This policy report, produced for the National Indian Health Board, is meant to educate Blackfeet advocates and assist tribal leaders by providing them with up-to-date policy analysis.

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**Data on Domestic and Sexual Violence Against American Indian Women**

Native women face one of the highest abuse rates in the nation - according to the [Department of Justice](https://www.justice.gov), 34% of Native women are raped in their lifetime, and 39% are victims of domestic violence. Additionally, [86% of these crimes](https://www.justice.gov) are perpetrated by *non-Native men*. Ideally, the federal system would take up these cases in which tribes do not have jurisdiction. However, between 2005 and 2009, U.S. attorneys declined to prosecute [67% of sexual violence cases](https://www.justice.gov) in Indian Country.

While there is not as comprehensive data on domestic and sexual violence disparities on the Blackfeet Reservation as there are national statistics, according to data from Montana's Department of Corrections, Office of Justice Relations, in 2016, there were 78 Sexual and Partner Family Member Assaults offenses by the Cut Bank Police Department and the Glacier Sheriff's Office. In the same year, there were 364 domestic dispute arrests by Blackfeet Law Enforcement.

Data from the [2017 Blackfeet Community Health Assessment](https://www.blackfeet-nation.org) gives us more insight on reservation specific data. In cases in which Child Protective Services were involved in 2016, 23% involved domestic abuse and 14% involved sexual abuse. Finally, a survey for the Community Health Assessment found that among survey-takers, 16% reported physical abuse in their homes as children, 7% sexual abuse, and 20% reported witnessing domestic violence.

Without strong women, strong children, and strong families, the Blackfeet Nation is not whole. Our women, children and families deserve to feel safe, protected, and empowered.
Men as Victims of Sexual and Domestic Violence

This policy brief is not meant to suggest that Native men as victims of violence do not also deserve support and considerations. Compared to the general population, Native men have higher rates of being victims of physical and sexual violence. According to a 2016 National Institute of Justice report, Native men also have higher rates of being victims of psychological aggression by intimate partners than Native women (73% compared to 66%). According to the 2016 report, about one third of Native men have faced physical violence in the last year, and about 9.9% have faced sexual violence, while 14.4% of Native women faced sexual violence in the last year and 56% in her lifetime. These staggering statistics - the lives they impact - must be addressed.

Background Information

When developing tribal policy or advocating on the federal level, it is important to know what current laws and legal precedents exist. Here are some of the most important laws related to ending domestic and sexual violence in Indian Country.

**Indian Civil Rights Act** (1968) - Previous to this law, tribal courts were only allowed to sentence Indian defendants up to three years in their courts. ICRA expanded tribal court sentencing authority. However, few tribes have expanded their sentencing authority, and states are often unwilling to help fill this gap.

**Oliphant v. Suquamish Indian Tribe** - A 1978 Supreme Court ruling that asserted that tribal courts could not prosecute non-Native offenders, even if they are on tribal land. This was detrimental to tribal ability to prosecute offenders, particularly considering that the vast majority of violent crimes against Native women are committed by non-Native men.

**Family Violence Prevention and Services Act** (1984) - The first law to provide federal funding for family violence prevention. Today, it is the primary source of federal funding for emergency shelter and other services for domestic violence survivors. The law sets aside 10% of grant funding specifically for tribes. In 2015, $13.5 million were distributed to 260 tribes in 28 states, serving 134 tribal domestic violence programs. The Blackfeet Domestic Violence Program has received funding through FVPSA formula grants. Funding can be used for emergency shelter and safe housing, counseling, advocacy, legal and medical assistance, hotlines, and other services to coordinate community response to domestic violence.

**Tribal Law and Order Act** (2010) - Increased tribal ability to prosecute criminals and helped to expand and enhance tribal police forces.

**Violence Against Women Act Reauthorization** (2013) - Increased tribal jurisdiction in prosecuting non-Native offenders in cases of domestic violence, dating violence and some violations of a protection order. This right had been denied to Indian tribes since the 1978 Oliphant v. Suquamish Indian Tribe Supreme Court decision. In order to prosecute under what is called Special Domestic Violence Criminal Jurisdiction, tribes must become voluntarily complaint with federal regulations. So far, eighteen tribes have done so, which has resulted in the
arrest of 128 non-Indian offenders to date. The Fort Peck Reservation is the only one in Montana who has currently expanded their jurisdictional abilities.

