

# The Violence Against Women Act of 2018: A Step in the Right Direction for Indian Children and Federal Indian Law

NEOSHIA R. ROEMER

It is well-settled law that if a person who violates the laws of the United States is a resident of another country, that person falls within the criminal jurisdiction of the United States. Similarly, if a person crosses state lines and commits child abuse in another state, he or she falls under the jurisdiction of the state where the crime was committed. The act itself automatically triggers criminal jurisdiction in the place where the person has committed the crime. However, this scenario changes drastically when a non-Native American person enters Indian country and commits violence against a child with whom they may or may not have a familial relationship. Here, the tribal court has no automatic criminal jurisdiction over the non-Native American offender and cannot prosecute the offender. This lack of automatic criminal jurisdiction remains a problem for many Indian tribes seeking to protect and defend their member children from abuse.

Because of the 1978 U.S. Supreme Court case *Oliphant v. Suquamish*,<sup>1</sup> tribal courts exercise limited criminal jurisdiction when it comes to non-Native American offenders. For Indian tribes, this limited exercise of jurisdiction over non-Native American offenders remains an area of vulnerability. Ideally, all federally recognized Indian tribes would have the ability to prosecute any person who breaks the laws of their nations without question because they are sovereigns.<sup>2</sup> The proposed Violence Against Women Act of 2018 (VAWA 2018) is a step in the right direction in acknowledging the rights that Indian tribes have to protect some of their most vulnerable citizens and returning jurisdiction to these tribes over non-Native American offenders who harm children.

This article discusses why Indian tribes require the ability to exercise the full jurisdiction of a sovereign to prosecute crimes against tribal member children living on a reservation. First, this article provides a brief history of the Violence Against Women Act, emphasizing the nature of the act and its provisions impacting Indian country. Second, this article discusses specifically how the Violence Against

Women Act of 2013 (VAWA 2013), which returned limited criminal jurisdiction over non-Native American offenders to tribes, impacts Indian country. Third, this article discusses the proposed VAWA 2018 and what it means for prosecuting crimes against children. Finally, this article describes the impact that VAWA 2018 could have in Indian country and how it recognizes inherent tribal sovereignty. Importantly, this article highlights jurisdictional concerns in Indian country and the need for the unlimited exercise of jurisdiction when it comes to violence against children. In discussing these jurisdictional concerns, this article does not intend to feed into hysteria, negative stereotypes, and bias when it comes to Indian country and Indian tribes' abilities to care for their member children.

## A Brief History of the Violence Against Women Act

Congress first passed the Violence Against Women Act in 1994 (VAWA 1994).<sup>3</sup> In its original form, VAWA 1994 contained both criminal and civil legal provisions that aimed to protect women from violence. Most notably, VAWA 1994 established repeat offender status for offenders

convicted of sexual assault more than one time,<sup>4</sup> promulgated a rule of evidence prohibiting the use of a victim's past sexual behavior as irrelevant to the matter at hand,<sup>5</sup> provided for full faith and credit for protection orders,<sup>6</sup> and created a civil remedy for women who were victims of sexual assault.<sup>7</sup> In addition to these substantive provisions, VAWA 1994 also provided for grants to train police departments,<sup>8</sup> educate youth on domestic violence,<sup>9</sup> and provide for community programs.<sup>10</sup> Since 1994, Congress has re-authorized VAWA three times: in 2000, 2005, and 2013. However, the focus of this article lies in the jurisdictional provisions of VAWA 2013, which authorized Indian tribes to pursue non-Native American offenders in limited circumstances.<sup>11</sup>

Through an amendment to the Indian Civil Rights Act of 1968 (ICRA), VAWA 2013 explicitly authorized special domestic violence criminal jurisdiction.<sup>12</sup> The special domestic violence criminal jurisdiction existed only for domestic, or dating, violence and violation of protection orders.<sup>13</sup> Moreover, participating tribes could only exercise special domestic violence criminal jurisdiction over a defendant with ties to the tribe.<sup>14</sup> As defined in VAWA 2013, a defendant's ties to a participating tribe include an analysis of whether (1) the defendant resided within the tribe's Indian country boundaries, (2) the defendant is employed by the tribe, or (3) the defendant is the spouse, intimate partner, or dating partner of a member of the tribe or another Indian who resides within the tribe's Indian country boundaries.<sup>15</sup> Though VAWA 2013 was revolutionary in returning tribal criminal jurisdiction in particular instances of domestic violence, a tribe's exercise of jurisdiction remains limited to offenders with ties to the tribe and/or the victim.

