

Statement of Senator Tom Udall
Violence Against Women Reauthorization Act (S. 1925)
Support for Title IX, Safety for Indian Women
April 25, 2012

Mr. President,

I rise today to express my support for the Violence Against Women Reauthorization Act. But more specifically, I want to talk about how crucial the tribal provisions in this bill are for Native American women.

For the past 18 years, this historic legislation has helped protect women from domestic violence, sexual assault, and stalking. It has strengthened the prosecution of these crimes and it has provided critical support to the victims of these crimes.

It has been a bipartisan effort with broad support. Democrats. Republicans. Law enforcement officers, prosecutors, judges, health professionals. All have supported this federal effort to protect women. Why? Because it has worked.

Since its passage in 1994, domestic violence has decreased by over 50 percent. And the victims of these crimes have been more willing to come forward. Knowing they are not alone. Knowing they will get the support they need. Knowing that crimes against women will not be tolerated.

Unfortunately, not all women have received the full benefits of the Violence Against Women Act. That is why the tribal provisions in the reauthorization are so important. Native American women are 2 1/2 times more likely than other U.S. women to be raped. One in three will be sexually assaulted in their lifetimes, and it is estimated that three out of every five Native women will experience domestic violence.

Those numbers are tragic. Those numbers tell a story of great human suffering. Of women in desperate situations. Desperate for support. And too often we have failed to provide that support.

But the frequency of violence against Native women is only part of the tragedy. To make matters worse, many of these crimes go unprosecuted and unpunished.

Here's the problem. The tribes have no authority to prosecute non-Indians for domestic violence crimes against their Native American spouses or partners within the boundaries of their own tribal lands. And yet over 50% of Native women are married to non-Indians, and 76% of the overall population living on tribal lands are non-Indians.

Instead, under existing law, these crimes fall exclusively under Federal jurisdiction. But Federal prosecutors have limited resources and they may be located hours away from tribal communities. As a result, non-Indian perpetrators often go unpunished. The cycle of violence continues and often escalates at the expense of their Native American victims.

On some tribal lands, the homicide rate for Native women is up to 10 times the national average. But this starts with small crimes. Small acts of violence that may not rise to the attention of a Federal prosecutor. In 2006 and 2007, U.S. Attorneys prosecuted only 45 misdemeanor crimes on tribal lands. For perspective, the Salt River Reservation in Arizona – which is relatively small – reported more than 450 domestic violence cases in 2006 alone. Those numbers are appalling.

Native women should not be abandoned to a jurisdictional loophole. The tribal provisions in the Violence Against Women Reauthorization Act provide a remedy. The bill allows tribal courts to prosecute non-Indians in a narrow set of cases that meet the following specific conditions:

- The crime must have occurred in Indian country;
- The crime must be either a domestic violence or dating violence offense, or a violation of a protection order; and
- The non-Indian defendant must reside in Indian country, be employed in Indian country, or be the spouse or intimate partner of a member of the prosecuting tribe.

This bill does not extend tribal jurisdiction to include general crimes of violence by non-Indians, crimes between two non-Indians, or crimes between persons with no ties to the tribe. Nothing in this provision diminishes or alters the jurisdiction of any Federal or state court.

I know some of my colleagues question if a tribal court can provide the same protections to defendants that are guaranteed in a Federal or state court. The bill addresses this concern and provides comprehensive protections to all criminal defendants who are prosecuted in tribal courts, whether or not the defendant is a Native American. Defendants would essentially have the same rights in tribal court as in state court.

These include the rights to counsel, to a speedy trial, and to due process; and the rights against unreasonable search and seizures, double jeopardy, and self-incrimination; among many others. In fact, a tribe that does not provide these protections cannot prosecute non-Indians under this provision.

Some have also questioned whether Congress has the authority to expand tribal criminal jurisdiction to cover non-Indians. This issue was carefully considered in drafting the tribal jurisdiction provision and the Indian Affairs and Judiciary Committees worked closely with the Department of Justice to ensure that the legislation is constitutional. In fact, just last week fifty prominent law professors sent a letter to the Senate and House Judiciary Committees expressing their “full confidence in the constitutionality of the legislation, and in its necessity to protect the safety of Native women.” Their letter provides a detailed analysis of the jurisdiction provision. It concludes that “the expansion of tribal jurisdiction by Congress, as proposed in Section 904 of S. 1925, *is* constitutional.” I would ask that the full text of their letter be included in the Record.

