully delivered upon these obligations. This is especially true in the law enforcement context, where the United States has failed to fully recognize our inherent sovereignty and at the same time, has not invested in the infrastructure necessary to fulfill this obligation.

The federal government has long failed to allocate the resources necessary to fill the void left by its refusal to recognize Tribal Nations' criminal jurisdiction over our land. Each time a crime takes place, the legal jurisprudence created by the United States requires a time consuming and complicated analysis necessary to determine who has jurisdiction. This determination requires an analysis of the perpetrator, the victim, the land on which the crime took place, the type of crime, and whether any statute applies that shifts the jurisdictional analysis, such as a restrictive settlement act. This murkiness leads to lost time—which can be deadly when a Native person is in danger. And even when it is clear that the federal government has jurisdiction over a particular crime and the Tribal Nation does not, prosecutors often decline to prosecute, citing lack of resources or evidence. This, in combination with a lack of Tribal Nation access to crime information, leaves known perpetrators walking free in Indian Country, now armed with the knowledge that they are impervious to the law.

Additionally, the chronic underfunding of Tribal public safety programs leaves many Tribal Nations without the personnel and other infrastructure necessary to combat crime in Indian Country. For example, Indian Country's police staffing does not meet the national police coverage standards. In FY 2020, Indian Country only had 1.9 officers per 1,000 residents compared to an average of 3.5 officers per 1,000 residents nationwide. Again, cooperation across governmental entities, including with Tribal Nations, can help resolve police staffing issues.

The federal government is not upholding its trust responsibility and obligations to provide the funding necessary for Tribal Nations to exercise enhanced sentencing and expanded criminal jurisdiction under the Tribal Law and Order Act (TLOA) and the Tribal Nation provisions of the 2013 reauthorization of the Violence Against Women Act (VAWA). For Tribal Nations to fully exercise these authorities, Congress mandated that we must first put into place certain procedural protections for defendants. At the same time, following centuries of termination and assimilationist policy, the federal government has consistently, and chronically underfunded line items and accounts dedicated to rebuild and support judicial infrastructure in Indian Country. It is incumbent upon the federal government to ensure Tribal Nations have funding and other resources to comply with these procedural requirements.

7Restrictive Settlement Acts

Some Tribal Nations, including some USET SPF member Tribal Nations, are living under restrictive settlement acts that further limit the ability to exercise criminal jurisdiction over our lands. These restrictive settlement acts flow from difficult circumstances in which states demanded unfair restrictions on Tribal Nations' rights in order for the Tribal Nations to have recognized rights to their lands or federal recognition. When Congress enacted these demands by the states into law, it allowed for diminishment of certain sovereign authorities exercised by other Tribal Nations across the United States.

Some restrictive settlement acts purport to limit Tribal Nations' jurisdiction over their land or to give states jurisdiction over Tribal Nations' land, which is itself a problem. But, to make matters worse, there have been situations where a state has wrongly argued the existence of the restrictive settlement act prohibits application of later-enacted federal statutes that would restore to Tribal Nations aspects of our jurisdictional authority. In fact, some USET SPF member Tribal Nations report being threatened with lawsuits should they attempt to implement TLOA's enhanced sentencing provisions. Congress is often unaware of these arguments when enacting new legislation. USET SPF asserts that Congress did not intend these land claim settlements to forever prevent a handful of Tribal Nations from taking advantage of beneficial laws meant to improve the health, general welfare, and safety of Tribal citizens. We would like to further explore short- and long-term solutions to this problem with the Committee.

Past Congressional Actions to Recognize Tribal Nations' Sovereign Jurisdiction

Congress can and has—at the urging of Indian Country-taken steps to remove the restrictions the United States placed on Tribal Nations' exercise of our inherent sovereign criminal jurisdiction. Through these actions, Congress has moved to legally recognize our inherent authorities even after the United States acted to stomp them out. For example, although the Supreme Court initially ruled Tribal Nations lack criminal jurisdiction over Native people who are not their own citizens, Duro v. Reina, 495 U.S. 676 (1990), Congress swiftly restored that inherent jurisdiction, 25 U.S.C. § 1301(2), and the Supreme Court recognized its restoration, *United States v. Lara*, 541 U.S. 193 (2004).

In 2010, Congress enacted TLOA to amend the Indian Civil Rights Act. See 25 U.S.C. § 1302. It increased the penalties a Tribal Nation may impose in cases where we have jurisdiction—allowing incarceration sentences of up to three years and a $15,000 fine per offense, with up to nine years of incarceration per criminal proceeding. 25 U.S.C. § 1302(a)(7)(C)-(D), (b). But TLOA requires Tribal Nations to provide certain procedural rights to defendants in order to exercise this enhanced sentencing. 25 U.S.C. § 1302(c).

In 2013, Congress included Tribal provisions when it reauthorized VAWA. See 25 U.S.C. § 1304. Through VAWA, Congress restored the exercise of criminal jurisdiction (called special domestic violence criminal jurisdiction (SDVCJ)) over non-Native people in limited circumstances related to domestic and dating violence. 25 U.S.C. § 1304(b)(1). VAWA allows participating Tribal Nations to exercise SDVCJ over Indian Country crimes that: are dating or domestic violence (defined to require a certain type of relationship) or in furtherance of certain protection orders, 25 U.S.C. § 1304(a)(1), (2), (5); when the victim or perpetrator is Native, 25 U.S.C. § 1304(b)(4)(a); and when the perpetrator has certain ties to the Tribal Nation, 25 U.S.C. § 1304(b)(4)(B). Like TLOA, VAWA requires Tribal Nations to provide certain procedural rights to defendants to exercise SDVCJ, including the right to a trial. 25 U.S.C. § 1304(d).

The Tribal Nations that have been able to exercise jurisdiction under VAWA report success in bringing perpetrators to justice and keeping our people safe. As the Department of Justice (DOJ) testified before this Committee in 2016, VAWA has allowed Tribal Nations to "respond to long-time abusers who previously had evaded justice." During the Oversight Hearing, SCIA Leadership also underscored that since the enactment of SDVCJ, there have been zero legitimate habeas petitions and zero claims related to non-Native defendants being deprived of due process as Tribal Nations exercise SDVCJ.

VAWA Must Be Updated to Address Gaps in SDVCJ and Ensure all Tribal Nations are Included

Although they are steps in the right direction, these existing laws do not do enough to provide for the exercise Tribal Nations' criminal jurisdiction, which rightfully belongs to us as a function of our inherent sovereignty. And they do not do enough to protect Native people from the violence that lives in the void left by limitations placed on Tribal Nations' exercise of criminal jurisdiction. Indeed, as Tribal Nations have implemented SDVCJ in the years following the 2013 VAWA Reauthorization, Tribal Nations have been unable to prosecute co-occurring crimes or those that do not fall within the strict definition of "domestic violence." In addition, SDVCJ and other features of the 2013 VAWA are not currently accessible by all federally recognized Tribal Nations. We support and appreciate the direction taken by the draft Title IX legislation, as it seeks to more fully deliver upon trust and treaty obligations, and look forward to working with SCIA to further refine its language.

Sexual Violence, Stalking, and Human Trafficking

The VAWA Title IX draft would extend Tribal Nations' restored jurisdiction over non-Native people, as authorized under VAWA, to include crimes related to sexual violence, stalking, and human trafficking. In this way, it would recognize Tribal Nations' inherent sovereign authority to exercise criminal jurisdiction over our lands to address a critical gap in the SDVCJ under VAWA.

According to a 2016 study by the National Institute for Justice, approximately 56 percent of Native women experience sexual violence in their lifetime, with one in seven experiencing that violence within the past year. Almost one in two Native women report being stalked. And the vast majority of these perpetrators are non-Native, preventing Tribal Nations from exercising criminal jurisdiction over them outside VAWA. However, VAWA as currently enacted does not extend to these crimes, which Tribal Nations, DOJ, and others involved in implementation of VAWA's SDVCJ have reported as an oversight in the drafting of the law. One such

area is its application to sexual violence outside of a domestic relationship. Title IX would extend VAWA's SDVCJ to include sex trafficking, sexual violence, and stalking. It would also add crimes of related conduct, defined to include violations of a Tribal Nation's criminal law occurring in connection with the exercise of VAWA SDVCJ.

Crimes Against Children and Tribal Law Enforcement

Title IX would address another serious gap in the SDVCJ VAWA provision by ensuring that it includes crimes against children and law enforcement officers—again, in recognition of our inherent sovereign rights and authorities. Currently, VAWA's SDVCJ does not extend to children involved in cases where a Tribal Nation is otherwise exercising VAWA's SDVCJ. Tribal Nations implementing VAWA report that children have been involved as victims or witnesses in nearly 60 percent of the instances in which they exercised VAWA's SDVCJ, VAWA does not protect them.

Yet another oversight in the drafting of VAWA is its inapplicability to police officers involved in cases where a Tribal Nation is otherwise exercising VAWA's SDVCJ. Implementing Tribal Nations have reported assaults on officers and other personnel involved in the criminal justice system. Domestic violence cases are the most common and most dangerous calls to which law enforcement respond, and VAWA does not give Tribal Nations the tools to protect officers when they carry out VAWA's SDVCJ. The Eastern Band of Cherokee Indians, for example, reported that a perpetrator during arrest under VAWA's SDVCJ threatened to kill officers and carry out a mass shooting and later struck a jailer—none of which was actionable under VAWA's SDVCJ. To remedy this problem, the Title IX draft would amend VAWA to extend jurisdiction to crimes committed against a Tribal Nation's officer or employee in the course of carrying out VAWA's SDVCJ for covered crimes that violate Tribal Nation law in Indian Country where the Tribal Nation has jurisdiction. Additionally, the draft language would ensure crimes beyond actual assault are actionable under VAWA. It would do so by clarifying that attempts at and threats of physical force that violate a Tribal Nations' laws are covered.

Confirm Application of SDVCJ to All Tribal Nations

As described above, a number of USET SPF member Tribal Nations, both those with jurisdictions adjacent to the state of Maine and those who live adjacent to other states within our region, are forced to govern under restrictive settlement acts (RSAs), which challenge their ability to exercise SDVCJ. We urge SCIA to more fully examine this issue and work to ensure that Title IX applies to all federally recognized Tribal Nations, including all those USET SPF member Tribal Nations subject to RSAs.

Tribal Reimbursement Program

USET SPF also supports the establishment of a reimbursement program for Tribal Nations exercising SDVCJ as an additional step toward honoring trust and treaty obligations. The federal government is obligated to assist us in rebuilding our governmental infrastructure, including judicial and other infrastructure related to the exercise of SDVCJ. Tribal Nations should not be forced to absorb the unpredictable and sometimes excessively high costs associated with SDVCJ, including the medical costs of incarcerated non-Natives. The creation of the reimbursement program will provide certainty for those Tribal Nations currently exercising SDVCJ, as well as for those who are interested in exercising this authority, but for whom unanticipated costs may be a prohibitive factor.

Access to Criminal Databases and Information

We also agree that Title IX should address lack of access to federal criminal databases, as well as generally increase the sharing of federal crime information with Tribal Nations. The draft of Title IX would ensure all Tribal Nations can access the Tribal Access Program (TAP) which facilitates access to the National Crime Information Center database for law enforcement. Through VAWA, Tribal Nations were authorized to access the National Crime Information Center database, but DOJ did not facilitate this access until launching the TAP pilot project in 2015. TAP allows Tribal criminal justice agencies to strengthen public safety, solve crimes, conduct background checks, and offer greater protection for law enforcement by ensuring the exchange of critical data across the Criminal Justice Information Services (CJIS) systems.

Many Tribal Nations remain on the waitlist to access TAP. The Title IX would require DOJ to ensure that all Tribal law enforcement officials have access to the National Crime Information Center. It would also codify TAP and authorize additional funding for the program, which we continue to support. We appreciate that

the Senate version of Title IX contains $6 million authorization-double that of the House.

Conclusion

The public safety crisis facing Tribal Nations and our people is directly attributable, at least in part, to U.S. policies of colonialism, termination, and assimilation, as well as the chronic failure to deliver upon the trust responsibility and obligations. These policies stole our homelands, tried to steal our cultures, and limited our ability to exercise our inherent sovereign rights and authorities. The United States, including all branches of government must act to provide parity to Tribal Nations in the exercise of our inherent sovereign rights and authorities. Our people cannot remain invisible and forgotten, as Tribal Nations work to navigate the jurisdictional maze that has grown up around Indian Country while the United States turns a blind eye.

USET SPF continues to support the provisions of the Title IX draft and believes it represents a major step in the right direction toward the United States recognizing Tribal Nations' inherent sovereign rights and authorities. This legislation better recognizes Tribal Nations' inherent sovereign right to exercise criminal jurisdiction over our land, and it provides additional resources the United States owes to keep our people safe.

As sovereign governments, Tribal Nations have a duty to protect our citizens, and provide for safe and productive communities. This cannot truly be accomplished without the full restoration of criminal jurisdiction to our governments through a fix to the Supreme Court decision in *Oliphant*. While we call upon the Senate to take up and pass a VAWA reauthorization containing the features found in the Title IX draft language, we strongly urge this Committee to consider how it might take action to fully recognize Tribal criminal jurisdiction over all persons and activities in our homelands for all Tribal Nations. Only then will we have the ability to truly protect our people. We thank you for holding an important hearing and look forward to further opportunities to discuss improved public safety in Indian Country.

PREPARED STATEMENT OF HON. JEROMY SULLIVAN, CHAIRMAN, PORT GAMBLE S'KLALLAM TRIBE

Dear Chairman Schatz and Vice-Chairwoman Murkowski: As Tribal Chairman of the Port Gamble S'Klallam Tribe (Tribe), I am writing to support and provide comments on the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released on December 8, 2021. The Tribe also supports the comments offered by the National Congress of American Indians (NCAI) and incorporates them by reference into our own. Tribal communities continue to suffer from the highest crime victimization rates in the country, and the bipartisan Title IX discussion draft includes desperately needed reforms. Our Tribe is dedicated to improving the safety and welfare of our Tribal citizens, and it is in that spirit we offer the following comments.

Background

The Port Gamble S'Klallam Tribe is a sovereign Tribal Nation comprised of over 1,342 citizens located on the northern tip of the Kitsap Peninsula in Northwest Washington State. The 1855 Point No Point Treaty reserved hunting, fishing, and gathering rights for our Tribe, and the United States agreed to respect our Tribal sovereignty and to protect and provide for the wellbeing of our people. The United States, therefore, has both treaty and trust obligations to protect our lands and resources and provide for the health and well-being of our citizens, obligations that are even more solemn when discussing the safety of our Tribal women and girls.

Nearly two-thirds of our citizens live on our Reservation. Native women, men, girls, and boys living in our community face many challenges to their physical safety and mental well-being. The threats are in the form of restricted access to rural maternal healthcare services, adequate housing, and food security, and continue into adolescence and adulthood in the form of high rates of physical, emotional, and sexual violence, substance abuse, and unmet mental and behavioral health needs. When coupled with the jurisdictional limitations that further complicate the delivery of limited public safety and victim services on our Reservation, it becomes clear that additional resources and targeted political actions are urgently needed to protect our citizens.

Being a self-governance Tribe has fundamentally shaped how we address public health and safety matters impacting our community, including how we implement VAWA. We maximize the use of federal funds, tailor programs to meet local needs, and take advantage of our own extensive on-Reservation network to provide serv-

ices, but more needs to be done. Many of the crimes targeted by VAWA are committed by non-Indians, and we need to amend federal law to improve access to justice and safety for victims in our communities. Below, we highlight provisions from the discussion draft and some recommended changes that we think are vital and must be included in the final bipartisan VAWA reauthorization bill.

1. Expanding Tribal Jurisdiction over Non-Indian Offenders via "Special Tribal Criminal Jurisdiction"

VAWA 2013's expansion of Tribal Nations' criminal jurisdiction over certain non-Indian domestic violence offenders has had significant impacts in Indian Country, strengthening Tribal Nations' ability to protect our people. However, substantial jurisdictional gaps impede the law's effectiveness. Because VAWA 2013's Special Domestic Violence Criminal Jurisdiction (SDVCJ) covers only non-Indians who commit crimes against intimate partners or persons covered by a qualifying protection order, Tribal Nations have been unable to protect the children who are often associated with such crimes (either as witnesses or victims themselves) and the law enforcement officials who respond to them. Additionally, SDVCJ's narrow scope has left victims of human trafficking, stalking, and sexual violence outside the context of an intimate relationship without recourse.

A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Our children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. It is particularly important that the final bipartisan VAWA bill recognizes that children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013.

The bipartisan Title IX discussion draft resolves these issues by expanding SDVCJ to "Special Tribal Criminal Jurisdiction" with additional covered crimes, including assault of Tribal justice personnel, child violence, obstruction of justice, sexual violence, sex trafficking, and stalking. We strongly support the inclusion of these provisions in the final Senate bill.

Recommended changes: We ask that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but not the bipartisan Senate Committee on Indian Affairs discussion draft. Our elders are an integral part of our Tribal communities. They carry our cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA.

Additionally, we strongly recommend amending the draft language on page 10 to remove the requirement that assaults on Tribal justice personnel must be tied to a "covered crime." That language may require a Tribal Nation to first prove the underlying covered crime before being able to prosecute the assault, which does not fully fix the public safety concern of police officers or detention personnel. We ask that the language fully cover all assaults of tribal justice personnel and not mention anything related to a "covered crime."

2. Reaffirming All Tribal Nations' Ability to Exercise Expanded Criminal Jurisdiction

Another unfortunate result of VAWA 2013 has been the inability of certain Tribal Nations—specifically those in Maine and Alaska—to exercise expanded criminal jurisdiction. The bipartisan Title IX discussion draft resolves this by expressly including Tribal Nations in Maine and creating a pilot program to address the unique needs in Alaska, where Alaska Native women are overrepresented among domestic violence victims by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. We strongly support the inclusion of these provisions in the final Senate bill and the inclusion of all Tribal Nations in VAWA.

3. Reimbursement for Costs Associated with Exercising Expanded Criminal Jurisdiction

Despite the expansion of Tribal criminal jurisdiction in VAWA 2013, the cost of implementation has been an impediment for many Tribal Nations. The bipartisan Title IX discussion draft resolves this by creating a funding stream with dedicated appropriations the Attorney General may use to reimburse Tribal Nations for costs associated with implementation, including expanding Tribal court and law enforcement capacity and providing health care for inmates. We strongly support the inclusion of these provisions in the final Senate bill.

Recommended change: We ask that that reimbursement program language be expanded to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation). Additionally, the time for the Attorney General to develop regulations for the program should be shortened from within one year to within six months after the effective date to ensure that this important program is implemented quickly to address the urgent need in Indian Country.

4. Strengthening the Tribal Access Program for National Crime Information (TAP)

The U.S. Department of Justice (DOJ) announced the TAP program in 2015, which allows Tribal Nations to both access information from federal criminal databases and to enter information, such as protection orders and criminal history, into those databases as well. Over 108 Tribal Nations participate in the program now, and it is critical to ensuring that Tribal protection orders and other judgments are enforceable. However, a lack of funding has been an impediment to many Tribal Nations' participation in the program, along with certain restrictions precluding Tribal Nations without a sex offender registry or a full-time law enforcement agency from participating.

The bipartisan Title IX discussion draft resolves these issues by creating funding streams with dedicated appropriations for Tribal Nations to participate in the TAP program, removing restrictions from participation, and ensuring that Tribal law enforcement officials have the ability to enter information as well as obtain it from national criminal databases. Relatedly, it also allows Tribal Nations to utilize the Bureau of Prisons (BOP) to house defendants serving sentences of more than one year. We strongly support the inclusion of these provisions in the final Senate bill.

Conclusion

We fully support the purpose of Title IX, which is to strengthen Tribal sovereignty and reaffirm Tribal jurisdiction over non-Indian perpetrators. We also support providing additional resources to address violence against all Native women.

Thank you for the opportunity to submit written comments on the bipartisan Title IX discussion draft. We urge all members of the Senate Committee on Indian Affairs to support the discussion draft's provisions and to co-sponsor a full bipartisan Senate bill that incorporates recommended changes. Our mission in providing these comments and endorsing NCAI's comments is to ensure that Tribal sovereignty is recognized and Tribal governments have the tools we need to protect our citizens and communities. On behalf of the Port Gamble S'Klallam Tribe, I thank you for the work you have done for the Tribe and for Indian Country.

TRIBAL LAW AND POLICY INSTITUTE
December 21, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs:

The Tribal Law and Policy Institute (TLPI) is a 100 percent Native American operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples. We believe that tribes and individual Native people suffer from ongoing unjust policies and practices that have worked to prevent fully empowering tribes as sovereigns and Native people as self-reliant citizens. Therefore, we seek to empower tribal communities to build upon inherent strengths as sovereign nations and protect their ancestral homelands, tribal members, and tribal jurisdiction.

As such, it is our privilege to submit this letter in support of the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released on December 8, 2021, which includes important provisions that will improve safety and justice in tribal communities. Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the bipartisan Title IX discussion draft are desperately needed today.

A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence.

Tribal Nations have been exercising jurisdiction over non-Indian domestic violence offenders under VAWA 2013 for over 8 years. Exercising Tribal Nations have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families while upholding the due process rights of all defendants in tribal courts. Despite these successes, perpetrators still find gaps in the law. Victims of sexual violence, child abuse, stalking, trafficking, elder abuse, and assaults against law enforcement officers deserve the same protections that Congress affords to domestic violence victims on tribal lands in VAWA 2013.

It is particularly important that the final bipartisan VAWA bill recognizes that Indian children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. However, federal law failed to restore tribal jurisdiction to prosecute these crimes. The Title IX discussion draft language would restore this category of jurisdiction and allow tribes to protect Indian children in their tribal justice systems.

We ask that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but not the bipartisan Senate Committee on Indian Affairs discussion draft. Indian elders are an integral part of tribal communities to whom we owe respect and care. Indian elders carry their cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA.

We also appreciate that the Title IX discussion draft recognizes that VAWA 2013 inadvertently left tribal police officers and detention personnel at risk. Domestic violence cases are both the most common and the most dangerous calls that law enforcement receives. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian defendants, but as of now, Tribal Nations remain unable to prosecute these crimes, as assaults on law enforcement was not a restored category of jurisdiction in VAWA 2013. This creates an obvious public safety concern. In order to ensure that the Title IX discussion draft fully rectifies this issue, we strongly recommend amending the draft language on page ten to remove the requirement that the assault must be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require the Tribal Nation to first prove the underlying covered crime before they could prosecute for the assault, which does not fully fix the public safety concern of police officers or detention personnel. This creates significant confusion that likely would have to be worked out in the courts. We ask that the language fully cover all assaults of tribal justice personnel and not mention anything related to a "covered crime."

Section 904 provides a local solution for the local problem of criminal victimization in Indian country. We are pleased to see that the bipartisan Title IX discussion draft continues to build on VAWA's promise and includes key priorities that have been identified by Tribal Nations to further enhance safety for victims in tribal communities.

The Title IX discussion draft clarifies that Tribal Nations in Maine are included in the law and creates a pilot project to address the unique needs in Alaska. We fully support the inclusion of all Tribal Nations in VAWA. Alaska Native women are over-represented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. The Title IX discussion draft includes a pilot project that will enable a limited number of Tribal Nations in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages.

In addition to the lifesaving provisions outlined above, the bipartisan Title IX discussion draft creates a reimbursement program under which the Attorney General may reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction. We would ask that that reimbursement program language be expanded to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation.) Additionally, the time for the Attorney General to develop regulations for the program should be shortened from within one year to within six months after the effective date to ensure that this important program is implemented quickly to address the urgent need in Indian Country.

The Title XI discussion draft also allows Tribal Nations to utilize the Bureau of Prisons (BOP) to house defendants serving sentences of more than one year and increases Tribal Nations' access to the National Crime Information Database. Both of these additions to VAWA will go a long way towards ensuring Tribal Nations are able to implement this restored jurisdiction fully and most effectively.

We fully support the purpose of Title IX, which is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. We also support providing additional resources to address violence against all Native women. However, the new language in the Section 901 Findings and Purposes, which adds Native Hawaiians, urban Indians communities, Native Americans, and Native American communities, jeopardizes the long-term enforcement of the law and detracts from the key purpose of Title IX. For those reasons we strongly recommend that all Native Hawaiian, urban Indian communities, Native American, and Native American communities language be removed from Section 901. The language in Section 901 should solely focus on American Indians, Alaska Natives, and Indian tribes in order to protect tribal sovereignty, which is consistent with the purpose of the Title IX.

We urge all members of the Senate Committee on Indian affairs to support the provisions included in the bipartisan Title IX discussion draft and to become a cosponsor of the full bipartisan Senate VAWA bill that incorporates all of the discussion draft provisions and our recommended changes.

Sincerely,

JERRY GARDNER, *Executive Director*

PASCUA YAQUI TRIBE OF ARIZONA
December 21, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs:

I write on behalf of the Pascua Yaqui Tribe of Arizona to support the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released on December 8, 2021, which includes important provisions that will improve safety and justice in tribal communities. Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the bipartisan Title IX discussion draft are desperately needed today.

A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a nonIndian perpetrator. Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence.

Tribal Nations have been exercisingjurisdiction over non-Indian domestic violence offenders under VAWA 2013 for over 8 years. The Pascua Yaqui Tribe is one of the first three pilot tribes to implement VAWA's Special Domestic Violence Criminal Jurisdiction (SDVCJ). Exercising Tribal Nations have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families while upholding the due process rights of all defendants in tribal courts. Despite these successes, as outlined below, perpetrators still find gaps in the law. Victims of sexual violence, child abuse, stalking, trafficking, elder abuse, and assaults against law enforcement officers deserve the same protections that Congress affords to domestic violence victims on tribal lands in VAWA 2013.

It is particularly important that the final bipartisan VAWA bill recognizes that Indian children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. However, federal law failed to restore tribal jurisdiction to prosecute these crimes. The Title IX discussion draft language would restore this category of jurisdiction and allow us to protect our Indian children in our tribal justice systems.

We ask that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but not the bipartisan Senate Committee on Indian Affairs discussion draft. Indian elders are an integral part of our tribal communities to whom we owe respect and care. Indian elders carry our cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA.

We also appreciate that the Title IX discussion draft recognizes that VAWA 2013 inadvertently left our tribal police officers and detention personnel at risk. Domestic violence cases are both the most common and the most dangerous calls that law enforcement receives. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian defendants, but as of now, Tribal Nations re-

main unable to prosecute these crimes as assaults on law enforcement was not a restored category of jurisdiction in VAWA 2013. This creates an obvious public safety concern. In order to ensure that the Title IX discussion draft fully rectifies this issue, we strongly recommend amending the limiting draft language on page ten related to "covered crime," and instead include language that fully covers all assaults of tribal justice personnel and not mention anything related to a "covered crime."

Section 904 provides a local solution for the local problem of criminal victimization in Indian country. We are pleased to see that the bipartisan Title IX discussion draft continues to build on VAWA's promise and includes key priorities that have been identified by Tribal Nations to further enhance safety for victims in tribal communities.

The Title IX discussion draft clarifies that Tribal Nations in Maine are included in the law and creates a pilot project to address the unique needs in Alaska. We fully support the inclusion of all Tribal Nations in VAWA. Alaska Native women are over-represented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. The Title IX discussion draft includes a pilot project that will enable a limited number of Tribal Nations in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages.

In addition to the lifesaving provisions outlined above, the bipartisan Title IX discussion draft creates a reimbursement program under which the Attorney General may reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction. We would ask that that reimbursement program language be expanded to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation.) Additionally, the time for the Attorney General to develop regulations for the program should be shortened from within one year to within six months after the effective date to ensure that this important program is implemented quickly to address the urgent need in Indian Country.

