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## Sex Trafficking on Indian Reservations

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## SEX TRAFFICKING ON INDIAN RESERVATIONS

### I. INTRODUCTION

Violet is a Native American girl raised in a foster home.<sup>1</sup> Her foster parents called her and her sisters “little savages” and often admonished them to be thankful they had a home.<sup>2</sup> Adult relatives and family friends sexually abused Violet when she was child.<sup>3</sup> When she turned twelve, she was kidnapped and trafficked to another city where she was beaten, raped, given addictive drugs against her will, and sold into prostitution.<sup>4</sup>

Violet’s tragic story is common among Native American women.<sup>5</sup> American Indian and Alaska Native women experience much higher levels of sexual violence than other women in the United States.<sup>6</sup> According to the Department of Justice, Native American women are over 2.5 times more likely to be raped or sexually assaulted than women in the U.S. in general.<sup>7</sup> More than one in three Native American women will be raped during their lifetime.<sup>8</sup> Violence against Native women has risen to the level of epidemic proportions.<sup>9</sup> According to a report by the National Congress of American Indians, “[o]n some Indian reservations, women are murdered at ten times the national average.”<sup>10</sup> Surprisingly, in eighty-six percent of reported cases of rape or sexual assault against Native women, survivors report that the perpetrators are non-Native men.<sup>11</sup>

Criminal jurisdiction on Indian land is an entangled web of state and federal statutes, expanded by case law.<sup>12</sup> The overlap of jurisdictions can prevent law enforcement from enforcing human trafficking laws.<sup>13</sup> For crimes of sexual violence committed on tribal land, the ethnicity of the perpetrator is important in determining which police force has authority to deal with the crime and which judicial system is responsible for bringing about

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1. Nicole Matthews, et al., *Trafficking of Native American Women for Prostitution in Minnesota: Some Preliminary Findings*, Focus Group on Human Trafficking of American Indian and Alaska Native Women and Children, 2 (Aug. 25, 2010), <http://www.prostitutionresearch.com/MIWSAC%3APRE%20PrelimFindings8-25-10.pdf>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA*, AMNESTY INT’L, 2 (2007), <http://www.amnestyusa.org/pdfs/MazeOfInjustice.pdf>.

7. *Id.* at 2.

8. *Id.*

9. *The Violence Against Women Reauthorization Act - S.1925, Title IX: Safety for Indian Women*, NAT’L CONG. OF AM. INDIANS, 1 (Mar. 22, 2012), [http://www.ncai.org/attachments/PolicyPaper\\_aO-aNWvmbuDVHyJLuXjgMFbPZRINiRXkixCAraUNsEsbJzhSwJSl\\_Tribal%20VAWA\\_Background.pdf](http://www.ncai.org/attachments/PolicyPaper_aO-aNWvmbuDVHyJLuXjgMFbPZRINiRXkixCAraUNsEsbJzhSwJSl_Tribal%20VAWA_Background.pdf).

10. *Id.*

11. *Maze of Injustice*, *supra* note 6, at 4.

12. Benjamin Thomas Greer, *Hiding Behind Tribal Sovereignty: Rooting Out Human Trafficking in Indian Country*, 16 J. GENDER RACE & JUST. 453, 468 (2013).

13. *Id.*

justice.<sup>14</sup> This jurisdictional maze often allows perpetrators to evade prosecution.<sup>15</sup> In some areas, this maze has essentially created lawlessness, which encourages violence.<sup>16</sup> Sex trafficking is a growing problem on Indian reservations and tribal courts are unable to effectively prosecute these crimes.<sup>17</sup> The tribal courts' limitations in prosecuting offenders attract criminals, particularly sex traffickers.<sup>18</sup>

In response to the increasingly high levels of physical violence against Native women, Congress reauthorized the Violence Against Women Act of 2013.<sup>19</sup> This Act allows tribal courts to prosecute a non-Native for acts of domestic violence, dating violence, or violations of protection orders.<sup>20</sup> However, there is no provision for tribal courts to prosecute non-Native men who commit a sexual assault that is not within the three categories of a domestic relationship, dating relationship, or a protection order.<sup>21</sup>

The Violence Against Women Act is a step in the right direction in providing opportunities for perpetrators to be brought to justice.<sup>22</sup> However, it falls short in protecting victims of sex trafficking.<sup>23</sup> The Violence Against Women Reauthorization Act, Section 904, should be expanded in order to allow tribal courts to prosecute non-Natives who engage in sex trafficking of Native women. In Part II, this Comment examines the history of sexual exploitation of Native women and the court's failure to provide a remedy due to the jurisdictional maze of state, federal, and tribal courts.<sup>24</sup> Part III focuses on the various provisions and requirements of the Violence Against Women Act, how VAWA fails to address the increase of trafficking of Native women, and the implementation of VAWA.<sup>25</sup> Part IV examines how tribal courts are better situated and structured to prosecute sex traffickers of Native women and propose that tribal courts be granted the authority to prosecute non-Native defendants who engage in sex crimes.<sup>26</sup>

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14. Maze of Injustice, *supra* note 6, at 7-8.