In addition to these requirements, VAWA provides specific rights for non-Native American defendants. One right that non-Native American defendants have is the right to counsel at no cost to the defendant for a charge that carries *any* term of imprisonment.<sup>16</sup> Alternatively, the Tribal Law and Order Act of 2010 required that indigent Native American defendants facing *more than one year* in prison receive an attorney at no cost to the defendant.<sup>17</sup> Arguably, VAWA 2013 allows ICRA to provide non-Native American offenders with greater civil rights than Native American offenders, especially considering its special "stay of detention" provision that applies specifically to non-Native American defendants.<sup>18</sup>

Undoubtedly, there is a distinction between the rights owed to Native American and non-Native American defendants under VAWA 2013. However, these distinctions themselves raise questions of sovereignty because tribes should have the full right to determine which rights to provide to defendants. Most recently, this tension played out in *United States v. Bryant*, where a Native American man was convicted in federal court under the federal habitual offender statute after successive, uncounseled domestic violence convictions in tribal court.<sup>19</sup> In his case before the U.S. Supreme Court, Bryant argued that using these uncounseled domestic violence violations, which complied with ICRA, to confer habitual offender status violated his Sixth Amendment right to counsel in federal court.<sup>20</sup> Ultimately, *Bryant* held that there was no due process violation where a Native American defendant's uncounseled tribal court convictions complied with ICRA.<sup>21</sup> Although *Bryant* upheld tribal sovereignty and an Indian tribe's right to decide whether to provide counsel to a member defendant where a term of punishment is less than a year, it highlights the distinctions between ICRA and the U.S. Constitution—distinctions that differentiate between Native American and non-Native American offenders in tribal court.

In addition to the expansion of the class of defendants a tribe may prosecute and the rights owed to non-Native defendants, another notable feature of VAWA 2013 is that it provides for grant funding that tribal courts can access through an application process. These grants include funds for services for victims of domestic violence,<sup>22</sup> as well as grants to help tribal governments develop law and policy to eradicate domestic violence within their communities.<sup>23</sup> Thus, VAWA 2013 provided for more funds that Indian tribes can access to further develop their own tribal legal codes, enact their own legal code, and promulgate their own rules on domestic violence. Considering VAWA's requirements for law-trained professionals and court systems, along with the costs associated with accessing special domestic violence criminal jurisdiction, these grants provide crucial funding to Indian tribes.

### The Impact of VAWA 2013 in Indian Country

After VAWA 2013, some Indian tribes began to exercise special domestic violence criminal jurisdiction. In its "Five Year Report," the National Congress of American Indians (NCAI) identified 18 tribes throughout the United States that have implemented special domestic violence criminal jurisdiction.<sup>24</sup> At the time of its report, NCAI found that these tribes made 143 arrests of non-Native American defendants with 74 convictions and 24 ongoing cases.<sup>25</sup> Notably, NCAI also identified 14 federal referrals within this five-year period.<sup>26</sup> The nature of these federal referrals are ambiguous, but they could be referrals for cases of child abuse or referrals based on habitual offender status. Tribes are utilizing VAWA 2013's provisions, but its reach is still somewhat limited.

Some Indian tribes wishing to exercise special domestic violence criminal jurisdiction ran into a large impediment: VAWA 2013 only provides special domestic violence jurisdiction over non-Native American defendants who commit partner-on-partner violence.<sup>27</sup> Related conduct, such as child abuse or resisting arrest, or other crimes of violence against women are not included in the special domestic violence criminal jurisdiction. In its report, NCAI identified some actual crimes that special domestic violence criminal jurisdiction tribal courts could not prosecute such as child endangerment, violence against children, violence against a victim's family, sexual contact, along with other crimes.<sup>28</sup> Tribal courts exercising special domestic violence criminal jurisdiction could not prosecute non-Native American defendants for crimes that VAWA 2013 covers at large.<sup>29</sup> Prosecuting crimes that are not domestic violence, dating violence, or violation of a protection order are not possible for tribes under VAWA 2013. VAWA 2013's special domestic violence criminal jurisdiction is working where tribes have accepted it. However, its reach into prosecuting all criminal conduct that offenders commit during specific incidents should be extended quite a bit. Perhaps expanding tribal criminal jurisdiction could help more Indian tribes utilize VAWA's provisions.

