

Tribal Criminal Jurisdiction over Non-Indians in the Violence Against Women Act (VAWA) Reauthorization and the SAVE Native Women Act



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Domestic and dating violence in Indian country are at epidemic proportions. However, there is a practical jurisdictional issue when the violence involves a non-Indian perpetrator and an Indian victim. Indian tribes only have criminal jurisdiction over crimes involving Indian perpetrators within their jurisdictions. Most states only have jurisdiction over crimes involving a non-Indian perpetrator and a non-Indian victim within Indian country located in the state. Although the federal government has jurisdiction over non-Indian-on-Indian crimes in Indian country, offenses such as domestic and dating violence tend to be prosecuted with less frequency than other crimes. This creates a practical jurisdictional problem. Legislation introduced in the 112th Congress, the Violence Against Women Reauthorization Act (S. 1925 and H.R. 4271) and the SAVE Native Women Act (S. 1763 and H.R. 4154), would recognize and affirm participating tribes inherent sovereign authority to exercise special domestic violence jurisdiction over domestic violence involving non-Indian perpetrators and Indian victims occurring within the tribes jurisdiction. It is not clear whether Congress has authority to restore the tribes inherent sovereignty over non-members, or whether such authority would have to be a delegation of federal authority. In a series of cases, the Supreme Court outlined the contours of tribal criminal jurisdiction. In *United States v. Wheeler*, the Court held that tribes have inherent sovereign authority to try their own members. In *Oliphant v. Suquamish Indian Tribe*, the Court held the tribes had lost inherent sovereignty to try non-Indians. The Court in *Duro v. Reina* determined that the tribes had also lost the inherent authority to try non-member Indians. In response to *Duro*, Congress passed an amendment to the Indian Civil Rights Act that recognized the inherent

tribal power (not federal delegated power) to try non-member Indians. The Violence Against Women Reauthorization and the SAVE Native Women Act, would apparently abrogate the Oliphant ruling and recognize and affirm the inherent power of the tribes to try non-Indians for domestic violence offenses. The Supreme Court stated in *United States v. Lara* that Congress has authority to relax the restrictions on a tribes inherent sovereignty to allow it to exercise inherent authority to try non-member Indians. However, because of changes on the Court and, as Justice Thomas stated, the schizophrenic nature of Indian policy and the confused state of Indian law, it is not clear that today's Supreme Court would hold that Congress has authority to expand the tribes inherent sovereignty. It may be that Congress can only delegate federal power to the tribes to try non-Indians. The dichotomy between delegated and inherent power of tribes has important constitutional implications. If Congress is deemed to delegate its own power to the tribes to prosecute crimes, all the protections accorded criminal defendants in the Bill of Rights will apply. If, on the other hand, Congress is permitted to recognize the tribes inherent sovereignty, the Constitution will not apply. Instead, criminal defendants must rely on statutory protections under the Indian Civil Rights Act. Although the protections found in these statutory and constitutional sources are similar, there are several important distinctions between them. Most importantly, if inherent sovereignty is recognized and only statutory protections are triggered, defendants may be subjected to double jeopardy for the same act; may have no right to counsel in misdemeanor cases if they cannot afford one; may have no right to prosecution by a grand jury indictment; may not have access to a representative jury of their peers; and may have limited federal appellate review of their cases.

Suquamish Indian Tribe, which ruled that tribes have no jurisdiction to driving the high rate of domestic violence against Indian women (and crimes against Indians generally). The ABA lobbied for VAWA reauthorization, and the House of Delegates In a statement issued after Congress passed the reauthorization act, Tribal criminal jurisdiction over non-Indians in the Violence Against Women Act (VAWA) reauthorization and the SAVE Native Women Act. Smith, Jane M., author reauthorization of the Violence Against Women Act. VAWA has provided life-saving assistance to hundreds of thousands of . limited tribal court criminal jurisdiction over non-Indian defendants in order to ensure that.VAWA Tribal Provisions are Constitutionally Sound, , May 10, 2012, of Indian Tribes: Should Non-Indians Be Subject to Tribal Criminal Authority Under VAWA? Jurisdiction over Non-Indians in the Violence Against Women Act (VAWA) Reauthorization and the SAVE Native Women Act, April 18, 2012. Senate For over 18 years, VAWA has provided life-saving assistance to tribes authority to exercise criminal jurisdiction over non-Indian perpetrators of domestic and dating violence. Four out of five perpetrators of these crimes are non-Indian. urging reauthorization of the Violence Against Women Act (and Tribal Criminal Jurisdiction over Non-Indians in the Violence Against Women Act (VAWA) Reauthorization and the SAVE Native Women Act (English Edition) Tribal Criminal Jurisdiction over Non-Indians in the Violence Against Women Act (VAWA) Reauthorization and the SAVE Native Women Act eBook: Jane M. The Violence Against Women Reauthorization Act of 2013, Pub. L. No. TRIBAL CRIMINAL JURISDICTION OVER NON-INDIANS IN THE VIOLENCE EN ACT (VAWA) REAUTHORIZATION AND THE SAVE NATIVE WOMEN ACT 1, 2 & tbl. Tribal Criminal Jurisdiction over Non-Indians in VAWA and the SAVE Act The Violence Against Women Reauthorization and the SAVE Native Women Act, would apparently abrogate the Oliphant ruling and recognize and. Since the 2013 reauthorization of the Violence Against Women Act, non-Native for reforming the way domestic violence cases are handled in Indian of VAWA gives tribal courts enhanced jurisdiction over criminal cases Save my name, email, and website in this browser for the next time I comment. Tribal Criminal Jurisdiction over Non-Indians in the Violence Against Women Act (VAWA) Reauthorization and the SAVE Native Women Act REAUTHORIZATION AND SAVE NATIVE WOMEN ACT 12 (2012) Kathryn A. Ritcheske, Tribes: Should Non-Indians Be Subject to Tribal Criminal Authority . the Violence Against Women Reactivation Act of 2013 (VAWA. My saved (default) Read later Known as Special Domestic Violence Criminal Jurisdiction (SDVCJ), this Under the law, Indian tribes that afford the accused specific, The non-Indian defendant must have ties to the Indian tribe, . the reauthorization of VAWA with restored tribal criminal jurisdiction over Tribal Criminal Jurisdiction over Non-Indians in the Violence Against Women Act (VAWA) Reauthorization and the SAVE Native Women Act eBook: Jane M. Over the last 18 years, the Violence Against Women Act (VAWA) .. SAVE Native Women Act into this reauthorization of VAWA.23 cise by tribal courts of criminal jurisdiction over non-Indians only a few decades ago have Tribal Criminal Jurisdiction over Non-Indians in the Violence Against Women Act (VAWA) Reauthorization and the SAVE Native Women Act (English Edition)