One of the reasons why SDVCJ is essential for tribal communities is that the majority of offenders are non-Native, and the majority of people who live on tribal land are non-Native. In order for a tribe to be able to prosecute under the SDVCJ, the defendant must have ties to the tribe - for example, they must live on the reservation, be employed on the reservation, or be a current or former spouse or intimate partner of a tribal member living on the reservation.

Meeting federal regulations can be a challenge for tribes with lower capacity. The Tribal Law and Order Act and VAWA require prosecuting tribes to:

- “provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution”;
- “at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys”;
- “require that the judge presiding over the criminal proceeding has sufficient legal training to preside over the criminal proceedings and is licensed to practice law in any jurisdiction in the United States”;
- make available to the public the tribe’s “criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances)”;
- and “maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.”

Tribes must also ensure that they draw from a jury pool that does not systematically exclude non-Indians; that defendants will be afforded all civil rights as outlined in the Indian Civil Rights Act (and most state constitutions); and that tribes follow the Tribal Law and Order Act guidelines regarding incarceration. Despite these requirements, VAWA 2013 gave tribes some flexibility in how to implement the statute. Many advocates are calling for an expansion of tribal jurisdiction to cover cases such as sex trafficking, stalking, or endangerment of a child.

**United States v. Bryant, No. 15-420, 136 U.S. 1954** - A June 13, 2016 Supreme Court ruling that asserted that tribal-court offenses could be considered as “previous offenses” in state or federal prosecutions of the same perpetrator, as long as the proceedings complied with the Indian Civil Rights Act of 1968. This means that if a perpetrator is being tried for a crime that cannot be tried at a tribal-court level, any past tribal-court rulings will be taken into consideration.
**H.R. 1625 - Consolidated Appropriations Act, 2018** - This bill will fund the federal government through 2018, included an appropriation of $4 million for domestic violence prevention efforts at IHS.

**S.772 - Ashlynne Mike AMBER Alert in Indian Country Act** - This bill was introduced by Senator John McCain (R-AZ) on March 29, 2017 and was signed into law by President Donald Trump on April 13, 2018. Senator Jon Tester (D-MT) and Senator Steve Daines (R-MT) were co-sponsors of the bill. This bill allows tribes to access federal AMBER Alert grants and waive the matching fund requirement for tribal grantees. This increases funding access to AMBER Alert communication plans in the case of a child abduction.

**Where We Are Now**

Several bills were introduced or reintroduced during the 115th Congress (which lasts until December, 2018) to address violence against women in Indian Country. These bills cover a range of issues, including law enforcement, victims services and support, tribal sentencing authority and jurisdictional expansion.

**S. 1870 - the SURVIVE Act** (Securing Urgent Resources Vital to Indian Victim Empowerment Act) was introduced on September 2, 2017 by Senator John Hoeven (R-ND) and 7 original bipartisan cosponsors. Both Senator Steve Daines (R-MT) and Senator Jon Tester (D-MT) are original cosponsors. The bill would establish a 5% tribal set aside of the total amount of funds available during a fiscal year under the Victims of Crime Act (VOCA). When VOCA passed in 1984, it did not include tribes in the distribution of funds. If the bill passes, tribes will be able to apply on an annual basis with no funding match required. The funding can be used to “(i) respond to the emotional, psychological, or physical needs of a victim of crime; (ii) assist a victim of crime in stabilizing his or her life after victimization; (iii) assist a victim of crime in understanding and participating in the criminal justice system; or (iv) restore a measure of security and safety for a victim of crime.”

**S. 1942 - Savanna’s Act**, introduced by Senator Heidi Heitkamp (D-ND) and 5 original cosponsors on October 5, 2017, would require the U.S. Attorney General to adopt standardized law enforcement and justice protocols for dealing with cases of murdered and missing Indigenous women. This includes improving law enforcement response rates and follow up and ensuring access to victim services for victims and their families. It would also require the Attorney General, along with the U.S. Department of the Interior to hold annual federal-tribal consultations on how to improve tribal access data collection. Finally, it would require the U.S. Attorney General and the Secretary of the Interior to develop a joint annual report to the Committee on Indian Affairs, the Committee on the Judiciary of the Senate, the Committee on Natural Resources, and the Committee on the Judiciary of the House of Representatives with data on missing and murdered Indigenous women, recommendations on how to improve data collection, and feedback on the implementation on the standardized protocol. Senator Jon Tester (D-MT) is an original cosponsor. As of the publication of this report, Senator Steve Daines (R-MT) has not cosponsored.