Additionally, tribes have logistical concerns in implementing VAWA. Implementing special domestic violence criminal jurisdiction is expensive.<sup>30</sup> Not only do tribal courts have to adhere to VAWA 2013's requirements, but they also have to pay to house defendants they sentence to prison.<sup>31</sup> VAWA 2013 provides grant funding that tribes may apply for to conduct VAWA 2013's objectives, but tribes must have the resources to apply for funding that may not be certain or consistent.<sup>32</sup> Moreover, applying for government funding also means adhering to VAWA's imposed Westernized, federal legal scheme. While this may not be a concern of all tribal governments,

VAWA 2013's special requirements for non-Native American defendants intrudes upon tribal sovereignty in some cases.<sup>33</sup> Though accepting these changes to a tribal court system are an exercise of offensive tribal sovereignty—a concept Judge Frank Pommersheim articulates as tribal nations taking active, sometimes uncertain risks in the course of nation building—these changes undoubtedly represent yet another iteration of federal policy dictating tribal policy and the rights of governance.<sup>34</sup> It is in this light that Indian tribes have to determine whether to exercise special domestic violence criminal jurisdiction under VAWA 2013.

### **The Proposed VAWA 2018 and Its Impact on Crimes Against Children**

At this time, Congress is considering the proposed VAWA 2018.<sup>35</sup> The proposed VAWA 2018 amends VAWA 2013's special domestic violence criminal jurisdiction, instead opting to frame it as a more general "special tribal jurisdiction" every time the phrase appears in ICRA.<sup>36</sup> In fact, VAWA 2018 strikes all language regarding a defendant's ties to a tribe.<sup>37</sup> Thus, VAWA 2018 effectively allows tribes to exercise criminal jurisdiction over all people, including non-Indians, who are charged with committing covered conduct, regardless of special sexual relationship ties. Further, VAWA 2018 amends the conduct over which a tribe may exercise its criminal jurisdiction to include not only domestic and dating violence but also sexual violence, sex trafficking, stalking, child violence, and related conduct.<sup>38</sup>

Unlike its predecessor, VAWA 2018 covers violence against children, which could impact child welfare cases within Indian country. According to NCJ's "Five Year Report," approximately 58 percent of the cases special domestic violence criminal jurisdiction tribal courts adjudicated involved crimes against children.<sup>39</sup> Where crimes against children occurred in these domestic violence cases, tribes had to refer these matters to state or federal authorities for prosecution without guarantee that those entities would follow up—even when the crime against the child was related to a matter falling under the tribe's special domestic violence criminal jurisdiction.<sup>40</sup> When a tribal court cannot exercise jurisdiction over non-Native Americans who commit crimes against children, tribal communities, especially children within those communities, remain vulnerable.

As a remedy of sorts, VAWA 2018 defines child violence as "covered conduct committed against a child by a caregiver."<sup>41</sup> Under VAWA 2018, a caregiver can be:

1. a parent or legal guardian;
2. a spouse or intimate partner of a parent or legal guardian;
3. any relative of the child;
4. a person who resides with, or has resided with, the child regularly or intermittently;
5. a person who provides care for the child in or out of the home;
6. any person exercising temporary or permanent control over a child; or
7. any person who temporarily or permanently supervises, or has supervised, the child.<sup>42</sup>

Additionally, the definition of "covered conduct" is broad enough to allow tribes to exercise jurisdiction in a variety of instances of child violence. VAWA 2018 defines "covered conduct" as conduct that "(A) involves the use, attempted use, or threatened use of force against the person or property of another; and (B) violates the criminal law of the Indian tribe that has jurisdiction over the Indian country where the conduct occurred."<sup>43</sup>

VAWA 2018 also provides for tribes to exercise criminal jurisdiction over "related conduct."<sup>44</sup> The addition of "related conduct" is significant because it is broadly defined by Congress as "an act of related conduct that occurs in Indian country."<sup>45</sup> Theoretically, participating tribes could pursue charges against a non-Indian offender that they would otherwise not have criminal jurisdiction to pursue, such as child trafficking, failure to appear, resisting arrest, destruction of public property in pursuit of conduct prohibited under VAWA, and other similar activities.

