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United States

Senate Committee on Indian Affairs

**“Oversight Hearing on the
Prevalence of Violence Against Indian Women”**

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Washington, D.C.

Written Testimony Submitted by

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- I. Overview of Sacred Circle.
- II. American Indian and Alaska Native women are disproportionately victimized by violence in America due to jurisdictional gaps in federal law.
- III. VAWA 2005 law enforcement provisions can enhance the ability of Indian tribes to respond to crimes of violence against Indian women.
- IV. Research is necessary to understand the prevalence, unique particularities and estimated cost of crimes of violence occurring against Indian women.
- V. The newly created position of Deputy Director for Tribal Affairs within the Office on Violence Against Women is a first step towards increasing the ability of the Department of Justice to effectively coordinate on a governmental basis with Indian Nations.
- VI. Conclusion.

I. Sacred Circle, National Resource Center to End Violence Against Native Women, provides training, consultation and technical assistance to Indian Nations, tribal organizations, law enforcement agencies, prosecutors and courts to address the safety needs of Native women who are battered, raped and stalked.

For over a decade, Sacred Circle has advocated for the safety of American Indian and Alaska Native women, by providing training, consultation and technical assistance on how to better respond to crimes of violence against Indian women, particularly domestic violence, sexual assault and stalking. Sacred Circle submits this testimony to provide written documentation to the U.S. Senate Committee on Indian Affairs' Oversight Hearing on the prevalence of violence against Indian women, and to provide recommendations on how to better safeguard the lives of Indian women.

Our experience and national work with Indian women gives us the necessary expertise to provide an accurate overview of some of the successes and problem areas in addressing violence against American Indian and Alaska Native women throughout the United States. Sacred Circle is a member of numerous federal inter-governmental committees and various national task forces established to address violence against women.¹ On a tribal level, Cangleska, Inc., the mother agency of Sacred Circle, provides advocacy to approximately 3,000 women and children each year and approximately 2,400

¹ National Task Force to End Sexual and Domestic Violence Against Women; National Congress of American Indians Task Force to End Violence Against Native Women; U.S. Department Of Justice Global Advisory Committee; U.S. Department Of Justice Working Group on Federal Tribal Sexual Assault Response; Full Faith and Credit Project; Federal Law Enforcement Training Center Curriculum Working Group; American Probation and Parole Association Model Protocol Working Group; International Forensic Nurse Examiner's DNA Curriculum Development Working Group.

men who are on domestic violence probation as ordered by the Oglala Sioux tribal courts.

Our testimony today offers concrete recommendations to strengthen the response of the federal and tribal systems to increase safety for Indian women in the context of the Violence Against Women Act of 2005. Given the prevalence of violence against Indian women, immediate action by the federal government in coordination and consultation with Indian tribes is required to enhance the safety of Indian women and save lives.

II. American Indian and Alaska Native women are disproportionately victimized by violence in America due to jurisdictional gaps in federal law.

Over the past ten years, Sacred Circe has learned many things about the state of peril confronting Indian women. Indian women are battered, raped and stalked at far greater rates than any other group of women in the United States. This means that from the oldest to the youngest, Indian women are being disrespected in life, and sadly many are dying without justice or the knowledge that their granddaughters may one day live free of the violence they experienced. Because Indian women are the backbone of our societies, this violence not only destroys the quality of life of Indian women, but it also threatens the safety and stability of their families, communities and tribal governments.

The Department of Justice estimates that:

- ◆ more than 1 out of 3 American Indian and Alaska Native women (34.1%) will be raped in her lifetime and 3 out of 4 will be physically assaulted²;
- ◆ about 9 in 10 American Indian victims of rape or sexual assault were estimated to have assailants who were white or black³; and
- ◆ 17% of American Indian women, at least twice that of other populations are stalked each year.⁴

These statistics reflect the horrific levels of violence committed on a daily basis against Indian women. During a single weekend at one Indian Health Service emergency room, located at Pine Ridge, seventy women were treated for rape trauma. It is important to note that many victims often do not seek medical treatment, so the instances of violence may in fact be higher than what the statistics show. It is also important to note that violence against Indian women occurs on a continuum of violence from simple assault to murder.

In fact, murder is the third cause of death for American Indian women.⁵ Further, the increased number of Indian women reported missing raises the concern that such cases should be investigated as homicide cases until the woman is located. The systemic response to a “missing person report” is frequently a “cold case file”.

² Patricia Tjaden & Nancy Thoennes, U.S. Dep’t. of Justice, *Full Report on the Prevalence, Incidence, and Consequences of Violence Against Women* (2000).