**S. 1953 - Tribal Law and Order Act Reauthorization and Amendments Act of 2017**, introduced by Senator John Hoeven (R-ND), Senator John McCain (R-AZ) and Senator John Barrasso (R-WY) on October 5, 2017, this bill
reauthorizes the Tribal Law and Order Act (TLOA) with provisions to enhance tribes’ sentencing authority. The bill would extend by five years the Bureau of Prisons pilot project allowing tribes to request that the Bureau incarcerate convicted tribal members. It would also require federal grantees of the Office on Violence against Women to report on the number of human trafficking victims served with their grant funding. As of publication of this report, Senator Steve Daines (R-MT) is a co-sponsor but Senator Jon Tester (D-MT) is not.

**S. 1986 - Justice for Native Survivors of Sexual Violence Act** was introduced by Senator Al Franken (D-MN) with Senators Lisa Murkowski (R-AK) and Tom Udall (D-NM) as co-sponsors on October 19, 2017. The bill would clarify that tribal court jurisdiction over non-Indians within Indian Country extends to crimes involving sexual violence, sex trafficking, stalking, and related conduct. This is a major jurisdictional gap in protecting victims of domestic and sexual violence. As of publication, neither Senator from Montana is a co-sponsor.

**Policy Recommendations**

The bills currently in Congress are focused on expanding tribal jurisdiction, enhancing data collection in Indian Country, and increasing funding available to tribes. This section provides a brief overview of two other key policy solutions that tribes should implement and advocate for: strengthening resilience by addressing childhood trauma and PTSD and strengthening the tribal legal system to protect victims.

**Strengthening resilience: Adverse Childhood Experiences**

The groundbreaking 1998 CDC-Kaiser Permanente Adverse Childhood Experiences study documented how childhood trauma, such as physical abuse, witnessing the abuse of a family member, or neglect, impacts the current health status and behaviors of individuals. They observed that the more adverse childhood experiences (ACEs) one has, the increased risk they have for many health behaviors and outcomes, including increased risk of being a victim of intimate partner violence and increased risk of being a victim of sexual violence. According to the 2017 Blackfeet Community Health Assessment, 25% of surveyed Blackfeet youth had 2-3 ACEs and 25% had more than 4. Addressing ACEs and teaching youth to build resilience, positive coping skills, and develop positive relationships is essential for preventing further violence and victimization.

Addressing these ACEs and building resilient youth has been the focus of domestic violence prevention programming at the Blackfeet Tribal Health Department. Jade Heather Ackerman, Domestic Violence Prevention Initiative coordinator for the Blackfeet Tribal Health Department notes that: “Toxic stress seems to be a huge factor in our younger generations...I am currently working with many youth in our community and attempting to build resiliency with them to help them understand this type of stress and be able to overcome it with healthy coping skills.”

Trauma continues to impact community members into adulthood. According to the 2017 Blackfeet Community Health Assessment, the eighth most common diagnosis in IHS for adults ages 18 to 45 is Post Traumatic Stress Disorder; it is the ninth most common diagnosis for individuals 66 and older.
Federal policy should ensure that any resources to address domestic violence in Indian Country be comprehensive in scope, recognize contributing factors (such as trauma or substance abuse) and be locally adaptable. For example, the Special Diabetes Program for Indians (SDPI) gives tribal grantees flexibility to develop their own locally based, culturally relevant programming to address diabetes, which may range from traditional food promotion to nutrition programming. Similarly, H.R.3704, the Native Health Access Improvement Act, was introduced in the 115th Congress by Congressman Jesse Ruiz to create a Special Behavioral Health Program for Indians, modeled after the success of SDPI. Federal policy and funding that is locally adaptable to allow for culturally relevant, tribally based solutions are most impactful in Indian Country.

**Strengthening tribal legal system to protect victims**

On a scale of one to ten asking how safe the Reservation is as a place to live, Blackfeet community members ranked the reservation a “three” in a 2017 survey. Survey respondents suggested that improving law enforcement (particularly in enforcing drug-related laws) and increasing court system capacity would help improve community safety. High turnover rates and judge inexperience with domestic violence and sexual violence cases make prosecution difficult, even with tribal offenders. It is clear that strengthening the tribal legal system and law enforcement is needed and desired within the community.

More data is needed on the demographics of offenders on the Blackfeet Reservation. Data from the Montana Department of Justice found that in Glacier County, all offenders in 2017 knew the victim - 64% were intimate partners; 16% were family members and about 17% were acquaintances. Given the demographics of the reservation (88% American Indian) and the physical isolation from other communities, it is likely that the majority of offenders are Native, but further data is needed.