Thus, VAWA 2018 allows tribes to exercise jurisdiction over a wide range of child violence, from familial child violence to child violence that may happen in other locations, such as in a school within Indian country boundaries. Importantly, this update to VAWA allows participating tribes to supplement their current jurisdiction because tribes may already pursue their own members, as well as other non-member Indians, for child violence that occurs within their Indian country boundaries.<sup>46</sup>

Generally, federal courts have jurisdiction over child sexual abuse where both the defendant and the victim are Indian.<sup>47</sup> However, VAWA 2018 also extends special tribal jurisdiction over any nonconsensual sexual act where the victim lacks the capacity to consent.<sup>48</sup> Though VAWA 2018 is unlikely to challenge the Major Crimes Act, VAWA 2018 finally allows tribes to charge non-Native Americans with sexual assault—signaling an abrupt departure from the culture of impunity surrounding non-Native American aggressors and sexual abuse in Indian country.

Another way in which VAWA 2018 protects children is through the removal of firearms from violent offenders. Tribes that are seeking grants for compelling witness testimony and improving law enforcement must submit protocols for ensuring the removal of firearms from people who have been convicted of domestic violence.<sup>49</sup> Though this VAWA section is not necessarily aimed at child protection, the removal of firearms from domestic violence offenders significantly improves a child's chance at a quality life. Statistics increasingly demonstrate that access to firearms makes it more likely that offenders with a history of domestic violence may escalate and perpetrate gun violence against their victims.<sup>50</sup>

### **VAWA 2018's Direct Impacts on Indian Child Welfare**

Violence against women and child welfare often manifest in the same case. To protect children, most state laws and tribal codes require that the presiding court consider any domestic violence allegations, charges, and/or convictions when placing children. Sometimes, domestic violence is the superseding cause of child welfare proceedings, including the termination of parental rights.<sup>51</sup> In *Rice v. McDonald*, the Alaska Supreme Court considered whether a trial court properly weighed evidence in determining whether Alaska or Texas had jurisdiction over the placement of Indian children.<sup>52</sup> In *Rice*, the father of three children allegedly murdered their mother.<sup>53</sup> He was arrested, and the father's relatives, who lived in Texas, moved the children from Alaska to Texas.<sup>54</sup> The father's relatives sought and obtained a custody order in a Texas court.<sup>55</sup> Subsequently, the mother's relatives filed a petition for custody.<sup>56</sup> Not only did the Indian Child Welfare Act of 1978 (ICWA) apply in this case, the Alaska Supreme Court was concerned that the trial court had not properly weighed and resolved the domestic violence issues in this child welfare case.<sup>57</sup> Resolving the domestic violence concerns was ultimately a huge factor in placing these Indian children in foster care in Alaska.<sup>58</sup>

Generally, child welfare is a matter of civil, not criminal, jurisdiction. Though, as *Rice* demonstrates, criminal matters certainly have an impact on the outcome of child welfare decisions. In general American jurisprudence, to break a law of any sort is to harm the state.<sup>60</sup> That is, in cases of child abuse, to harm a child is to harm the state. Under this framework, the state has the full ability to pursue recourse against someone who commits child abuse. Conversely, this is not the case in Indian country if the offender is not Native American. Although a non-Native American offender may harm the tribe by hurting its member children, the tribe can only refer the case outward. The tribe has no way to prosecute the harm against its member child.

All forms of familial violence, such as domestic violence, child abuse, and child sexual abuse, tend to be generational and follow a cycle of power and control.<sup>61</sup> In Native American communities, most of this violence stems from colonial violence such as cultural genocide through boarding schools, rape, and removal of children.<sup>62</sup> However, where tribal nations are without the power to seek reparation for the harms that offenders cause to their children and, vicariously, to the nation, today's child victims may very well be tomorrow's child abusers. This is not to exact a doom-and-gloom outlook on tribal communities that have worked diligently to take back their communities and eradicate violence. Rather, to best protect the interests of their member children, tribes must have criminal jurisdiction to hold accountable offenders who cause harm to children.