15. *Id.* at 8.

16. *Id.*

17. Sarah Deer, *Indian Law: Relocation Revisited: Sex Trafficking of Native Women in the United States*, 36 WM. MITCHELL L. REV. 621, 679.

18. *Id.* at 680.

19. *Violence Against Women Act Reauthorization of 2013: New Protections for Native American Survivors of Domestic Abuse*, NORTHWEST JUSTICE PROJECT, 1 (Oct. 2013), <http://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/47C151C7-E8E2-4AAE-A2DA-E9CC9017DA80/3702en.pdf>.

20. *Introduction to the Violence Against Women Act*, TRIBAL COURT CLEARINGHOUSE, [http://www.tribal-institute.org/lists/title\\_ix.htm](http://www.tribal-institute.org/lists/title_ix.htm).

21. *Id.*

22. Sari Horwitz, *New Law Offers Protection to Abused Native American Women*, WASH. POST, Feb. 8, 2014, [http://www.washingtonpost.com/world/national-security/new-law-offers-a-sliver-of-protection-to-abused-native-american-women/2014/02/08/0466d1ae-8f73-11e3-84e1-27626c5ef5fb\\_story.html](http://www.washingtonpost.com/world/national-security/new-law-offers-a-sliver-of-protection-to-abused-native-american-women/2014/02/08/0466d1ae-8f73-11e3-84e1-27626c5ef5fb_story.html).

23. *Id.*

24. *See* Deer, *supra* note 17, at 623; Maze of Injustice, *supra* note 6, at 27.

25. *See* Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (1994); Horwitz, *supra* note 22; *Violence Against Women Act (VAWA) Reauthorization 2013*, U. S. DEP'T OF JUSTICE, (Sept. 17, 2014), <http://www.justice.gov/tribal/violence-against-women-act-vawa-reauthorization-2013-0>.

26. *See* Amanda M.K. Pacheco, *Broken Traditions: Overcoming the Jurisdictional Maze to Protect Native American Women from Sexual Violence*, 11 J.L. & SOC. CHALLENGES 1, 19 (2009); Maze of Injustice, *supra* note 6, at 30.

## II. BACKGROUND

The federal Trafficking Victim Protection Act (TVPA) of 2000 defines “sex trafficking” as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”<sup>27</sup> TVPA further defines “severe forms of trafficking in persons” as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.”<sup>28</sup> Modern law now acknowledges that traffickers often use non-traditional means of control such as force, fraud, coercion, or the abuse of power, rather than simply relocating the victim.<sup>29</sup> Women and children make up the majority of trafficking victims.<sup>30</sup> The Department of Justice (DOJ) statistics demonstrate that from 2008 to 2010 eighty-three percent of sex trafficking victims in the United States were U.S. citizens.<sup>31</sup> Further, the DOJ found that out of 460 sex trafficking victims, fifty-four percent of them were twenty-four years old or younger.<sup>32</sup> Traffickers often seek out vulnerable populations when picking their victims.<sup>33</sup>

These targeted populations are often poverty stricken and characterized by a lack of education and unemployment.<sup>34</sup> These characteristics are prevalent in Native American communities.<sup>35</sup> Gangs take advantage of the vulnerability of this sect of society.<sup>36</sup> In a report from 2011, the National Intelligence Center of the FBI found that gang involvement in human trafficking and prostitution is increasing due to the higher profitability and lower risks of detection and punishment than drugs or weapons trafficking.<sup>37</sup> Sexual exploitation and trafficking is not new to Native American communities.<sup>38</sup> Sexual abuse has a long and tragic history within the United States; to continue to deny this reality merely impedes the resolution and justice these trafficking victims desire.<sup>39</sup>

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27. Trafficking Victims Protection Act, 22 U.S.C.S. § 7102(10) (2014).

28. *Id.* § (9)(A).

