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**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Oversight Field Hearing**  
**“The Needs and Challenges of**  
**Tribal Law Enforcement on Indian Reservations**

**June 1, 2007**

**Lower Brule, South Dakota**

**Written Testimony Submitted**

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**Cangleska, Inc. Management Team Director**

**I. Sacred Circle, National Resource Center to End Violence Against Native Women, provides training, consultation and technical assistance to Indian Nations, tribal organizations, law enforcement agencies, prosecutors and courts to address the safety needs of Native women who are battered, raped and stalked.**

For over a decade Sacred Circle has advocated for the safety of American Indian and Alaska Native Women, providing training, consultation and technical assistance on responding to crimes of violence against Native women, particularly domestic violence, sexual assault and stalking. Sacred Circle submits this testimony to provide written documentation to the U.S. House of Representatives, Committee on Natural Resources of “The Needs and Challenges of Tribal Law Enforcement on Indian Reservations.”

Over the past ten years we have learned many things about the state of peril confronting Native women. From the oldest to the youngest, Native women are disrespected and treated in the most humiliating fashion, living and dying without justice or the knowledge that their grand daughters will live free of the violence they experienced. This violence destroys the quality of life of Native women and threatens the safety and stability of their families, community and Indian tribes.

Our national work gives us an overview of some of the successes and problem areas in addressing violence against American Indian and Alaska Native women throughout the United States. Sacred Circle is a member of numerous Federal Inter-governmental Committees and various National Task Forces

established to address violence against women.<sup>1</sup> On a tribal level, Cangleska, Inc., the mother agency of Sacred Circle, provides advocacy to approximately 3,000 women and children each year and approximately 2,400 men who are on domestic violence probation as ordered by the Oglala Sioux Tribe's Courts.

The comments provided focus on “The Needs and Challenges of Tribal Law Enforcement on Indian Reservations” in the context of addressing violence against Indian women and implementation of the Violence Against Women Act of 2005.

In particular, Section 903 of VAWA 2005, recognizes the importance of government-to-government consultation. Section 903 directs the Attorney General and the Secretary of the U.S. Department of Health and Human Services to use the consultation as an opportunity to solicit recommendations from tribal governments on three topics:

- Administering grant funds appropriated for tribal governments and programs created to benefit tribal governments by the original VAWA and subsequent legislation;
- Enhancing the safety of Indian women from domestic violence, dating violence, sexual assault, and stalking; and
- Strengthening the Federal response to crimes of domestic violence, dating violence, sexual assault, and stalking.

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<sup>1</sup> National Task Force to End Sexual and Domestic Violence Against Women; National Congress of American Indians Task Force to End Violence Against Native Women; U.S. Department Of Justice Global Advisory Committee; U.S. Department Of Justice Working Group on Federal Tribal Sexual Assault Response; Full Faith and Credit Project; Federal Law Enforcement Training Center Curriculum Working Group; American Probation and Parole Association Model Protocol Working Group; International Forensic Nurse Examiner's DNA Curriculum Development Working Group.

- II. Enhancing the safety of Indian women from domestic violence, dating violence, sexual assault, and stalking. The safety of Indian women is dependent upon the response of Indian Nations and the Federal government to crimes of domestic violence, sexual assault, dating violence and stalking. Consultation between the Department of Justice and Indian Nations is essential to the development of respectful effective coordination and management of violent crimes against Native women.**

The unique legal relationship between the United States and Indian Tribes creates a federal responsibility in safeguarding the lives of Native women. Native women are battered, raped and stalked at far greater rates than any other group of women in the United States. The Department of Justice estimates that:

- ◆ more than 1 of 3, 34.1%, American Indian and Alaska Native women will be raped in her lifetime and 3 of 4 will be physically assaulted<sup>2</sup>;
- ◆ about 9 in 10 American Indian victims of rape or sexual assault were estimated to have assailants who were white or black<sup>3</sup>; and
- ◆ 17 % of American Indian women, at least twice that of other populations, are stalked each year.<sup>4</sup>

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<sup>2</sup> Patricia Tjaden & Nancy Thoennes, U.S. Dep't. of Justice, *Full Report on the Prevalence, Incidence, and Consequences of Violence Against Women* (2000).