I respect my colleague’s concerns about the tribal provisions of this bill and I am willing to work with any Senator who may have concerns about these provisions. Native American Law can be daunting, but I want to stress just how much effort, research, and consultation went into drafting the tribal provisions in VAWA. Title 9 is taken almost entirely from S.1763, the Stand Against Violence and Empower Native Women Act (the SAVE Native Women Act). This bill was based

on a Department of Justice proposal submitted to Congress last July. That proposal was the product of extensive multi-year consultations with tribal leaders about public safety generally and violence against women specifically and it builds on the foundation laid by the Tribal Law and Order Act of 2010.

The SAVE Native Women Act was cleared by the Indian Affairs Committee in a unanimous voice vote. Shortly thereafter, its core provisions were again vetted and incorporated in the Judiciary Committee's Violence Against Women Act Reauthorization as Title 9. In short, the Safety for Indian Women title has been vetted extensively, and enjoys wide and bipartisan support.

The tribal provisions in this bill are fundamentally about fairness and affording Native women the protections they deserve. As a former Federal prosecutor and Attorney General of a state with a large Native American population, I know firsthand how difficult the jurisdictional maze can be for Tribal Communities. And one result of this maze is unchecked crime. In situations where personnel and funding run thin, and distance is a major prohibitive factor, violence often goes unpunished.

Title 9 will create a local solution for a local problem. By allowing tribes to prosecute the crime occurring in their own communities, they will be equipped to stop the escalation of domestic violence.

And tribes have already proven to be effective in combating crimes of domestic violence committed by Native Americans. But let me reiterate this very important point – without an act of Congress, tribes cannot prosecute a *non*-Indian, even if he lives on the reservation and is married to a tribal member. Without *this* act of Congress, tribes will continue to lack authority to protect the women who are members of their own tribes. With this bill we can close a dark and desperate loophole in criminal jurisdiction.

Beyond extending the jurisdiction of tribes within specific constraints, this bill will also promote other efforts to protect Native women from an epidemic of domestic violence. By increasing grants for tribal programs to address violence and for research on violence against Native women. And also by allowing federal prosecutors to seek tougher sentences for perpetrators who strangle or suffocate their spouses or partners.

All of these provisions are about justice. Right now, Native women don't get the justice they deserve. But these are strong women. They, rightly, demand to be heard. They have identified a desperate need and support logical solutions. That is why Native women and tribal leaders across the nation support the Violence Against Women Reauthorization Act and the proposed tribal provisions.

Let us work with these women to create as many tools as possible for confronting domestic violence.

There are many—far *too* many—stories of desperation that illustrate why the provisions protecting Native women are in this bill. I want to share just one such story now.

This is the story of a young, Native American woman, married to a non-Indian. He began abusing her two days after their wedding. They lived on her reservation. In great danger, she filed for an order of protection, as well as a divorce, within the first year of the marriage. The brutality only increased. It ended with the woman's abuser going to her place of work—which was located on the reservation—and attempting to kill her with a gun. A co-worker, trying to protect her, took the bullet.

Before that awful day, this young woman had nowhere to turn for help. In her own words, “After a year of abuse and more than 100 incidents of being slapped, kicked, punched and living in horrific terror, I left for good. During the year of marriage I lived in constant fear of attack. I called many times for help but no one could help me.”

The tribal police did not have jurisdiction over the daily abuse because the abuser was a non-Indian. The federal government had jurisdiction but chose not to exercise it because the abuse was only misdemeanor level, prior to the attempted murder. The state did not have jurisdiction because the abuse was on tribal land and the victim was Native American.

Her abuser at one point after an incident of abuse actually called the county sheriff himself to prove that he was untouchable. The deputy sheriff came to the home on tribal land, but left saying he did not have jurisdiction.

This is just one of the daily, even hourly, stories of abuse. Stories that should outrage us all. And that could end through local intervention. Local authority that will only be made possible through an act of Congress. We have the opportunity to support such an act in the tribal provisions of VAWA.

I encourage my colleagues to fully support the tribal provisions in this important bill.