29. Angela Bortel et al., *Sex Trafficking Needs Assessment for the State of Minnesota*, THE ADVOCATES FOR HUM. RTS., 3 (2008), [http://www.theadvocatesforhumanrights.org/uploads/executive\\_summary\\_10.13.08.pdf](http://www.theadvocatesforhumanrights.org/uploads/executive_summary_10.13.08.pdf).

30. FRANCIS T. MIKO, ET AL., CONG. RESEARCH SERV., RL30545, TRAFFICKING IN WOMEN AND CHILDREN: THE U.S. AND INTERNATIONAL RESPONSE I (2002).

31. Duren Banks & Tracey Kyckelhahn, *Characteristics of Suspected Human Trafficking Incidents, 2008-2010*, U.S. DEP'T OF JUST., 6 (Apr. 2011), <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.

32. *Id.*

33. Greer, *supra* note 12, at 477.

34. Suzanne Koeplinger, *Sex Trafficking of American Indian Women and Girls in Minnesota*, 6 U. ST. THOMAS L.J. 129, 130 (2008).

35. Gary D. Sandefur, *American Indian Reservations: The First Underclass Areas?*, University of Wisconsin - Madison Institute for Research on Poverty, 12 FOCUS 1, 37 (1989), <http://www.irp.wisc.edu/publications/focus/pdfs/foc121f.pdf>.

36. Andrea L. Johnson, Note, *A Perfect Storm: The U.S. Anti-Trafficking Regime's Failure to Stop the Sex Trafficking of American Indian Women and Girls*, 43 COLUM. HUM. RTS. L. REV. 617, 640-41 (2012).

37. NAT'L GANG INTELLIGENCE CTR., FED. BUREAU OF INVESTIGATION, 2011 NAT'L GANG THREAT ASSESSMENT: EMERGING TRENDS, 9 (2011) <http://www.fbi.gov/stats-services/publications/2011-national-gang-threat-assessment>.

38. Alexandra (Sandi) Pierce & Suzanne Koeplinger, *New Language, Old Problem: Sex Trafficking of American Indian Women and Children*, VAWNET.ORG 1 (Oct. 2011). [http://www.vawnet.org/Asoc\\_Files\\_VAWnet/AR\\_NativeSexTrafficking.pdf](http://www.vawnet.org/Asoc_Files_VAWnet/AR_NativeSexTrafficking.pdf).

39. Deer, *supra* note 17, at 623.

A. *The History of Sexual Exploitation of Native American Women*

From the first moment of contact, explorers and colonizers employed the same ploys and promises sex traffickers use today against Native American women.<sup>40</sup> In speaking at an Alaska Native Women's Conference, Jacqueline Agtuca—an advocate for Native women—stated, “Sexual assault rates and violence against Native American women did not just drop from the sky. They are a process of history.”<sup>41</sup> One can trace the history of sexual exploitation of Native American women back to early colonization.<sup>42</sup> Sexual violence was a major tool of genocide and colonialism.<sup>43</sup> Jack D. Forbes explains this connection by stating that colonial forces found it easy to shift “from the raping of a woman to the raping of a country to the raping of the world.”<sup>44</sup>

1. Early Colonization

The exploitation of Native women began upon their first contact with Europeans, and continues to this day.<sup>45</sup> Upon observing the Native peoples, Christopher Columbus wrote in his journal that “[i]t appears to me that the people are ingenious, and would be good servants . . . . If it please our Lord, I intend at my return to carry home six of them to your Highnesses, that they may learn our language.”<sup>46</sup>

Trafficking and slavery go hand-in-hand.<sup>47</sup> Sexual abuse is an obvious consequence of enslavement, and sex trafficking flows easily from the pairing of slavery and sexual exploitation.<sup>48</sup> Traffickers will sometimes transport their victims from their home to unfamiliar destinations, separating them from family and friends and all other sources of protection and support.<sup>49</sup>

2. Forced Migration

It is widely known that the U.S. government and colonizers forcibly relocated many Native Americans from their land, while committing devastating atrocities in the process.<sup>50</sup> According to Sarah Deer, a law professor and victim advocacy legal specialist, “Native people often arrived at their new ‘home’ or place of captivity with little more than the clothes on their back; soldiers often took advantage of this state of affairs to coerce

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40. *Id.* at 628.

41. Maze of Injustice, *supra* note 6, at 15.

42. Deer, *supra* note 17, at 624.

43. Andrea Smith & Luana Ross, *Introduction: Native Women and State Violence*, 31 SOC. JUSTICE 4 (2004), <https://www.socialjusticejournal.org/SJEdits/98Edit.html>.