These are urgent needs because the first responsibility of any government, tribal or otherwise, is the safety and protection of its people. Protecting victims of violent crime, domestic violence, and sexual assault is about justice and safety, and it is also about fairness, equity, and dignity. Violent behavior against intimate partners or vulnerable family members by tribal citizens or non-Indians and missing and murdered family members are matters that can no longer tolerated. It is time to intensify our shared efforts to prevent and combat domestic violence, particularly against American Indian and Alaska Native women and ensure that all cases of domestic violence are investigated, perpetrators prosecuted, and victims provided with appropriate remedies. We must guarantee the right, in law and practice, to access to justice. Jurisdictions lacking proper resources, coordination, communication, and accountability is the primary reason for victims being neglected, criminals escaping punishment, and for the human rights crisis of Missing and Murdered Indigenous Women, and Girls (MMIWG).

Congress should continue to work with the Biden Administration to reauthorize and amend VAWA to fully restore tribal inherent criminal and civil jurisdiction, through a full "*Oliphant*-Fix," and should support and reaffirm tribal civil and criminal jurisdiction over all wrongdoers, for all federally recognized Indian tribes that wish to exercise such jurisdiction. Recently, the Supreme Court in *US. v. Cooley*, re-affirmed the constitutional authority of Congress to restore the Tribal jurisdiction that Oliphant previously erased, concluding that "[i]n all cases, tribal authority remains subject to the plenary authority of Congress." [1]

Currently, SDVCJ under VAWA 2013 is limited to only crimes of domestic violence, dating violence, or violations of an order of protection committed in Indian Country, where the defendant is a spouse or intimate partner of a tribal member. VAWA 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. The proposed VAWA Reauthorization will certainly help address some of the gaps to cover children and other ancillary crimes a VAWA defendant may commit. However, now that tribes are required to guarantee all aspects of due process that states do, there is no longer any reason why additional restoration of inherent criminal and civil jurisdiction of tribal courts should be delayed. Full restoration would help ensure fair-

[1] *United States v. Cooley*, 141 S. Ct. 1638 (2021); See also, *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020).

ness, safeguard tribal communities, and help clear up long standing jurisdictional problems.

In 1978, the Supreme Court upheld a decision in *Oliphant v. Suquamish Tribe* (1978) that effectively removed tribal authority to prosecute non-Indian criminal offenders.[2] This Supreme Court decision has had a wide range of negative impacts on tribal communities, especially concerning community safety and health. According to Oliphant, the task of prosecuting non-Indians for crimes committed within reservations belonged to the state or federal government. However, the state and federal governments lack the time and resources to properly prosecute crimes. Problems tied to jurisdiction since *Oliphant* led to an inadequate legal response to crimes, allowing violence against women and judicial and health inequities to fester uncontrolled in Indian Country for decades. Tribes were unable to fully address crimes committed by non-Indians, in particular domestic violence, and inaction by the state and federal governments have left victims of crime without justice.[3]

On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013.[4] Title IX of VAWA 2013, entitled "Safety for Indian Women," contains section 904 (Tribal Jurisdiction over Crimes of Domestic Violence) and section 908 (Pilot Project).[5] It included the SDVCJ provision that provides tribes with limited jurisdiction over nonIndian perpetrators of crimes of domestic violence, dating violence, and violations of protection orders. The purpose of the law was to decrease domestic violence in Indian Country, strengthen the capacity of Indian tribes to exercise their inherent and restored sovereign power to administer justice and control crime, and to ensure that perpetrators of domestic violence are held accountable for their criminal behavior.[6]

Three initial tribes, including the Pascua Yaqui Tribe (PYT) in Arizona, were selected and certified by the Department of Justice to pilot the implementation of VAWA 2013's SDVCJ.[7] The passing of VAWA 2013 was a success that is celebrated to this day and implementation of VAWA 2013, coupled with the tools of the "Tribal Law & Order Act of 2010" (TLOA), is having a positive impact in Indian Country. Recent VAWA and TLOA restored authority provided measured tools that foster longstanding policies of tribal self-determination and tribal self-governance. It is wholly consistent with the federal government's trust responsibility and the policy pendulum swing towards autonomy, economic self-sufficiency, and the protection and preservation of Native American land and culture.

As one of the first tribes to implement VAWA SDVCJ, the PYT has conducted 101 investigations of domestic violence perpetrated by 64 non-Indian defendants (57 male, 7 female). There have been 80 cases charged in the Pascua Yaqui Tribal

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[2] *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

[3] Prior to the 2013 reauthorization of VAWA, the federal government declined to prosecute 75 percent of violent crimes reported in Indian Country—67 percent of intimate partner violence (IPV) crimes were crimes of sexual violence (Amnesty International, 2010). This lack of justice and health equity led to underreporting from American Indian women. Additionally, women who did decide to report were left in a vulnerable state because of the lack of repercussions for crimes related to IPV. Three distinct, yet interrelated, issues arose from Oliphant led to the inequities described, including lack of federal action to address violence by non-Indians on reservations, another is impunity or lack of deterrence for abusers, and the third is lack of protection, remedy, and justice for victims. The *Oliphant v. Suquamish* decision created a gaping hole in jurisdiction.

[4] Public Law 113—4, 127 Stat. 54 (2013); see Remarks on Signing the Violence Against Women Reauthorization Act of 2013, 2013 Daily Comp. Pres. Docs. 139 (Mar. 7, 2013).

[5] Section 908(b)(l) provided that tribes generally cannot exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ) until at least two years after the date ofVAWA 2013's enactment-that is, on or after March 7, 2015. However, section 908(b)(2) established a "Pilot Project" that authorized the Attorney General, in the exercise of his discretion, to grant a tribe's request to be designated as a "participating tribe" on an accelerated basis and to commence exercising SDVCJ on a date (prior to March 7, 2015) set by the Attorney General, after coordinating with the Secretary of the Interior, consulting with participating tribes, and concluding that the tribe's criminal justice system has adequate safeguards in place to protect defendants' rights under the Indian Civil Rights Act of 1968, as amended by VAWA 2013. Under VAWA SDVCJ authority a tribe must protect the rights of defendants under the Indian Civil Rights Act of 1968, including the right to due process, which requires including a fair cross-section of the community injury pools which does not systematically exclude non-Indians. Further, the due process rights also require informing defendants detained by a tribal court of their right to file federal habeas corpus petitions.

[6] *See* S. Rep. No. 112–153, at 8–11, 32 (2012); see also S. 1763, 112th Cong., at 1–2 (as reported by the S. Comm. on Indian Affairs, Dec. 27, 2012) (title listing bill's purposes); H.R. 757, 113th Cong., at 1 (2013) (same).

[7] Confederated Tribes of the Umatilla Indian Reservation; Pascua Yaqui Tribe; and The Tulalip Tribe. *https://www.govinfo.gov/content/pkg/FR-2014-02-12/pdf/2014-03023.pdf*

Court, resulting in 37 convictions.[8] Intrinsic case-related data has been collected and reported but data on the health impacts experienced by victims, their families, and the community have not been collected. Our experience tells us that with VAWA, we have a long-term solution that is tied directly to tribal historic authority of protecting our people. Tribes know best about what policies and enforcement strategies work in tribal communities.

The domestic violence cases investigated and prosecuted by the Pascua Yaqui Tribe are significant, because they highlight crimes that were never prosecuted before the implementation of VAWA 2013's SDVCJ. They are not intra-racial crimes; they are crimes committed by non-Native perpetrators and the cases provide evidence of a serious jurisdictional gap that still exists in Arizona and across Indian Country. The Tribe is excited and committed to collaborating with its state and federal partners to ensure the public safety of its community through restored jurisdiction. SDVCJ is a positive step forward to ensuring the safety of community and is necessary to ensure that there are no safe havens for criminals.

We have learned that the tribal provisions of VAWA 2013, provide a mechanism for Tribes to afford the victims of domestic violence the maximum protection that the law currently provides. The safety of victims of domestic violence and drug and alcohol related crimes became easier to address through the increased intervention of Tribal law enforcement, Tribal Special Assistant U.S. Attorneys (SAUSA), and support from federal investigative partners and U.S. Attorney Tribal Liaisons. Systemic disparate treatment and inherent structural bias for Indian Country victims and communities has begun to be adjusted and is now fairer and more just within Indian communities.

We have also learned that the rightful starting place to reverse historical jurisdictional problems and injustices in Indian Country is strong tribal court systems. Although the historical and legal responsibility to prosecute major crimes has fallen to the federal government since 1885, prior to that time, Indian tribes largely maintained their own traditional criminal and civil mechanisms in Indian Country. Tribes are in the best position to close jurisdictional gaps and remove safe havens for lawbreakers. Criminal investigations occur at the local level. Local government is the best government to prosecute cases to protect Indian Country's mothers, fathers, daughters, sons, sisters, brothers, aunts, uncles and grandparents.

Additionally, VAWA Bureau of Indian Affairs (BIA) funded training, hosted by implementing Tribes have informed State, Tribal, and Federal courts, helping to increase regional cooperation and coordination among jurisdictions.[9] Intimate partner violence is a crossjurisdictional matter, the prosecution of non-Indian domestic violence offenders by Tribal courts requires the sharing of offender criminal history information, orders of protection, gun prohibitions pursuant to the Brady Act,[10] warrants, and information about offenders being monitored on pretrial release or who have been convicted and are serving a term of tribal probation in the surrounding counties or municipalities. The sharing of crime information is being enhanced by

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[8] In part, as a result of the legal analysis of "domestic violence" in the United State Supreme Court decision in *US. v. Castleman*, a total of 32 cases were dismissed and 21 were declined for evidentiary reasons.

[9] 25 U.S.C. 3612(c)(4)(2000). The Tribal Justice Support Division of the Office of Justice Services, Bureau of Indian Affairs, is statutorily mandated to support and provide opportunities for coordination and corporation between Tribal and State Judiciary systems.

[10] The Brady Handgun Violence Prevention Act of 1993 (Brady Act) requires the use of the National Instant Criminal Background Check System (NICS) by federally licensed firearms dealers to determine whether a prospective firearm transfer to individuals applying to receive or possess firearms would violate state or federal law. The NICS is a computerized system designed to immediately make such a determination by conducting a search of available records. A NICS check searches by name and descriptive data for matching records in three databases, the NCIC which contains information on wanted persons and protection orders, the Interstate Identification Index (III) which contains criminal history records, and the NICS Indices which contains the names of prohibited persons as defined in the Brady Act. The NICS Indices contains information that may not be available in the NCIC or the III of persons prohibited from receiving firearms under federal or state law. The NCIC's Protection Order File (POF) was established in accordance with the Violence Against Women Act (VAWA), and in support of the Violent Crime Control and Law Enforcement Act which permits information from the NCIC databases, including protection orders, to be disseminated to civil and criminal courts for use in domestic violence and stalking cases. The VAWA also authorizes state and federal criminal justice agencies to enter information into the POF for the purpose of protecting persons from domestic violence and stalking. Additionally, the VAWA amended the Gun Control Act of 1968, making it unlawful for any person who is subject to a qualifying protection order to ship, transport, possess, or receive any firearm.

the implementation of the Department of Justice, Tribal Access Program (TAP) by VAWA SDVCJ Implementing Tribes. [11]

The training provides an overview of the Violence Against Women Act (VAWA), to help with successful implementation and address violent crime generally, promote working relationships with state and federal partners, and provides guidance on issues related to victims of crime and the enforcement of orders of protection. Information sharing between tribal judicial systems and state judicial systems is imperative for the proper function of courts operating in a cross-jurisdictional environment. In Arizona, where tribal jurisdiction is often challenging, TribalState Court collaboration has shown to be a promising strategy utilized to reduce jurisdictional conflict, build relationships, and provide cross-jurisdictional education and resources.

Pascua Yaqui VAWA Implementation

On March 7, 2013, VAWA 2013 was signed into law by President Obama. On June 26, 2013, the U.S. Attorney for the District of Arizona, John Leonardo, visited the Pascua Yaqui Tribe and toured the tribal court facility. The Tribe expressed an interest in the implementation of Special Domestic Violence Criminal Jurisdiction. On July 09, 2013, the Tribal Chairman submitted a letter to the Department of Justice's, Mr. Tracy Toulou, as a preliminary expression of interest in exercising SDVCJ and asked to be designated as a participating Tribe. On July 15, 2013, the Pascua Yaqui Tribe was one of approximately 27 federally recognized Indian tribes that timely sent "preliminary expressions of interest" in participating in the Pilot Project. By doing so, tribes expressed an interest in participating in both Phase One and Phase Two of the Pilot Project.

The Department of Justice launched the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG), as part of Phase One of the Pilot Project. The ITWG is a voluntary working group of designated tribal representatives who exchange views, information, and advice, peer-to-peer, about how tribes may best exercise SDVCJ, combat domestic violence, recognize victims' rights and safety needs, and safeguard defendants' rights. Since the launch tribal representatives continue to participate in a series of teleconferences, participated as panelists, and participated in ITWG in-person meetings.

On December 30, 2013, the Tribe submitted an extensive application to the DOJ to be designated a Pilot Tribe and to start exercising SDVCJ (Phase II). [12] On February 6, 2014, the Tribe received official notice that the Tribe was designated a participating Pilot Tribe authorized to exercise SDVCJ. [13] The Pascua Yaqui Tribe SDVCJ Pilot status story was picked up and released locally, statewide, and nationally, via press release by the White House. [14] On February 12, 2014, VAWA Pilot information was posted for notice in the Federal Register by the Department of Justice. [15] Official Tribal notice was sent out via global e-mail to all tribal government and casino enterprise employees, as well as being posted on the official Pascua Yaqui Tribal Internet site on February 6th, 2014. On February 10th, 2014, the Arizona Daily Star ran a front-page story that circulated to 238,000 readers in Southern Arizona, including the City of Tucson. The story was also posted on their online news site. The online AZSTARNET has a reach of 1 million independent views per month and has approximately 12 million page views per month. [16] The Pascua

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[11] Available at *https://www.justice.gov/tribal/tribal-access-program-tap, last visited December 21, 2021. Due to structural obstacles, most Tribes are still unable to upload or share data on MMIWG, Missing Persons, Violent offenders, Orders of Protection, or Domestic Violence court orders/convictions. Tribes need registration/data systems, policies, technical infrastructure, training, procedures, and necessary laws or codes to facilitate prosecutions, investigations, reporting, and submissions to NCIC/NSOR for aggregate data collection and/or publishing.*

[12] Available at *https://www.justice.gov/sites/default/files/tribal/legacy/2014/02/06/applguestionnaire-pascuayagui.pdf.* Last visited December 21, 2021.

[13] Available at *http://www.justice.gov/tribal/docs/letter-to-pascua-yagui.pdf.* Last visited December 21, 2021.

[14] Available at *http://www.whitehouse.gov/blog/2014/02/06/moving-forward-protect-native-american-women-justicedepartment-announces-vawa-2013-*, last visited December 21, 2021, Department of Justice (Attorney General) *http://www.justice.gov/opa/pr/2014/February/14-ag-126.html*, the U.S. Attorney for the District of Arizona, *http://www.justice.gov/usao/az/pressreleases/2014/PR02062014Vawa.html*

[15] Fed. Reg. Volume 79, Number 29 (Wednesday, February 12, 2014)][Notices][Pages 8487–8488] Federal Register Online via the Government Printing Office [www.gpo.gov] [FR Doc No: 2014–03023] *http://regulations.justia.com/regulations/fedreg/2014/02/l2/2014-03023.html See also* 78 Fed. Reg. 71645 (Nov. 29, 2013)

[16] Available at *http://azstarnet.com/news/local/pascua-yagui-gain-added-power-to-prosecute-some-non-indians/aiticle34l7ac6ec683-50d4-9a55-cc386524c468.html.* Last visited December 21, 2021.

Yaqui press release was shared online through a leading Internet Indian Country legal news blog called "Turtle Talk," it was posted on February 7, 2014. [17]

On February 20, 2014, the Pascua Yaqui Tribe was one of three Tribes to begin exerc1smg Special Domestic Violence Criminal Jurisdiction over non-Indian perpetrators of domestic violence. [18] On July 2, 2014, for the first time since 1978 when the U.S. Supreme Court stripped tribal governments of their criminal authority over non-Indians, the Pascua Yaqui Tribe obtained the first conviction of a non-Indian, a twenty-six-year-old Hispanic male, for the crime of domestic violence assault committed on the Pascua Yaqui Reservation. On May 9, 2017, the Pascua Yaqui Tribe's Tribal Court was the location of the first jury trial conviction of a non-Indian defendant under VAWA. Frank Jaimez was the first non-Indian defendant to be convicted by a jury in tribal court for a tribal charge of domestic violence. This was the first non-Indian defendant jury trial conviction in a tribal court in 40 years due to VAWA 2013's SDVCJ. The 19-year-old Hispanic male was convicted of committing an act of domestic violence against his wife, an enrolled Yaqui tribal member.

Since implementation, the Pascua Yaqui Tribe has investigated over 100 cases and formally charged over 80 cases involving non-Indian males and non-Indian females, mostly from the State of Arizona, who were involved in dozens of reported domestic violence crimes. It is important to note that prior to VAWA 2013, these are cases that were historically being ignored or declined by federal authorities.

The Pascua Yaqui Tribe has had significant success holding non-tribal Domestic Violent offenders accountable for offenses committed on the reservation. The 100+ investigations have been perpetrated by 64 defendants, and of these defendants, there have been at least 34 instances of them committing subsequent offenses after their first arrest. At least one of these repeat offenders had been previously prosecuted federally. The cases include violent injuries such as hair dragging, strangulation, bruising, closed fist strikes to the face, and throwing fire. The violent actions of non-Indian and violent major crime offenders are not traditional, they are not cultural, and they are not the norm for the community. Tribes know best about what policies and enforcement strategies work in tribal communities, and so giving tribes greater jurisdiction allows them to continue their duty of protecting their people and community.

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[17] Available at *http://turtletalk.wordpress.com/2014/02/07/pascua-yagui-press-release-re-vawa-pilot-program-selection/*. Last visited December 21, 2021.

[18] The Pascua Yaqui Tribe has a modem, professional and highly functional criminal justice system with the following services available: Tribal Courts, Appellate Courts, pre-trial services, probation, prosecution and a public defender's office, as well as police, detention and victim services. The system is very responsive to public safety needs as well as affording offenders all the protections of due process. The Tribal Court has one Chief Judge and two associate judges. The Appellate Court has one Chief Justice. The Prosecutor's Office has one Chief Prosecutor, four Deputy Prosecutors, and four lay Advocates. The Public Defender's Office is composed of one Chief Public Defender, three attorneys, and one lay advocate. In addition, the Tribe contracts with outside attorneys as needed for conflict counsel. The Probation Department has one Chief Probation Officer and three probation officers. The Probation caseload monitors both adult probationers and juvenile probationers. Despite the existing tribal justice infrastructure, there is broad community support for developing a more collaborative, problem-solving approach and more alternatives to incarceration. In 1978, the Tribe was originally subject to Arizona State jurisdiction under 25 U.S.C. § 1300f(c) and PL280. In 1985, the State of Arizona retroceded criminal & civil jurisdiction. Between 1985 and 1988, the Department of Interior operated the Pascua Yaqui tribal court system through a "Court of Indian Offenses," a "CFR" Court operated by the Bureau of Indian Affairs, (B.I.A.). In 1988, the Tribe took over the Tribal Court from the B.I.A. through a 638 contract. In 1991, the Tribe hired three Tribal police officers who served alongside the B.I.A. officers. In 1998, The Tribe signed a 638 agreement with the B.I.A. to direct its own law enforcement services. In 1997, the Tribe started the Pascua Yaqui Victim Services program. Currently, the Tribe employs nineteen uniformed patrol officers who are certified by Arizona P.O.S.T as State certified officers and most are federal Special Law Enforcement Commissioned (SLEC) certified officers. Three of the officers are Criminal Investigators. The Tribe also employs a number of victim advocates. The Tribe is also served by the Federal Bureau of Investigation (F.B.I.) (Phoenix Division), for assistance with major criminal investigations. In 1993, the Tribe entered into a User Agreement with the Arizona Department of Public Safety (DPS) for limited NCIC and ACJIS criminal information access. In 2005, the Tribe entered into an Intergovernmental Agreement with Pima County to participate in the Pima County Regional Special Weapons and Tactics (SWAT) Team program for police SWAT services. In 2006, the Tribe approved an Intergovernmental Agreement with Arizona DPS for crime laboratory services for the purpose of examining and processing evidence collected during criminal investigations. In 2009, the Tribe entered into an Intergovernmental Agreement (IGA) with the Pima County Sheriffs Department for participation in the Spillman Records Management System and Computer Aided Dispatch System in order to enhance their limited access to ACJIS, NCIC, ALETS, NLETS, and MVD databases. In 2010, the Tribe entered into an IGA with Pima County to take part in the Pima County Wireless Integrated Network (PCWIN). PCWIN provides improved public emergency services and regionally coordinated mutual aid.

One continued frustration about the current legislation that the newly proposed language aims to address is the Tribe's inability to charge non-Indians for acts of domestic violence where the victim is a child or elder (grandparent). Given the Pascua Yaqui tribe's multigenerational household demographics, this is a large and significant gap in the law for this tribe and certainly many others. There have been approximately 32 children present during the acts of domestic violence at Pascua Yaqui. These children range in age from infant to 11 years old. Some of them have been witnesses to domestic violence, the reporting party of the domestic violence act(s), and victims themselves. This gap in jurisdiction prevents the Tribe from protecting the most vulnerable and impressionable of their people, children, and take the necessary steps to stop the cycle of trauma.

Other typical situations of domestic violence give rise to circumstances which would otherwise be chargeable crimes, had the perpetrator been tribal or if the crime occurred off the reservation and the State handled the prosecution. Increasing jurisdiction for tribes could serve to correct injustices, such as:

- A non-tribal offender was arrested for domestic violence, but there was a secondary victim present, i.e., the sister of the original victim. The Tribe was unable to issue any charges relating to the victimization of the sister due to lack of jurisdiction.
- The Tribe also lacked jurisdiction in a case where the Defendant, who was on probation for a VAWA-related offense, violated the terms and conditions of his probation specifically prohibiting his possession and/or use of narcotic drugs. There were no allegations that the Defendant committed any new domestic violence related offenses against a tribal member. The case was ultimately declined as the Defendant's possession/use of narcotic drugs did not fall within in the limited scope of SDVCJ jurisdiction, even as a probation violation.
- In another case, during the pendency of a VAWA investigation, the victim had a new boyfriend who is a tribal officer, and the Defendant made threats against him. However, the Tribe could not charge the threats against the new boyfriend, even though he is a Tribal officer, due to lack of jurisdiction.
- In other cases, in which there was probable cause for DY-disorderly conduct offense, but not physical violence, the Tribe could not prosecute, as this presented a Castleman issue.

Thus, all these cases could not be charged. This does not mean there is no domestic violence occurring in the home, but that the Tribe is limited in its response to the domestic violence and other violence as a result of the limited legislation and this public safety problem requires a legislative fix.

The Pascua Yaqui Tribe's criminal justice system is proving to be on par with any other jurisdictions. The Tribe has held 3 jury trials, with a mixed pool of jurors. The trials resulted in both a conviction and acquittals, thus demonstrating that the Tribe has the ability to safeguard due process rights for Defendants. The Tribe is committed to collaborating with its state and federal partners to keep the safety of its community and expand jurisdiction. While VAWA–SDVCJ was a positive step forward to ensure that there are no safe havens for criminals, additional jurisdiction is needed and the proposed language in Title IX is a necessary positive step. The Pascua Yaqui Tribe has demonstrated that the Tribe can successfully arrest, investigate, detain, sentence, and hold a fair trial for any accused. There is no reason to continue to limit Indian Country or the Pascua Yaqui Tribe's ability to protect the people in their communities from non-Indian offenders. We look forward to being able to enhance our public safety response with the jurisdiction expansions in the proposed Title IX legislation.

We fully support the purpose of Title IX, which is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. We also support providing additional resources to address violence against all Native women.

We urge all members qf the Senate Committee on Indian affairs to support the provisions included in the bipartisan Title IX discussion draft and to become a cosponsor of the full bipartisan Senate VAWA bill that incorporates all of the discussion draft provisions and our recommended changes.

Sincerely,

PETER YUCUPICIO, *Chairman*

SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA

Dear Chair Schatz and Vice-Chair Murkowski:

I write on behalf of the Sac and Fox Tribe of the Mississippi in Iowa to support the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR IN-

DIAN WOMEN discussion draft which includes important provisions that will improve safety and justice in tribal communities. As a Tribe implementing VAWA 2013 Tribal jurisdiction, I can attest that these proposed changes in the law are impo11ant to making tribal communities safer.

As the Conunittee has well-documented, Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the bipartisan Title IX discussion draft are desperately needed today. A 20 I 6 report by the National Institute of Justice fow1d that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence. Thus, clarifying that a Tribe's expanded jurisdiction includes these crimes is vital.

We are also so appreciative that your draft legislation recognizes that Indian children are equally in need of the same protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. We ask that the Title IX discussion draft include the provision from the House bill, H.R. 1620, to include crimes against elders. Elders are an integral part of our tribal communities to whom we owe respect and care. We are also hopeful that the measure will include the VAWA Reauthorization with Key provisions that recognize Tribes' inherent jurisdiction over all crimes against law enforcement, detention, and court personnel—not only those that are deemed "covered crimes".

We also suppo11 the new grant program to reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction and the extension of the Bureau of Prisons program first authorized in the Tribal Law Order Act. Finally, we support the expanded tribal access to the National Crime Information Database. This is important to addressing the plague of missing and murdered indigenous women in America.

Please let me know if there is anything I can do, as the Chairman of the Sac and Fox Tribe of the Mississippi in Iowa, to suppo11 your efforts. Again, we appreciate your leadership in drafting this important measure and look forward to working with you in the New Year.

Sincerely,

VERN JEFFERSON, *Chairman*

NORTHERN ARAPAHO BUSINESS COUNCIL
December 22, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs: I write on behalf of the Northern Arapaho Tribe to support the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released on December 8, 2021, which includes important provisions that will improve safety and justice in tribal communities. Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the bipartisan Title IX discussion draft are desperately needed today.

A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence.

Tribal Nations have been exercising jurisdiction over non-Indian domestic violence offenders under VAWA 2013 for over 8 years. Exercising Tribal Nations have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families while upholding the due process rights of all defendants in tribal courts. Despite these successes, perpetrators still find gaps in the law. Victims of sexual violence, child abuse, stalking, trafficking, elder abuse, and assaults against law enforcement officers deserve the same protections that Congress affords to domestic violence victims on tribal lands in VAWA 2013.

It is particularly important that the final bipartisan VAWA bill recognizes that Indian children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. However, federal law failed to restore tribal jurisdiction to prosecute these crimes. The Title IX discussion draft 2 language would restore this category of jurisdiction and allow us to protect our Indian children in our tribal justice systems.

We ask that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but not the bipartisan Senate Committee on Indian Affairs discussion draft. Indian elders are an integral part of our tribal communities to whom we owe respect and care. Indian elders carry our cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA.

