

SEC. 904 OF S.1925, THE VIOLENCE AGAINST WOMEN ACT REAUTHORIZATION CONSTITUTIONAL PROTECTIONS FOR SUSPECTS OF DOMESTIC VIOLENCE

Sec. 904 of S. 1925 seeks to fill a gap in jurisdiction that has left many acts of domestic and dating violence in Indian Country unprosecuted and unpunished. Tribal leaders, police officers, and prosecutors report a pattern of escalating violence that goes unaddressed, with beating after beating, each more severe than the last, ultimately leading to severe physical injury or even death.

An NIJ-funded analysis of death certificates found that, on some reservations, Native women are murdered at a rate more than ten times the national average. S. 1925 seeks to address domestic violence at the local level in the early stages, before violence escalates to aggravated assault and homicide, by empowering tribal courts to prosecute crimes of domestic violence, dating violence, or violations of protection orders, regardless of the race of the perpetrator.

The race-based limits in place under current law deny Native victims equal access to justice. Sec. 904 of S. 1925 provides that justice, while at the same time offering full due-process protections to suspects of domestic and dating violence in tribal courts.

S. 1925 requires that tribal governments prosecuting domestic and dating violence cases provide defendants with protections equivalent to those they would receive in any state court.

Due Process Protections for Defendants Suspected of Domestic and Dating Violence:

- Rights included in the Indian Civil Rights Act (ICRA), which include the rights: to a speedy trial, against illegal search and seizure, to confront witnesses, to remain silent (not testify against oneself), to equal protection, to due process, to a six-person jury trial, to be informed of the nature of charges, to compulsory process for witnesses, against cruel and unusual punishment, to petition a federal court for habeas corpus to challenge the legality of one's detention;
- The right to a licensed defense attorney "at the expense of the tribal government";
- "The right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution";
- Access to a published version of the prosecuting tribe's criminal laws, rules of evidence, and rules of procedure, as well as a video or audio recording of the trial for appeal or habeas review;
- Right to a licensed judge, trained in criminal law;
- All residents of Indian communities (Indian and non-Indian) must be made a part of the jury pool;
- ***And all other rights whose protection is necessary under the U.S. Constitution*** (explicitly found in Section 904 of S.1925).

Suspects of domestic and dating violence can challenge their detention prior to trial

- Individuals charged under Section 904's special domestic-violence jurisdiction have the immediate right to petition a federal court to stay their detention pending trial. The court may grant the stay if it finds that there is a substantial likelihood that the habeas petition will be granted; and after giving the alleged victim an opportunity to be heard, finds by clear and convincing evidence that the petitioner is not likely to flee or pose a danger to any person or the community if released.

Persons found guilty of domestic and dating violence can challenge their conviction

- A person convicted in tribal court of domestic or dating violence under this provision will have both the right to a direct appeal in tribal (or intertribal) appellate court and the right to seek release by petitioning a federal district court for a writ of habeas corpus under ICRA's Section 1303.

For more information, please contact NCAI Staff Attorney, Katy Jackman at kjackman@ncai.org.