44. JACK D. FORBES, COLUMBUS AND OTHER CANNIBALS 10 (1992).

45. Deer, *supra* note 17, at 631.

46. *Internet Medieval sourcebook: Christopher Columbus: Extracts from Journal*, FORDHAM UNIVERSITY, <http://www.fordham.edu/halsall/source/columbus1.asp>.

47. Deer, *supra* note 17, at 641.

48. Adrienne Davis, *Don't Let Nobody Bother Yo' Principle: The Sexual Economy of American Slavery*, Sister Circle: Black Women and Work, RUTGERS UNIV. PRESS, 107-08 (2002) [http://law.wustl.edu/faculty\\_profiles/documents/davis/The%20Sexual%20Economy%20of%20American%20Slavery.pdf](http://law.wustl.edu/faculty_profiles/documents/davis/The%20Sexual%20Economy%20of%20American%20Slavery.pdf). Although discussing African American slavery, the same principles apply to Native American slavery.

49. Trafficking Victims Protection Act, 22 U.S.C.S. § 7101(b)(5) (2006).

50. Maze of Injustice, *supra* note 6, at 15.

Native women into trading sexual favors for food, clothing, and blankets.”<sup>51</sup> In observing these relocations through the lens of human trafficking, this movement left Native women vulnerable to victimization.<sup>52</sup> Once Native Americans relocated to the reservations, the U.S. government removed Native children from their families and sent them to a mandatory boarding school, devastating their mothers.<sup>53</sup>

### 3. Trafficking of Native Children and Victimization of Native Mothers

When the colonizers could not destroy Native American society, they instead turned to the indoctrination of Native children.<sup>54</sup> One of the most evil ways to attack a community is to target the children, destroying it from the inside out.<sup>55</sup> The United States government would remove Native children as young as five and send them to boarding schools.<sup>56</sup> Reports of conditions in the schools included cruel and inhumane treatment, as well as physical and sexual violence.<sup>57</sup> Sarah Deer concluded that “[f]or many Native people, the boarding school era is synonymous with sexual abuse and sexual exploitation on a grand scale.”<sup>58</sup> Separation from one’s children would be difficult enough; however, the government went a step further and instituted sterilization programs, violating Native women’s human rights.<sup>59</sup> Between 1972 and 1976, the federal government sterilized thousands of Native women without their free consent.<sup>60</sup> In order to coerce the women to consent to the sterilization, they threatened to take their children away.<sup>61</sup>

### 4. Urban Relocation

In 1956, Congress passed the Indian Relocation Act, which encouraged Native Americans to relocate to urban areas.<sup>62</sup> This removal of Natives from their reservations to a new city is the next logical step from the forced migrations of the early colonial days.<sup>63</sup> Open violence was no longer necessary to make the Indians comply with the government’s wishes.<sup>64</sup> After years of federally sanctioned violence, the Native Americans were economically and emotionally defeated.<sup>65</sup> This relocation is strikingly similar to human trafficking in that it once again placed the Natives in unfamiliar terrain, without their support

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51. Deer, *supra* note 17, at 662.

52. *Id.* at 664.

53. *Id.*

54. *Id.*

55. *Id.* at 665.

56. Maze of Injustice, *supra* note 6, at 16.

57. *Id.*

58. Deer, *supra* note 17, at 666.

59. Maze of Injustice, *supra* note 6, at 17.

60. See U.S. Gov’t Accountability Office, GAO, *Summary of information Obtained: Medical Research Involving Indian Subjects*, 3 (Nov. 1975), <http://archive.gao.gov/f0402/100493.pdf>.

61. Charles R. England, *A Look at the Indian Health Service Policy of Sterilization, 1972-1976*, <http://www.dickshovel.com/IHSSterPol.html>.