³ Lawrence A. Greenfeld & Steven K. Smith, U.S. Dep’t. of Justice, *American Indians and Crime* (1999).

⁴ *Stalking and Domestic Violence*, May 2001 Report to Congress, U.S. Dep’t of Justice, Office of Justice Programs, NCJ 186157.

⁵ I.j.d. Wallace, A.D. Calhoun, K.E. Powell, J. O’Neill, & S.P. James, *Homicide and Suicide Among Native Americans, 1979-1992*, Violence Surveillance Summary Series, No. 2, Atlanta, GA; Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 1996.

Our experiences providing services to women show that the high levels of violence against Indian women is linked to the particular vulnerabilities of Indian women as a population and is compounded by the social realities facing most Indian communities in the United States. The gaps in federal law and inadequate resources to support tribal justice systems allow perpetrators to commit acts of violence again and again with little or no accountability for their crimes. People often say that the justice system is broken. Indian women seeking safety understand this reality. Today it is more dangerous to report incidents of domestic violence and rape because of the retaliatory violence that often results due to the lack of an appropriate justice system response.

The lack of jurisdiction of Indian nations over non-Indian perpetrators and the sentencing limitations placed upon Indian tribes by Congress enhances the vulnerability of Indian women and the ability of predators to target Indian women as a population. The Department of Justice estimation that 75% of sexual assaults committed against Indian women are by perpetrators of a different race⁶ indicates that perpetrators of such violence are aware of this jurisdictional void. To make matters worse, this jurisdictional void furthers the public perception that Indian women are not entitled to the same protections as non-Indian women. The prevalence and severity of violence would be treated as an emergency if committed against any other population of women.

We appreciate this Committee's decision to hold oversight hearings on this important matter. We hope that this is merely a first step and that the federal government's interest and concern will not end with the end of this hearing. The

⁶ *Id.* at 3.

staggering statistics of violence against Indian women requires that the highest levels of government – federal, state and tribal – act in coordination to address the escalating crisis in the lives of Indian women.

III. VAWA 2006 law enforcement provisions can enhance the ability of Indian tribes to respond to crimes of violence against Indian women.

The unique legal relationship of the United States to Indian tribes creates a federal responsibility to assist tribal governments in safeguarding the lives of Indian women. On January 5, 2006, President Bush signed and reauthorized the Violence Against Women Act of 2005 (“VAWA 2005”). VAWA 2005 represents landmark legislation that aims to protect victims of domestic violence, dating violence, sexual assault, and stalking. Contained in VAWA 2005 is the historic Title IX, Safety for Indian Women Act. Unfortunately, one year and eight months after the reauthorization, many of the life-saving law enforcement provisions enacted by Congress have not been acted upon.

Section 903 of Title IX provides the opportunity for consistent consultation on a government-to-government basis between the Department of Justice and Indian Nations. The first consultation was held at Mystic Lake, Minnesota on September 19, 2006. The second annual consultation was held one year later, this past week, on September 19, 2007 at Sandia Pueblo, New Mexico. At this most recent consultation, Indian tribes in their comments consistently raised the concern that little, if no, action had been taken on the questions and recommendations from the previous year’s consultation. Further, a consistent

concern raised by tribal leadership, including the Great Plains Tribal Chairman's Association, was that the law enforcement reform sections of VAWA 2006 have not been implemented. Attached is a list of tribal recommendations made during the 2007 consultation. (Attachment A). We concur with these recommendations, and we would like to highlight the following issues:

a) Title IX, §905 (a). Tracking of Violence Against Indian Women.

Section 905(a) amends the federal code⁷ to require the Attorney General to permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from, federal criminal information databases.

This amendment addresses a tremendous gap that has up to now acted to reduce the ability of tribal law enforcement to adequately respond to domestic violence and sexual assault. Prior to the amendment, tribal law enforcement access to the federal criminal databases was dependent upon access granted or denied by the state agency. The ability of Indian tribes to enter information regarding order of protections and convicted sex offenders, and the resulting accessibility of that information to tribal, state and federal law enforcement agencies, is a matter of life and death. This is particularly true for Indian women who have obtained an order of protection or cooperated with prosecuting their rapist. Access to the federal databases is also an officer safety issue and essential to the day-to-day services provided to tribal communities.

Although we applaud this amendment, we are concerned that it has not been properly implemented yet. Proper implementation of this provision requires

⁷ Section 905(a) amends 28 U.S.C. § 534, Access to Federal Criminal Information Databases.

the Department of Justice to issue guidelines and a directive to the personnel to allow tribal law enforcement to access the federal criminal justice databases.