Forty years ago, Congress recognized that tribes have a vested interest in the placement of their member children in the civil context when it enacted ICWA.<sup>63</sup> Congress enacted ICWA to protect tribal communities from disintegration through the disproportionate removal of their children to protect their best interests as Indian children.<sup>64</sup> ICWA applies where an Indian child is the subject of child welfare proceedings.<sup>65</sup> Where an Indian child is involved in child welfare proceedings, ICWA provides Indian tribes with exclusive jurisdiction over the matter if the child resides within reservation boundaries.<sup>66</sup> Thus, the tribe has the exclusive right to determine what is in that child's best interest. Congress acknowledges that tribes have an interest in these proceedings, but the same does not hold true in holding non-Native American offenders criminally liable.

VAWA 2018 proposes to return some jurisdiction to tribes so that they can protect their children from non-Native American offenders who harm children. ICWA, as well as general principles of governance, demonstrate that sovereign governments have the right to administer child welfare provisions.<sup>67</sup> However, violence against children—even where the offender does not exact physical violence against the child—has long been outside of this child welfare paradigm where a non-Native American commits violence within a tribe's jurisdiction.<sup>68</sup> Unlike state entities that operate under the notion that to harm a child is to harm the state, tribes currently have no way to pursue the harms these offenders exact upon tribal communities. Thus, Indian tribes still do not have full control over ensuring the safety of their member children.

## Conclusion

Since its original enactment in 1994, VAWA has continuously evolved to cover more ground, especially in Indian country. Although Indian tribes have inherent sovereignty and should be able to exercise criminal jurisdiction without qualification, federal law has limited tribal criminal jurisdiction. This limits tribal authority to prosecute harms

against the community, particularly where children are harmed. The proposed VAWA 2018 targets this gap in criminal jurisdictional authority and attempts to fill it by widening the category of non-Native American offenders who tribes can charge with offenses and by broadening the category of prosecutable offenses. In recognizing full tribal sovereignty and tribes' inherent right to prosecute crimes within their borders, the proposed VAWA 2018 is a step in the right direction, especially because it allows Indian tribes to better ensure the safety of their member children. ☉



Naoshia R. Roemer is currently the fellow at the Indigenous Law & Policy Center at Michigan State University College of Law in East Lansing, Mich., where she mentors first-year law students, works in the Indian Law Clinic and ICWA Appellate Project, works on developing an effective pipeline to law programs, and conducts academic research. Roemer's academic interests include federal Indian law policy, child welfare, children's rights, juvenile defense, and violence against women. Roemer is a 2017 graduate of the University of New Mexico School of Law, where she graduated cum laude, earned a Law & Indigenous Peoples Certificate, and participated as a staff member on the Tribal Law Journal. She is licensed to practice law in New Mexico.

## Endnotes

<sup>1</sup>*Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978).

<sup>2</sup>*See Cherokee Nation v. Georgia*, 30 U.S. 1, 34 (1831) (recognizing Indian tribes have inherent sovereign authority).

<sup>3</sup>Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (Sept. 13, 1994) [hereinafter VAWA 1994].

<sup>4</sup>*Id.* § 40111(a), 108 Stat. 1903.

<sup>5</sup>*Id.* § 40141(b), 108 Stat. 1919.

<sup>6</sup>*Id.* § 40221(a), 108 Stat. 1930-31.

<sup>7</sup>*Id.* §§ 40301-40304, 108 Stat. 1941-42. *But see United States v. Morrison*, 529 U.S. 598 (2000) (holding this provision unconstitutional under the Commerce Clause and Fourteenth Amendment).

<sup>8</sup>VAWA 1994, *supra* note 2, § 40231(a), 108 Stat. 1932.

<sup>9</sup>*Id.* § 40251, 108 Stat. 1935.

<sup>10</sup>*Id.* § 40261, 108 Stat. 1935.

<sup>11</sup>*See Oliphant*, 435 U.S. at 212 (holding that Indian tribes had no inherent authority to prosecute a non-Indian offender without an act of Congress permitting them to do so).

<sup>12</sup>Violence Against Women Act of 2013, Pub. L. No. 113-4, § 904(b) (1), 127 Stat. 54, 122 [hereinafter VAWA 2013]; Indian Civil Rights Act of 1968, 25 U.S.C. § 1304.

