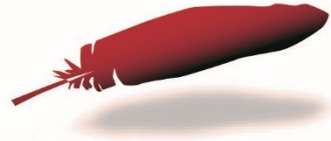


National Indian
Health Board



POLICY PRESENTATION: VIOLENCE AGAINST WOMEN ACT

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Christopher D. Chavis, JD, MPA
Policy Center Deputy Director

Agenda

- I. History of Criminal Jurisdiction in Indian Country
- II. VAWA Reauthorization of 2013
- III. VAWA Reauthorization of 2021



Summary

- In 2013, President Barack Obama signed the reauthorization of the Violence Against Women Act (VAWA).
- This act allowed for limited criminal jurisdiction over non-Indians for crimes related domestic and dating violence.
- In 2021, the House voted to reauthorize VAWA, which expanded jurisdiction.



How Did We Get Here?

- Unlike other sovereigns, Tribes do not have jurisdiction over everything that happens within their borders.
- This is the result of a long and complicated relationship with the United States.



Tribal Nations – The Oldest Governments in North America

- When the first colonists arrived, they encountered a continent that was already settled by existing sovereign nations.
- This was recognized in Article I, Section 8, Clause 3 of the U.S. Constitution, which states that the United States Congress shall have power *"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."*



Indian Title

- “The United States ... hold[s] and assert in themselves the title by which it was acquired. They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy either by purchase or by conquest.” – Johnson v. M’Intosh (1823)
- Indians do not have the right to sell land to other individuals, only to the federal government.



Domestic Dependent Nations

“Their relations to the United States resemble that of a ward to his guardian. They look to our Government for protection, rely upon its kindness and its power, appeal to it for relief to their wants[.]” – Cherokee Nation v. Georgia, 30 U.S. 1 (1831)



States Have No Part

“The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force ... [t]he whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the Government of the United States.”

- Worcester v. Georgia, 31 U.S. 515 (1832)



Trade and Intercourse Act (1790)

- The federal government set out early on to set the rules of engagement between Indians and non-Indians.
- The Trade and Intercourse Act outlined that non-Indians could be punished for crimes committed in Indian Country.



General Crimes Act (1817)

- The Trade and Intercourse Act only covered crimes committed by non-Indians against Indians.
- The General Crimes Act was passed in 1817 and applied to Indians who commit crimes against non-Indians.



Ex parte Crow Dog, 109 U.S. 556 (1883)

- The federal government attempted to prosecute an Indian for a murder committed against an Indian, even after the issue had been handled by the Tribe.
- The Supreme Court said no. The federal government did not have jurisdiction.



Major Crimes Act (1885)

- In response to *Crow Dog*, Congress passed the Major Crimes Act.
- The Act initially placed seven “major” crimes under the exclusive jurisdiction of the federal government.
- In *U.S. v. Kagama* (1886), the Court ruled that this was an allowable exercise of Congress’s plenary power over Tribal nations.



Jurisdiction over Non-Indians

- In 1978, the Supreme Court ruled in *Oliphant v. Suquamish* that Tribes do not have inherent jurisdiction over non-Indians, unless authorized by Congress.
- In 1990, they went even further in *Duro v. Reina* and said that Tribes do not have jurisdiction over non-members.
- Congress quickly enacted a fix that said that Tribes have jurisdiction over *all Indians* regardless of Tribal citizenship.



Jurisdictional Hole

- Despite the federal government having jurisdiction over non-Indians, their enforcement was lax.
- This created a jurisdictional hole where non-Indians could commit crimes in Indian Country and not face a substantial threat of prosecution.



Violence Against Women Act

- In 2013, Congress sought to address this issue when it reauthorized the Violence Against Women Act.
- Congress extended *limited* jurisdiction over non-Indians.



How do Tribes Access This?

- The ability to exercise this “extra” jurisdiction is not automatic.
- Tribal Courts must meet certain conditions, including having law trained judges, providing due process rights, providing free counsel for indigent defendants, and ensuring that the jury pool resembles the surrounding community.
- These provision largely mirror the mainstream American court system.



What Crimes Are Covered?

- Domestic Violence
- Dating Violence
- Criminal violations of protection orders.



What isn't covered?

- By only covering only dating and domestic violence, VAWA misses crimes committed between two strangers.
- More work needed to be done...



H.R. 1620

- On March 8, a bill to reauthorize VAWA was introduced in the House. The bill passed the House on March 22.
- It seeks to strengthen the 2013 reauthorization by broadening the jurisdiction of Tribes.



Additional Jurisdiction

- The bill adds:
 - Obstruction of Justice
 - Sexual Violence
 - Sex Trafficking
 - Stalking
 - Crimes against Children
 - Elder Abuse
 - Assault of a Law Enforcement or Corrections Officer



Information Sharing

- The bill strengthens the ability of Tribal police to access, enter, and obtain information from federal criminal information database.



Reimbursements and Grants

- Tribe would also be eligible for reimbursement for expenses incurred from exercising this extra jurisdiction.
- It could include the costs of detaining, trying, and housing offenders (including health care), costs related to Indigent criminal defense, and costs associated with probation and rehabilitation services.
- The exact rules would be determined by the Department of Justice after Tribal consultation.



What's Next?

- H.R. 1620 still has to be passed by the United States Senate and signed into law by the President.



Questions?

Contact Me!

cchavis@nihb.org

202-750-3402

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