62. See *Indians, Vocational Training*, Pub. L. No. 84-959, 70 Stat. 986 (1956).

63. Deer, *supra* note 17, at 670.

64. *Id.*

65. *Id.*

system, and without any other options.<sup>66</sup> These relocations led to an increased risk of victimization with little judicial recourse.<sup>67</sup> The already strained relationship between tribes and the government coupled with the historic lack of protection from the federal government served as barriers to Native women reporting sexual violence.<sup>68</sup>

*B. Court's Failure to Provide a Remedy for Native Women*

Tribal courts are the most appropriate forums for deciding cases that occur on tribal land.<sup>69</sup> Tribal governments and courts should bear the responsibility of protecting human rights on tribal land.<sup>70</sup> Human rights are the inherent rights of individuals based on their worth and dignity as human beings.<sup>71</sup> However, jurisdictional confusion has complicated the issue of whose job it is to protect Natives women's inherent rights, and the federal restrictions on tribal courts make it nearly impossible to hold tribes accountable in protecting those rights.<sup>72</sup> Allowing tribes to prosecute crimes occurring on tribal land is a condition precedent for ensuring protection of Native women's human rights.<sup>73</sup>

Indian tribes originally had exclusive jurisdiction over crimes committed by one tribal member against another that occurred in Indian country.<sup>74</sup> However, a series of federal laws and Supreme Court decisions have restricted tribal jurisdiction over crimes committed on tribal land.<sup>75</sup>

Enacted in 1885, the Major Crimes Act infringed on tribal sovereignty by granting federal authorities jurisdiction over more serious crimes—including rape and murder—committed on tribal land.<sup>76</sup> Tribal authorities retain concurrent jurisdiction over Native perpetrators but the impact of the Major Crimes Act is that tribal authorities have pursued fewer serious crimes.<sup>77</sup>

Public Law 280 then transferred federal criminal jurisdiction over all crimes involving Native Americans on tribal land to certain state governments in 1953.<sup>78</sup> The effect of PL 280 was to grant both tribal and state authorities concurrent jurisdiction over offenses committed by Indians on Native land.<sup>79</sup>

Finally, the Indian Civil Rights Act of 1968, limited the penalty that tribal courts may impose for any crime—including rape or murder—to a maximum of one year's imprisonment and a \$ 5,000 fine.<sup>80</sup> This Act conveyed the message to tribal courts that they

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66. *Id.*

67. *Id.* at 665.

68. Maze of Injustice, *supra* note 6, at 4.

69. *Id.* at 30.

70. Wenona T. Singel, *Indian Tribes and Human Rights Accountability*, 49 SAN DIEGO L. REV. 567, 569 (2012).

71. Kirsten Matoy Carlson, *Jurisdiction and Human Rights Accountability in Indian Country*, 2013 MICH. ST. L. REV. 355, 360 (2013).

72. *Id.*

73. *Id.* at 361.

74. *See Ex parte Crow Dog*, 109 U.S. 556, 558 (1883).

75. Maze of Injustice, *supra* note 6, at 28.

76. *Id.* at 29.

77. *Id.*

78. *Id.*

79. *Id.*

80. Maze of Injustice, *supra* note 6, at 29.

are only equipped to handle less serious crimes<sup>81</sup> As a result of this restriction on tribal courts' this limited the chances that a tribal court would prosecute serious crimes, such as sexual violence.<sup>82</sup> Perhaps the most serious affront to tribal sovereignty came in 1978; the U.S. Supreme Court held that tribes do not have criminal jurisdiction over non-Natives in *Oliphant v. Suquamish*.<sup>83</sup> This precluded the prosecution of non-Native sex traffickers in tribal courts.<sup>84</sup>

These laws and decisions left tribal courts to depend on federal and state courts to prosecute non-Native sex traffickers who target Natives.<sup>85</sup> And it has further had the effect of denying victims of sexual abuse due process and the equal protection of the law.<sup>86</sup> Amnesty International—a non-government organization devoted to human rights—found that when jurisdiction falls to federal or state authorities Native women are often denied justice.<sup>87</sup> Frequently the federal and state authorities decide not to prosecute reported cases of sexual violence against Native women.<sup>88</sup> According to the University of Arizona NativeNet—which offers training, education, and resources in tribal governance and law—despite the extremely high violent crime rates on Indian reservations, federal officials have declined to prosecute about fifty percent of alleged violent crimes on tribal land in the last five years. This includes a seventy-five percent refusal rate for purported sex crimes against Native women and children.<sup>89</sup> This lack of enforcement due to jurisdictional gaps has contributed to the persistence of criminal activity by non-Natives on tribal land.<sup>90</sup>

The jurisdictional complexities that surround tribal courts serve as barriers to successfully prosecuting sex trafficking cases in Native American communities.<sup>91</sup> These barriers leave Native women vulnerable to traffickers.<sup>92</sup> Amnesty International identified three main factors that determine where jurisdictional authority lies. The three factors are “whether the victim is a member of a federally recognized Indian tribe or not; whether the accused is a member of a federally recognized Indian tribe or not; and whether the alleged offence took place on tribal land or not.”<sup>93</sup> The answers to these questions are not always easy but they determine the delegation for responsibility of the crime’s investigation.<sup>94</sup> The answers determine if the federal, state, or tribal law enforcement will investigate the case, who has the burden of prosecution, and they establish in which court the case should be tried.<sup>95</sup> Further complicating the issue, these jurisdictions often overlap, making the

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81. *Id.*

82. *Id.*

83. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 195 (1978).