We also appreciate that the Title IX discussion draft recognizes that VAWA 2013 inadvertently left our tribal police officers and detention personnel at risk. Domestic violence cases are both the most common and the most dangerous calls that law enforcement receives. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian defendants, but as of now, Tribal Nations remain unable to prosecute these crimes as assaults on law enforcement was not a restored category of jurisdiction in VAWA 2013. This creates an obvious public safety concern. In order to ensure that the Title IX discussion draft fully rectifies this issue, we strongly recommend amending the draft language on page ten to remove the requirement that the assault must be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require the Tribal Nation to first prove the underlying covered crime before they could prosecute for the assault, which does not fully fix the public safety concern of police officers or detention personnel. This creates significant confusion that likely would have to be worked out in the courts. We ask that the language fully cover all assaults of tribal justice personnel and not mention anything related to a "covered crime."

Section 904 provides a local solution for the local problem of criminal victimization in Indian country. We are pleased to see that the bipartisan Title IX discussion draft continues to build on VAWA's promise and includes key priorities that have been identified by Tribal Nations to further enhance safety for victims in tribal communities.

The Title IX discussion draft clarifies that Tribal Nations in Maine are included in the law and creates a pilot project to address the unique needs in Alaska. We fully support the inclusion of all Tribal Nations in VAWA. Alaska Native women are over-represented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. The Title IX discussion draft includes a pilot project that will enable a limited number of Tribal Nations in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages.

In addition to the lifesaving provisions outlined above, the bipartisan Title IX discussion draft creates a reimbursement program under which the Attorney General may reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction. We would ask that that reimbursement program language be expanded to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation.) Additionally, the time for the Attorney General to develop regulations for the program should be shortened from within one year to within six months after the effective date to ensure that this important program is implemented quickly to address the urgent need in Indian Country. The Title XI discussion draft also allows Tribal Nations to utilize the Bureau of Prisons (BOP) to house defendants serving sentences of more than one year and increases Tribal Nations' access to the National Crime Information Database. Both of these additions to VAWA will go a long way towards ensuring Tribal Nations are able to implement this restored jurisdiction fully and most effectively.

We fully support the purpose of Title IX, which is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. We also support providing additional resources to address violence against all Native women. However, the new language in the Section 901 Findings and Purposes, which adds Native Hawaiians, urban Indians communities, Native Americans, and Native American communities, jeopardizes the long-term enforcement of the law and detracts from the key purpose of Title IX. For those reasons we strongly recommend that all Native Hawaiian, urban Indian communities, Native American, and Native American communities language be removed from Section 901. The language in Section 901

should solely focus on American Indians, Alaska Natives, and Indian tribes in order to protect tribal sovereignty, which is consistent with the purpose of the Title IX.

We urge all members of the Senate Committee on Indian affairs to support the provisions included in the bipartisan Title IX discussion draft and to become a co-sponsor of the full bipartisan Senate VAWA bill that incorporates all of the discussion draft provisions and our recommended changes.

Sincerely,

JORDAN DRESSER, *Chairman*

SACRAMENTO NATIVE AMERICAN HEALTH CENTER, INC. (SNAHC)
December 22, 2021

Dear Chairman Schatz and Vice Chairman Murkowski:

Thank you for the opportunity to provide comments on the Violence Against Women Act (VAWA) reauthorization discussion draft. On behalf of Sacramento Native American Health Center, Inc. (SNAHC) in Sacramento, California, we hereby submit our written comments and recommendations in response to the tribal title draft [1] and larger bill. SNAHC is a non-profit 501 (c)(3) Federally Qualified Health Center located in Downtown Sacramento. SNAHC is community-owned and operated; a Board of Directors governs the center. SNAHC is committed to enhancing the quality of life by providing a culturally competent, holistic, and patient-centered continuum of care. SNAHC's dedicated team of highly trained clinicians offer a wide range of services, including adult medicine, pediatrics, behavioral health, laboratory, dental care, substance abuse services, wellness programs, nutrition, herbalism, and diabetes care.

Comments

Urban Indian Organizations (UIOs) like ours provide much more than just health services to American Indians and Alaska Natives including but not limited to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), housing services, social services, community advocacy, and other resources to victims of domestic violence. Many UIOs conduct home visits and are at the front-line to identify domestic violence and other risk factors for Missing and Murdered Indigenous People (MMIP). Urban Indian inclusion in VAWA is important to strengthen these critical services provided at UIOs for American Indians/Alaska Natives (AI/ANs), and the National Council of Urban Indian Health (NCUIH) has advocated for urban Indians to be added in the Senate draft bill. This is a huge accomplishment given that the House bill on VAWA (H.R. 1620) excluded UIOs and urban Indian communities.

During the White House Tribal Nations Summit last month, President Biden signed an Executive Order (E.O.) [2] on addressing the crisis of MMIP with UIO inclusion. The E.O. specifically mentions the Department of Health and Human Services (HHS) and the Secretary of the Interior conferring with UIOs on developing a comprehensive plan to support initiatives related to MMIP. NCUIH and UIOs support urban confer among federal agencies on policies that impact urban AI/ANs and have been working on an urban confer bill [3] that recently passed the House (406–17) with overwhelming support. The E.O also highlights the need for improved data surrounding this crisis as it relates to urban Indian communities. NCUIH has, and continues to, advocate for gathering more data on AI/AN communities and Missing and Murdered Indigenous People. On July 2, 2021, NCUIH submitted comments to the Department of Justice on Savannah's Act requesting UIOs and urban Indians to be incorporated into improving data relevancy, access, and resources. We look forward to participating in that effort and we hope that VAWA will help us combat this epidemic in Indian country.

SNAHC would like to express appreciation for the inclusion of urban Indians in 11 locations of the Senate draft bill. We respectfully ask you retain the following provisions in the final Senate bill:

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[1] Discussion draft of Title IX of VAWA: *https://www.indian.senate.gov/sites/default/files/KEN21B05.pdf*

[2] Executive Order on Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People: *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/15/executive-order-on-improving-public-safety-and-criminal-justice-for-native-americans-and-addressing-the-crisis-of-missing-or-murdered-indigenous-people/*

[3] Urban Indian Health Confer Act: *https://www.congress.gov/117/meeting/house/114098/documents/BILLS-117522ih.pdf*

- Bill Amendment: SEC. 101. Stop Grants

—Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10441 et seq.) is amended—

—(25) paying any fees charged by any governmental authority for furnishing a victim or the child of a victim with any of the following documents:

- "(B) An identification card issued to the individual by a State or Tribe, that shows that the individual is a resident of the State or a member of the Tribe."; and

—(B) in Subsection (d)—

—i) in paragraph (1)-

—II) in subparagraph (D), by inserting ", urban Indian communities, and Native Hawaiian communities" after "assisting Indian tribes"; (ii) in paragraph (2)-

—I) in subparagraph (A)(iii), by inserting ", urban Indian communities, and Native Hawaiian communities" after "provide services to Indian tribes"; and

—II) in subparagraph (B), by inserting ", urban Indian communities, and Native Hawaiian communities" after "in areas where Indian tribes";

- Bill Amendment: SEC. 105. Outreach and Services to Underserved Population Grants.

—Section 120 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (34 U.S.C. 20123) is amended—

—(2) in subsection (b)(3), by inserting "urban Indian, Native Hawaiian," before "or local organization";

- Bill Amendment: SEC. 108. Enhancing Culturally Specific Services for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

—Section 121 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (34 U.S.C. 20124) is amended-

—"(4) DISTRIBUTION.—Of the total amount available for grants under this section, not less than 40 percent of such funds shall be allocated for programs or projects that meaningfully address non-intimate partner relationship sexual assault.";

- (3) in subsection (c)—

—(A) in paragraph (1), by striking "and" at the end;

—(B) in paragraph (2), by striking the period at the end and inserting "; and"; and

—(C) by adding at the end the following:

—"(3) tribal nonprofit organizations, Native Hawaiian organizations, and urban Indian organizations.";

- Bill Amendment: SEC. 110. Pilot Program on Restorative Practices.

—a) IN GENERAL.—The Violence Against Women Act of 1994 (title IV of Public Law 103–322), as amended by section 205, is further amended by adding at the end the following:

—"Subtitle R-Restorative Practices

—"SEC. 41801. PILOT PROGRAM ON RESTORATIVE PRACTICES.

- "(a) DEFINITIONS.—In this section:

—"(2) ELIGIBLE ENTITY.—The term 'eligible entity' means-

—A) a State;

—B) a unit of local government;

—C) a tribal government;

—D) a tribal organization;

—E) a victim service provider;

—F) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); and

—G) a private or public nonprofit organization, including

—(i) a tribal nonprofit organization; and

—ii) a faith-based nonprofit organization.

- Bill Amendment: SEC. 302. Creating Hope through Outreach, Options, Services, and Education (CHOOSE) for Children and Youth

—Section 41201 of the Violence Against Women Act of 1994 (34 U.S.C. 12451) is amended—

—2) in subsection (c)—

- (A) in paragraph (1)(A)—

—(ii) by inserting "Native Hawaiian organization, urban Indian organization," before "or population-specific community-based organization"; and

- Bill Amendment: SEC. 506. Expanding Access to Unified Care.

—(f) Authorization of Appropriations.—

—2) Set-Aside.—Of the amount appropriated under this subsection for a fiscal year, the Secretary shall reserve 15 percent of such amount for purposes of making grants to entities that are affiliated with Indian Tribes or Tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), or Urban Indian organizations (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C.1603)). Amounts reserved may be used to support referrals and the delivery of emergency first aid, culturally competent support, and forensic evidence collection training.

- Bill Amendment: SEC. 507. Expanding Access to Forensics for Victims of Interpersonal Violence

—(a) Definitions.—In this section:
—(9) URBAN INDIAN ORGANIZATION.—The term "Urban Indian organization" has the meaning given such term in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

- (b) Demonstration Grants for Comprehensive Forensic Training.—

—(6) Authorization of Appropriations.—

—(B) Set-Aside.—Of the amount appropriated under this paragraph for a fiscal year, the Secretary shall reserve 10 percent for purposes of making grants to support training and curricula that addresses the unique needs of Indian Tribes, Tribal organizations, Urban Indian organizations, and Native Hawaiian organizations. Amounts so reserved may be used to support training, referrals, and the delivery of emergency first aid, culturally competent support, and forensic evidence collection training.

- Bill Amendment: SEC. 901. Findings and Purposes

—(b) Purposes.—The purposes of this subtitle are-

—3) to empower Tribal governments and Native American communities, including urban Indian communities and Native Hawaiian communities, with the resources and information necessary to effectively respond to cases of domestic violence, dating violence, stalking, sex trafficking, sexual violence, and missing and murdered Native Americans; and

—4) to increase the collection of data related to missing and murdered Native Americans and the sharing of information among Federal, State, Tribal, and local officials responsible for responding to and investigating crimes impacting Indian Tribes and Native American communities, including urban Indian communities and Native Hawaiian communities, especially crimes relating to cases of missing and murdered Native Americans.

Closing

In closing, SNAHC would like to thank the members of the Senate Committee on Indian Affairs for including urban AI/ANs in this important piece of legislation. We urge Congress to continue its support of all AI/ANs by retaining these provisions in the final VAWA reauthorization.

Sincerely,

BRITTA GUERRERO, *CEO*

ALLIANCE OF TRIBAL COALITIONS TO END VIOLENCE
December 22, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs:

I write to you today on behalf of the Alliance of Tribal Coalitions to End Violence (ATCEV) to provide comments as solicited at the Senate Committee on Indian Affairs hearing on December 8, 2021, to the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft. Tribal communities continue to suffer the highest crime victimization rates in the country, and

the reforms included in the bipartisan Title IX discussion draft are desperately needed, and urgently so.

As you are likely aware, American Indian and Alaska Native women continue to suffer the highest rates of victimization in the country. A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Our Indian children are particularly impacted. Research shows that American Indian and Alaska Native children are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence and creates a significant barrier to justice.

Section 901. Findings & Purposes

The purpose of Title IX is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. ATCEV supports additional resourcing to address violence against all Native women. However, the new language in the Section 901. Findings and Purposes addressing Native Hawaiians, urban Indians communities, Native Americans, and Native American communities, jeopardizes the long-term enforcement of the law and detracts from the key purpose of Title IX. The language in Section 901 should solely focus on American Indians, Alaska Natives, and Indian tribes to protect tribal sovereignty, consistent with the purpose of the Title IX. ATCEV would recommend that all Native Hawaiian, urban Indian communities, Native American, and Native American communities language be removed from Section 901.

Section 902. Tribal Access Program and Section 903. Bureau of Prisons

ATCEV supports the Title XI discussion draft provision to allow Tribal Nations to utilize the Bureau of Prisons (BOP) to house defendants serving sentences of more than one year, and the provision to increase Tribal Nations' access to the National Crime Information Database. These additions are responsive to the testimony of tribal leaders provided at the Government-to-Government Consultations and will likely increase the safety of Indian women.

Section 904. Tribal Jurisdiction Over Covered Crimes

VAWA 2013 provided some semblance of justice for American Indian victims restoring the inherent sovereign rights of Tribal Nations to exercise special domestic violence criminal jurisdiction over non-Indian offenders. However, victims of sexual violence, child abuse, stalking, trafficking, elder abuse, and assaults against law enforcement officers deserve the same protections that Congress afforded to domestic violence victims on tribal lands in VAWA 2013. ATCEV applauds the expansion of the crimes in which Tribal Nations can hold non-Indian perpetrators accountable in the discussion draft but would propose the final Senate Title IX provisions also include the crimes against elders. The elder crimes were included in the House bill, H.R. 1620, but is not included in the discussion draft presented at the Senate Committee on Indian Affairs December 8, 2021. Indian elders are an integral part of our tribal communities to whom we owe respect and care. Indian elders carry our cultures and traditions, and we must ensure that they are not left out of a VAWA reauthorization, similar to how sexual assault victims and child victims of domestic violence were left out of VAWA 2013.

ATCEV would also suggest that in order to ensure that the Title IX discussion draft fully protects our law enforcement and correctional personnel, the removal of the requirement that these assaults be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require a Tribal Nation to first prove the underlying covered crime before prosecution for the assault, which does not fully address the public safety concern of police officers or detention personnel as expressed as a need by the exercising Tribes.

ATCEV acknowledges and supports the language in the Title IX discussion draft that clarifies Tribal Nations in Maine are included in the law.

With regard to reimbursement program addressed in the bipartisan Title IX discussion draft under which the Attorney General may reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction, the ATCEV would like to relay what we have hear from the field, requesting that the program be expanded to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation), and that the time to develop regulations for the program be shortened from within one year to within six months to ensure expedient access of the program to Tribes.

Subtitle B—Alaska Tribal Public Safety Empowerment

ATCEV fully supports creates a pilot project to address the unique needs in Alaska. For years, Tribal leaders, tribal coalition directors, advocates, victim survivors and their families in Alaska have shared stories and have beg for recognition of and solutions to the atrocities they experience in Alaska with regards to domestic violence and sexual assault. Alaska Native women are over-represented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. The Title IX discussion draft includes a pilot project that will enable a limited number of Tribal Nations in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages. We are excited about this improvement and attention provided our Alaska Native relatives.

Thank you for your work to improve the Violence Against Women Act.Please feel free to call upon me should I or the tribal coalition leaders be able to provide you with information on the crimes of domestic and sexual violence in Indian Country and Alaska.

Respectfully,

DAWN R. STOVER, *Executive Director*

TOHONO O'ODHAM NATION
December 22, 2021

Dear Chairman Schatz, Vice Chair Murkowski, and honorable members of the Senate Committee on Indian Affairs:

On behalf of the Tohono O'odham Nation (the Nation), I write to express the Nation's support of the Violence Against Women Act (VAWA) Title IX—Safety for Indian Women discussion draft (Title IX discussion draft) recently released by the Senate Committee on Indian Affairs ("the Committee"). The Title IX discussion draft includes important provisions that will improve safety and justice in tribal communities. Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the Title IX discussion draft are desperately needed today.

In a 2016 report prepared for the National Institute of Justice, the Report analyzed findings from a 2010 National Intimate Partner and Sexual Violence Survey that over 80 percent of American Indians and Alaska Native women and men have experienced violence in their lifetime.[1] The report also highlighted that 97 percent of these victims were victimized by a non-Indian perpetrator.[2] Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence.

Tribal Nations have been exercising jurisdiction over non-Indian domestic violence offenders under the VAWA enacted in 2013 (VAWA 2013) for over 8 years. Tribes currently exercising the special domestic violence criminal jurisdiction under VAWA 2013 have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families while upholding the due process rights of all defendants in tribal courts. Despite these successes, perpetrators still find gaps in the law. Victims of sexual violence, child abuse, stalking, trafficking, elder abuse, and assaults against law enforcement officers all deserve the same protections that Congress affords to domestic violence victims on tribal lands in VAWA 2013.

It is particularly important that any version of the VAWA bill recognizes that Native American children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. However, federal law failed to restore tribal jurisdiction to prosecute these crimes. The Title IX discussion draft language would restore this category of jurisdiction and allow Tribal Nations to protect our children in our tribal justice systems.

The Nation respectfully asks that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but not in the Committee's Title IX discussion draft. Elders are an integral part of our community to whom we owe respect and care.

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[1] André B. Rosay, Violence Against American Indian and Alaska Native Women and Men, a report prepared for the National Institute of Justice, Department of Justice, at 2 (May 2016), available at *https://www.ojp.gov/pdffiles1/nij/249736.pdf.*

[2] *Id.* at 46, Figure 6.1.

Elders carry our cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA.

The Title IX discussion draft recognizes that VAWA 2013 inadvertently left our tribal police officers and detention personnel at risk. Domestic violence cases are both the most common and the most dangerous calls that law enforcement receives. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian defendants, but as of now, Tribal Nations remain unable to prosecute these crimes as assaults on law enforcement were not a category of jurisdiction restored in VAWA 2013. This creates an obvious public safety concern. To ensure that the Title IX discussion draft fully rectifies this issue, we strongly recommend amending the draft language on page ten to remove the requirement that the assault must be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require Tribal Nations to first prove the underlying covered crime before they can prosecute for the assault, which does not fully address the public safety concerns relating to police officers or detention personnel. This would also create significant confusion that likely would have to be resolved in the courts. We ask that the language fully cover all assaults of tribal justice personnel and not include any requirement that the assault be related to a "covered crime."

Section 904 provides a local solution for the local problem of criminal victimization in Indian country. The Nation appreciates that the Title IX discussion draft continues to build on VAWA's promise and includes key priorities to further enhance safety for victims in tribal communities.

The Title IX discussion draft clarifies that Tribal Nations in Maine are included in the law and creates a pilot project to address the unique needs in Alaska. We fully support the inclusion of all Tribal Nations in VAWA. Alaska Native women are over-represented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. The Title IX discussion draft includes a pilot project that will enable a limited number of Tribal Nations in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages.

The Title IX discussion draft creates a reimbursement program under which the Attorney General may reimburse tribes for expenses incurred in exercising special tribal criminal jurisdiction. The Nation believes that it would be appropriate to expand that reimbursement program language to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation). Additionally, the time for the Attorney General to develop regulations for the program should be reduced from within one year to within six months after the effective date, to ensure that this important program is implemented quickly to address the urgent need in Indian Country.

The Title XI discussion draft also allows tribes to use the Bureau of Prisons (BOP) to house defendants serving sentences of more than one year and increases tribes' access to the National Crime Information Database. Both of these additions to VAWA will go a long way towards ensuring that the Nation is able to implement this restored jurisdiction fully and most effectively.

The Nation fully supports the purpose of Title IX, which is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. We also support providing additional resources to address violence against all Native women. However, the language added to Section 901, Findings and Purposes, which adds Native Hawaiians, urban Indians communities, Native Americans, and Native American communities, jeopardizes the long-term enforcement of the law and detracts from the key purpose of Title IX. For those reasons we recommend that language pertaining to Native Hawaiian, urban Indian communities, Native Americans, and Native American communities be removed from Section 901. The language in Section 901 should solely focus on American Indians, Alaska Natives, and Indian tribes in order to use consistent terminology and protect tribal sovereignty, which is consistent with the purpose of the Title IX.

The Nation supports the provisions included in the bipartisan Title IX discussion draft and respectfully requests that members of the Committee become co-sponsors of a full bipartisan Senate VAWA bill that incorporates the Title IX discussion draft provisions and the suggested changes outlined above.

Thank you for your time and consideration.

Sincerely,

NED NORRIS, JR., *Chairman*

AFFILIATED TRIBES OF NORTHWEST INDIANS
December 21, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs:

I write on behalf of the Affiliated Tribes of Northwest Indians to support the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released on December 8, 2021, which includes important provisions that will improve safety and justice in tribal communities. Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the bipartisan Title IX discussion draft are desperately needed today.

A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence.

Tribal Nations have been exercising jurisdiction over non-Indian domestic violence offenders under VAWA 2013 for over 8 years. Exercising Tribal Nations have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families while upholding the due process rights of all defendants in tribal courts. Despite these successes, perpetrators still find gaps in the law. Victims of sexual violence, child abuse, stalking, trafficking, elder abuse, and assaults against law enforcement officers deserve the same protections that Congress affords to domestic violence victims on tribal lands in VAWA 2013.

It is particularly important that the final bipartisan VAWA bill recognizes that Indian children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. However, federal law failed to restore tribal jurisdiction to prosecute these crimes. The Title IX discussion draft 2 language would restore this category of jurisdiction and allow us to protect our Indian children in our tribal justice systems.

We ask that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but not the bipartisan Senate Committee on Indian Affairs discussion draft. Indian elders are an integral part of our tribal communities to whom we owe respect and care. Indian elders carry our cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA.

We also appreciate that the Title IX discussion draft recognizes that VAWA 2013 inadvertently left our tribal police officers and detention personnel at risk. Domestic violence cases are both the most common and the most dangerous calls that law enforcement receives. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian defendants, but as of now, Tribal Nations remain unable to prosecute these crimes as assaults on law enforcement was not a restored category of jurisdiction in VAWA 2013. This creates an obvious public safety concern. In order to ensure that the Title IX discussion draft fully rectifies this issue, we strongly recommend amending the draft language on page ten to remove the requirement that the assault must be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require the Tribal Nation to first prove the underlying covered crime before they could prosecute for the assault, which does not fully fix the public safety concern of police officers or detention personnel. This creates significant confusion that likely would have to be worked out in the courts. We ask that the language fully cover all assaults of tribal justice personnel and not mention anything related to a "covered crime."

Section 904 provides a local solution for the local problem of criminal victimization in Indian country. We are pleased to see that the bipartisan Title IX discussion draft continues to build on VAWA's promise and includes key priorities that have been identified by Tribal Nations to further enhance safety for victims in tribal communities.

The Title IX discussion draft clarifies that Tribal Nations in Maine are included in the law and creates a pilot project to address the unique needs in Alaska. We

fully support the inclusion of all Tribal Nations in VAWA. Alaska Native women are over-represented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. The Title IX discussion draft includes a pilot project that will enable a limited number of Tribal Nations in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages.

In addition to the lifesaving provisions outlined above, the bipartisan Title IX discussion draft creates a reimbursement program under which the Attorney General may reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction. We would ask that that reimbursement program language be expanded to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation.) Additionally, the time for the Attorney General to develop regulations for the program should be shortened from within one year to within six months after the effective date to ensure that this important program is implemented quickly to address the urgent need in Indian Country.

The Title XI discussion draft also allows Tribal Nations to utilize the Bureau of Prisons (BOP) to house defendants serving sentences of more than one year and increases Tribal Nations' access to the National Crime Information Database. Both of these additions to VAWA will go a long way towards ensuring Tribal Nations are able to implement this restored jurisdiction fully and most effectively.

We fully support the purpose of Title IX, which is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. We also support providing additional resources to address violence against all Native women. However, the new language in the Section 901 Findings and Purposes, which adds Native Hawaiians, urban Indians communities, Native Americans, and Native American communities, jeopardizes the long-term enforcement of the law and detracts from the key purpose of Title IX. For those reasons we strongly recommend that all Native Hawaiian, urban Indian communities, Native American, and Native American communities language be removed from Section 901. The language in Section 901 should solely focus on American Indians, Alaska Natives, and Indian tribes in order to protect tribal sovereignty, which is consistent with the purpose of the Title IX.

We urge all members of the Senate Committee on Indian affairs to support the provisions included in the bipartisan Title IX discussion draft and to become a cosponsor of the full bipartisan Senate VAWA bill that incorporates all of the discussion draft provisions and our recommended changes.

Respectfully,

LEONARD FORSMAN, *President*

DENVER INDIAN HEALTH AND FAMILY SERVICES, INC.
December 22, 2021

Dear Chairman Schatz and Vice Chairman Murkowski:

Thank you for the opportunity to provide comments on the Violence Against Women Act (VAWA) reauthorization discussion draft. On behalf of On behalf of Denver Indian Health and Family Services, Inc. (DIHFS) in Denver, Colorado, we hereby submit our written comments and recommendations in response to the tribal title draft [1] and larger bill.

Comments

Urban Indian Organizations (UIOs) like ours provide much more than just health services to American Indians and Alaska Natives including but not limited to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), housing services, social services, community advocacy, and other resources to victims of domestic violence. Many UIOs conduct home visits and are at the front-line to identify domestic violence and other risk factors for Missing and Murdered Indigenous People (MMIP). Urban Indian inclusion in VAWA is important to strengthen these critical services provided at UIOs for American Indians/Alaska Natives (AI/ANs), and the National Council of Urban Indian Health (NCUIH) has advocated for urban Indians to be added in the Senate draft bill. This is a huge accomplishment given that the House bill on VAWA (H.R. 1620) excluded UIOs and urban Indian communities.

[1] Discussion draft of Title IX of VAWA: *https://www.indian.senate.gov/sites/default/files/KEN21B05.pdf*

During the White House Tribal Nations Summit last month, President Biden signed an Executive Order (E.O.)[2] on addressing the crisis of MMIP with UIO inclusion. The E.O. specifically mentions the Department of Health and Human Services (HHS) and the Secretary of the Interior conferring with UIOs on developing a comprehensive plan to support initiatives related to MMIP. NCUIH and UIOs support urban confer among federal agencies on policies that impact urban AI/ANs and have been working on an urban confer bill[3] that recently passed the House (406–17) with overwhelming support. The E.O also highlights the need for improved data surrounding this crisis as it relates to urban Indian communities. NCUIH has, and continues to, advocate for gathering more data on AI/AN communities and Missing and Murdered Indigenous People. On July 2, 2021, NCUIH submitted comments to the Department of Justice on Savannah's Act requesting UIOs and urban Indians to be incorporated into improving data relevancy, access, and resources. We look forward to participating in that effort and we hope that VAWA will help us combat this epidemic in Indian country.

DIHFS would like to express appreciation for the inclusion of urban Indians in 11 locations of the Senate draft bill. We respectfully ask you retain the following provisions in the final Senate bill:

- Bill Amendment: SEC. 101. Stop Grants

  —Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10441 et seq.) is amended—

  —(25) paying any fees charged by any governmental authority for furnishing a victim or the child of a victim with any of the following documents:
- "(B) An identification card issued to the individual by a State or Tribe, that shows that the individual is a resident of the State or a member of the Tribe."; and

  —(B) in Subsection (d)—

  —i) in paragraph (1)-

  —II) in subparagraph (D), by inserting ", urban Indian communities, and Native Hawaiian communities" after "assisting Indian tribes"; (ii) in paragraph (2)-

  —I) in subparagraph (A)(iii), by inserting ", urban Indian communities, and Native Hawaiian communities" after "provide services to Indian tribes"; and

  —II) in subparagraph (B), by inserting ", urban Indian communities, and Native Hawaiian communities" after "in areas where Indian tribes";
- Bill Amendment: SEC. 105. Outreach and Services to Underserved Population Grants.