§905(a) Tracking of Violence Against Indian Women Recommendations:

- Identify which component of DOJ is responsible for implementation of Section 905(a) and provide Indian tribes contact information for the component;
- Develop DOJ guidelines for the implementation of Section 905(a), in consultation with Indian tribes, and provide the guidelines to Indian tribes;
- Issue a statement to Indian tribes that the system is now available for tribal law enforcement to access and enter information into the federal databases under Section 905(b).

b) Title IX. §908. Enhanced Criminal Law Resources.

Section 908(a) amends the federal criminal code⁸ to expand the Firearms Possession Prohibition to include convictions in tribal court. It amends the federal criminal code to include under the term "misdemeanor crime of domestic violence" any offense that is a misdemeanor under tribal law.

Prior to passage of this amendment, perpetrators of domestic violence convicted in tribal court could continue to possess firearms. This important amendment by Congress recognized the danger that Indian women faced because of this legal loophole. Unfortunately, no training or guidelines have been issued by the Department of Justice for implementation of this life-saving provision.

⁸ Section 908(a) amends 18 U.S.C. § 921(33)(a)(1), Firearms Possession Prohibition, and 25 U.S.C. § 2803(3), Law Enforcement Authority.

§908(a) Enhanced Criminal Law Resources Recommendations:

- Identify which component of DOJ is responsible for developing implementation prosecutorial guidelines for Section 908(a) and provide Indian tribes contact information for the component;
- Develop implementation guidelines on Section 908(a) in consultation with Indian tribes;
- Develop and provide training on the guidelines for the implementation of Section 908(a) to Indian tribes;
- Issue a press release at the time of the first prosecution of Section 908(a).

c) Title IX. §909. Domestic Assault by an Habitual Offender.

Section 909 amends the federal criminal code⁹ to create a new Federal felony for habitual offenders of domestic violence and sexual assault. It imposes criminal penalties upon any person who: (1) commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country; and (2) has a final conviction on at least two separate prior occasions in federal, state, or tribal court for offenses that would be, if subject to federal jurisdiction, an assault, sexual abuse, or serious violent felony against a spouse or intimate partner, or a domestic violence offense.

Section 909 was enacted by Congress to address the reality that domestic violence is a pattern of violence that is repeated over time. Domestic violence increases in frequency and also in the severity of the violence committed. The pattern of domestic violence might begin at a misdemeanor level and escalate to

⁹ Section 909 amends Title 18, Chapter 17.

a felony level of violence. Tribal law enforcement agencies report that domestic violence is one of the largest categories of crime within tribal jurisdiction. Domestic violence, however, is rarely prosecuted by the United States Attorneys' Offices. One reason for the lack of prosecution is that a single incident of domestic violence often does not rise to the requirements of a federal felony, and the Major Crimes Act does not include the crime of domestic violence. The amendment at Section 909 addresses this gap between tribal and federal law. This new law will allow United States Attorneys to prosecute perpetrators of misdemeanor domestic violence that are repeat offenders and have two prior convictions in tribal court. It addresses an outstanding concern of tribal law enforcement, prosecutors and courts that domestic violence perpetrators are not being held accountable for violence committed against Indian women.

Coordination of investigation efforts between tribal and Federal law enforcement will be essential to the successful prosecution of cases under this Section. Unfortunately, no training or guidelines have been issued by the Department of Justice on implementation of this very important Section that directly impacts the safety of Indian women.

§909 Domestic Assault by an Habitual Offender Recommendations:

- Develop in consultation with Indian tribes guidelines for the implementation of Section 909 Domestic Assault by an Habitual Offender;
- Conduct cross training for Assistant United States Attorneys and tribal prosecutors for the investigation, charging and prosecution of cases under Section 909;

- Inform Indian tribes of the progress and steps made toward implementation of Section 909.

IV. Research is necessary to understand the prevalence, unique particularities and estimated cost of crimes of domestic violence, sexual assault, dating violence and stalking occurring against Indian women.

The Department of Justice has issued several reports on violence against women mandated by the Acts of 1994 and 2000. Within these reports, crimes of violence against American Indian and Alaska Native women are given limited attention. Previous research mandated under VAWA did not require in depth research on violence against Indian women.

Section 904 mandates for the first time in United States history a national baseline study reviewing the crimes of domestic violence, dating violence, sexual assault, stalking, and murder committed against Indian women. Such a study is essential to analyzing and creating safety in the lives of Indian women.