<sup>3</sup> Lawrence A. Greenfeld & Steven K. Smith, U.S. Dep't. of Justice, *American Indians and Crime* (1999).

These statistics reflect the horrific levels of violence committed on a daily basis against Native women. While compounded by many social factors research links this level of violence to the vulnerabilities of Native women as a population. The lack of jurisdiction of Indian nations over non-Indian perpetrators and the sentencing limitation placed upon Indian tribes by Congress enhances the vulnerability of Native women and the ability of predators to target Native women as a population. This jurisdictional void furthers the public perception that Native women do not have the same protections that non-Indian women are entitled to receive. The Department of Justice estimation that 75% of sexual assaults committed against Native women are by perpetrators of a different race<sup>5</sup> is indicative that perpetrators of such violence are aware of this jurisdictional void.

Section 903, provides the opportunity for consistent consultation on a government-to-government basis between the Department of Justice and Indian Nations. The staggering statistics of violence against Native women requires that the highest levels of government act in coordination to address the escalating crisis in the lives of Native women. The prevalence and severity of violence would be treated as an emergency if committed against any other population of women. Given the crisis in the lives of Native women and the lack of adequate resources<sup>6</sup> more must be done at every level from funding through the Office on Violence Against Women, handling of cases by the FBI and United

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<sup>4</sup> *Stalking and Domestic Violence*, May 2001 Report to Congress, U.S. Dep't of Justice, Office of Justice Programs, NCJ 186157.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> See *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, U.S. Comm. On Civ. Rights, available at <http://www.usccr.gov/pubs/na0703/na0204.pdf>.

States Attorneys, and release of perpetrators by the Bureau of Prisons to improve efforts to create a more responsive criminal justice system. Federal agencies must work on a government-to-government basis with Indian Nations to prosecute such crimes. This cannot be achieved without formal consultation with Indian tribal governments.

The following recommendations are offered to maximize the opportunity provided by Section 903:

- set the date for the annual consultation no later than nine months prior
- provide the opportunity for all tribal governments to participate in the preparatory call
- issue the agenda no less than two months prior to the consultation to allow for advance preparation of participants and if at all possible to provide questions to the Department on issues of concern to be addressed during the Consultation.

**III. Research is necessary to understand the prevalence, unique particularities and estimated cost of crimes of domestic violence, sexual assault, dating violence and stalking occurring against Indian women.**

The Department of Justice has issued several reports on violence against women mandated by the Acts of 1994 and 2000. Within these reports, crimes of violence against American Indian and Alaska Native women are given limited

attention. Previous research mandated under VAWA did not require in depth research on violence against Indian women. Section 904 will create for the first time in United States history the mandate to research crimes of domestic violence, sexual assault, dating violence, stalking and murder of American Indian women. The unique circumstances created by the jurisdictional void, rural isolation, conflict between Indian tribes and states, and other social factors require such research. It is important to note that violence against Indian women occurs on a continuum of violence from simple assault to murder. Department of Justice research indicates that the vast majority of Indian women victimized by such crimes knew their assailant. Unfortunately this continuum in many cases has resulted in the deaths of women. Murder is the third cause of death for America Indian women.<sup>7</sup> In addition, an increased number of American Indian women reported missing raises the concern that these reports should be investigated as homicide cases until the woman is located. A national baseline study reviewing the crimes of domestic violence, dating violence, sexual assault, stalking, and murder committed against Indian women is essential to analyzing and creating safety in the lives of Native women. Of critical importance is the establishment of a task force, as provided by Sec. 903(A), of representatives from national domestic violence and sexual assault tribal organizations that have decades of experience in assisting Native women. In addition, Indian Nations are essential as the governments providing the emergency response to such

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<sup>7</sup> I.j.d. Wallace, A.D. Calhoun, K.E. Powell, J. O'Neill, & S.P. James, Homicide and Suicide Among Native Americans, 1979-1992, Violence Surveillance Summary Series, No. 2, Atlanta, GA; Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 1996.

crimes, the daily assistance to Native women, and monitoring of offenders. Indian tribes after tens of thousands of years remain sovereign nations having the authority and responsibility to protect the safety of women and stability of their citizenry. The presence of these representatives will provide the expertise necessary to implementing such a study.