  —Section 120 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (34 U.S.C. 20123) is amended—

  —(2) in subsection (b)(3), by inserting "urban Indian, Native Hawaiian," before "or local organization";
- Bill Amendment: SEC. 108. Enhancing Culturally Specific Services for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

  —Section 121 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (34 U.S.C. 20124) is amended-

  —"(4) DISTRIBUTION.—Of the total amount available for grants under this section, not less than 40 percent of such funds shall be allocated for programs or projects that meaningfully address non-intimate partner relationship sexual assault.";
- (3) in subsection (c)—

  —(A) in paragraph (1), by striking "and" at the end;

  —(B) in paragraph (2), by striking the period at the end and inserting "; and"; and

  —(C) by adding at the end the following:

  —"(3) tribal nonprofit organizations, Native Hawaiian organizations, and urban Indian organizations.";
- Bill Amendment: SEC. 110. Pilot Program on Restorative Practices.

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[2] Executive Order on Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People: *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/15/executive-order-on-improving-public-safety-and-criminal-justice-for-native-americans-and-addressing-the-crisis-of-missing-or-murdered-indigenous-people/*

[3] Urban Indian Health Confer Act: *https://www.congress.gov/117/meeting/house/114098/documents/BILLS-117522Iih.pdf*

—a) IN GENERAL.—The Violence Against Women Act of 1994 (title IV of Public Law 103–322), as amended by section 205, is further amended by adding at the end the following:

—"Subtitle R-Restorative Practices

—"SEC. 41801. PILOT PROGRAM ON RESTORATIVE PRACTICES.

- "(a) DEFINITIONS.—In this section:

—"(2) ELIGIBLE ENTITY.—The term 'eligible entity' means-

—A) a State;

—B) a unit of local government;

—C) a tribal government;

—D) a tribal organization;

—E) a victim service provider;

—F) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); and

—G) a private or public nonprofit organization, including

—(i) a tribal nonprofit organization; and

—ii) a faith-based nonprofit organization.

- Bill Amendment: SEC. 302. Creating Hope through Outreach, Options, Services, and Education (CHOOSE) for Children and Youth

—Section 41201 of the Violence Against Women Act of 1994 (34 U.S.C. 12451) is amended—

—2) in subsection (c)—

- (A) in paragraph (1)(A)—

—(ii) by inserting "Native Hawaiian organization, urban Indian organization," before "or population-specific community-based organization"; and

- Bill Amendment: SEC. 506. Expanding Access to Unified Care.

—(f) Authorization of Appropriations.—

—2) Set-Aside.—Of the amount appropriated under this subsection for a fiscal year, the Secretary shall reserve 15 percent of such amount for purposes of making grants to entities that are affiliated with Indian Tribes or Tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), or Urban Indian organizations (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C.1603)). Amounts reserved may be used to support referrals and the delivery of emergency first aid, culturally competent support, and forensic evidence collection training.

- Bill Amendment: SEC. 507. Expanding Access to Forensics for Victims of Interpersonal Violence

—(a) Definitions.—In this section:
—(9) URBAN INDIAN ORGANIZATION.—The term "Urban Indian organization" has the meaning given such term in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

- (b) Demonstration Grants for Comprehensive Forensic Training.—

—(6) Authorization of Appropriations.—

—(B) Set-Aside.—Of the amount appropriated under this paragraph for a fiscal year, the Secretary shall reserve 10 percent for purposes of making grants to support training and curricula that addresses the unique needs of Indian Tribes, Tribal organizations, Urban Indian organizations, and Native Hawaiian organizations. Amounts so reserved may be used to support training, referrals, and the delivery of emergency first aid, culturally competent support, and forensic evidence collection training.

- Bill Amendment: SEC. 901. Findings and Purposes

—(b) Purposes.—The purposes of this subtitle are-

—3) to empower Tribal governments and Native American communities, including urban Indian communities and Native Hawaiian communities, with the resources and information necessary to effectively respond to cases of domestic violence, dating violence, stalking, sex trafficking, sexual violence, and missing and murdered Native Americans; and

—4) to increase the collection of data related to missing and murdered Native Americans and the sharing of information among Federal, State, Tribal, and

local officials responsible for responding to and investigating crimes impacting Indian Tribes and Native American communities, including urban Indian communities and Native Hawaiian communities, especially crimes relating to cases of missing and murdered Native Americans.

Closing

In closing, DIHFS would like to thank the members of the Senate Committee on Indian Affairs for including urban AI/ANs in this important piece of legislation. We urge Congress to continue its support of all AI/ANs by retaining these provisions in the final VAWA reauthorization.

Sincerely,

ADRIANNE MADDUX, *Executive Director*

TANANA CHIEFS CONFERENCE
December 21, 2021

Introduction and Background on TCC

Chairman Schatz, Vice Chairman Murkowski and Members of the Senate Committee on Indian Affairs, thank you for the opportunity to provide testimony for the record of the Committee's December 8, 2021 Oversight Hearing on "Restoring Justice: Addressing Violence in Native Communities through VAWA Title IX Special Jurisdiction ." My name is Brian Ridley, I am a member of the Native Village of Eagle, and I have the honor of serving as president of the Tanana Chiefs Conference (TCC).

TCC is a non-profit intertribal consortium of 42 communities, including 37 federally recognized tribes, located across Alaska's vast interior. Headquartered in Fairbanks, Alaska, TCC serves approximately 18,000 tribal members over an area of about 235,000 square miles, which is nearly the size of Texas. TCC is charged with advancing tribal self-determination and enhancing regional Native unity with the goal to meet the health and social service needs of tribes and tribal members throughout the region. TCC is also home to the Tribal Protective Services program that serves all victims of crime from/residing in the TCC region.

VAWA/Alaska Challenges

The Violence Against Women Act (VAWA) is a pillar of the federal government's response to domestic violence, sexual assault, dating violence, and stalking. TCC has been actively engaged in the VAWA reauthorization discussions to ensure that Congress understands the unique challenges that our tribes face. Alaska Native women are overrepresented in the domestic violence victim population by 250 percent. This unacceptable statistic is due, in part, to the remote nature of many of Alaska's tribal communities, as well as complex jurisdictional challenges and the lack of funding for public safety programs in the villages.

Congress has worked to strengthen VAWA through each reauthorization to take into account our increased understanding of gender-based violence and the lack of access to justice that our rural and Indigenous populations face. The last VAWA reauthorization in 2013 contained a provision authorizing the Special Domestic Violence Criminal Jurisdiction (SDVCJ) for Indian tribes. However, the SDVCJ did not apply to Indian tribes in Alaska, as the provision was limited to certain crimes committed in "Indian country."

Relying primarily on the State of Alaska to provide public safety and justice services has not worked well for Alaska Natives. The tribal communities within the TCC region need the same access to law enforcement and the authority to protect tribal members, especially those living in remote villages. TCC is pleased that Congress and this Committee are working diligently on VAWA reauthorizations that would address the critical needs of Alaska Native communities.

H.R. 1620, VAWA Reauthorization Act of 2021

H. R.1620, the Violence Against Women Reauthorization Act of 2021, is based on extensive outreach to survivors, direct service providers, and other stakeholders. This bipartisan, House-passed bill maintains protections for all victims, makes vital investments in sexual assault prevention and services, and ensures sexual predators who prey on Native women can be held accountable. It also invests in culturally specific organizations, protects victims of domestic violence from intimate partner homicide, provides alternatives to the legal system for survivors who want them, and increases victims' access to safe housing and economic stability.

TCC strongly supports the language in H.R. 1620 that aims to end impunity for non-Native perpetrators of sexual assault, child abuse co-occurring with domestic vi-

olence, stalking, sex trafficking, and assaults on tribal law enforcement officers on tribal lands. TCC also supports the bill's establishment of a pilot project to allow up to five Indian tribes in Alaska to implement special tribal criminal jurisdiction and, for that specific purpose, to redefine Indian country to include certain lands in Alaska.

SCIA Discussion Draft of the VAWA Tribal Title

TCC commends Chairman Schatz and Vice Chairman Murkowski for releasing their Discussion Draft of the VAWA Tribal Title. TCC supports Subtitle B-Alaska Tribal Public Safety Empowerment, which aims to empower Alaskan Tribal Governments to effectively respond to cases of domestic violence, dating violence, stalking, sex trafficking, sexual violence, and missing and murdered Alaska Natives. TCC applauds the draft's establishment of a pilot program under which the Attorney General shall designate not more than 5 Indian tribes per calendar year as participating tribes to exercise the special tribal criminal jurisdiction over all persons present in the village of the Indian tribe. TCC believes that the pilot program will help to make our villages safer, but jurisdiction alone is not enough unless it comes with the means to implement it. The federal government has never adequately funded law enforcement and court activities for tribes in Alaska. Congress must work to provide more funding so that tribes have the law enforcement personnel they need to keep their communities safe and the courts that are necessary to maintain justice.

TCC Requests/Conclusion

In closing, the Tanana Chiefs Conference urges the Senate Committee on Indian Affairs to continue working to incorporate the Draft Tribal Title into the Senate's VAWA reauthorization bill. Further, TCC urges the Senate to introduce a bipartisan VAWA reauthorization that builds on the House-passed bill and meets the identified needs of survivors and communities. The dangers are far too great for Congress to delay the reauthorization of the Violence Against Women Act.

Sincerely,

BRIAN RIDLEY, *President*

ONEIDA NATION
December 22, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs:

On behalf of the Oneida Nation, please accept this letter to support the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released on December 8, 2021, which includes important provisions that will improve safety and justice in tribal communities. Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the bipartisan Title IX discussion draft are desperately needed today.

A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence.

Tribal Nations have been exercising jurisdiction over non-Indian domestic violence offenders under VAWA 2013 for over 8 years. Tribal Nations exercising jurisdiction have held serial offenders accountable and brought justice and safety to hundreds of victims and their families, while upholding the due process rights of all defendants in tribal courts. Despite these successes, perpetrators still find gaps in the law. Victims of sexual violence, child abuse, stalking, trafficking, elder abuse, and assaults against law enforcement officers deserve the same protections that Congress affords to domestic violence victims on tribal lands that are contained in VAWA 2013.

It is particularly important that the final bipartisan VAWA bill recognizes that Indian children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. However, federal law failed to restore tribal jurisdiction to prosecute these crimes. The Title IX discussion draft language would restore

this category of jurisdiction and allow us to protect our Indian children in our tribal justice systems.

We ask that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but contained in the bipartisan Senate Committee on Indian Affairs discussion draft. Indian elders are an integral part of our tribal communities to whom we owe respect and care, as our elders carry our cultures and traditions. We must ensure that they are not left behind in this reauthorization of VAWA.

We also appreciate that the Title IX discussion draft recognizes that VAWA 2013 inadvertently left our tribal police officers and detention personnel at risk. Domestic violence cases are both the most common and the most dangerous calls that law enforcement receives. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian defendants, and Tribal Nations remain unable to prosecute these crimes, as assaults on law enforcement personnel was not a restored category of jurisdiction in VAWA 2013. This creates a significant public safety concern. To ensure that the Title IX discussion draft fully rectifies this issue, we strongly recommend amending the draft language on page ten to remove the requirement that the assault must be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require the Tribal Nation to first prove the underlying covered crime before they could prosecute for the assault, which does not fully fix the public safety concern of police officers or detention personnel. This creates significant confusion that likely would have to be worked out in the courts. We ask that the language fully cover all assaults of tribal justice personnel and not mention anything related to a "covered crime."

Section 904 provides a local solution for the local problem of criminal victimization in Indian country. We are pleased to see that the bipartisan Title IX discussion draft continues to build on VAWA's promise and includes key priorities that have been identified by Tribal Nations to further enhance safety for victims in tribal communities.

The Title IX discussion draft clarifies that Tribal Nations in Maine are included in the law and creates a pilot project to address the unique needs in Alaska. We fully support the inclusion of all Tribal Nations in VAWA. Alaska Native women are over-represented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. The Title IX discussion draft includes a pilot project that will enable a limited number of Tribal Nations in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages.

In addition to the lifesaving provisions outlined above, the bipartisan Title IX discussion draft creates a reimbursement program under which the Attorney General may reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction. We would ask that that reimbursement program language be expanded to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation). Furthermore, we request that jury costs be included in the reimbursement program language. Tribes must provide the defendant with a jury that reflects a fair cross section of the community that does not systematically exclude any distinctive group in the community, including non-Indians. This means that Tribal and non-Tribal members will need to serve as jurors. Unless Tribe's draft legislation addressing the issue, Tribal Courts may be limited in their ability to ensure individuals comply with the summons for jury duty. Therefore, Tribes may need to pay jurors for their time to increase compliance and in order to ensure that the defendant's rights are upheld. These costs should be eligible for reimbursement. Additionally, the time for the Attorney General to develop regulations for the program should be shortened from within one year to within six months after the effective date to ensure that this important program is implemented quickly to address the urgent need in Indian Country.

The Title XI discussion draft also allows Tribal Nations to utilize the Bureau of Prisons (BOP) to house defendants serving sentences of more than one year and increases Tribal Nations' access to the National Crime Information Database. Both of these additions to VAWA will go a long way towards ensuring Tribal Nations are able to implement this restored jurisdiction fully and most effectively. However, some BOPs are located hours away from Tribal Courts; we request that costs associated with using local jails to house individuals be reimbursed when BOP facilities are not located near the Tribal Courts.

We fully support the intent of Title IX, which is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. We also support providing additional resources to address violence against all Native women. However, the new language in the Section 901 Findings and Purposes, which adds Native Ha-

waiians, urban Indians communities, Native Americans, and Native American communities, jeopardizes the long-term enforcement of the law and detracts from the key purpose of Title IX. For those reasons we strongly recommend that all Native Hawaiian, urban Indian communities, Native American, and Native American communities language be removed from Section 901. The language in Section 901 should solely focus on American Indians, Alaska Natives, and Indian tribes in order to protect tribal sovereignty, which is consistent with the purpose of the Title IX.

We urge the Senate Committee on Indian affairs to support the provisions included in the bipartisan Title IX discussion draft and to co-sponsor the full bipartisan Senate VAWA bill that incorporates all of the discussion draft provisions and our recommended changes.

With a Good Mind, a Good Heart & Strong Fire,

TEHASSI TASI HILL, *Chairman*

NATIVE PEOPLES ACTION
December 22, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs:

I write on behalf of Native Peoples Action in support of the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released on December 8, 2021, which includes important provisions that will improve safety and justice in tribal communities who continue to suffer from the highest rates of crime victimization in the country. The reforms included in the bipartisan Title IX discussion draft are desperately needed.

Native Peoples Action is a statewide Indigenous non-profit organization in Alaska that strives to give voice to our ancestral imperative to uplift our peoples and our traditional ways of life by taking a stand, working together and mobilizing action. We do this through ensuring Alaska Natives are heard in all levels of policy making, by building stronger unity among Indigenous communities to collectively advocate for the wellness of our peoples and our ways of life, and by transforming social systems.

Alaska Natives and American Indians face disproportionate levels of crime rates. A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indigenous perpetrator. Sadly, Indigenous children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence.

American Indians and Alaska Natives are 2.5 times as likely to experience violent crimes and at least two times more likely to experience rape or sexual assault crimes compared to all other races. According to the Tribal Law and Order Act Commision Report, Alaska Native women are over-represented in the domestic violence victim population by 250 percent; they comprise 19 percent of Alaska's population, but are 47 percent of reported rape victims in the State. And among other Indian Tribes, Alaska Native women suffer the highest rates of domestic and sexual violence in the country.

Tribes have been exercising jurisdiction over non-Indigenous domestic violence offenders under VAWA 2013 for over 8 years. Exercising Tribes have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families while upholding the due process rights of all defendants in tribal courts. Despite these successes, perpetrators still find gaps in the law. Victims of sexual violence, child abuse, stalking, trafficking, Elder abuse, and assaults against law enforcement officers deserve the same protections that Congress affords to domestic violence victims on tribal lands in VAWA 2013.

It is particularly important that the final bipartisan VAWA bill recognizes that Indigenous children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. Federal law has failed to restore Tribal jurisdiction to prosecute these crimes. The Title IX discussion draft language would restore this category of jurisdiction and allow us to protect our Indigenous children in our tribal justice systems.

We ask that the Title IX discussion draft be amended to include crimes against Elders, which was a category of restored jurisdiction included in the House Bill, H.R. 1620, but not the bipartisan Senate Committee on Indian Affairs discussion draft. Indigenous Elders are an integral part of our Tribal communities to whom

we owe deep respect and care. Indigenous Elders carry our cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA.

We also appreciate that the Title IX discussion draft recognizes that VAWA 2013 inadvertently left our tribal police officers and detention personnel at risk. There have been reported assaults on tribal officers during domestic violence calls that are committed by non-Indian defendants, but as of now, tribal communities remain unable to prosecute these crimes as assaults on law enforcement was not a restored category of jurisdiction in VAWA 2013. This creates an obvious public safety concern. In order to ensure that the Title IX discussion draft fully rectifies this issue, we recommend amending the draft language on page ten to remove the requirement that the assault must be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require the Tribes to first prove the underlying covered crime before they could prosecute for the assault, which does not fully fix the public safety concern of police officers or detention personnel. This creates significant confusion that likely would have to be worked out in the courts. We ask that the language fully cover all assaults of tribal justice personnel and not mention anything related to a "covered crime."

Section 904 provides a local solution for the local problem of criminal victimization in Tribal communities. We are pleased to see that the bipartisan Title IX discussion draft continues to build on VAWA's promise and includes key priorities that have been identified by Tribes to further enhance safety for victims in tribal communities.

The Title IX discussion draft clarifies that Tribal Nations in Maine are included in the law and creates a pilot project to address the unique needs in Alaska. We fully support the inclusion of all Tribes in VAWA. Alaska Native women are overrepresented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. The Title IX discussion draft includes a pilot project that will enable a limited number of Tribes in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages.

In addition to the lifesaving provisions outlined above, the bipartisan Title IX discussion draft creates a reimbursement program under which the Attorney General may reimburse Tribes for expenses incurred in exercising special tribal criminal jurisdiction. We would ask that the reimbursement program language be expanded to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation.) Additionally, the time for the Attorney General to develop regulations for the program should be shortened from within one year to within six months after the effective date to ensure that this important program is implemented quickly to address the urgent need in Tribal communities.

We urge all members of the Senate Committee on Indian affairs to support the provisions included in the bipartisan Title IX discussion draft and to become a cosponsor of the full bipartisan Senate VAWA bill that incorporates the discussion draft provisions and our recommended changes.

Gunalchéesh/Háw'aa/Quyana/Mahsi'Choo/Baasee'/Maasee'/Dogedinh/Thank you,

KENDRA KLOSTER, *Executive Director*

THE ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS

December 21, 2021

Dear Chairman Schatz and Vice-Chairman Murkowski,

The Association of Village Council Presidents fully supports the December 8, 2021 Discussion Draft of Title IX to the Violence Against Women Act, and respectfully requests the prompt introduction and passage of Title IX, especially subtitle B—Alaska Tribal Public Safety Empowerment.

The Association of Village Council Presidents (AVCP) is the largest tribal consortium in the Nation with 56 federally recognized tribes as members. We are located in the Yukon-Kuskokwim Delta in Western Alaska, which includes 48 villages along the Yukon River, Kuskokwim River, and Bering Sea Coast spanning an area approximately the size of the State of New York. AVCP provides community development, education, social services, and advocacy for our member tribes and communities. This includes advocating for our region's top priority, public safety.

In 2019, U.S. Attorney General Barr declared a law enforcement emergency in rural Alaska. The majority of villages in our Region have no full-time law enforcement and many have no law enforcement presence at all. In rural Alaska, rates of domestic violence and physical assault are 10 times higher than in the rest of the United States. Despite the dire need for public safety, and often being the primary

governmental entity in the village, Alaska Tribes are not recognized as having criminal jurisdiction over the individuals in our communities.

This is why Tribes and Tribal Organizations across Alaska, including here in the Yukon-Kuskokwim Delta, support the proposed Alaska Tribal Public Safety Empowerment subtitle (see the enclosed resolution recently passed at our annual convention). Recognizing that Alaska Tribes have inherent civil and criminal jurisdiction over all Indians present within our village boundaries is a major step toward ending the current public safety crisis. The pilot project for a limited number of Alaska Tribes to exercise special criminal jurisdiction over certain crimes that occur within their villages is another step in the right direction. The Alaska Tribal Public Safety Empowerment is essential to protecting our women and children and making our communities safer.

In closing, thank you for your support and dedication in working for Indian Country, including Alaska Tribes. We look forward to seeing the Discussion Draft of Title IX, including the Alaska Tribal Public Safety Empowerment, introduced very soon. Our tribes are not asking for anything less or anything more than any other community in Alaska or the United States.

Quyana,

VIVIAN KORTHUIS, *CEO*

Attachment: Resolution 21–09–01

TITLE: A Resolution in Support of the Alaska Tribal Public Safety Empowerment Act

WHEREAS The Association of Village Council Presidents (AVCP) is the recognized tribal organization and non-profit Alaska Native regional corporation for its fifty-six member indigenous Native villages within Western Alaska and supports the endeavors of its member villages; and

WHEREAS AVCP fully supports its member villages in all aspects of their self-determination, health, and well-being; and

WHEREAS There is a public safety crisis in rural Alaska—

- 59 percent of adult women in Alaska have experienced intimate partner violence, sexual violence, or both;
- Reported rape in Alaska is 2.5 times the national average;
- Alaska Natives comprise just 19 percent of the state population, but 47 percent of reported rape victims;
- In rural Alaska's tribal communities (and for Alaska Native women living in urban areas) women reported rates of domestic violence up to 10 times higher than in the rest of the United States and physical assault victimization rates up to 12 times higher;
- More than 95 percent of all crimes committed in rural Alaska can be attributed to alcohol; and

WHEREAS Tribes in rural Alaska have little to no public safety resources to keep their tribal communities safe; and

WHEREAS Tribes rely on a patchwork of state law enforcement and tribal law enforcement, which leaves gaps in service and instability for tribal governments and tribal public safety employees; and

WHEREAS The interpretation of certain legislation regarding Indian Country in Alaska has cast the status of Alaska tribes' criminal jurisdiction into doubt; and

WHEREAS At the 2016 AVCP Annual Convention, the AVCP Region tribes declared public safety as the region's number one priority; and

WHEREAS On June 28, 2019, Attorney General Barr declared a law enforcement emergency in rural Alaska; and

WHEREAS On October 17, 2019, U.S. Senator Murkowski (R–AK) introduced S. 2616, the Alaska Tribal Public Safety Empowerment Act ("the Act") legislation; and

WHEREAS The Act recognizes that, regardless of land title, Indian tribes in Alaska have inherent civil and criminal jurisdiction over all Alaska Natives present in their villages; and

WHEREAS The Act recognizes that Indian tribes in Alaska have full civil jurisdiction within their villages to issue and enforce protection orders involving any individual; and

WHEREAS The Act also creates a pilot program in Alaska in which the Attorney General will select up to five tribes or inter-tribal organizations each year to exercise general civil jurisdiction over all persons within the village, plus criminal jurisdiction over all persons for certain enumerated crimes; and

WHEREAS Alaska tribes have waited long enough for the devastating impacts of a lack of public safety in their communities to be addressed; and

WHEREAS Alaska tribes are asking for no more or no less than any other community in the State of Alaska or in the United States.

NOW THEREFORE BE IT RESOLVED That the Association of Village Council Presidents Full Board of Directors calls for the reintroduction and passage of the Alaska Tribal Public Safety Empowerment Act.

NOW THEREFORE BE IT FURTHER RESOLVED That, to this end, the members of the Alaska Congressional Delegation co-sponsor this legislation.

ADOPTED by the Members of the Association of Village Council Presidents during the Association's fifty-seventh annual convention held this 22nd day of September with a duly constituted quorum of delegates present.

EASTERN BAND OF CHEROKEE INDIANS
December 22, 2021

As Principal Chief of the Eastern Band of Cherokee Indians ("EBCI" and/or "Eastern Band"), I write to provide our comments on the Discussion Draft for Title IX of the Violence Against Women Act (VAWA), as posted online on the Senate Committee on Indian Affairs' website on December 8, 2021.

Tha EBCI is a Tribal Nation based in the mountains of Western North Carolina. We are the Cherokee descendents who avoided forced removal along the Trail of Tears, or who returned from the Indian Territory after the march. About 15,000 people live on the Qualla Boundary, the traditional name for the Eastern Band Cherokee Reservation, including about 8,500 Eastern Band Cherokee citizens. Nearly all the land within the exterior boundary of the Qualla Boundary is held in trust by the United States for the Eastern Band.

On June 15, 2015, the Eastern Band implemented VAWA § 904's Special Domestic Violence Criminal Jurisdiction (SDVCJ). The Eastern Band has its own court system, consisting of a trial court and an appellate court (Supreme Court), and it own Office of Tribal Prosecutor (OTP). In FY21, there were 2,119 criminal cases (including 30 juvenile cases) filed in the Cherokee Court. These criminal cases constituted 71 percent or approximately two-thirds of all matters filed in the Cherokee Court durin FY21. Approximately 1,497 criminal cases were heard and disposed of in FY21. In addition, the EBCI has an in-house Legal Assistance Office (LAO) that represents Tribal citizen plaintiffs on civil domestic violence matters. In FY21, the LAO assisted with 90 matters referred by the DV program; 72 of these were requests for domestic violence protective orders under EBCI law. . The Eastern Band has also implemented the Tribal Law and Order Act (TLOA), including enhanced sentencing. [1]

Overall, the Discussion Draft constitutes a bi-partisan achievement that, if passed into law, will go a long way towards addressing the epidemic of violence our Native women and children continue to suffer. The Committee has done a commendable job drafting the Discussion Draft. We have very few critiques or criticisms to offer. The EBCI applauds the Members of the Committee, as well as their staff, for the incredible work on this excellent Discussion Draft. Most notably, the Discussion Draft builds upon the jurisdictional restoration provisions of VAWA 2013 and expands the scope of restored tribal criminal jurisdiction over non-Indian criminal conduct into much needed areas, including assault on tribal justice personnel, child violence, trafficking, sexual assault, obstruction of justice and more. While Tribal Nations, including the EBCI, continue to advocate for a full restoration of tribal criminal jurisdiction as a permanent fix to the Supreme Court's 1978 decision in *Oliphant v. Suquamish Indian Tribe*, any expanded recognition of the inherent jurisdiction of Tribal Nations to protect their citizens on tribal lands constitutes an important advancement in Indian country.

I. Scope of Covered Conduct

A. Definition of Domestic Violence

The EBCI considers the definition of "domestic violence" in Title IX to be effective in that it refers to "any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs." [2] It is crucial that Title IX's definition of "domestic violence" be first and foremost centered on the implementing tribe's own definition of "domestic violence" under the tribe's own crimi-

[1] *See* 25 U.S.C. § 1302 (b).
[2] Compare 25 U.S.C. § 1304(a)(2) with definition found in Discussion Draft § 904(3)(B).

nal law to ensure that the federal statutory definition of "domestic violence" does not function as a jurisdictional barrier. The EBCI applauds this definition.

We want to point out , however, that while the definition of "domestic violence" in the Discussion Draft is an improvement over the existing definition, we advocate that the definition address "reckless" conduct as proposed in H.R. 1620. H.R. 1620 includes the following language in its definition of "domestic violence": "when an offender recklessly engages in conduct that creates a substantial risk of death or serious bodily injury to the victim".[3] The addition of "recklessly" in the definition will reach more criminal conduct than the Discussion Draft's definition and would be a welcome inclusion.