Of critical importance is the establishment of a task force, as provided by Section 903(A), to include representatives from national domestic violence and sexual assault tribal organizations that have decades of experience in assisting Indian women. Such a task force must also include Indian Nations, as the governments primarily responsible for providing emergency responses to such crimes, for providing daily assistance to Indian women, and for monitoring offenders. Indian tribes after tens of thousands of years maintain their inherent sovereignty with the authority and responsibility to protect the safety of their

Indian women and the stability of their citizenry. The presence of these representatives on such a task force will ensure the expertise necessary to properly implement the baseline study required by Section 904.

The following recommendations are offered to maximize the opportunity provided by Section 904:

- Immediately establish, as provided by Section 904(a)(3), the tribal task force to develop and guide implementation of the study;
- Recognize that American Indian and Alaska Native women experience multiple incidents of violence over a lifetime and addressing such violence requires an array of services beyond crisis intervention;
- Recognize that the failure of federal justice systems, and state systems where state jurisdiction has been established, to adequately respond to violence against Native women is demonstrated in the distinction between the number of hospital emergency trauma center visits and the number of cases reported, charged and ultimately convicted.

V. The new position of Deputy Director for Tribal Affairs within the Office on Violence Against Women is a first step towards increasing the ability of the Department of Justice to effectively coordinate on a governmental basis with Indian Nations and improve the response of tribal law enforcement agencies to crimes of domestic violence and sexual assault.

The unique governmental relationship between Indian tribes and the United States is long established by the inherent sovereignty of Indian nations as governments that pre-existed the United States, and is recognized in the U.S.

Constitution, Supreme Court cases, acts of Congress and Executives Orders of the President. Congress again recognized this unique governmental relationship within the Violence Against Women Act by statutorily including Indian tribes within various provisions and defining Indian Tribes as eligible applicants for certain programs under the Act from the Violence Against Women Office within the Department of Justice. The administration of Federal programs to tribal governments must comply with this legal context. As such, the development of policies and grant program guidelines according to state-based models is not only inappropriate, but also ineffective in the creation and implementation of an effective response to domestic violence, sexual assault and stalking against Native women. Furthermore, in order to properly administer tribal set-aside funds, it is necessary to keep in mind the special relationship between Indian tribes and the federal government, and the confusing jurisdictional realities in Indian country. This is also essential in the development of appropriate model codes, protocols, public education awareness materials, research, and training.

Increasing the response of Indian tribes and tribal law enforcement to domestic violence and sexual assault requires understanding the complexity of the jurisdictional maze created by Federal Indian law, the appropriate protocol for implementing government-to-government programmatic and administrative matters, and the management of funds set aside for Indian Nations. The new statutorily created Deputy Director for Tribal Affairs must be involved with any initiatives to address and enhance the response of tribal law enforcement to domestic violence and sexual assault. The authorities, responsibilities and

expertise of the Deputy Director will be essential to the success of any initiative to increase the safety of Indian women and respond to such crimes. However, we want to stress that the Department of Justice's responsibilities should not end with the creation of this office. This is merely an important first step among many that need to be taken to adequately address the horrific levels of violence perpetrated against Indian women.

VI. Conclusion.

In 1994, Congress enacted the Violence Against Women Act recognizing the extent and severity of violence against women. Over the last eleven years, the Act has significantly increased the ability of Indian Nations, tribal law enforcement agencies, and advocacy organizations to assist Indian women and hold perpetrators of domestic violence, sexual assault, and stalking accountable for their crimes.

VAWA 2006, specifically Title IX, represents a historic turning point in United States history in the recognition by the United States of its unique legal responsibility to assist Indian tribes in safeguarding the lives of Indian women. Addressing the needs and challenges confronting Indian tribes and tribal law enforcement in adequately responding to crimes of violence against Indian women under VAWA 2006 requires the full involvement of all agencies in the coordinated governmental implementation of the Act.

Given the crisis in the lives of Indian women and the present lack of adequate resources to properly safeguard Indian women,¹⁰ it is clear that more must be done at every level, from increasing funding through the Office on Violence Against Women, to better coordinating the handling of cases by the FBI and United States Attorneys, to addressing the problematic release of perpetrators by the Bureau of Prisons. If action is taken at every level, we can improve efforts to create a more responsive federal criminal justice system, and we can enhance tribes' ability to safeguard their citizens and communities. In conclusion, federal agencies must work on a government-to-government basis with Indian Nations, specifically tribal law enforcement, prosecutors and courts to hold perpetrators of such crimes accountable.

The advances made under VAWA 2006 have the potential to further the progress made toward a time when the honored status of Indian women is restored and all women will live free of violence.

¹⁰ See *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, U.S. Comm. On Civ. Rights, available at <http://www.usccr.gov/pubs/na0703/na0204.pdf>.