The following recommendations are offered to maximize the opportunity provided by Section 904:

- immediately establish, as provided by Section 904(a)(3), the tribal task force to develop and guide implementation of the study
- recognize that American Indian and Alaska Native experience multiple incidents of violence over a lifetime and addressing such violence requires an array of services beyond crisis intervention
- recognize that the federal, and within PL 53 – 280 jurisdiction state, justice agencies failure to adequately respond is demonstrated in the distinction between hospital emergency trauma centers and cases reported, charged and ultimately number of conviction within respective jurisdictions
- recognize that to increase the response of tribal law enforcement to crimes of domestic violence and sexual assault of Indian women on Indian reservations requires understanding the past and current failure to respond to such crimes.



**III. The Deputy Director for Tribal Affairs within the Office on Violence Against Women will increase the ability of the Department of Justice to effectively coordinate on a governmental basis with Indian Nations and improve the response of tribal law enforcement agencies to crimes of domestic violence and sexual assault.**

The unique governmental relationship between Indian tribes as the United States is long established by the Constitution, Supreme Court cases, Acts of Congress and Executives Orders of the President. Congress recognized this unique governmental relationship within the Violence Against Women Act by statutorily including Indian tribes within various provisions and defining Indian Tribes as eligible applicants for certain programs under the Act from the Violence Against Women Office within the Department of Justice. The administration of Federal programs to tribal governments must comply with this legal context. The development of policies and grant program guidelines according to state-based models is not only inappropriate, but also, ineffective in the creation of an enhanced response to domestic violence, sexual assault and stalking. Recognizing this complex legal relationship is a necessary component in the proper administration of tribal set-aside funds. It is also essential in the development of model codes, protocols, public education awareness materials, research, and training.

One example of this unique governmental relationship is concurrent jurisdiction over violent crimes committed against Native women such as sexual

assault. The U.S. Department of Justice has general jurisdiction over felony crimes<sup>8</sup> by or against Indians, including homicide, rape and aggravated assault. These crimes require a coordinated Tribal-Federal response because of the sentencing limitation placed upon tribal courts of “imposing no more than one year per offense or \$5,000. fine.”<sup>9</sup> This sentencing limitation is inappropriate and unless prosecuted by a U.S. Attorney the defendant is not held accountable for the violent crime. In addressing sexual assault of Native women this legal context must be understood and all requirements placed upon Indian tribes should also be placed upon the counterparts handling such cases within the Department. Similarly, the primary healthcare agency handling rape trauma emergency is the Indian Health Services of the Department of Health and Human Services. This agency does not have a formal protocol for sexual assault.

Increasing the response of tribal law enforcement to domestic violence and sexual assault requires understanding the complexity of the jurisdictional maze created by Federal Indian Law, the appropriate protocol for implementing government-to-government programmatic and administrative matters, and the management of funds set aside for Indian Nations. The newly statutorily created Deputy Director for Tribal Affairs must be involved with any initiatives to address and enhance the response of tribal law enforcement to domestic violence and sexual assault. The authority, responsibilities and expertise of the Deputy Director will be essential to the success of tribal law enforcement initiatives to increase their response to such crimes.

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<sup>8</sup> 18 U.S.C. § 1152 and 1153 (2004).

<sup>9</sup> 25 U.S.C. §§1301-1303 (2000).

## V. Conclusion.

In 1994, Congress enacted the Violence Against Women Act recognizing the extent and severity of violence against women. Over the last eleven years the Act has significantly increased the ability of Indian Nations, tribal law enforcement agencies, and advocacy organization to assist Native women and hold perpetrators of domestic violence, sexual assault, and stalking accountable for their crimes. VAWA 2005, specifically Title IX, represents a historic turning point in United States history in the recognition by the United States of its unique legal responsibility to assist Indian tribes in safeguarding the lives of Indian women. Addressing the needs and challenges of tribal law enforcement on Indian reservations in adequately respond to crimes of violence against Indian women under VAWA 2005 requires the full involvement of such agencies in the coordinated governmental implementation of the Act. The advances made under VAWA 2005 will further the progress made toward a time when the honored status of Native women is restored and all women will live free of violence.