We also suggest that Discussion Draft's definition of "domestic violence" would be improved by including a reference to violence committed against an elder. H.R. 1620 includes violence committed against an elder "as such term is defined by Tribal law" in the definition of domestic violence—a provision which the Discussion Draft omits entirely.[4] The EBCI fully supports the inclusion of elder abuse in the final version of Title IX because, as it currently stands under VAWA 2013, there is no restoration of tribal criminal jurisdiction over elder abuse unless that abuse takes place in the context of a dating or intimate partner relationship. According to the World Health Organization, rates of elder abuse are highest in nursing homes and long-term care facilities where abuse is often committed by staff members, and elder abuse has continued to increase worldwide during the COVID–19 pandemic.[5] It is important that the final version of Title IX remains sufficiently deferential to tribal law to allow for tribal prosecution of elder abuse so that tribal communities may combat the high rates of violence against tribal elders. Very often, violence against our elders is committed by a non-dating or intimate partner. The EBCI is of the opinion that elder abuse should be expressly addressed within the definition of "domestic violence."

We note that S. 2843 defines "domestic violence" in a way which is even more deferential to tribal law than the Discussion Draft's definition. S. 2843 also includes "the use, threatened use, or attempted use of violence" proscribed by the Tribe as well as violence committed by "a person against an adult or child victim who is protected from the acts of that person under the domestic or family violence laws of the Indian tribe that has jurisdiction over the Indian country where the violation occurs."[6] By including provisions that specifically state that a tribe may prosecute those who commit any violent act against an adult or child victim who would be protected from the same under tribal law, S. 2843 is more deferential to tribal law in defining which crimes committed against children will fall within the statutory defined category of restored tribal criminal jurisdiction. The EBCI supports the inclusion of a definition of "domestic violence" that gives tribal law maximum deference and greatest reach, to ensure that the federal definition of "domestic violence" does not arbitrarily limit the kinds of domestic violence cases that an implementing Tribe may prosecute.

B. Assault of Tribal Justice Personnel

VAWA 2013 does not address assault of a tribal law enforcement or correctional officer. The EBCI commends the Committee for including special provisions in the Discussion Draft to address assault of tribal justice personnel. Importantly, the Draft's definition of tribal justice personnel as "an individual authorized to act for, or on behalf of, that Indian tribe"[7] is broad enough to encompass both Indian and non-Indian tribal law officers, as many tribes have non-Indian justice personnel who serve their tribal communities and should be protected from violence. Answering a domestic violence call can be one of the most dangerous calls a tribal law officer undertakes. At the Eastern Band, we have experienced numerous tragedies where our law officers are assaulted by a non-Indian perpetrator who is engaged in committing a crime of domestic violence. Although the Eastern Band-since implementing SDVCJ in 2015-has been able to prosecute a domestic violence crime committed against a Native victim, we have been unable to prosecute the crime committed when the perpetrator assaults our law enforcement personnel. This seriously undermines public safety in our community.

However, there is a potential issue with the Discussion Draft's provision that provides protection for tribal justice personnel only for certain situations specific to the

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[3] Violence Against Women Act Reauthorization Act of 2021, H.R. 1620, 117th Cong. § 903(4)(A) (2021).

[4] *Id.*

[5] World Health Organization, "Elder Abuse" (October 4, 2021), *https://www.who.int/news-room/fact-sheets/detail/elder-abuse*

[6] Violence Against Women Act Reauthorization Act of 2019, S. 2843, 116th Cong. § 903(2)(C) (2019–2020).

[7] Discussion Draft § 904(3)(B).

scope of their duties. In particular, the Discussion Draft provides protection under the law for tribal justice personnel "preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting *a covered crime*."[8] The use of "covered crime" could be problematic in situations where a non-covered crime (such as arson) is being committed by a non-Indian. In the Discussion Draft, if and when tribal justice personnel arrive, and if there is an assault against a tribal law officer, the Eastern Band would not be able to prosecute the assault committed against our law officer. In this scenario, if the non-Indian was not committing or was not in the process of committing a "covered crime", the language in the Draft Discussion may lead to confusion in tribal court as to whether or not jurisdiction has been established over the offending non-Indian. The EBCI urges the Committee to clarify this provision to avoid a situation where a non-Indian offender assaults tribal justice personnel and yet, cannot be held accountable.

C. Child Violence, Obstruction of Justice, Sex Trafficking, Sexual Violence, and Stalking

The Discussion Draft significantly improves existing law by expanding covered crimes to include child violence, obstruction of justice, sex trafficking, sexual violence, and stalking.[9] This expansion is vital to ensuring the full scope of sexual and domestic violence against Native women and children can be punished while tribes await a full restoration of criminal jurisdiction over non-Indians.

II. Tribal Access Program

The Committee's version of Title IX does an excellent job of expanding and funding tribal access to the national crime information databases.[10] It is vital that both the Bureau of Indian Affairs and tribal law enforcement have access to, and the ability to use and move information into, the National Crime Information Center and other national databases, as the Discussion Draft provides.[11] Importantly, the Discussion Draft version does not require that a tribal justice official have criminal jurisdiction over Indian country to be an authorized law enforcement official for purposes of National Crime Information Center access as such a requirement could significantly impede the speedy retrieval of information for ongoing Indian country investigations. The EBCI applauds the Committee's work to codify the Tribal Access Program in a sustainable way.

III. Grant Reimbursement Program

The Discussion Draft expands the scope of grants to tribal governments currently covered in 25 U.S.C. § 1304(f)-(h).[12] Existing law provides only for "grants" as opposed to reimbursements. This is a crucial distinction because under the existing framework, tribes receive grant awards to fund their justice systems in an upfront sum to provide funding for law enforcement, prosecution, trial and appellate courts, probation systems, detention and correctional facilities, alternative rehabilitation centers, culturally appropriate services, and criminal codes and rules of procedure.[13]

The problem with requiring tribes to implement VAWA's restored tribal criminal jurisdiction using upfront grant awards alone is that there are often situations in which unexpected costs, such as inmate healthcare costs, can arise during the course of implementation. An unexpected inmate surgery can drastically affect the entire budgeting plan for a fiscal year for a tribe and makes implementing VAWA's restored jurisdiction prohibitive for many smaller tribes. The EBCI has encountered this very issue with the existing grant program. We welcome a reimbursement program for eligible expenses including healthcare costs for persons charged.

Additionally, the EBCI supports the Discussion Draft's requirements for timeliness and a necessary $25,000,000 in funding each fiscal year through 2026, which significantly expands the availability of awards and reimbursements for tribes. The Discussion Draft stipulates that a decision on reimbursement or rejection of reimbursement will be reached no later than 90 days after DOJ receives a qualified request from a tribal government and that tribes will be notified no later than 30 days after they have gone past the maximum allowable reimbursement set by the Department that the maximum has been reached.[14] This timeliness provision will ensure federal accountability in reimbursing tribes for their expenses and provides tribes

[8] Id. (emphasis added).
[9] Discussion Draft § 904.
[10] *Id.* at § 902.
[11] *Id.*
[12] *Id.* at § 904.
[13] 25 U.S.C. § 1304(f)-(h).
[14] Discussion Draft § 904(f).

with a reasonable expectation of when the funds will arrive. This is very important to our ability to successfully implement VAWA Title IX.

IV. Bureau of Prisons Tribal Prisoner Program

The Discussion Draft provides for a Bureau of Prisons Tribal Prisoner Program, which is similar to provisions previously included in the Tribal Law and Order Act (TLOA).[15] A Bureau of Prisons Tribal Program is critical to provide tribes with the ability to house offenders in federal prisons when they are convicted in tribal court. The EBCI previously used this provision in TLOA. TLOA has expired and has yet to be re-authorized, so we are very thankful to see this program codified now in VAWA. It is key that this be a full program, as opposed to a pilot program, to avoid termination or expiration of the program. The EBCI commends the Committee for including these provisions and supports tribal efforts to participate in the Bureau of Prisons Tribal Prisoner Program.

V. Alaska Pilot Project Grant

The EBCI is very thankful to see that the Discussion Draft contains provisions in Subtitle B (§§ 911–913) to improve Alaska tribal public safety through the establishment of a Pilot Program for Special Tribal Criminal Jurisdiction for Indian Tribes occupying Villages in Alaska.[16] The Alaska Pilot Program is desperately needed in VAWA 2021. As the Discussion Draft notes, Alaska Native women are disproportionately represented in the domestic violence victim population—by 250 percent—and suffer the highest rates of domestic and sexual violence compared to the populations of other Indian tribes. EBCI wholeheartedly supports the Alaska Pilot Program and defers to any comments that tribes in Alaska may have to offer regarding the program provisions, as well as any comments or feedback received by the Alaska Native Women's Resource Center.

VI. Inclusion of Tribes in Maine

The EBCI was dismayed to learn that tribes in Maine were left out of VAWA 2013's SDVCJ, and the EBCI is thankful to see that VAWA's restored tribal criminal jurisdiction has been extended to tribes in Maine in this Discussion Draft.[17] The EBCI believes strongly that none of us are safe until all of us are safe, and there is no reason for any federally recognized tribe to remain restricted in its ability to exercise this restored jurisdiction.

VII. Conclusion

In drafting a final version of Title IX, the Committee should consider Congress's reasons for enacting VAWA Title IX in the first instance-recognizing and affirming "the powers of self-government . . . includ[ing] the inherent power" of tribes.[18] The EBCI applauds the work the Committee has done in its Draft to ensure that all federally recognized tribes will be able to implement VAWA's restored criminal jurisdiction, including tribes located in Alaska. Though there are still minor changes to be made, the EBCI is confident that the Committee's final version of Title IX will meaningfully update existing law and empower tribes to seek justice in their communities. This Discussion Draft, if it becomes law, will allow tribes to better protect their citizens living within their borders and, ultimately, will go a long ways towards addressing the epidemic of violence our Tribal Nations and citizens face.

Thank you to the leadership of both Chairman Schatz and Vice Chairman Murkowski, and the work of your excellent staffs, for their vision and leadership in making such an excellent Discussion Draft possible. This is truly a historic moment.

Sgi,

RICHARD SNEED, *Principal Chief*

FORT PECK ASSINIBOINE AND SIOUX TRIBES' RED BIRD WOMAN CENTER
December 22, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs:

I write on behalf of the Fort Peck Assiniboine and Sioux Tribes' Red Bird Woman Center to support the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released on December 8, 2021, which includes important provisions that will improve safety and justice in tribal

[15] Discussion Draft § 903.
[16] Discussion Draft §§ 911–913.
[17] Discussion Draft § 904.
[18] 25 U.S.C. § 1304(b)(1).

communities. Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the bipartisan Title IX discussion draft are desperately needed today.

A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence.

Tribal Nations have been exercising jurisdiction over non-Indian domestic violence offenders under VAWA 2013 for over 8 years. Exercising Tribal Nations have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families while upholding the due process rights of all defendants in tribal courts. Despite these successes, perpetrators still find gaps in the law. Victims of sexual violence, child abuse, stalking, trafficking, elder abuse, and assaults against law enforcement officers deserve the same protections that Congress affords to domestic violence victims on tribal lands in VAWA 2013.

It is particularly important that the final bipartisan VAWA bill recognizes that Indian children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. However, federal law failed to restore tribal jurisdiction to prosecute these crimes. The Title IX discussion draft language would restore this category of jurisdiction and allow us to protect our Indian children in our tribal justice systems.

We ask that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but not the bipartisan Senate Committee on Indian Affairs discussion draft. Indian elders are an integral part of our tribal communities to whom we owe respect and care. Indian elders carry our cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA.

We also appreciate that the Title IX discussion draft recognizes that VAWA 2013 inadvertently left our tribal police officers and detention personnel at risk. Domestic violence cases are both the most common and the most dangerous calls that law enforcement receives. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian defendants, but as of now, Tribal Nations remain unable to prosecute these crimes as assaults on law enforcement was not a restored category of jurisdiction in VAWA 2013. This creates an obvious public safety concern. In order to ensure that the Title IX discussion draft fully rectifies this issue, we strongly recommend amending the draft language on page ten to remove the requirement that the assault must be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require the Tribal Nation to first prove the underlying covered crime before they could prosecute for the assault, which does not fully fix the public safety concern of police officers or detention personnel. This creates significant confusion that likely would have to be worked out in the courts. We ask that the language fully cover all assaults of tribal justice personnel and not mention anything related to a "covered crime."

Section 904 provides a local solution for the local problem of criminal victimization in Indian country. We are pleased to see that the bipartisan Title IX discussion draft continues to build on VAWA's promise and includes key priorities that have been identified by Tribal Nations to further enhance safety for victims in tribal communities.

The Title IX discussion draft clarifies that Tribal Nations in Maine are included in the law and creates a pilot project to address the unique needs in Alaska. We fully support the inclusion of all Tribal Nations in VAWA. Alaska Native women are over-represented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. The Title IX discussion draft includes a pilot project that will enable a limited number of Tribal Nations in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages.

In addition to the lifesaving provisions outlined above, the bipartisan Title IX discussion draft creates a reimbursement program under which the Attorney General may reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction. We would ask that that reimbursement program language be expanded to include reimbursements for trial and appellate courts (including facili-

ties maintenance, renovation, and rehabilitation.) Additionally, the time for the Attorney General to develop regulations for the program should be shortened from within one year to within six months after the effective date to ensure that this important program is implemented quickly to address the urgent need in Indian Country.

The Title XI discussion draft also allows Tribal Nations to utilize the Bureau of Prisons (BOP) to house defendants serving sentences of more than one year and increases Tribal Nations' access to the National Crime Information Database. Both of these additions to VAWA will go a long way towards ensuring Tribal Nations are able to implement this restored jurisdiction fully and most effectively.

We fully support the purpose of Title IX, which is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. We also support providing additional resources to address violence against all Native women. However, the new language in the Section 901 Findings and Purposes, which adds Native Hawaiians, urban Indians communities, Native Americans, and Native American communities, jeopardizes the long-term enforcement of the law and detracts from the key purpose of Title IX. For those reasons we strongly recommend that all Native Hawaiian, urban Indian communities, Native American, and Native American communities language be removed from Section 901. The language in Section 901 should solely focus on American Indians, Alaska Natives, and Indian tribes in order to protect tribal sovereignty, which is consistent with the purpose of the Title IX.

We urge all members of the Senate Committee on Indian affairs to support the provisions included in the bipartisan Title IX discussion draft and to become a cosponsor of the full bipartisan Senate VAWA bill that incorporates all of the discussion draft provisions and our recommended changes.

Sincerely,

SUSAN PARKER, *Program Director*

INDIAN HEALTH CARE RESOURCE CENTER OF TULSA
December 21, 2021

Dear Chairman Schatz and Vice Chairman Murkowski:

Thank you for the opportunity to provide comments on the Violence Against Women Act (VAWA) reauthorization discussion draft. On behalf of Indian Health Care Resource Center in Tulsa, Oklahoma, we hereby submit our written comments and recommendations in response to the tribal title draft1 and larger bill.

Indian Health Care Resource Center provides cutting edge care for almost 12,000 Native Americans annually. The wide array of integrated services operates through a multidisciplinary, patient-centered, medical home model of care. The one-stop shop houses the following services: (1) Primary Care for all ages; (2) Internal Medicine; (3) Pediatrics including well child; (4) Obstetrics; (5) Public Health including a new COVID–19 and Immunization Clinic; (6) Optometry; (7) Dentistry; (8) Pharmacy; (9) Laboratory; (10) Radiology including x-ray, mammography, and ultra sound; (11) Behavioral Health; (12) Substance Abuse Prevention and Treatment; (13) Systems of Care Wrap Around Services; 14) Social service connection through medical social workers; (15) Domestic violence prevention and intervention; (16) Health Education and Wellness including diabetes management, dietitians, and exercise; (17) Transportation, and (18) Programs for Youth including suicide and drug abuse prevention and cultural activities.

Comments

Urban Indian Organizations (UIOs) like ours provide much more than just health services to American Indians and Alaska Natives including but not limited to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), housing services, social services, community advocacy, and other resources to victims of domestic violence. Many UIOs conduct home visits and are at the front-line to identify domestic violence and other risk factors for Missing and Murdered Indigenous People (MMIP). Urban Indian inclusion in VAWA is important to strengthen these critical services provided at UIOs for American Indians/Alaska Natives (AI/ANs), and the National Council of Urban Indian Health (NCUIH) has advocated for urban Indians to be added in the Senate draft bill. This is a huge accomplishment given that the House bill on VAWA (H.R. 1620) excluded UIOs and urban Indian communities.

During the White House Tribal Nations Summit last month, President Biden signed an Executive Order (E.O.)[2] on addressing the crisis of MMIP with UIO inclusion. The E.O. specifically mentions the Department of Health and Human Services (HHS) and the Secretary of the Interior conferring with UIOs on developing a comprehensive plan to support initiatives related to MMIP. NCUIH and UIOs support urban confer among federal agencies on policies that impact urban AI/ANs and have been working on an urban confer bill[3] that recently passed the House (406–17) with overwhelming support. The E.O also highlights the need for improved data surrounding this crisis as it relates to urban Indian communities. NCUIH has, and continues to, advocate for gathering more data on AI/AN communities and Missing and Murdered Indigenous People. On July 2, 2021, NCUIH submitted comments to the Department of Justice on Savannah's Act requesting UIOs and urban Indians to be incorporated into improving data relevancy, access, and resources. We look forward to participating in that effort and we hope that VAWA will help us combat this epidemic in Indian country.

SNAHC would like to express appreciation for the inclusion of urban Indians in 11 locations of the Senate draft bill. We respectfully ask you retain the following provisions in the final Senate bill:

- Bill Amendment: SEC. 101. Stop Grants

  —Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10441 et seq.) is amended—

  —(25) paying any fees charged by any governmental authority for furnishing a victim or the child of a victim with any of the following documents:
- "(B) An identification card issued to the individual by a State or Tribe, that shows that the individual is a resident of the State or a member of the Tribe."; and

  —(B) in Subsection (d)—

  —i) in paragraph (1)-

  —II) in subparagraph (D), by inserting ", urban Indian communities, and Native Hawaiian communities" after "assisting Indian tribes"; (ii) in paragraph (2)-

  —I) in subparagraph (A)(iii), by inserting ", urban Indian communities, and Native Hawaiian communities" after "provide services to Indian tribes"; and

  —II) in subparagraph (B), by inserting ", urban Indian communities, and Native Hawaiian communities" after "in areas where Indian tribes";
- Bill Amendment: SEC. 105. Outreach and Services to Underserved Population Grants.

  —Section 120 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (34 U.S.C. 20123) is amended—

  —(2) in subsection (b)(3), by inserting "urban Indian, Native Hawaiian," before "or local organization";
- Bill Amendment: SEC. 108. Enhancing Culturally Specific Services for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

  —Section 121 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (34 U.S.C. 20124) is amended-

  —"(4) DISTRIBUTION.—Of the total amount available for grants under this section, not less than 40 percent of such funds shall be allocated for programs or projects that meaningfully address non-intimate partner relationship sexual assault.";
- (3) in subsection (c)—

  —(A) in paragraph (1), by striking "and" at the end;

  —(B) in paragraph (2), by striking the period at the end and inserting "; and"; and

  —(C) by adding at the end the following:

  —"(3) tribal nonprofit organizations, Native Hawaiian organizations, and urban Indian organizations.";
- Bill Amendment: SEC. 110. Pilot Program on Restorative Practices.

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[2] Executive Order on Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People: *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/15/executive-order-on-improving-public-safety-and-criminal-justice-for-native-americans-and-addressing-the-crisis-of-missing-or-murdered-indigenous-people/*

[3] Urban Indian Health Confer Act: *https://www.congress.gov/117/meeting/house/114098/documents/BILLS-117522Iih.pdf*

—a) IN GENERAL.—The Violence Against Women Act of 1994 (title IV of Public Law 103–322), as amended by section 205, is further amended by adding at the end the following:

—"Subtitle R-Restorative Practices

—"SEC. 41801. PILOT PROGRAM ON RESTORATIVE PRACTICES.

- "(a) DEFINITIONS.—In this section:

—"(2) ELIGIBLE ENTITY.—The term 'eligible entity' means-

—A) a State;

—B) a unit of local government;

—C) a tribal government;

—D) a tribal organization;

—E) a victim service provider;

—F) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); and

—G) a private or public nonprofit organization, including

—(i) a tribal nonprofit organization; and

—ii) a faith-based nonprofit organization.

- Bill Amendment: SEC. 302. Creating Hope through Outreach, Options, Services, and Education (CHOOSE) for Children and Youth

—Section 41201 of the Violence Against Women Act of 1994 (34 U.S.C. 12451) is amended—

—2) in subsection (c)—

- (A) in paragraph (1)(A)—

—(ii) by inserting "Native Hawaiian organization, urban Indian organization," before "or population-specific community-based organization"; and

- Bill Amendment: SEC. 506. Expanding Access to Unified Care.

—(f) Authorization of Appropriations.—

—2) Set-Aside.—Of the amount appropriated under this subsection for a fiscal year, the Secretary shall reserve 15 percent of such amount for purposes of making grants to entities that are affiliated with Indian Tribes or Tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), or Urban Indian organizations (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C.1603)). Amounts reserved may be used to support referrals and the delivery of emergency first aid, culturally competent support, and forensic evidence collection training.

- Bill Amendment: SEC. 507. Expanding Access to Forensics for Victims of Interpersonal Violence

—(a) Definitions.—In this section:
—(9) URBAN INDIAN ORGANIZATION.—The term "Urban Indian organization" has the meaning given such term in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

- (b) Demonstration Grants for Comprehensive Forensic Training.—

—(6) Authorization of Appropriations.—

—(B) Set-Aside.—Of the amount appropriated under this paragraph for a fiscal year, the Secretary shall reserve 10 percent for purposes of making grants to support training and curricula that addresses the unique needs of Indian Tribes, Tribal organizations, Urban Indian organizations, and Native Hawaiian organizations. Amounts so reserved may be used to support training, referrals, and the delivery of emergency first aid, culturally competent support, and forensic evidence collection training.

- Bill Amendment: SEC. 901. Findings and Purposes

—(b) Purposes.—The purposes of this subtitle are-

—3) to empower Tribal governments and Native American communities, including urban Indian communities and Native Hawaiian communities, with the resources and information necessary to effectively respond to cases of domestic violence, dating violence, stalking, sex trafficking, sexual violence, and missing and murdered Native Americans; and

—4) to increase the collection of data related to missing and murdered Native Americans and the sharing of information among Federal, State, Tribal, and

local officials responsible for responding to and investigating crimes impacting Indian Tribes and Native American communities, including urban Indian communities and Native Hawaiian communities, especially crimes relating to cases of missing and murdered Native Americans.

Closing

In closing, Indian Heath Care Resource Center would like to thank the members of the Senate Committee on Indian Affairs for including urban AI/ANs in this important piece of legislation. We urge Congress to continue its support of all AI/ANs by retaining these provisions in the final VAWA reauthorization.

Sincerely,

CARMELITA SKEETER, *CEO*

TULALIP TRIBE
December 21, 2021

Chairman Schatz and Vice-chair Murkowski and the members of the Senate Committee on Indian Affairs,

I am a tribal judge for the Tulalip Tribes and a citizen of the Chickasaw Nation. I am writing to you as a private citizen and not on the behalf of the Tulalip Tribes or my own tribe, and not in my official capacity as a judge. My views and opinions are my own and not the official views and opinions of any other entity or organization and offered for the purpose of bettering the law, as requested by the Inter-Tribal Working Group.

As a tribal judge, I regularly exercise jurisdiction over a range of crimes that occur on the reservation, including felony enhanced sentence crimes under TLOA and special domestic violence crimes under VAWA. The Tulalip Tribal Court was one of the original VAWA SDVCJ Pilot Courts. Our Court has been exercising VAWA jurisdiction for some time now.

I wanted to discuss briefly our experience here. At Tulalip, we give due process protections of equal or greater degree than the Federal government does. We are a respected Court locally. In addition to my other dockets, I preside over the adult criminal wellness docket, a type of drug court. Our criminal wellness program is a mentor Court for the National Association of Drug Court Professionals (NADCP), meaning other courts observe our dockets and we offer them mentorship on how to implement their own programs. We do this not only for other tribal courts, but for state courts as well, and we have received excellent feedback about our operations from these courts, including the state courts who have observed, and from our NADCP evaluations. We have something to contribute and something to teach, and we are happy to do so to create a better system for all of us.

We provide superior due process protections to everyone, not just our VAWA clients. VAWA clients are treated like everyone else in our Court; that is to say with dignity and respect. They appear on our docket somewhat regularly, and yet Federal habeas petitions against our VAWA jurisdiction have been virtually non-existent since we started exercising special domestic violence jurisdiction as a Pilot Court. I believe this is because VAWA clients would typically rather be prosecuted here than in the State. That is for a variety of reasons, including that we offer more services than the State. For instance, we have an over-dose mapping program which in addition to gathering data on local overdose deaths, is an outreach program which provides clothing and toiletries to transient criminal defendants, and which connects individuals with various other services and housing. They have even been known to drive people to treatment on the other end of the State when I order someone into treatment. We offer probation talking circles, we conduct native crafting events in the courthouse, we have a recovery house called The Healing Lodge, and have recently built a tiny-home village for the homeless on the reservation. Recently, Tulalip has begun providing hotel vouchers to the homeless during cold weather. A typical person is much better off being prosecuted here than elsewhere.

Of course I am always pleased to see the Senate make attempts to correct the Federal government's historical errors in interfering with our inherent jurisdiction and natural rights as a native people, therefore I am happy to see the Senate's current VAWA reauthorization attempt, which goes further than I would have predicted the Federal government would go. (Then I again, we natives have learned not to expect much from the Federal government, other than broken promises.)

Reauthorization and expansion of VAWA is certainly needed, and the current proposed Senate bill is a major step in the right direction.

However, there are a few items in the bill that should be corrected:

1. Assault on justice personal—This section says tribes can only have jurisdiction over justice personnel in the context of their duties enforcing "covered crimes." This is confusing and pointless. The bill should simply say that assaulting justice personnel generally is a covered crime. I cannot think of a single reason the Senate should want a situation where a person can be prosecuted for assaulting a police officer investigating a sexual assault, but not embezzlement or some other non-covered crime. If a person is on the reservation assaults a reservation police officer, judge, prosecutor, etc. it is perfectly reasonable to expect to be prosecuted in a reservation court.

2. There is no reimbursement for tribal courts listed in the section on reimbursement. Virtually everyone else involved in the justice system including treatment providers can be reimbursed under the proposed reauthorization, but courts have been strangely left out, even though we bare much of the cost. I have to assume that was inadvertent, and I hope the Senate corrects it.

3. Covered crimes should be broader. For instance, child violence is covered but not child neglect or child endangerment. I'm not sure why we should have jurisdiction over someone who hits a child but not over someone who starves a child. In addition, the covered crimes should also include elder abuse and vulnerable adult abuse, among other crimes that are especially egregious to native people. My people say our children, elders, and vulnerable adults are living treasures. I cannot fathom leaving our elders and vulnerable adults out of the bills.

Regarding that last point, after the Senate finishes reauthorizing and expanding VAWA, I hope Congress does not consider their work accomplished regarding our tribal sovereignty and inherent jurisdiction.

This bill is a band aid on a much larger problem. Every few years, Congress puts another band aid on the problem, grows our jurisdiction a little, and then forgets we exist. I am not going to look a gift horse in the mouth, and I will say thank you for whatever our tribes can get.

Yet, the problem still persists. The problem is the fact that the Federal government thinks it has any say over our jurisdiction to begin with. We are separate sovereigns, with inherent plenary authority over our reservations. No one can take that away from us. Not Congress. Not the Supreme Court. My people, the Chickasaws, call ourselves unconquered and unconquerable. Yet you pass legislation telling us whether we have jurisdiction over our domain.

