

A Brief History of VAWA & Recent Developments as of August 1, 2012

Holly Handler, Alaska Legal Services Corporation (586-6425/hhandler@alsc-law.org)

- 1994 Congress enacts the Violence Against Women Act (VAWA). The Act requires states and Indian Tribes to give each other's domestic violence protection orders full faith and credit. Full faith and credit is critical to quick and efficient state recognition of tribal court orders. The act also provides federal resources to support community-based domestic violence programs.
- 2000 Congress reauthorizes VAWA and adds a new section recognizing the full civil jurisdiction of tribal courts to enforce protection orders issued within tribal authority.
- 2005 Congress reauthorizes VAWA and creates new community programs.
- 2011 VAWA expires October 6.

Sen. Leahy introduces S. 1925, VAWA Reauthorization Act of 2011 on Nov. 30. It includes three controversial provisions to protect immigrating victims of trafficking and violence, and LGBT victims, and to recognize tribal criminal jurisdiction over non-Native domestic violence offenders in the lower 48. It also singles out Alaska to limit tribal civil jurisdiction over domestic violence.

S. 1925 passes in Senate on April 26 (68-31) with a Murkowski amendment (co-sponsored by Begich) easing the restrictive provisions for Alaska Tribes.

- 2012 Rep. Adams introduces HR 4970, VAWA Reauthorization Act of 2012, April 27.

HR 4970 passed in House on May 16 (222-205). It leaves out the controversial provisions but leaves jurisdiction status quo for Alaska Tribes.

Now: **Stalemate.** The House won't set up a conference committee on the Senate bill. It has latched onto a technical objection with a visa fee that Rep. Boehner will not waive. The Senate won't conference on the House bill because the House won't recognize the validity of the Senate Bill. That would keep the committee from considering the controversial provisions to extend emergency visas to victims of trafficking and violence.

Congress has 2 days until August recess and a few days in September to reach a compromise or VAWA will not be reauthorized this year. Practically, this means keeping the status quo, including maintenance of funding formulas.

18 USC Section 2265. Full faith and credit given to protection orders (*current*)

(e) Tribal Court Jurisdiction.— For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

Senate Bill 1925. SEC. 905. TRIBAL PROTECTION ORDERS (*proposed*)

(e) Tribal Court Jurisdiction.--For purposes of this section, a **court of an Indian tribe** shall have full civil jurisdiction to **issue and** enforce protection orders **involving any person**, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising **anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise** within the authority of the Indian tribe."

(b) Applicability.--Nothing in this Act, including an amendment made by this Act, alters or modifies the jurisdiction or authority of an Indian tribe in the State of Alaska under section 2265(e) of title 18, United States Code (as in effect on the day before the date of enactment of this Act).

SEC. 910. LIMITATION. Nothing in this Act or any amendment made by this Act limits, alters, expands, or diminishes the civil or criminal jurisdiction of the State of Alaska, any subdivision of the State of Alaska, or any Indian tribe in the State of Alaska.

- This bill amends the Act to explicitly recognize tribal civil jurisdiction to issue and enforce protection orders "involving any person" (including non-Natives) but excludes Alaska Tribes from this amendment
- The bill also adds — unnecessarily — "Indian Country" into the section on tribal protection orders, which was previously silent on Indian Country
- Other sections of the Senate Bill authorize lower 48 Tribes to exercise criminal jurisdiction over non-Natives for d.v. crimes in Indian Country, and extend protections to immigrant and LGBT victims of domestic violence
- This version of the bill represents a compromise from the original version which included the following elimination of all tribal jurisdiction to issue and enforce domestic violence protection orders in Alaska (except Metlakatla)...

Former Version of Senate Bill 1925. SEC. 905. TRIBAL PROTECTION ORDERS.
(similar language was in a different House bill for VAWA authorization that died)

(e) Tribal Court Jurisdiction-

(1) IN GENERAL- Except as provided in paragraph (2), for purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.

(2) APPLICABILITY- Paragraph (1)--

(A) shall not apply to an Indian tribe in the State of Alaska, except with respect to the Metlakatla Indian Community, Annette Islands Reserve; and

(B) shall not limit, alter, expand, or diminish the civil or criminal jurisdiction of the State of Alaska or any subdivision of the State of Alaska.

House of Representatives Bill 4970 (*proposed*)

- Makes no change to Tribal Court Jurisdiction over civil protection orders
- Excludes the Senate's new controversial provisions regarding immigrating victims of trafficking and violence, LGBT victims, and criminal jurisdiction over non-Natives in Indian Country to prosecute domestic violence
- Provides for applications to federal court for domestic violence protection orders for offenses against Native victims in Indian Country