The Fort Peck Reservation is the only tribal government in Montana with Special Domestic Violence Criminal Jurisdiction (under VAWA) allowing them to prosecute non-Native offenders in cases of domestic violence, dating violence and some violations of a protection order. They were approved to begin prosecution in March, 2015 after applying for the pilot program in 2013. In addition to a tribal court systems that complies with requirements for SDVCJ, they have a strong Family Violence Resource Center that provides resources and support to victims and survivors. The tribal court also gives all those who they offer an order of protection a “Hope Card” so they can easily prove this status, if needed, in another jurisdiction. The experience of the Fort Peck Reservation over the past three years could provide a good learning opportunity for the Blackfeet tribal court systems and law enforcement on how to strengthen their systems for domestic and sexual violence victims.

Some tribes also have Domestic Violence Courts, in which the judges are specially trained on the complex dynamics of domestic violence cases and jurisdictional issues in Indian Country, and non-rotating personnel work to ensure the victims are safe and have access to the appropriate resources. One benefit of establishing a Domestic Violence court is the potential for increased collaboration between the court system, law enforcement, victims advocates, child welfare and other services. There are three different models for Tribal Domestic
Violence Courts: those that oversee criminal charges (such as criminal acts of domestic or dating violence), those that oversee civil charges (such as protection orders, child visitation, or divorce), and those that oversee both.

Another option for increasing victim safety is to establish a Domestic Violence Docket, meaning that certain court days are set aside specifically for civil or criminal domestic violence cases. This can create enhanced continuity for victims and increase safety and security measures within the court for victims and their families.

Additional Recommendations

In addition to the current bills in Congress, there are many things we can do on the local level to address domestic and sexual violence. Resources that exist on the reservation for victims of domestic or sexual violence include: Victim Advocate Services, Blackfeet BIA; Montana Legal Services (Blackfeet Office); Blackfeet Law Enforcement and the Blackfeet Domestic Violence Program. These are not the only ways to end domestic and sexual violence, but are important steps to prevention and healing for victims. The most impactful solutions to ending domestic violence and helping victims are locally based and culturally relevant.

Addressing Economic Barriers Between 94 to 99% of women who face domestic abuse are also victims of financial abuse. Because of this economic control, it is often difficult for women and their children to leave abusive households. This must be addressed when providing services - such as housing or relocation assistance - for victims of domestic violence.

Confronting stigma In 2017, 64% of women victims in Glacier County, Montana were intimate partners with their abusers. This, combined with the fact that the Blackfeet Reservation is small and many families know each other, means there is great social stigma in seeking help. We need to build communities and families in which asking for help is okay and we listen to and believe people when they say they are afraid or in danger.

Support LGBTQ and Two Spirit Relatives Most studies only include men and women, and do not account for violence against queer, transgender and two spirit Native Americans. As LGBTQ people across all racial groups face augmented threat of violence, we need to address these issues within our Native communities as well.

Reclaiming Blackfeet Masculinity The Blackfeet traditionally viewed all genders as equal. Women were essential to Blackfeet culture, community and economy, and violence against women and children was rare prior to colonization. Talking to your sons, nephews, and friends about standing up when they see sexism, treating women with respect, and helping them develop healthy ways to deal with emotions like anger are all essential to ending violence.
Additional Resources

- "About the CDC-Kaiser ACE Study" webpage, Center for Disease Control and Prevention: https://www.cdc.gov/violenceprevention/acestudy/about.html
- Indian Health Service Trauma-Informed Care webinars: https://www.ihs.gov/telebehavioral/seminararchive/trauma/
- Indian Law Resource Center “Safe Women, Strong Nations” project webpage: http://indianlaw.org/safewomen
- The Tribal Court Clearinghouse website, a project of the Tribal Law and Policy Institute: http://www.tribal-institute.org/lists/dvcourts.htm

About the Author: Abaki Beck (Blackfeet, Red River Metis) graduated in 2015 from Macalester College with a B.A. in American Studies with honors. Her senior honors thesis focused on youth suicide causes and prevention on the Blackfeet Reservation. After graduation, she was awarded an Udall Foundation Congressional Fellowship and later worked for Congresswoman Betty McCollum (D-MN) assisting with health and Native American issues. She was the lead researcher on an oral-history project focused on Blackfeet traditional foods, creating a report on food sovereignty and an advocacy guide for a community-based organization. She served in the inaugural cohort of the National Indian Health Board’s Tribal Youth Health Advisory Board representing the Billings Area.