President George Washington gave my people certain assurances himself. He wrote a letter to our great minko (king) Piaminko, who the President called "the Mountain Leader, Head Warrior, and First Minister", in which he reassured his "brothers" the Chickasaws that the United States would uphold its treaties with the Chickasaws. The word "brothers" was not lost on the Chickasaws. Before the revolution, the Chickasaws referred to King George as our "father" as a sign of respect to his status as king of his people. George Washington knew this when he allied with us, and by calling us "brothers" he was signaling equality between us and the United States. Washington told us in his letter that the U.S. was not interested in our lands and "if any bad people tell you otherwise they deceive you, and are our enemies, and the enemies of the United States." He asked us to "hold fast the Chain of Friendship, and do not believe any evil Reports against the justice and integrity of the United States." Proclamation by the President, August 26, 1790, and the President to the Chickasaw Nation, December 30, 1790, in The Territorial Papers of the United States, ed. Clarence Edwin Carter, 28 vols. (Washington, D.C.: GPO 1934) 4:34, 41.

We were always to be equals. The future that Washington described was not one where Congress dictated to us how to conduct ourselves on our own land. Do you not trust us? You mete out a little bit of jurisdiction now and then, when you want to remind us to hold our hands out to you for more. Why not give us back the rest of our criminal jurisdiction?

If you can trust us tribal judges with sexual assaults and domestic violence, then why can't you trust us with shoplifts and drug possession cases? Are we tribal judges competent to sentence people for rapes, but incompetent to sentence them for unlawful camping or littering?

To reference Harry Browne, the Federal government breaks our legs, then gives us a crutch and says Tribes would not be able to walk without the Federal government. We should not have to beg for our jurisdiction back. The Federal government should have never interfered with our jurisdiction to begin with.

6Oliphant v. Suquamish took our criminal jurisdiction over "non-Indians" away in 1978. Not 1778 or 1878. 1978. Let that sink in. Arguably one of the most racist court decisions in the history of this country is a relatively modern decision. The entire premise of the decision is tribal judges cannot be trusted with criminal juris-

diction over all people who choose to commit crimes within the boundaries of the reservation. They can only be trusted with jurisdiction over natives. Why? Because the race of the person in front of us in court matters? When else does it matter? Imagine if the Federal government told the State of Washington they could only exercise criminal jurisdiction over people of certain ethnicities. How would that go over?

Before VAWA, the position of the Federal government was clear. The Federal government effectively said natives who operate tribal courts are incompetent to give people due process. The Federal government prohibited us from exercising authority over "non-Indians," because apparently we should only be allowed to be incompetent to other natives.

Then Congress eventually passed VAWA. You let us prove we are in fact competent after all (and always were.) Only now that we have proved that, instead of giving us back our jurisdiction over all people who commit crimes on our reservations, you still hold most of it back. Why? So that you can give us a little more in a few years when you want to remind us who to vote for?

The Republicans on the committee should listen closely to this. The Democrats will always get native votes if the Democrats get to keep bringing up VAWA reauthorization every few years. They give us a little bit, then throw a party. Then they do it all over again a couple years later. Just give us all our jurisdiction back now and be done with it. Natives will notice and remember.

The reasoning behind the decision to hold back most of our jurisdiction is incoherent. I guarantee not a single Senator could offer a reasonable argument why tribal judges should be allowed to exercise full jurisdiction over sexual assault but not shoplifting, or full jurisdiction over child violence but not unreasonable noise.

The Senate should not be haggling over whether to make covered crimes narrow or slightly less narrow. The Senate should be debating whether to give us all of our criminal jurisdiction back. If you really cared about Indian country like you all claim to, then this would have already been fixed.

We will take what little victories we can get. That is, after all, how we have survived to this point. But we should not have to constantly beg for what we have a right to. It is a travesty that the Supreme Court has never overturned Oliphant v. Suquamish. Perhaps they will someday. Yet, it is an even bigger travesty that the immediate reaction of Congress to *Oliphant* did not involve legislation to fix it, and still never has. The Congress of the United States is not helpless to do anything about this.

Congress can give us our jurisdiction back any time. Congress simply chooses not to. And every year that passes by is another year you choose not to. And now 43 years have passed, and you are just now letting us have jurisdiction over people that beat native kids.

How much time has to pass before you decide to fix the real problem. Address the issues with this reauthorization and pass it. Sure. Of course you should. The perfect should not be the enemy of the good. And then next year get to work giving us back the rest of our jurisdiction. You want to right the wrongs? That is what you were elected to do. Right them. Right the whole wrong.

Thanks for your time.

JOSHUA HEATH, *Associate Judge*

BUTTE NATIVE WELLNESS CENTER
December 20, 2021

Dear Chairman Schatz and Vice Chairman Murkowski:

Thank you for the opportunity to provide comments on the Violence Against Women Act (VAWA) reauthorization discussion draft. On behalf of Butte Native Wellness Center in Butte, MT, we hereby submit our written comments and recommendations in response to the tribal title draft1 and larger bill. The Butte Native Wellness Center provides health, mental health, substance abuse and wellness services to more than twelve different tribes. Services are provided within a traditional framework and are designed to accentuate the American Indian/Alaska Native traditions.

Comments

Urban Indian Organizations (UIOs) like ours provide much more than just health services to American Indians and Alaska Natives including but not limited to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), housing services, social services, community advocacy, and other resources to victims of domestic violence. Many UIOs conduct home visits and are at the front-line

to identify domestic violence and other risk factors for Missing and Murdered Indigenous People (MMIP). Urban Indian inclusion in VAWA is important to strengthen these critical services provided at UIOs for American Indians/Alaska Natives (AI/ANs), and the National Council of Urban Indian Health (NCUIH) has advocated for urban Indians to be added in the Senate draft bill. This is a huge accomplishment given that the House bill on VAWA (H.R. 1620) excluded UIOs and urban Indian communities.

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SNAHC would like to express appreciation for the inclusion of urban Indians in 11 locations of the Senate draft bill. We respectfully ask you retain the following provisions in the final Senate bill:

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  —Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10441 et seq.) is amended—

  —(25) paying any fees charged by any governmental authority for furnishing a victim or the child of a victim with any of the following documents:
- "(B) An identification card issued to the individual by a State or Tribe, that shows that the individual is a resident of the State or a member of the Tribe."; and

  —(B) in Subsection (d)—

  —i) in paragraph (1)-

  —II) in subparagraph (D), by inserting ", urban Indian communities, and Native Hawaiian communities" after "assisting Indian tribes"; (ii) in paragraph (2)-

  —I) in subparagraph (A)(iii), by inserting ", urban Indian communities, and Native Hawaiian communities" after "provide services to Indian tribes"; and

  —II) in subparagraph (B), by inserting ", urban Indian communities, and Native Hawaiian communities" after "in areas where Indian tribes";
- Bill Amendment: SEC. 105. Outreach and Services to Underserved Population Grants.

  —Section 120 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (34 U.S.C. 20123) is amended—

  —(2) in subsection (b)(3), by inserting "urban Indian, Native Hawaiian," before "or local organization";
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  —Section 121 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (34 U.S.C. 20124) is amended-

  —"(4) DISTRIBUTION.—Of the total amount available for grants under this section, not less than 40 percent of such funds shall be allocated for programs or projects that meaningfully address non-intimate partner relationship sexual assault.";
- (3) in subsection (c)—

  —(A) in paragraph (1), by striking "and" at the end;

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[2] Executive Order on Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People: *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/15/executive-order-on-improving-public-safety-and-criminal-justice-for-native-americans-and-addressing-the-crisis-of-missing-or-murdered-indigenous-people/*

[3] Urban Indian Health Confer Act: *https://www.congress.gov/117/meeting/house/114098/documents/BILLS-117522Iih.pdf*

—(B) in paragraph (2), by striking the period at the end and inserting "; and"; and

—(C) by adding at the end the following:

—"(3) tribal nonprofit organizations, Native Hawaiian organizations, and urban Indian organizations.";

- Bill Amendment: SEC. 110. Pilot Program on Restorative Practices.

—a) IN GENERAL.—The Violence Against Women Act of 1994 (title IV of Public Law 103–322), as amended by section 205, is further amended by adding at the end the following:

—"Subtitle R-Restorative Practices

—"SEC. 41801. PILOT PROGRAM ON RESTORATIVE PRACTICES.

- "(a) DEFINITIONS.—In this section:

—"(2) ELIGIBLE ENTITY.—The term 'eligible entity' means-

—A) a State;

—B) a unit of local government;

—C) a tribal government;

—D) a tribal organization;

—E) a victim service provider;

—F) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); and

—G) a private or public nonprofit organization, including

—(i) a tribal nonprofit organization; and

—ii) a faith-based nonprofit organization.

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—Section 41201 of the Violence Against Women Act of 1994 (34 U.S.C. 12451) is amended—

—2) in subsection (c)—

- (A) in paragraph (1)(A)—

—(ii) by inserting "Native Hawaiian organization, urban Indian organization," before "or population-specific community-based organization"; and

- Bill Amendment: SEC. 506. Expanding Access to Unified Care.

—(f) Authorization of Appropriations.—

—2) Set-Aside.—Of the amount appropriated under this subsection for a fiscal year, the Secretary shall reserve 15 percent of such amount for purposes of making grants to entities that are affiliated with Indian Tribes or Tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), or Urban Indian organizations (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C.1603)). Amounts reserved may be used to support referrals and the delivery of emergency first aid, culturally competent support, and forensic evidence collection training.

- Bill Amendment: SEC. 507. Expanding Access to Forensics for Victims of Interpersonal Violence

—(a) Definitions.—In this section:
—(9) URBAN INDIAN ORGANIZATION.—The term "Urban Indian organization" has the meaning given such term in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

- (b) Demonstration Grants for Comprehensive Forensic Training.—

—(6) Authorization of Appropriations.—

—(B) Set-Aside.—Of the amount appropriated under this paragraph for a fiscal year, the Secretary shall reserve 10 percent for purposes of making grants to support training and curricula that addresses the unique needs of Indian Tribes, Tribal organizations, Urban Indian organizations, and Native Hawaiian organizations. Amounts so reserved may be used to support training, referrals, and the delivery of emergency first aid, culturally competent support, and forensic evidence collection training.

- Bill Amendment: SEC. 901. Findings and Purposes

—(b) Purposes.—The purposes of this subtitle are-

—3) to empower Tribal governments and Native American communities, including urban Indian communities and Native Hawaiian communities, with the resources and information necessary to effectively respond to cases of domestic violence, dating violence, stalking, sex trafficking, sexual violence, and missing and murdered Native Americans; and

—4) to increase the collection of data related to missing and murdered Native Americans and the sharing of information among Federal, State, Tribal, and local officials responsible for responding to and investigating crimes impacting Indian Tribes and Native American communities, including urban Indian communities and Native Hawaiian communities, especially crimes relating to cases of missing and murdered Native Americans.

Closing

In closing, Butte Native Wellness Center would like to thank the members of the Senate Committee on Indian Affairs for including urban AI/ANs in this important piece of legislation. We urge Congress to continue its support of all AI/ANs by retaining these provisions in the final VAWA reauthorization.

Sincerely,

SHANNON PARKER, *Executive Director*

TULALIP TRIBES
December 20, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs:

On behalf of the Tulalip Tribes, we write to support the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released December 8, 2021, which includes important provisions that will improve safety and justice in tribal communities. We will provide a brief overview of the Tulalip Tribes, its Special Domestic Violence Criminal Jurisdiction (SDVCJ) Program, the gaps in the 2013 we are experiencing, and offer ideas on how to improve your discussion draft.

Background on the Tulalip Tribes

The Tulalip community is located on a 22,000-acre Reservation bordering on the east to Interstate 5 corridor, 35 miles north of Seattle. This area has recently experienced rapid population growth and development. Tulalip has approximately 5,000 enrolled members, but most Reservation residents are non-Indian due to the history of allotments. Today, the Tribes or Tribal members hold approximately 60 percent of the Reservation lands with the balance being in non-Indian ownership. The large number of non-Indian residents on the Tulalip Indian Reservation, the geographic location of the reservation, and the economic activity on the reservation generated by the Tulalip Tribes has contributed to an increased number of crimes committed against members of the Tulalip Tribes, including missing tribal members and human trafficking.

Special Domestic Violence Criminal Jurisdiction

The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) recognized tribal jurisdiction over certain non-Indians who commit domestic violence crimes against Indians. The Tulalip Tribes and its Tribal Court was one of the first three pilot project courts to exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ) over non-Indians who commit domestic violence related crimes against Indians under VAWA 2013 (25 USC 1304). As a pilot project tribe, compliance with 2013 VAWA provisions was critical as we moved forward with SDVCJ implementation. The Tulalip Tribes already had a number of 2013 VAWA key requirements in place but we still took substantial efforts to ensure compliance set forth in the law through the creation of a SDVCJ advisory council who spent significant resources in updating codes, court rules, policies, personnel and administrative capacity within the tribal court, prosecutor office, and DV program, to support a successful program. Tulalip also spent significant resources in program development to ensure it had the appropriate staff to run a successful Special Domestic Violence Criminal Jurisdiction (SDVCJ) program.

The Tulalip SDVCJ program has been a huge success. Since February 20, 2014, through December 31, 2019, we have had 36 defendants of age range 18–54. 16 Caucasian, 6 African Americans, 7 Hispanic, 1 Middle Eastern, 1 non-enrolled Canadian Indian, 2 non-enrolled Native American, 3 mixed races. Out of 47 cases, there have

been 16 case convictions, 1 case acquittal, there are 12 cases pending, 12 cases dismissed, 4 deferrals, 2 cases not filed.

Unfortunately, the exercise of SDVCJ has exposed numerous jurisdictional gaps in the 2013 law that allow non-Indians to evade prosecution for other crimes committed. These crimes range from child abuse and assault, sexual assault, rape, sex trafficking, kidnapping, and drug related crimes. Domestic Violence crimes against native women do not take place in a vacuum and these crimes are going unpunished.

At Tulalip, the most glaring jurisdictional gap has been the inability to prosecute crimes against children. Children are often in the home and are the first responders to DV incidents, either coming to the aid of their mother or being used as a physical pawn during an incident. Indian children are often victims of crime and these crimes are rarely, if ever, prosecuted by the State or U.S. Attorney. The non-Indian is not prosecuted for these crimes because under the 2013 tribal provisions we do not have jurisdiction to prosecute these crimes. The tribes who have been exercising jurisdiction over non-Indians pursuant to VAWA 2013 report that children are involved in their cases nearly 60 percent of the time as witnesses or victims. [1] Indeed, well over half of the cases prosecuted under Tulalip's SDVCJ program involved crimes against children, and only one of these cases was prosecuted by the federal government as mentioned above. The remainder of the cases at Tulalip were not prosecuted. This is a grave injustice. Indian children deserve the same protections afforded to non-Indian children and under the current legal system Indian children do not receive those same protections.

Under the Tulalip SDVCJ program, during 19 of the incidents, a child or children were present, and 8 children were victims of crime. Of the crimes in which children were victims of crime, only 1 case was prosecuted because underlying crime transferred to federal court. The State of Washington has not taken action on other crimes in which children were victims.

For these reasons, we are optimistic to see that the final bipartisan VAWA bill recognizes that Indian children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. Its is critical that jurisdiction is restored that allows us to protect our Indian children in our tribal justice systems.

We ask that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but not the bipartisan Senate Committee on Indian Affairs discussion draft. Indian elders are an integral part of our tribal communities to whom we owe respect and care. Indian elders carry our cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA.

We also appreciate that the Title IX discussion draft recognizes that VAWA 2013 inadvertently left our tribal police officers and detention personnel at risk. Domestic violence cases are both the most common and the most dangerous calls that law enforcement receives. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian defendants, but as of now, Tribal Nations remain unable to prosecute these crimes as assaults on law enforcement was not a restored category of jurisdiction in VAWA 2013. This creates an obvious public safety concern. In order to ensure that the Title IX discussion draft fully rectifies this issue, we strongly recommend amending the draft language on page ten to remove the requirement that the assault must be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require the Tribal Nation to first prove the underlying covered crime before they could prosecute for the assault, which does not fully fix the public safety concern of police officers or detention personnel. This creates significant confusion that likely would have to be worked out in the courts. We ask that the language fully cover all assaults of tribal justice personnel and not mention anything related to a "covered crime." Section 904 provides a local solution for the local problem of criminal victimization in Indian country. We are pleased to see that the bipartisan Title IX discussion draft continues to build on VAWA's promise and includes key priorities that have been identified by Tribal Nations to further enhance safety for victims in tribal communities.

Additionally, we support the purpose of Title IX, which is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. We also support providing additional resources to address violence against all Native women. However, the new language in the Section 901 Findings and Purposes, which adds Native Hawaiians, urban Indians communities, Native Americans, and Native

[1] NCAI, "VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five-Year Report," p. 28,(2018).

American communities, jeopardizes the long-term enforcement of the law and detracts from the key purpose of Title IX. For those reasons we strongly recommend that all Native Hawaiian, urban Indian communities, Native American, and Native American communities language be removed from Section 901. The language in Section 901 should solely focus on American Indians, Alaska Natives, and Indian tribes in order to protect tribal sovereignty, which is consistent with the purpose of the Title IX.

We urge all members of the Senate Committee on Indian affairs to support the provisions included in the bipartisan Title IX discussion draft and to become a cosponsor of the full bipartisan Senate VAWA bill that incorporates all of the discussion draft provisions and our recommended changes.

Thank you,

TERI GOBIN, *Chairwoman*

TANGIRNAQ NATIVE VILLAGE, WOODY ISLAND TRIBAL COUNCIL
December 21, 2021

Dear Chairman Schatz and Vice-Chairman Murkowski:

The Tangirnaq Native Village urges prompt introduction and passage of the December 8, 2021 Discussion Draft of Title IX to the Violence Against Women Act (VAWA), and specifically swift passage of subtitle B—Alaska Tribal Public Safety Empowerment.

Alaska's public safety crisis and the disproportionate impact upon Alaska Native people, particularly Alaska Native women and children, is well-documented and known to each of you. I will not repeat the horrifying statistics and data here.

The Tangirnaq Native Village joins countless Alaska tribes and tribal organizations in urging Congressional action to address Alaska's public safety crisis. Clarifying tribal jurisdiction over Indian people in Alaska Native villages, and opening a pilot project to explore tribal jurisdiction over domestic violence-related crimes committed by non-Indians against Indian victims, is absolutely essential to achieving public safety in Alaska Native villages; to protecting Indian women and children from violence; and to holding offenders accountable.

Numerous federal reports document the current public safety crisis that has long plagued Alaska Native communities. Alaska Tribes are best suited to address this crisis, but only if Congress provides the essential tools that will empower the tribes to do so. The Committee's Discussion Draft provides these necessary tools.

Thank you for the opportunity to comment on the Discussion Draft. And thank you for your efforts to secure the tools of justice and safety, to empower Alaska Tribes to reduce violence in our own communities and to promote justice, self-governance, and safety.

Quyanaa (thank you),

ALEX CLEGHORN, *President*

RINCON BAND OF LUISEÑO INDIANS
December 21, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs:

I write on behalf of the Rincon Band of Luiseño Indians to support the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released on December 8, 2021, which includes important provisions that will improve safety and justice in tribal communities. Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the bipartisan Title IX discussion draft are desperately needed today.

A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence.

Tribal Nations have been exercising jurisdiction over non-Indian domestic violence offenders under VAWA 2013 for over 8 years. Exercising Tribal Nations have held serial offenders accountable and have brought justice and safety to hundreds of vic-

tims and their families while upholding the due process rights of all defendants in tribal courts. Despite these successes, perpetrators still find gaps in the law. Victims of sexual violence, child abuse, stalking, trafficking, elder abuse, and assaults against law enforcement officers deserve the same protections that Congress affords to domestic violence victims on tribal lands in VAWA 2013.

It is particularly important that the final bipartisan VAWA bill recognizes that Indian children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. However, federal law failed to restore tribal jurisdiction to prosecute these crimes. The Title IX discussion draft language would restore this category of jurisdiction and allow us to protect our Indian children in our tribal justice systems.

We ask that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but not the bipartisan Senate Committee on Indian Affairs discussion draft. Indian elders are an integral part of our tribal communities to whom we owe respect and care. Indian elders carry our cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA.

We also appreciate that the Title IX discussion draft recognizes that VAWA 2013 inadvertently left our tribal police officers and detention personnel at risk. Domestic violence cases are both the most common and the most dangerous calls that law enforcement receives. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian defendants, but as of now, Tribal Nations remain unable to prosecute these crimes as assaults on law enforcement was not a restored category of jurisdiction in VAWA 2013. This creates an obvious public safety concern. In order to ensure that the Title IX discussion draft fully rectifies this issue, we strongly recommend amending the draft language on page ten to remove the requirement that the assault must be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require the Tribal Nation to first prove the underlying covered crime before they could prosecute for the assault, which does not fully fix the public safety concern of police officers or detention personnel. This creates significant confusion that likely would have to be worked out in the courts. We ask that the language fully cover all assaults of tribal justice personnel and not mention anything related to a "covered crime."

Section 904 provides a local solution for the local problem of criminal victimization in Indian country. We are pleased to see that the bipartisan Title IX discussion draft continues to build on VAWA's promise and includes key priorities that have been identified by Tribal Nations to further enhance safety for victims in tribal communities.

The Title IX discussion draft clarifies that Tribal Nations in Maine are included in the law and creates a pilot project to address the unique needs in Alaska. We fully support the inclusion of all Tribal Nations in VAWA. Alaska Native women are over-represented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. The Title IX discussion draft includes a pilot project that will enable a limited number of Tribal Nations in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages.

In addition to the lifesaving provisions outlined above, the bipartisan Title IX discussion draft creates a reimbursement program under which the Attorney General may reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction. We would ask that that reimbursement program language be expanded to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation.) Additionally, the time for the Attorney General to develop regulations for the program should be shortened from within one year to within six months after the effective date to ensure that this important program is implemented quickly to address the urgent need in Indian Country.

The Title XI discussion draft also allows Tribal Nations to utilize the Bureau of Prisons (BOP) to house defendants serving sentences of more than one year and increases Tribal Nations' access to the National Crime Information Database. Both of these additions to VAWA will go a long way towards ensuring Tribal Nations are able to implement this restored jurisdiction fully and most effectively.

We fully support the purpose of Title IX, which is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. We also support providing additional resources to address violence against all Native women. However, the new language in the Section 901 Findings and Purposes, which adds Native Ha-

waiians, urban Indians communities, Native Americans, and Native American communities,jeopardizes the long-term enforcement of the law and detracts from the key purpose of Title IX. For those reasons we strongly recommend that all Native Hawaiian, urban Indian communities, Native American, and Native American communities language be removed from Section 901. The language in Section 901 should solely focus on American Indians, Alaska Natives, and Indian tribes in order to protect tribal sovereignty, which is consistent with the purpose of the Title IX.

We urge all members of the Senate Committee on Indian affairs to support the provisions included in the bipartisan Title IX discussion draft and to become a cosponsor of the full bipartisan Senate VAWA bill that incorporates all of the discussion draft provisions and our recommended changes.

Sincerely,

BO MAZZETTI, *Tribal Chairman*

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
December 21, 2021

Dear Chair Schatz and Vice-Chair Murkowski:

I write on behalf of the Sault Ste. Marie Tribe of Chippewa Indians to support the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft which includes important provisions that will improve safety and justice in tribal communities. As a Tribe implementing VAWA 2013 Tribal jurisdiction, I can attest that these proposed changes in the law are important to making tribal communities safer.

As the Committee has well-documented, Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the bipartisan Title IX discussion draft are desperately needed today. A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence. Thus, clarifying that a Tribe's expanded jurisdiction includes these crimes is vital.

We are also so appreciative that your draft legislation recognizes that Indian children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. We ask that the Title IX discussion draft include the provision from the House bill, H.R. 1620, to include crimes against elders. Indian elders are an integral part of our tribal communities to whom we owe respect and care. We are also hopeful that the measure will include the House bill's provision that recognizes Tribes' inherent jurisdiction over all crimes against law enforcement, detention, and court personnel not only those that deemed "covered crimes".

We also support the new grant program to reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction and the extension of the Bureau of Prisons (BOP) program first authorized in the Tribal Law Order Act. Finally, we support the expanded tribal access to the National Crime Information Database. This is important to addressing the plague that is missing and murdered indigenous women in America.

Please let me know if there is anything you need me to do I support of your efforts from my role as Chairperson of my Tribe or from leadership roles I serve through the United Tribes of Michigan, Midwest Alliance of Sovereign Tribes, or the National Congress of American Indians.

Again, we appreciate your leadership in drafting this important measure and look forward to working with you in the New Year.

Respectfully,

AARON A. PAYMENT, *Chairperson*

JAMESTOWN S'KLALLAM TRIBE
December 22, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs:

I write on behalf of the Jamestown S'Klallam Tribe to support the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released on December 8, 2021, which includes important provisions that will improve safety and justice in tribal communities.

Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the bipartisan Title IX discussion draft are desperately needed today. A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study found that 90 percent of these victims were victimized by a non-Indian perpetrator. Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence.

Tribal Nations have been exercising jurisdiction over non-Indian domestic violence offenders under VAWA 2013 for over 8 years including our Tribe. Exercising Tribal Nations have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families while upholding the due process rights of all defendants in tribal courts. Despite these successes, perpetrators still find gaps in the law. Victims of sexual violence, child abuse, stalking, trafficking, elder abuse, and assaults against law enforcement officers deserve the same protections that Congress affords to domestic violence victims on tribal lands in VAWA 2013. It is particularly important that the final bipartisan VAWA bill recognizes that Indian children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. However, federal law failed to restore tribal jurisdiction to prosecute these crimes.

The Title IX discussion draft 2 language would restore this category of jurisdiction and allow us to protect our Indian children in our tribal justice systems. We ask that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but not the bipartisan Senate Committee on Indian Affairs discussion draft.

Indian elders are an integral part of our tribal communities to whom we owe respect and care. Indian elders carry our cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA. We appreciate that the Title IX discussion draft recognizes that VAWA 2013 inadvertently left our tribal police officers and detention personnel at risk. Domestic violence cases are both the most common and the most dangerous calls that law enforcement receives. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian defendants, but as of now, Tribal Nations remain unable to prosecute these crimes as assaults on law enforcement was not a restored category of jurisdiction in VAWA 2013.

This situation creates an obvious public safety concern. To ensure that the Title IX discussion draft fully rectifies this issue, we strongly recommend amending the draft language on page ten to remove the requirement that the assault must be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require the Tribal Nation to first prove the underlying covered crime before they could prosecute for the assault, which does not fully fix the public safety concern of police officers or detention personnel. This conflict creates significant confusion that likely would have to be worked out in the courts. All Tribes ask that the language fully cover all assaults of tribal justice personnel and not mention anything related to a "covered crime."

Section 904 provides a local solution for the local problem of criminal victimization in Indian country. We are pleased to see that the bipartisan Title IX discussion draft continues to build on VAWA's promise and includes key priorities that have been identified by Tribal Nations to further enhance safety for victims in tribal communities. The Title IX discussion draft clarifies that Tribal Nations in Maine are included in the law and creates a pilot project to address the unique needs in Alaska. Our Tribe fully supports the inclusion of all Tribal Nations in VAWA. Alaska Native women are over-represented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence.

The Title IX discussion draft includes a pilot project that will enable a limited number of Tribal Nations in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages. In addition to the lifesaving provisions outlined above, the bipartisan Title IX discussion draft creates a reimburse-

ment program under which the Attorney General may reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction. We would ask that that reimbursement program language be expanded to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation.)