<sup>13</sup>VAWA 2013, *supra* note 12, § 904, 127 Stat. 122.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

<sup>16</sup>*See VAWA 2013, supra* note 12, § 504, 127 Stat. 122-23 (providing a non-Native American defendant with all other rights afforded under the U.S. Constitution).

<sup>17</sup>*See 25 U.S.C. § 1302(a)(6)* (providing Native American defendants with the right to counsel where they pay for the expense of the attorney).

<sup>18</sup>*See VAWA 2013, supra* note 12, § 904, 127 Stat. 123; *see also* Jordan Gross, *Through a Federal Habeas Corpus Glass, Darkly—Who Is Entitled to Effective Assistance of Counsel in Tribal Court Under ICRA and How Will We Know if They Got It?*, 42

AM. INDIAN L. REV. 1, 47 (2017) (arguing that ICRA's federal habeas corpus provision on the right to stay sentencing provides non-Native American defendants with greater protection than similarly situated Native American defendants).

<sup>19</sup>*United States v. Bryant*, 519 U.S. \_\_\_, 136 S. Ct. 1954, 1963 (2016).

<sup>20</sup>*Id.* at 1964.

<sup>21</sup>*Id.* at 1966.

<sup>22</sup>VAWA 2013, *supra* note 12, § 901, 127 Stat. 118.

<sup>23</sup>*Id.* §§ 901-02, 127 Stat. 118-19.

<sup>24</sup>NAT'L CONG. OF AM. INDIANS, VAWA 2013'S SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION FIVE-YEAR REPORT 6 (2013).

<sup>25</sup>*Id.* at 7.

<sup>26</sup>*Id.*

<sup>27</sup>*See* VAWA 2013, *supra* note 12.

<sup>28</sup>*See* FIVE-YEAR REPORT, *supra* note 24, at 23.

<sup>29</sup>*Id.*

<sup>30</sup>*Id.* at 29.

<sup>31</sup>*Id.*

<sup>32</sup>Alfie Ellis, *A Roadmap for Making Native America Safer*, 37 WYO. LAW. 20, 21-22 (2014).

<sup>33</sup>Catherine M. Redlingshafer, *An Avoidable Conundrum: How American Indian Legislation Unnecessarily Forces Tribal Governments to Choose Between Cultural Preservation and Women's Preservation*, 93 NOTRE DAME L. REV. 393, 396 (2017).

<sup>34</sup>Frank Pommersheim, *At the Crossroads: A New and Unfortunate Paradigm of Tribal Sovereignty*, 55 S.D. L. REV. 48, 57 (2010).

<sup>35</sup>Violence Against Women Act of 2018, H.R. 6545, § 906(1) [hereinafter VAWA 2018]. This is proposed legislation for which Congress has until Dec. 7, 2018, to enact.

<sup>36</sup>*Id.*

<sup>37</sup>*Id.* at § 906(3).

<sup>38</sup>*Id.* at § 906(4)(b).

<sup>39</sup>FIVE YEAR REPORT, *supra* note 24, at 24.

<sup>40</sup>*Id.*

<sup>41</sup>VAWA 2018, *supra* note 35, § 906(2)(g).

<sup>42</sup>*Id.*

<sup>43</sup>*Id.*

<sup>44</sup>*Id.* § 906(4).

<sup>45</sup>*Id.* § 906(4)(c).

<sup>46</sup>*See, e.g.*, MAJOR CRIMES ACT, 18 U.S.C. § 1153 (1994) (enumerating child sexual abuse as a crime of federal jurisdiction but not child violence); *United States v. Lara*, 541 U.S. 193 (2004) (holding that tribal courts may exercise criminal jurisdiction over non-member

Indians); *Oliphant*, 435 U.S. 191 (holding that tribal courts may not exercise criminal jurisdiction over non-Indian defendants).

<sup>47</sup>*See* 18 U.S.C. § 1153(a) (conferring jurisdiction over any Indian who is charged with an assault of a child younger than 16 years old).

<sup>48</sup>VAWA 2018, *supra* note 35 § 906(c).

<sup>49</sup>*Id.* § 101(a)(1).

<sup>50</sup>Carolyn B. Ramsey, *Firearms in the Family*, 78 OHIO ST. L. J. 1257, 1274-75 (2017).

