

Proposed Law Allows Tribal Courts to Prosecute Non-Indians, Seeks End to Assault 'Epidemic'

By Sandra Basu

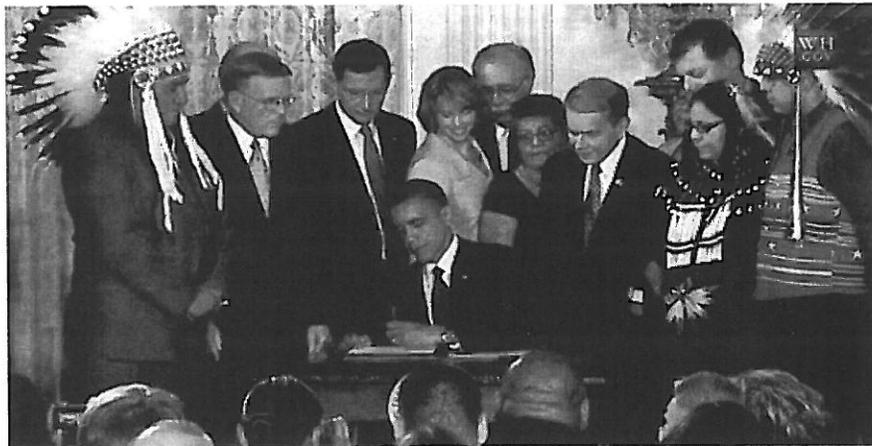
WASHINGTON — The U.S. Senate is considering legislation to strengthen the ability of tribal law-enforcement agencies to address the epidemic of sexual assaults and domestic violence against women in their communities.

According to the Department of Justice, a nationwide survey shows that about one-third of all American Indian women will be raped in their lifetime, and another regional survey by the University of Oklahoma showed that nearly three out of five Native American women had been assaulted by their spouses or intimate partners.

Last month, the Senate Indian Affairs Committee approved Senate Bill 1763, paving the way for its consideration by the full Senate. Currently, tribal courts have no authority to prosecute a non-Indian. In addition to giving tribal courts that authority, the bill clarifies that tribal courts have full civil jurisdiction to issue and enforce certain protection orders involving anyone, Indian or non-Indian.

The Department of Justice supports such legislation as violence against women has, in fact, reached "epidemic rates," Tom Perrelli, Department of Justice associate attorney general, testified before the Senate Indian Affairs Committee in November.

"Tribal leaders, police officers and prosecutors tell us of an all-too-familiar pattern of escalating violence that goes unaddressed with beating after beating, each more severe than the last,



In 2010, President Obama signed the Tribal Law and Order Act which strengthened tribal law enforcement and the ability to prosecute and fight crime more effectively, but some advocates say it did not go far enough. — Photo source: The White House

ultimately leading to death or severe physical injury," he testified.

Challenges in Protecting Women

The high rates of sexual assaults and domestic violence against women have alarmed American Indian community leaders, but one of the major challenges in addressing the problem has been in prosecuting perpetrators of these crimes. Until recently, tribal law limited sentences of Indian offenders

to one year in prison, no matter the seriousness of the offense.

Last year, legislation was enacted to allow tribal courts to sentence Indian offenders for as long as three years per offense. However, tribal courts still lacked authority to prosecute a non-Indian, even if he or she lives on the reservation and is married to a tribal member, Perrelli explained at the hearing.

"Tribal police officers who respond to a domestic-violence call, only to

discover that the accused is non-Indian and therefore outside the tribe's criminal jurisdiction, often mistakenly believe they cannot even make an arrest," Perrelli said.

The new legislation to address the problem is strongly supported by advocates for women's rights and safety.

Suzanne Koeppinger, executive director of Minnesota Indian Women's Resource Center, said at the Senate hearing that she supported the legislation and that rates of sexual assaults are higher than data show. She spoke about the injuries her group has seen in young women and how those crimes go unreported.

"One of the programs serving young Native girls who are at high risk of sexual violence is our Oskingiwkwe (young woman in the Ojibwe language) Program. ... Recent evaluation of this program for 11- to 20-year-old Native girls shows 31% of girls coming into the program had a head injury resulting from assault, nearly a quarter of girls had diagnosed mental illness and were homeless upon intake," she said. "None of the girls had reported their assaults."

Organizations such as Amnesty International also say they support the legislative change.

"The SAVE Native Women Act will continue critical efforts to begin restoring to tribal governments the authority to protect women in their own communities from violent crime and hold perpetrators accountable," said Curt Goering, chief operating officer of Amnesty International USA, in a written statement. ☐

IHS Instructs Hospitals on Appropriate Sexual Assault Responses

Indian Health Service (IHS) also has been working to strengthen its ability to address sexual assaults and domestic violence in tribal communities.

In March of 2011, IHS issued its first agency-wide policy on how hospitals should respond to adult and adolescent victims of sexual assault. A recent Government Accountability Office (GAO) report that examined the ability of IHS- and tribally-operated hospitals to collect and preserve medical forensic evidence for sexual assault and domestic cases, however, concluded that more work must be done to improve the agency's response to these crimes.

The report found that the ability of IHS hospitals to collect and preserve medical forensic evidence varied widely. Of 45 hospitals, 26 reported that they are typically able to perform medical forensic exams on site for victims of sexual assault, while 19 reported that they choose to refer sexual assault victims to other facilities.

"The hospitals that provided services began to do so, generally, in response to an unmet need, not because of direction from IHS headquarters, according to hospital officials. Partly as a result, levels of available services have fluctuated over time," the report stated.

The report noted that, while IHS has made "significant progress" since 2010 in developing required policies and procedures on medical forensic services for victims of sexual assault, challenges in "standardizing and sustaining the provision of such services" remained.

Challenges cited in the report include "systemic issues such as overcoming long travel distances between Indian reservations or

Alaska Native villages and IHS or tribal hospitals and developing staffing models that overcome problems with staff burnout, high turnover and compensation, so that standardized medical forensic services can be provided over the long term."

Other challenges include "establishing plans to help ensure that IHS hospitals consistently implement and follow the March 2011 policy, such as with training guidelines, and developing policies directing how IHS hospitals should respond to domestic violence incidents and sexual abuse involving children who have not yet reached adolescence — neither of which is included in the March 2011 policy. GAO found that IHS is aware of these challenges and has initiatives under way or under consideration to address them."

In addition, the report noted that the March 2011 IHS sexual-assault policy did not "clearly and comprehensively articulate the agency's processes for responding to subpoenas or requests for employee testimony."

The Department of Health and Human Services responded to the report in a letter in October that was included with the GAO report that the challenges identified by the report are "areas of vital prioritization for moving forward."

"Our plan was to develop the initial policy, then consult with tribes to gather their input and recommendations, then revise/update the policy, and to develop an implementation plan, all of which are in progress. IHS will address the recommendations from the report as it continues its implementation of the policy," the letter stated.