Additionally, the time for the Attorney General to develop regulations for the program should be shortened from within one year to within six months after the effective date to ensure that this important program is implemented quickly to address the urgent need in Indian Country.

The Title XI discussion draft allows Tribal Nations to utilize the Bureau of Prisons (BOP) to house defendants serving sentences of more than one year and increases Tribal Nations' access to the National Crime Information Database. Both additions to VAWA will go a long way towards ensuring Tribal Nations are able to implement this restored jurisdiction fully and most effectively.

Our Tribe fully supports the purpose of Title IX, which is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. We support providing additional resources to address violence against all Native women.

However, the new language in the Section 901 Findings and Purposes, which adds Native Hawaiians, urban Indians communities, Native Americans, and Native American communities, jeopardizes the long-term Tribal enforcement authority of the law and detracts from the key purpose of Title IX. For those reasons we urge that all Native Hawaiian, urban Indian communities, Native American, and Native American communities' language be removed from Section 901. The language in Section 901 should solely focus on American Indians, Alaska Natives, and Indian tribes' governmental authority to protect tribal sovereignty and jurisdiction, which is consistent with the purpose of the Title IX.

We urge the SCIA leadership and all members of the Senate Committee on Indian Affairs to support the provisions included in the bipartisan Title IX discussion draft and to become a co-sponsor of the full bipartisan Senate VAWA bill that incorporates all the discussion draft provisions and our recommended changes.

Sincerely,

W. RON ALLEN, *Tribal Chairman/CEO*

ALASKA NATIVE JUSTICE CENTER

Thank you to the Chairman and Members of the Committee for holding an Oversight Hearing and releasing a discussion draft of Title IX that strengthens the Violence Against Women Act (VAWA) to further recognize and empower tribal governments—particularly in Alaska—to protect Native people.

My name is Alex Cleghorn. I was born in Anchorage and grew up in Fairbanks. Reflective of Alaska's unique history, I am a tribal citizen of Tangirnaq Native Village and a shareholder of regional and village Alaska Native Corporations. I have been an attorney for nearly twenty years and my work has focused on representing tribes and tribal organizations regarding self-determination and community health and safety. I am licensed in California, Alaska and the courts of the Central Council of Tlingit and Haida Indian Tribes of Alaska.

The Alaska Native Justice Center (ANJC) is an Alaska Native tribal organization that serves as the primary provider of justice and victim [1] services for Alaska Native and American Indian (AN/AI) people in Anchorage, Alaska. ANJC also partners with Alaska tribes to strengthen self-determination and sovereignty to serve tribal citizens. ANJC has been designated its tribal authority through Cook Inlet Region Inc., organized through the Alaska Native Claims Settlement Act and recognized under Section 4(b) of the Indian Self-Determination and Education Assistance Act (PL 93–638, 25 U.S.C. 450b).

ANJC was originally founded to address the lack of attention Native women victims experienced in the Alaska justice system and the disproportionate imprisonment of Alaska Native men. Today, our mission continues to be Justice for Alaska Native people. The sobering fact and unacceptable truth of the matter is that violence in Alaska, and particularly violence against Alaska Native women, is at an epidemic level. Even more concerning is that this epidemic—this crisis—is well known, thoroughly documented and has clearly identified solutions.

ANJC writes in support of the testimony offered during the Oversight Hearing. We further offer our support of the Discussion Draft of Title IX—Safety for Indian Women and urge the Committee to adopt the Discussion Draft, which has already

[1] Not everyone who has been affected by criminal activity wishes to be referred to as a victim. Some might prefer the term "survivor," for example. For the sake of clarity, however, these comments use the term "victim."

been delayed too long. We also take the opportunity to clearly lay out some of the complicated issues related to funding, especially as it relates to the State of Alaska and other P.L. 280 states.

I. Well Documented Public Safety Crisis In Alaska

Title IX includes findings that illustrate some the scope of the public safety crises in Alaska. It is also important to recognize that 80 percent of Alaska Native women will experience violence in their lifetimes[2] and 55.6 percent of Alaska's sexual assault victims are Alaska Native people.[3] Additionally, we know that an overwhelming number of sex offense cases reported in Alaska are not prosecuted. In fact, the Alaska Department of Public Safety reports that in 2018–2019, 621 sex offense cases were referred to the Department of Law for prosecution. Of those 621 cases, only 322 were actually accepted for prosecution.[4] This means that barely 50 percent of reported sex offenses were accepted for prosecution. This is unacceptable. Alaska Native women deserve better.

While horrifying, even these stark numbers do not fully capture the real picture for two reasons. First, the numbers recorded represent those cases actually reported and do not reflect unreported offenses. Second, the numbers do not consider the impact that these offenses have on families, siblings, children, parents, and spouses, who are also "victims" and directly harmed by such offenses.

ANJC can reliably point to 40 years of reports and data collection regarding public safety in Alaska that offer recommendations on how to address the crisis. Years of written and oral testimony also serve to provide a critical foundation for understanding the magnitude of the crisis of violence against Native women and what can be done. Many aspects of this crisis are well-documented. However, justice remains inaccessible for Native women who are victims of violence.

Years of written and oral testimony point to a complicated maze of injustice in Alaska. The familiar culprits are the jurisdictional complexities stemming in part from Alaska's lack of reservations and Alaska's status as a mandatory P.L. 280 state. Our unique status contributes to a systematic lack of federal resources for Alaska tribal public safety and tribal justice systems. Title IX provides the Congressional action that is necessary to address this crisis. The time is now.

II. Correcting Alaska's Unfair Exclusion From Special Domestic Violence Criminal Jurisdiction (SDVCJ)

The 2013 Violence Against Women Act (VAWA) reauthorization afforded tribes SDVCJ on Indian lands for crimes of domestic violence, dating violence, and protection order violations. However, the SDVCJ language in VAWA categorically excluded 228 of Alaska's 229 federally recognized tribes, leaving only one tribe eligible to exercise SDVCJ. This lack of tribal jurisdiction over non-Indian offenders in Alaska continues to allow the perpetuation of disproportionate violence against Alaska Native women.

Numerous federally established commissions have recommended the removal of the barriers that currently inhibit the ability of Alaska tribes to exercise criminal jurisdiction and utilize criminal remedies when confronting the highest rates of violent crime in the country. We are heartened by this Congressional effort within Title IX that is designed to remove these barriers, including:

- affirming the inherent criminal jurisdiction of Alaska tribes;
- supporting the development, enhancement, and sustainability of Alaska tribal courts including full faith and credit for Alaska tribal court orders;
- enabling recognition of Alaska Native communities for public safety purposes.

Title IX builds upon years of efforts to affirm Alaska tribes' jurisdiction over people committing certain violent crimes. Most recently this included the VAWA Reauthorization Act of 2021 (H.R. 1620) and the Alaska Tribal Public Safety Empowerment Act, S. 2616 (introduced in the 116th Congress, 2019–2020). The Committee received expert testimony about the successes of VAWA 2013 SDVCJ. Alaska Tribes should no longer be shut out of this opportunity and the Discussion Draft makes this necessary change.

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[2] André Rosay, "Violence Against Alaska Native and American Indian Women and Men" *https://www.ncjrs.gov/pdffiles1/nij/249736.pdf.*

[3] *https://dps.alaska.gov/getmedia/dec8c6c2-1db7-45fb-9401-637932594882/Felony-Level-Sex-Offenses-2018*

[4] *http://www.ajc.state.ak.us/acjc/docs/ar/2020.pdf.*

III. Funding

Funding and access to funding should be as simple and flexible as possible in order to assure effective dissemination and use of these important resources. For many years, Alaska Tribes have shared the challenges presented by competitive grant processes. The challenges that accompany competitive grant processes are well documented. Chief among them are concerns that sustained funding is never guaranteed, and that funding losses or requirements to implement new approaches can make it difficult to guarantee continuity in services and to allow programs to reach their full potential. In Tribal communities, it can take years for programs to mature and demonstrate positive impacts, especially programs focused on prevention. The Committee should be well aware that the vast majority of Alaska Tribes do not receive BIA Public Safety and Justice funding, and therefore nearly all funding is through competitive grants from the Department of Justice.

Alaska Tribes should be provided dedicated, annual noncompetitive base funding to develop and sustain tribal court systems, assist in the provision of public safety and related services, and assist with intergovernmental agreements. Recent BIA studies have quantified the appropriation necessary to bring tribal justice systems in P.L. 280 states up to par with non-P.L. 280 states.[5] We commend the BIA for this work and urge that Congressional appropriations are adequate to address the public safety crisis. The appropriation should be explicit that the funds must be allocated for law enforcement, public safety and courts. Also, we suggest that there is an explicit prohibition that the money cannot be allocated or diverted to Tribes in non-P.L. 280 states and include language that provides that the funds will be allocated to tribes in P.L. 280 states through the Tribes' existing 638 contract or by the Tribe requesting a 638 contract for Public Safety and Justice including law enforcement and courts.

At the oversight hearing the BIA representative confirmed that the BIA does not have a policy of not executing 638 contracts and compacts for Public Safety and Justice (PSJ) funding to tribes in P.L. 280 states. However, the BIA has not yet done so. Therefore, appropriations should direct the BIA to revisit its practice of not executing 638 contracts and compacts for PSJ funding to tribes in P.L. 280 states (except for Self-Governance tribes).

Because tribes in P.L. 280 states do not receive PSJ funding there is no "base (reoccurring annual) funding level" or 638 contracts or compacts in which to allocate a PSJ set aside—as occurred in the American Rescue Plan Act. The BIA's recognition of this issue and final disbursement plan for ARPA funding through the Social Services line ensured that Alaska Tribes could address tribal safety needs that fall outside of a formal law enforcement program. However, this is a longstanding issue that can (and should) be addressed when appropriations for PSJ are made in Alaska and other P.L. 280 states.

This approach will allow sustained funding so that programs do not end with the end of a grant. Many programs take years to make an impact in their targeted communities and the competitive grant cycle diverts time, effort and resources from addressing the crisis to seeking funding and complying with unnecessary and burdensome grant management requirements. Funds should be as flexible as possible to address endemic issues that will save lives.[6]

The primary way to increase the effectiveness of the funding distributed to Tribes is by easing the restrictions on the funding so that Tribes can flexibly use the funds in the most effective way at the local level. Tribes and Tribal Organizations know best how to address this crisis, and funding restrictions inhibit Tribes' capacity to deploy much needed funds.

Alaska Tribes need to be able to build and maintain public safety, law enforcement, and Tribal justice infrastructure. Competitive grants will always be a stop gap measure for Alaska Tribes when it comes to Alaska's public safety crisis. There are successful models such as the Tiwahe demonstration projects that could serve as an additional framework for using contracting or compacting to address the need for victim services, public safety, and law enforcement in Alaska. Alaska Tribes, and all tribal governments, deserve to be trusted to do their part alongside other American governments to protect Native women. Title IX does just that.

Thank you for the opportunity to comment on the Discussion Draft. Your efforts to remove the barriers that impede Alaska Tribe's efforts to provide safety and justice are appreciated.

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[5] *See* 160 Cong. Rec. H976405 (Dec. 11, 2014) (Explanatory Statement).

[6] See "Citizens hide from active shooters as Alaska fails to deliver on 2019 promise of village troopers," Anchorage Daily News, December 13, 2021, available at *https://www.adn.com/alaska-news/rural-alaska/2021/12/13/citizens-hide-from-active-shooters-as-alaska-fails-to-deliver-on-2019-promise-of-village-troopers/*.

ALEX CLEGHORN, SENIOR LEGAL AND POLICY DIRECTOR

NATIONAL CONGRESS OF AMERICAN INDIANS
December 21, 2021

Dear Senator Schatz, Senator Murkowski, and all members of the Senate Committee on Indian Affairs:

I write on behalf of the National Congress of American Indians to support the bipartisan Violence Against Women Act (VAWA) Title IX—SAFETY FOR INDIAN WOMEN discussion draft released on December 8, 2021, which includes important provisions that will improve safety and justice in tribal communities. Tribal communities continue to suffer from the highest crime victimization rates in the country, and the reforms included in the bipartisan Title IX discussion draft are desperately needed today.

A 2016 report by the National Institute of Justice found that over 80 percent of American Indians and Alaska Natives will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Sadly, Indian children are particularly impacted by this violence and are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian country and Alaska continues to undermine safety for American Indian and Alaska Native victims of violence.

Tribal Nations have been exercising jurisdiction over non-Indian domestic violence offenders under VAWA 2013 for over 8 years. Exercising Tribal Nations have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families while upholding the due process rights of all defendants in tribal courts. Despite these successes, perpetrators still find gaps in the law. Victims of sexual violence, child abuse, stalking, trafficking, elder abuse, and assaults against law enforcement officers deserve the same protections that Congress affords to domestic violence victims on tribal lands in VAWA 2013.

It is particularly important that the final bipartisan VAWA bill recognizes that Indian children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The Tribal Nations implementing VAWA 2013 report that children have been involved as victims or witnesses in their cases nearly 60 percent of the time. However, federal law failed to restore tribal jurisdiction to prosecute these crimes. The Title IX discussion draft language would restore this category of jurisdiction and allow us to protect our Indian children in our tribal justice systems.

We ask that the Title IX discussion draft be amended to include crimes against elders, which was a category of restored jurisdiction included in the House bill, H.R. 1620, but not the bipartisan Senate Committee on Indian Affairs discussion draft. Indian elders are an integral part of our tribal communities to whom we owe respect and care. Indian elders carry our cultures and traditions, and we must ensure that they are not left behind in this reauthorization of VAWA.

We also appreciate that the Title IX discussion draft recognizes that VAWA 2013 inadvertently left our tribal police officers and detention personnel at risk. Domestic violence cases are both the most common and the most dangerous calls that law enforcement receives. Several Tribal Nations have reported assaults on their officers or bailiffs committed by non-Indian defendants, but as of now, Tribal Nations remain unable to prosecute these crimes as assaults on law enforcement was not a restored category of jurisdiction in VAWA 2013. This creates an obvious public safety concern. In order to ensure that the Title IX discussion draft fully rectifies this issue, we strongly recommend amending the draft language on page ten to remove the requirement that the assault must be tied to a "covered crime." Requiring that the assault of the tribal justice personnel be tied to a "covered crime" may require the Tribal Nation to first prove the underlying covered crime before they could prosecute for the assault, which does not fully fix the public safety concern of police officers or detention personnel. This creates significant confusion that likely would have to be worked out in the courts. We ask that the language fully cover all assaults of tribal justice personnel and not mention anything related to a "covered crime."

Section 904 provides a local solution for the local problem of criminal victimization in Indian country. We are pleased to see that the bipartisan Title IX discussion draft continues to build on VAWA's promise and includes key priorities that have been identified by Tribal Nations to further enhance safety for victims in tribal communities.

The Title IX discussion draft clarifies that Tribal Nations in Maine are included in the law and creates a pilot project to address the unique needs in Alaska. We

fully support the inclusion of all Tribal Nations in VAWA. Alaska Native women are over-represented among domestic violence victims in Alaska by 250 percent and make up 47 percent of reported rape victims in the state, yet 1 in 3 rural Alaskan communities have no law enforcement presence. The Title IX discussion draft includes a pilot project that will enable a limited number of Tribal Nations in Alaska to exercise special tribal criminal jurisdiction over certain crimes that occur in Alaska villages.

In addition to the lifesaving provisions outlined above, the bipartisan Title IX discussion draft creates a reimbursement program under which the Attorney General may reimburse Tribal Nations for expenses incurred in exercising special tribal criminal jurisdiction. We would ask that that reimbursement program language be expanded to include reimbursements for trial and appellate courts (including facilities maintenance, renovation, and rehabilitation.) Additionally, the time for the Attorney General to develop regulations for the program should be shortened from within one year to within six months after the effective date to ensure that this important program is implemented quickly to address the urgent need in Indian Country.

The Title XI discussion draft also allows Tribal Nations to utilize the Bureau of Prisons (BOP) to house defendants serving sentences of more than one year and increases Tribal Nations' access to the National Crime Information Database. Both of these additions to VAWA will go a long way towards ensuring Tribal Nations are able to implement this restored jurisdiction fully and most effectively.

We fully support the purpose of Title IX, which is to strengthen tribal sovereignty and reaffirm tribal jurisdiction over non-Indian perpetrators. We also support providing additional resources to address violence against all Native women. However, the new language in the Section 901 Findings and Purposes, which adds Native Hawaiians, urban Indians communities, Native Americans, and Native American communities, jeopardizes the long term enforcement of the law and detracts from the key purpose of Title IX. For those reasons we strongly recommend that all Native Hawaiian, urban Indian communities, Native American, and Native American communities language be removed from Section 901. The language in Section 901 should soley focus on American Indians, Alaska Natives, and Indian tribes in order to protect tribal sovereignty, which is consistent with the purpose of the Title IX. We urge all members of the Senate Committee on Indian affairs to support the provisions included in the bipartisan Title IX discussion draft and to become a co-sponsor of the full bipartisan Senate VAWA bill that incorporates all of the discussion draft provisions and our recommended changes.

Sincerely,

FAWN SHARP, *President*

SONOSKY, CHAMBERS, SACHSE, MILLER & MONKMAN, LLP

December 21, 2021

Dear Chairman Schatz and Vice-Chairman Murkowski:

I write on behalf of the Tanana Chiefs Conference to urge prompt introduction and passage of the December 8, 2021 Discussion Draft of Title IX to the Violence Against Women Act, and to specifically urge swift passage of subtitle B—Alaska Tribal Public Safety Empowerment.

Nothing speaks more powerfully to the need for this legislation than the dozens of attached tribal leader letters written from every corner of Alaska over the past several years. Cementing tribal jurisdiction over Indian people in Alaska Native villages, and opening a pilot project to explore tribal jurisdiction over domestic violence-related crimes committed by non-Indians against Indian victims, is absolutely essential to achieving law and order in Alaska Native villages; to protecting Indian women and children from violence; and to holding offenders accountable. History shows the current tragic law enforcement vacuum that has long plagued Alaska Native communities. Alaska tribes can fill that vacuum, but only if Congress provides the essential tools that will empower the tribes to do so. The Committee's Discussion Draft provides those vital tools.

Thank you for the opportunity to comment on the Discussion Draft. And thank you for the light of hope that TCC's 15-year quest will at long last be achieved: to empower Alaska tribes to reduce violence in their own communities and to promote local accountability, self-governance, and law and order.

Respectfully,

LLOYD B. MILLER

Enclosures

The following letter was submitted for the record by the:

Alakanuk Native Village
Association of Village Council Presidents (AVCP)
Chevak Native Village
Chuathbaluk Native Village
Chuloonawick Native Village
Eek Native Village
Emmonak Native Village
Goodnews Bay Native Village
Hamilton Native Village
Kipnuk Native Village
Kwinhagak Native Village
Nunapitchuk Native Village
Nunam Iqua Native Village
Napaskiak Native Village
Napakiak Native Village
National Council of Urban Indian Health (NCUIH)
Nikolai Native Village
Nulato Native Village
Nunakauyak Traditional Council
Pitkas Point Native Village
Iqurmiut Traditional Council
Tununak Native Village
Tuntutuliak Native Village

Dear Senator Murkowski:

We write to express our deep appreciation and gratitude for your introduction of the Alaska Tribal Public Safety and Empowerment Act, S. 2616. We also want to express our appreciation for the hard work your staff put into helping craft this important legislation.

S. 2616 legislation recognizes the heartbreaking tragedy that Alaska Native people face every day because of the violent crimes that occur in our villages that are left unpunished and the perpetrators are left to run free. We do not want to talk about this problem any longer. We do not want to cry about this problem any longer. We do not want to mourn any more victims. We want the tools to combat this problem.

S. 2616 recognizes the foundational role tribal governments must play in finding solutions to this public safety crisis. S. 2616 gives Alaska tribes a critical tool by acknowledging the inherent authority and sacred duty our tribal governments possess to keep our communities safe. The solutions to the current public safety crisis is to be found in partnerships with state and federal law enforcement agencies, and S. 2616 recognizes that tribal governments must be foundational partners in crafting these solutions.

In short, we know that crime is best addressed by the government closest to the crime, and in an Alaska Native Village that is the tribal government. We look forward to working with you, Senator Sullivan and Congressman Young to secure final passage of this important legislation to combat the crisis plaguing our communities.

PANEL DISCUSSION ON SOCIAL PROTECTION SYSTEMS

MARCH 12, 2019

63rd UNITED NATIONS COMISSION ON THE STATUS OF WOMEN (UNCSW)

Canadian Mission to the United Nations

Introduction. Thank you for the opportunity to participate in the U.N.'s Panel Discussion on Social Protection Systems featuring indigenous perspectives. My name is J. Michael Chavarria and I am the Governor of the Pueblo of Santa Clara, also serving in the capacity of the Chairman for the Eight Northern Indian Pueblos Council and Vice-Chairman for the All Pueblo Council of Governors (APCG), which is comprised of the leaders of the nineteen Pueblos of New Mexico and Ysleta del Sur Pueblo in Texas. Together and individually, our communities are dedicated to improving the safety and welfare of our tribal citizens.

The Federal Trust Responsibility to Pueblos, Tribal Nations and Indigenous Communities Must be Upheld. The United States has a trust responsibility to protect the interests of indigenous peoples within its borders. This trust responsibility is rooted in the political government-to-government relationship that exists between the federal government and tribal nations. The inherent sovereignty of tribal nations to govern their internal affairs and community members is recognized in the

U.S. Constitution, Supreme Court precedent, federal statutes, and treaties. Any meaningful investment in social protection systems that are intended to advance and protect the interests of indigenous peoples must reflect these founding principles.

Indigenous Peoples and Communities Face Untold Threats to Their Physical Safety and Welfare. The threats begin in the womb in the form of restricted access to maternal healthcare services, safe housing, and inadequate nutrition for fetal development, and continue into adolescence and adulthood in high rates of physical, emotional, and sexual violence, human trafficking, substance/mental abuse, and suicide. When coupled with the jurisdictional issues that further complicate the delivery of limited public safety and victim services in Indian Country, it becomes clear that additional resources and targeted political actions are urgently needed to protect indigenous peoples in America.

Question 1—- What works to address the social protection needs of indigenous women and girls, including early childhood education, maternal health, access to capital and job/skills training, access to justice/legal services, and income assistance? Please provide examples of programs and interventions that have been effective in your regions and communities in protecting and empowering indigenous women and girls.

Social Protections Must be Rooted in Traditional Values to be Effective. I come from the Pueblo of Santa Clara, one of 19 Pueblos in the State of New Mexico. For Pueblo women and girls, the practice of our native traditions, customs, religion and, most importantly, our languages, is essential to their overall well-being. These customs, beliefs, and means of expression convey an individual's association to and within the community and, thus, are pivotal to growing up in Pueblo society. For example, women are taught of their traditional roles in our communities as they give life, provide nourishment, and keep the household together. Further, being respectful of your body and other people is taught at a young age. However, the challenges contemporary Pueblo People face in living both in our Native world and the Western world have eroded this respect. There are individuals in our community who have problems with alcohol and drugs who are not bad people, but who forget the lessons rooted in their heritage and cause harm on to others. The breakdown of traditional patterns contributes to gender abuse and other violent crimes. Our Pueblo ways are not the ways of violence against women. Embedding this message at the heart of all social protection programs is vital to our peoples' wellbeing.

Peacekeepers Domestic Violence Program—Protects Individuals and Strengthens the Community. The Santa Clara Tribal Police Department operates the Peacekeepers Domestic Violence Program, administered with the support of the Eight Northern Pueblos Council Inc. The Program seeks to raise domestic violence awareness and advocates for systemic changes in the criminal justice system and in the mindset of perpetrators of violence. Domestic violence victims receive assistance in completing orders of protection, locating emergency shelter, and accessing vital resources such as support groups and referrals for counseling, medical services, and financial services. Victim Advocates are also provided to help individuals navigate the legal justice system. Like many traditional programs, Peacekeepers does not look at domestic violence issues in isolation. It also runs a Batterer's Intervention Program built on the philosophy that individuals must take responsibility for their actions. It teaches historical Native perspectives on domestic violence and encourages participants to examine their belief systems and adopt non-violence behaviors. Thus, the Peacekeepers Program helps protect indigenous people in harmful situations and prevent future instances of abuse by addressing root causes.

Tribal Leadership and Community Groups. One of the most effective means of encouraging mutual respect for indigenous women, men, girls, and boys is by continual community engagement. Our Pueblo leaders engage directly with youth—speaking to them directly from the heart on their inherent value, Pueblo identity and unlimited potential to be accomplished members of society. These efforts are also advanced by our strong community groups. The Tewa Women United, for example, started in 1989 as a support group for indigenous women united in heart, mind, and spirit. It is now a non-profit organization that encourages people to be politically engaged to advance positive change with a goal of ending all forms of violence against indigenous women and girls. The Coalition to Stop Violence Against Native Women is also a force for good, providing support, education and advocacy on behalf of Native women and children.

Indian Head Start—A Multigenerational Approach to Indigenous Resiliency and Achievement. Indian Head Start has been a vital part of Head Start since its inception in 1965, and it is currently the most important and successful federal program focused on the needs of Native youth and families in early childhood education. Cur-

rently, Indian Head Start and Early Head Start serves 22,379 children in more than 200 separate programs across 26 states. Our programs are unique in that they tend to be located in rural communities that are often affected by hardships such as poverty, high rates of crime, limited or non-existent transportation networks, and limited financial and qualified personnel resources. Indian Head Start strives to address these challenges through a focus on the whole individual—including education, health, language, and culture—as well as on the whole family and the whole community, creating a vibrant and safe learning environment for our Native children.

Indian Head Start is founded on a three-generational approach provides an array of services tailored to meet the needs of children, parents, and (increasingly) grandparents. For example, programs may offer family nutrition or literacy workshops for parents and guardians. For Indian Head Start, this model is especially important given the critical role the program fills in addressing the unique needs of Native children, parents, and communities. Indian Head Start empowers Native women by providing parents with access to job assistance trainings, healthcare services, and a reliable source of safe and nurturing early childhood education. Native girls and boys are empowered with self-esteem, high quality educational services, and nutritional meals to support their healthy development.

Further, through the integration of culturally and linguistically appropriate classroom practices, Indian Head Start empowers Native communities to take the lead in preserving, revitalizing, and reclaiming their heritage. This is achieved most commonly through the integration of elders into the classroom. Elders are teachers and role models in their communities who impart tradition, knowledge, culture, and lessons—all of which have been proven to be key contributors to Native student resiliency and success in later life. Further, for many communities, elders represent the last stronghold of tribal languages and traditions that were very nearly lost during the boarding school and termination eras of federal Indian policy.

Question 2—What actions would strengthen social protection systems and prevention mechanisms in order for indigenous women and girls to live free from violence? What are the barriers or challenges in setting up and maintaining social protection systems in indigenous communities and what are examples of tools and approaches that have been most effective in overcoming these barriers and challenges?

Integrating Traditional and Western Systems would Strengthen Social Protections for All Indigenous People. Western society tends to compartmentalize community services: social issues are addressed separate from healthcare, which is approached apart from economic development, which is segregated from education matters, and so on. In contrast, indigenous societies tend to approach aspects of life and community through a holistic lens that integrates social services, physical welfare, spirituality, and education into a unified system. We must make concerted effort to understand at how these Western and indigenous systems overlap and react to each other in order to identify and close gaps in social protection services. Entire systems must be understood and changed, not just individual programs, to truly protect all indigenous people.