<sup>51</sup>*See, e.g., In re Jayl.S.A.*, 2018 IL App (5th) 180299-U, ¶ 56

(holding that where a parent did not comply with domestic violence counseling services, termination of parental rights was appropriate); *Rice v. McDonald*, 390 P.3d 1133 (Ala. 2017) (discussing a matter where domestic violence led to the death of one parent, the incarceration of the other, and foster care needs for the children).

<sup>52</sup>*Rice*, 390 P.3d at 1135.

<sup>53</sup>*Id.*

<sup>54</sup>*Id.*

<sup>55</sup>*Id.*

<sup>56</sup>*Id.*

<sup>57</sup>*Rice*, 390 P.3d at 1137-38.

<sup>58</sup>*Id.*

<sup>59</sup>Chris Calton, "The People v..."—Why the State Claims to be the Victim of Crime, MISES INST. (Nov. 15, 2017), <https://mises.org/wire/people-vs-why-state-claims-be-victim-crime>.

<sup>60</sup>*See* Orly Rachmilovitz, *Bringing Down the Bedroom Walls: Emphasizing Substance Over Form in Personalized Violence*, 14 WM. & MARY J. WOMEN & L. 495, 504-05 (2008) (discussing the power imbalance in the cycle of domestic violence).

<sup>61</sup>AMY L. CASSELMAN, INJUSTICE IN INDIAN COUNTRY: JURISDICTION, AMERICAN LAW, AND SEXUAL VIOLENCE AGAINST NATIVE AMERICAN WOMEN 6 (2015).

<sup>62</sup>Indian Child Welfare Act of 1978, 25 U.S.C. § 1902 (2012).

<sup>63</sup>*Id.*

<sup>64</sup>*Id.* § 1911, § 1912.

<sup>65</sup>*Id.* § 1911(a).

<sup>66</sup>*See* U.S. CONST. amend. X (leaving rights not enumerated in the Constitution to the states); *see also* 25 U.S.C. § 1911(a) (vesting tribes with exclusive jurisdiction over child welfare cases where the child lives within their reservation boundaries); *Ankenbrandt v. Richards*, 504 U.S. 689, 706 (1992) (discussing federal abstention in domestic relations matters such as child custody).

<sup>67</sup>*See People v. Johnson*, 718 N.Y.S.2d 1, 3 (N.Y. 2000) (holding that there is a likelihood that a jury could reasonably determine the act of domestic violence caused mental harm to the child).

## Tribes and Cannabis *continued from page 51*

marijuana-enforcement.

<sup>9</sup>*See* REPUBLICAN NAT'L CONVENTION, REPUBLICAN PLATFORM 2016 15-16 (2016), [https://prod-cdn-static.gop.com/media/documents/DRAFT\\_12\\_FINAL%5B1%5D-ben\\_1468872234.pdf](https://prod-cdn-static.gop.com/media/documents/DRAFT_12_FINAL%5B1%5D-ben_1468872234.pdf).

<sup>10</sup>*See generally*, Brad Bartlett & Garrett Davey, *Tribes and Cannabis: Seeking Parity with States and Consultation and Agreement with the U.S. Government*, FED. LAW. (April 2017).

<sup>11</sup>S.375, NEV. LEGIS., <https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?ID=836> (last visited Dec. 3, 2018).

<sup>12</sup>NUWU CANNABIS MARKETPLACE, <https://www.nuwucannabis.com> (last visited Dec. 3, 2018).

<sup>13</sup>*See* Cal. Code Regs. tit. 16, § 5009 (2018); Cal. Code Regs. tit. 17, § 40133 (2018); Cal. Code Regs. tit. 3, § 8102(z)(1) (2018).

<sup>14</sup>*Menominee Indian Tribe of Wis. v. Drug Enf't Admin.*, 190 F.Supp. 3d 843 (E.D. Wis. 2016).

<sup>15</sup>*St. Croix Chippewa Indians of Wis. v. Schimel*, No. 18-cv-88 (W.D. Wis.).

<sup>16</sup>Hemp Farming Act of 2018, H.R. 5485, 115th Cong. (2017-2018), <https://www.congress.gov/bills/115th-congress/house-bill/5485r-2>; Hemp Farming Act of 2018, S.2667, 115th Cong. (2017-2018), <https://www.congress.gov/bills/115th-congress/senate-bill/2667r-3>.