Reauthorization of an Expanded Violence Against Women Act is Urgently Needed to Build Internal Tribal Capacities. In the United States, the Federal Government has exclusive jurisdiction over cases of murder, sexual abuse, kidnapping, serious bodily assault, and certain other crimes committed in Indian Country pursuant to the Major Crimes Act, 18 U.S.C. §1153. The Violence Against Women Act authorized tribal courts to exercise criminal jurisdiction over non-Native offenders who commit domestic or dating violence against Native victims on tribal lands—crimes that have been historically under-prosecuted in the United States. VAWA's Special Domestic Violence Criminal Jurisdiction is critical to ensuring that dangerous jurisdictional gaps are closed by allowing tribal law enforcement to exercise jurisdiction over non-indigenous offenders who commit certain crimes on tribal lands. VAWA has enabled tribal nations to further justice in such cases by removing cumbersome jurisdictional barriers from tribal courts. This special jurisdiction also honors our tribal sovereignty by helping us to build our internal justice capacities. To date, tribal nations exercising their criminal jurisdiction under the Act have reported 143 arrests of 128 non-Native offenders that have led to 74 convictions, 5 acquittals, and 24 pending cases (as of March 20, 2018).[1]

VAWA authorization expired in February 2019. Any reauthorization should include expanded tribal jurisdiction over crimes against children, law enforcement

[1] National Congress of American Indians, Special Domestic Violence Criminal Jurisdiction Five-Year Report at 1 (March 20, 2018), available at *http://www.ncai.org/resources/ncai-publications/SDVCJ—5—Year—Report.pdf.*

personnel, or sexual assault crimes committed by strangers to provide increased safety and access to justice services for Native victims of crime. A strong, dependable local law enforcement is critical for victims of crime to feel like they have support and an opportunity to attain justice. A permanent reauthorization of VAWA is vital to continuing these efforts. We recommend that any government wishing to protect its indigenous women and girls study VAWA and its implementation.

Empowering Women and Youth to Overcome Historical and Contemporary Trauma. To effectively engage with indigenous communities in America, one must also engage with a dark, long and painful history of trauma and loss. Understanding all that we have persevered as indigenous people since first contact helps us to prepare, mentally and spiritually, for the seemingly never-ending struggles of the future. One approach to addressing the impacts of historical and contemporary trauma is through empowerment initiatives. These initiatives aim to reconnect individuals with the expression of their indigenous identities as well as beneficial social services to provide participants with the tools they need for long-term success.

Building internal and external strength enables indigenous women to stand up for their rights and self-worth, no matter the barriers or challenges. Financial management seminars, self-defense courses, educational scholarships, affordable childcare, and accessible crisis shelters and transitional housing are the bricks with which women build their own paths in life. We recommend that governments conduct research into the job market and average working hours of women and mothers. The information can then be used to better ensure that empowerment initiatives take place during times that are accessible to the women they are intended to serve. This could mean holding sessions at different times of the day (such as early in the morning, right after school, or before red-eye shifts begin), as well as at multiple locations so that transportation concerns do not become a barrier. At Santa Clara Pueblo, for example, many members are employed with shift work. Providing services outside of the 8am-5pm schedule—such as during nights and weekends—has enabled us to serve a much broader segment of our population. International organizations, national governments, and local entities can provide the necessary funding, expertise, and resources to make these types of services available to all.

Empowered women empower others, creating a ripple effect of positive change in ways that cannot be predicted. For instance, the recent election of Deb Haaland, a Laguna Pueblo member, and Sharice Davids, a Ho-Chunk Nation member, to the United States House of Representatives showed indigenous women and girls that they can—and should—be leaders at the top levels of government. We are seeing ever increasing levels of political activism among our indigenous women and youth who are proud of their heritage, engage in traditional ceremonies, and know how to navigate the complex dual systems of their indigenous and American citizenship.

Coordination of Services is Key to Leveraging Available Resources. Lack of coordination among governmental entities leads to gaps in social protections and causes confusion, pain, and cynicism for victims of crime as well as law enforcement personnel. Too often we have invested significant resources in working with a federal or state agency on an initiative, only to discover that another agency already has a similar program in place. The lack of intra- and inter-governmental communication and coordination harms the welfare of our people. Several indigenous communities in New Mexico, for example, have implemented a coordinated community response in which their tribal courts, law enforcement, social services, and youth programs work together to enhance services and provide a holistic response to incidences of violence.

Data Collection and Dissemination on Missing and Murdered Indigenous Women. The United States has had knowledge of the existential threats facing indigenous women and girls for decades. Our women and girls experience incidences of violence and abuse at rates that far exceed the national average. In 2016 alone, over 5,700 cases of missing indigenous women were reported to the National Crime Information Center. The actual figure is likely much higher due to the confluence of underreporting of crimes in Indian Country and the lack of official data on the issue. This epidemic must be addressed. However, we cannot effectively respond to the crisis without access to accurate data and timely reports in national crime information databases. Standardized reporting protocols and inter-jurisdictional guidance on responding to cases of missing and murdered indigenous women is also key. This should be done in coordination with tribal nations and law enforcement entities.

An example of a best practice in strengthening access to crime-related data is the U.S. Department of Justice Tribal Access Program (TAP). TAP provides tribal nations with access to essential law enforcement data—such as fingerprint and identity verification databases, investigative reports, and criminal records—that allow tribal justice departments to better serve and protect their communities. Yet only a handful of the 573 federally recognized tribes are active participants. Interest in

the program remains high and is steadily increasing as tribal nations become aware of the beneficial training and technology being offered. Expanded access to TAP and other TAP-like resources translates into enhanced social protection systems and prevention mechanisms to better safeguard our indigenous people.

Question 3—How can governments and/or civil society organizations better support the development and maintenance of new and/or existing social protection systems? Please recommend best practices. How can they better create an emphatic dialogue with indigenous women and girls in order to understand their worldview and traditional values and to protect their human rights, foster their economic, political, social and cultural empowerment being factors to support social protection systems and indigenous women's adherence to them?

Community Engagement Must be at the Heart of Change. Santa Clara Pueblo has been successful in its public safety endeavors by being intentional in engaging with diverse stakeholders in the community. While this type of in-depth engagement may take a longer amount of time to complete, the outcome is exponentially beneficial. Community members feel engaged in and represented by their government as they create a shared vision for the Pueblo. That feeling of ownership in initiatives helps sustain projects and policies through difficult times. For example, in 2011, the Pueblo experienced a series of devastating wildfires that ravaged our traditional lands and changed the livelihood of the entire community. We started a program known as the KhapoKidz Initiative to re-center our youth and ground them in healthy practices. The Initiative did this by focusing on four pillars: (1) community involvement; (2) holistic health practices; (3) reduced juvenile and young adult crime; and (4) facilitate mentorship, leadership, and educational opportunities. We are all vested in the same future—one that is safer and healthier for our indigenous girls and boys.

Any meaningful effort to eliminate violence gender-based violence must, at its heart, support culturally responsive outreach and practices. Tribal nations have demonstrated time and again that where programs are implemented with culturally responsive practices, positive outcomes for individuals and the community follow. We have seen this in the reduced recidivism rates for indigenous offenders placed in facilities with culturally based rehabilitation services, in improved academic outcomes for children exposed to culturally inclusive curricula, as well as in the reduced prevalence of end-stage renal disease under the Special Diabetes Program for Indians, among many other examples. The U.S. federal government must ensure that, to the maximum extent possible, all training and technical assistance, grant opportunities, and other resources intended to reduce violence in Indian Country support culturally responsive practices.

Supporting Tribal Leadership is a Fundamental Best Practice in Maintaining Adequate Social Protection Systems. To put it simply, tribal leaders must be allowed to lead. Positive action from our leaders translates into the better protection of our most vulnerable community members. Societal, political, and sometimes even economic pressures to look the other way in cases of gender-based crimes degrades the integrity of leaders and destroys the trust of victims crying out for help. Distrust in leadership and law enforcement destabilizes the foundation of community, leaving all exposed to the dangers in the fault lines. At Santa Clara Pueblo, tribal leaders do not interfere in criminal prosecution and justice matters. They trust the procedures, laws, and personnel of the Pueblo to carry out a just process. The clear separation of these areas helps to maintain the community's trust in their elected officials and governmental system.

Jurisdictional Clarity is Key to Effective Law Enforcement. Ambiguity as to which government is responsible for law enforcement creates significant problems when a criminal incident arises. It can contribute to the mishandling of evidence, inflict further trauma on a victim, and thwart justice. Federal, state, and tribal governments must work together through intergovernmental agreements and cross-deputization agreements, among other measures, to ensure that there are no jurisdictional gaps or misunderstandings. These types of agreements are entered into following meaningful discussions between appropriate leaders of each governmental entity. They also provide an opportunity for leaders to identify other areas that contribute to the lack of public safety in Indian Country—such as inadequate data and the connection between incidences of gender-based violence and nearby land development projects, such as fracking and pipelines. Tribal governments and law enforcement agencies are invaluable resources given the limited to non-existent national data on gender-based violence in Indian Country. Yet, too often, the lines of communication between federal, state, and tribal nations go unused and great harm is caused by the silence. Candid conversations between these entities on jurisdiction and other issues must take place regularly to promote public safety in Indian Country.

Enforcement of Gender-Based and Domestic Violence Laws. As discussed in detail above, VAWA has played an invaluable role in furthering justice in Indian Country by empowering tribal nations to prosecute non-indigenous people who commit certain crimes on tribal lands. This law and others that are intended to protect women, girls, and those who suffer from incidents of domestic violence must be enforced to effect real change. Enforcement involves educating judges, prosecutors, public defenders, law enforcement personnel, and administrative staff in the justice system of not only the black letter provisions of the law, but of the socio-economic and other underlying factors that contribute to gender-based and domestic violence cases. Enforcement must be approached holistically and without compromise.

It is important to remember that many tribal nations do not have tribal justice departments and lack the resources to establish programs on their own. While a plethora of federal resources exist to assist tribal nations that have established law enforcement agencies or a tribal court, very few—if any—federal funds are available to facilitate the start-up process. Having experienced the benefits of operating our own tribal justice department and tribal court system, we stand with other tribal nations who wish to exercise this fundamental aspect of tribal sovereignty but lack the immediate resources to accomplish their goals. The federal government could better support the development of new tribal courts and justice services, including law enforcement departments, by creating a special program within the Department of Justice that targets this issue.

We thank you for the opportunity to participate in this important United Nations discussion. At the core of social protection for us as Pueblo People is respectfully remembering who we are and where we are from. Having this foundation in our Native identity and the sacredness of the Power of Prayer is essential to sustaining a community that is safe for all our members. Kuunda.

YUPIIT OF ANDREAFSKI
November 12, 2019

Dear Senator Murkowski:

I write on behalf of the Yupiit of Andreafski, a federally recognized tribe located in St. Mary's, Alaska, to express our deep appreciation and gratitude for your introduction of the Alaska Tribal Public Safety and Empowerment Act, S. 2616. We also want to express our appreciation for the hard work your staff put into helping craft this important legislation.

S. 2616 legislation recognizes the heartbreaking tragedy that Alaska Native people face every day because of the violent crimes that occur in our villages that are left unpunished and the perpetrators are left to run free. We do not want to talk about this problem any longer. We do not want to cry about this problem any longer. We do not want to mourn any more victims. We want the tools to combat this problem.

S. 2616 recognizes the foundational role tribal governments must play in finding solutions to this public safety crisis. S. 2616 gives Alaska tribes a critical tool by acknowledging the inherent authority and sacred duty our tribal governments possess to keep our communities safe. The solutions to the current public safety crisis is to be found in partnerships with state and federal law enforcement agencies, and S. 2616 recognizes that tribal governments must be foundational partners in crafting these solutions.

In short, we know that crime is best addressed by the government closest to the crime, and in an Alaska Native village that is the tribal government. We look forward to working with you, Senator Sullivan and Congressman Young to secure final passage of this important legislation to combat the crisis plaguing our communities.

Sincerely,

GEORGE BEANS, SR., *Council President*

YAKUTAT TLINGIT TRIBE
November 11, 2019

Dear Senator Murkowski:

I write on behalf of the Native Village of Yakutat/Yakutat Tlingit Tribe to express our deep appreciation and gratitude for your introduction of the Alaska Tribal Public Safety and Empowennent Act, S. 2616. We also want to express our appreciation for the hard work your staff put into helping craft this important legislation.

S. 2616 legislation recognizes the heartbreaking tragedy that Alaska Native people face every day because of the violent crimes that occur in our villages that are left unpunished and the perpetrators are left to run free. We do not want to talk

about this problem any longer. We do not want to cry about this problem any longer. We do not want to mourn any more victims. We want the tools to combat this problem.

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In short, we know that crime is best addressed by the government closest to the crime, and in an Alaska Native village that is the tribal government. We look forward to working with you, Senator Sullivan and Congressman Young to secure final passage of this important legislation to combat the crisis plaguing our communities.

Thank you,

NATHANIEL J. MOULTON, *Executive Director*

NATIVE VILLAGE OF KOTLIK
November 6, 2019

Dear Senator Murkowski:

I write on behalf of the Native Village of Kotlik to express our deep appreciation and gratitude for your introduction of the Alaska Tribal Public Safety and Empowennent Act, S. 2616. We also want to express our appreciation for the hard work your staff put into helping craft this important legislation.

S. 2616 legislation recognizes the heartbreaking tragedy that Alaska Native people face every day because of the violent crimes that occur in our villages that are left unpunished and the perpetrators are left to run free. We do not want to talk about this problem any longer. We do not want to cry about this problem any longer. We do not want to mourn any more victims. We want the tools to combat this problem.

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Sincerely,

MICHAEL HUNT SR., *Tribal Chairman*

NATIVE VILLAGE OF KALSKAG
November 7, 2019

Dear Senator Murkowski:

I write on behalf of the Native Village of Kalskag to express our deep appreciation and gratitude for your introduction of the Alaska Tribal Public Safety and Empowennent Act, S. 2616. We also want to express our appreciation for the hard work your staff put into helping craft this important legislation.

S. 2616 legislation recognizes the heartbreaking tragedy that Alaska Native people face every day because of the violent crimes that occur in our villages that are left unpunished and the perpetrators are left to run free. We do not want to talk about this problem any longer. We do not want to cry about this problem any longer. We do not want to mourn any more victims. We want the tools to combat this problem.

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closest to the crime, and in an Alaska Native village that is the tribal government. We look forward to working with you, Senator Sullivan and Congressman Young to secure final passage of this important legislation to combat the crisis plaguing our communities.

Sincerely,

JULIA F. DORRIS, *Traditional Council President*

NATIVE VILLAGE OF CHEFORNAK
November 12, 2019

Dear Senator Murkowski:

I write on behalf of the Native Village of Chefornak to express our deep appreciation and gratitude for your introduction of the Alaska Tribal Public Safety and Empowennent Act, S. 2616. We also want to express our appreciation for the hard work your staff put into helping craft this important legislation.

S. 2616 legislation recognizes the heartbreaking tragedy that Alaska Native people face every day because of the violent crimes that occur in our villages that are left unpunished and the perpetrators are left to run free. We do not want to talk about this problem any longer. We do not want to cry about this problem any longer. We do not want to mourn any more victims. We want the tools to combat this problem.

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Sincerely,

NATIVE VILLAGE OF CHEFORNAK

NATIVE VILLAGE OF BILL MOORE'S SLOUGH
November 15, 2019

Dear Senator Murkowski:

I write on behalf of the Native Village of Bill Moore's Slough to express our deep appreciation and gratitude for your introduction of the Alaska Tribal Public Safety and Empowennent Act, S. 2616. We also want to express our appreciation for the hard work your staff put into helping craft this important legislation.

S. 2616 legislation recognizes the heartbreaking tragedy that Alaska Native people face every day because of the violent crimes that occur in our villages that are left unpunished and the perpetrators are left to run free. We do not want to talk about this problem any longer. We do not want to cry about this problem any longer. We do not want to mourn any more victims. We want the tools to combat this problem.

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Sincerely,

NATIVE VILLAGE OF BILL MOORE'S SLOUGH

SCIA TESTIMONY OF HON. VICTOR JOSEPH, CHIEF, TANANA CHIEFS CONFERENCE
June 19, 2019

The Tanana Chiefs Conference (TCC) is an intertribal consortium of 37 federally-recognized Indian tribes and 4 additional Alaska Native communities located across the Interior region of Alaska. Our region stretches from the Brooks Range on the north, to the Alaska Range on the south, from the Canadian border on the east to almost Norton Sound on the west. Our area covers some 235,000 square miles—150,400,000 acres—half again as large as California and almost as large as Texas. With no roads to most of our communities, travel is by boat in the summer, snow machine in the winter, and otherwise by small plane when weather permits.

Our villages live a highly successful subsistence way of life, and our languages, cultures and lifeways are intact. But historical events outside of our control have made life particularly difficult. First, the federal government turned over its own law enforcement functions to the State through Public Law 280, saddling the State with a law enforcement burden it had insufficient resources to carry out. Then when Congress settled our land claims in 1971, the Alaska Native Claims Settlement Act created new corporations to hold and invest most village lands. As part of ANCSA, the core of our communities were designated for current or future state-chartered municipal governments—governments which in many villages were never formed. As a result, most of the "Indian country" of our villages was eliminated (as the Supreme Court would later hold in the *Venetie* case), severely curtailing the ability of the villages to govern their own affairs.

With these changes in legal status and governing authority, along with other pressures, our village governments have suffered and our communities entered a period of increasing dysfunction and danger, especially for women. Today, the statistics in Alaska are stunning:

- Alaska domestic violence rates are 10 times the national average, and sexual assaults against Alaska Native women are 12 times the national average. Many offenders are non-Native.
- Alaska Native women are over-represented by 250 percent among domestic violence victims. Although Alaska Natives comprise just 19 percent of the state population, Native women constitute 47 percent of all reported rape victims. Every 18 hours an Alaska Native woman is sexually assaulted.
- One out of every 4 Alaska Native youth suffers post-traumatic stress (PTSD) due to childhood exposure to violence-the same rate as Afghanistan War veterans.
- State-based law enforcement is virtually nonexistent in most Alaska Native villages. State troopers are only present in hub cities. VPSOs are only present in 40 out of 229 villages.
- The suicide rate in village Alaska is 6 times the national rate, the alcohol-related mortality rate is 3.5 times the national rate, and 95 percent of rural crimes in Alaska are alcohol related.
- Although some laws and law reform proposals are tied to "Indian Country," tribal territorial jurisdiction vanished almost entirely with the enactment of the 1971 Alaska Native Claims Settlement Act. Most crimes do not occur on the few remaining lands that constitute "Indian country" under federal law (allotments, townsite lots, trust lands). While some law reform measures are also keyed to lands owned by Alaska Native Corporations (ANCs), almost no one lives on ANC lands.

In short, today there is a law enforcement crisis in our communities of epic proportions. But under current law, there is no effective means to combat it and the tribal governments who are closest to the problem have virtually no tools whatsoever to address the issue themselves.

It is with these observations that TCC has examined the several bills now pending before this Committee. While all four bills are very well-intentioned and all mention Alaska Natives, there is little in these bills that is actually workable as a means for improving local tribal law enforcement in our communities, and for protecting our most vulnerable tribal members.

For instance, S. 227 (Savannah's Act) notes in section 2(a)(7) that "the complicated jurisdictional scheme that exists in Indian country" " has a significant negative impact on the ability to provide public safety to Indian communities;" is "exploited by criminals;" and demands "a high degree of commitment and cooperation

among Tribal Federal, and State law enforcement officials." It also recites the importance of "empower[ing] tribal governments" "to effectively respond to cases of missing and murdered Indians."

Yet the bill's operative provisions are then tied to the very jurisdictional hooks regarding "Indian lands" that have proven to be so problematic for Alaska Tribes. For instance, Section 3(4) defines Indian lands to include "Indian country" under 18 U.S.C. 1151, even though for most practical purposes there isn't any Indian country in Alaska outside of a few isolated tracts of trust and restricted fee lands, and hardly any people actually live on those lands. Section 3(4)(B) also mentions Alaska Native corporation (ANC) lands, but again virtually no people live on ANCSA lands. This makes the bill's limitations to "Indian land" extremely problematic in Alaska. Alaska Native villages are left out.

Later, section 5 of S. 227 builds on the federal government's existing jurisdiction over "Indian country" crimes, but that jurisdiction is again of little help in village Alaska, both because of the small amount of Indian country in Alaska villages and because Public Law 280 transferred the federal government's jurisdiction over those areas to the State. Here, too, Alaska villages are left out.

S. 288 is similarly problematic for Tribes in Alaska because sections 2(2) and 2(4)(C) focus on enhancing tribal criminal jurisdiction in "Indian country," thereby excluding Alaska Native villages.

S. 290 in section 3(2)(G) seeks to expand tribal jurisdiction but defines the term "covered conduct" to mean certain conduct that "violates the criminal law of the Indian tribe that has jurisdiction over the Indian country where the conduct occurs," again making these measures largely ineffective in Alaska. Ultimately, with these limitations it is difficult to see how the Report addressed in Section 5(b)(1) will help Alaska tribes, despite the critically important need to focus on the "effectiveness" of "Federal programs . . . intended to build the capacity of criminal justice systems of Indian tribes to investigate and prosecute offenses relating to dating violence, domestic violence, child violence, and related conduct."

S. 982 carries some of the same problems as the other bills, including S. 227, such as by limiting "Indian lands" to Indian country (including reservation and trust) lands or ANC-owned lands (sec. 3(4)). The bill softens this limitation by frequently focusing its provisions to speak of crimes "within Indian lands and of Indians," but this hardly overcomes the core problem that just as with the other bills, S. 982 bill fails to focus on the extreme law enforcement problems confronting Alaska Native villages.

As Congressman Young correctly noted earlier this year, the current situation confronting Alaska Native villages, combined with the unique history of congressional treatment of these areas, demands an Alaska solution to a unique Alaska problem. Either the term "Indian country" needs to be redefined to include all lands within each Alaska Native village, or Congress needs to simply declare that tribes shall have criminal and civil jurisdiction in and around their villages without regard to the term "Indian country." Alaska Tribes cannot enforce the rule of law in their communities and provide for civil society according to tribal customs, traditions and laws without a fresh declaration from Congress clearly declaring their authority to do so.

Alaska tribal authority should be declared to be broad and plenary with respect to tribal members. In the case of non-Natives present in the villages, it should at a minimum cover sexual violence, child violence, alcohol, and related crimes, including the crimes identified in S. 288. This should be done, not on a limited or pilot basis, but on a broad basis to protect all women and children in all Alaska Native villages. The time to wait while more women are raped or murdered is over. While greater federal assistance is also critically needed, first and foremost our tribes must be empowered to protect their own. They are the front line, the first responders, and as a matter of basic self-governance they must be returned the tools they need to protect their communities.

Thank you.

NATIVE VILLAGE OF KASIGLUK
November 13, 2019

Dear Senator Murkowski:

I write on behalf of the [Native Village of Kasigluk] to express our deep appreciation and gratitude for your introduction of the Alaska Tribal Public Safety and Empowerment Act, S. 2616. We also want to express our appreciation for the hard work your staff put into helping craft this important legislation.

S. 2616 legislation recognizes the heartbreaking tragedy that Alaska Native people face every day because of the violent crimes that occur in our villages that are left unpunished and the perpetrators are left to run free. We do not want to talk about this problem any longer. We do not want to cry about this problem any longer. We do not want to mourn any more victims. We want the tools to combat this problem.

S. 2616 recognizes the foundational role tribal governments must play in finding solutions to this public safety crisis. S. 2616 gives Alaska tribes a critical tool by acknowledging the inherent authority and sacred duty our tribal governments possess to keep our communities safe. The solutions to the current public safety crisis is to be found in partnerships with state and federal law enforcement agencies, and S. 2616 recognizes that tribal governments must be foundational partners in crafting these solutions.

In short, we know that crime is best addressed by the government closest to the crime, and in an Alaska Native village that is the tribal government. We look forward to working with you, Senator Sullivan and Congressman Young to secure final passage of this important legislation to combat the crisis plaguing our communities.

Sincerely,

NATALIA BRINK, *President*

June 5, 2020

Dear Senator Murkowski,

Last November our organizations and dozens of the Tribes we represent wrote to you to convey their strong support for swift enactment of S. 2616, the Alaska Tribal Public Safety and Empowerment Act, which you introduced in October. That bill followed our meeting in July where you committed to give this matter your very highest priority.

While much has happened since S. 2616 was introduced, those developments—most importantly the new coronavirus—have only made public safety issues in village Alaska more urgent. Today, the burden to protect our communities from the virus falls squarely on the shoulders of our elected tribal leaders. But so long as clarifying legislation remains stalled, their actual authority to take protective action is uncertain. To be clear, the coronavirus is an existential threat to our villages. It is therefore imperative that our Tribes have the necessary tools to adequately protect every resident from getting infected, Native and non-Native alike. This is not hyperbole: the consequence of inadequate protection is already decimating the Navajo Nation.

We respectfully but urgently request your support for prompt enactment of S. 2616 as part of the Senate's next coronavirus legislation, with appropriate language added to clarify tribal authority to protect all village residents from infectious diseases like the coronavirus.

Respectfully,

Vivian Korthius, President, ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS

Victor Joseph, Chief, TANANA CHIEFS CONFERENCE

Ralph Anderson, President, BRISTOL BAY NATIVE ASSOCIATION

Richard Peterson, President, CENTRAL COUNCIL TLINGIT AND HAIDA

Melanie Bahnke, President, KAWERAK, INC

April 8, 2021

Dear Senator Murkowski, Senator Sullivan & Congressman Young,

Last June we wrote to draw attention to the critical importance of securing enactment of the Alaska Tribal Public Safety and Empowerment Act that Senator Murkowski introduced in October 2019. We now write with renewed urgency to request that the Alaska Delegation reintroduce this proposed Act as soon as possible so that it can move through the legislative process in this session of Congress.

The Alaska Tribal Public Safety and Empowerment Act is the product of a decade of work by Senator Murkowski, key congressional staff working in consultation with Alaska tribal representatives and advocates, key individuals like Walt Monegan (former Alaska State Public Safety Commissioner), and key experts brought together in 2019 by the National Congress of American Indians. As a result, the Alaska Tribal Public Safety and Empowerment Act has been widely vetted and it is widely supported. It also enjoyed support from the Justice Department under former

Attorney General Barr, and there is every reason to expect it will be supported by Attorney General Garland. But most importantly, it has received a veritable flood of support from local Alaska tribal leadership.

The grave conditions which compelled introduction of the bill haven't gotten any better—as a result of the COVID–19 pandemic they have gotten worse. Domestic violence, rape, child abuse, and alcohol and drug abuse continue unabated in our villages. At the same time, the COVID epidemic has heightened the need for enhanced tribal authority to take aggressive action, including local quarantine measures, when public emergencies arise.

Congressman Young put it well last year. When he championed his amendments to the Violence Against Women Act, Congressman Young urged Congress to embrace an Alaska solution to an Alaska problem resulting from Alaska's unique history. And that is what the Alaska Tribal Public Safety and Empowerment Act would do.

We respectfully but urgently renew our call for prompt introduction of the Alaska Tribal Public Safety and Empowerment Act in the House and Senate so that this Act can finally become law in 2021.

With respect and gratitude for your service,

Vivian Korthius, President, ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS

PJ Simon, Chief, TANANA CHIEFS CONFERENCE

Ralph Anderson, President, BRISTOL BAY NATIVE ASSOCIATION

Richard Peterson, President, CENTRAL COUNCIL TLINGIT AND HAIDA

Melanie Bahnke, President, KAWERAK, INC

Julie Kitka, President, ALASKA FEDERATION OF NATIVES

Gloria O'Neill, President, ALASKA NATIVE JUSTICE CENTER

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