84. *Maze of Injustice*, *supra* note 6, at 30.

85. *Deer*, *supra* note 17, at 680.

86. *Maze of Injustice*, *supra* note 6, at 30.

87. *Id.* at 9.

88. *Id.*

89. *The Major Crimes Act*, U. OF ARIZ. NATIVE NET, <http://www.uanativenet.com/topicitem/Topics%20In%20Brief/455>.

90. *Maze of Injustice*, *supra* note 6, at 30.

91. *Koeplinger*, *supra* note 34, at 134.

92. *Johnson*, *supra* note 36, at 679.

93. *Maze of Injustice*, *supra* note 6, at 27.

94. *Id.*

95. *Id.*

water even murkier.<sup>96</sup> The outcome is at times so confusing that no one intervenes and the victim is left without any remedy.<sup>97</sup>

Additionally, the confusion and prolonged time it takes to determine whether tribal, state, or federal authorities have jurisdiction over a certain crime results in an inadequate investigation or a complete failure to respond.<sup>98</sup> This dilemma is effectively undermining victims' right to justice.<sup>99</sup>

Criminal perpetrators are taking advantage of this confusion and they are targeting and exploiting Indian country as a base of operation, successfully exploiting the jurisdictional loopholes and lack of law enforcement.<sup>100</sup>

The Senate Committee on Indian Affairs reported that "non-Indian perpetrators are well aware of the lack of Tribal jurisdiction over them, the vulnerability of Indian women, and the unlikelihood of being prosecuted by the Federal Government for their actions."<sup>101</sup> This morass of jurisdictional lines creates a "de facto haven for traffickers, allowing the traffickers to operate with little concern of detection or prosecution."<sup>102</sup> By stripping away tribal courts' authority to prosecute non-Natives, state and federal courts and authorities have failed to adequately protect victims of sex trafficking, and instead have made them appear more vulnerable and enticing to perpetrators.<sup>103</sup>

### III. ANALYSIS OF VAWA, SECTION 904: HOW IT SUCCEEDS AND FAILS

Lisa Brunner's first memory of her stepfather beating her mother occurred when she was four years old and living on the Ojibwe reservation.<sup>104</sup> She cowered under the table as he beat her mother over the head with the butt of a shotgun.<sup>105</sup> There were many beatings to follow and twenty years later, her own husband assaulted her on the same reservation.<sup>106</sup> It is estimated that one in three Native American women are assaulted or raped, and three out of five Native American women encounter domestic violence.<sup>107</sup> Due to the confusion resulting from whether the state, the federal government, or the tribe has jurisdiction over the assault, Native American women often receive an inadequate response to their attack.<sup>108</sup>

The U.S. Supreme Court has left it up to Congress to determine who has the authority to prosecute the perpetrator, and for thirty-five years, Congress took no action.<sup>109</sup> On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013, which recognizes tribes' inherent power to exercise "special domestic

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96. *Id.*

97. *Id.* at 27-28.

98. Maze of Injustice, *supra* note 6, at 8.

99. *Id.*

100. Greer, *supra* note 12, at 478.

101. *Id.* at 478-79.

102. *Id.* at 454.

103. Johnson, *supra* note 36, at 679.

104. Horwitz, *supra* note 22.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. Horwitz, *supra* note 22.

violence criminal jurisdiction” over certain defendants—regardless of whether they are Native or non-Native—who commit acts of domestic violence, dating violence, or violate protection orders on tribal land.<sup>110</sup>

A. *Section 904 and What it Entails*

VAWA is a historic piece of legislation that gives Native American victims of domestic abuse hope that their violators will receive punishment and they will receive justice.<sup>111</sup> Before Congress passed VAWA a jurisdictional gap existed which allowed non-Native perpetrators of domestic and sexual abuse to avoid prosecution.<sup>112</sup> The Violence Against Women Reauthorization Act of 2013 attempts to close this gap by allowing tribes to exercise special criminal jurisdiction over domestic abuse offenses on tribal land.<sup>113</sup> Congress first enacted VAWA in 1994 in order to address the widespread issue of abuse of women throughout the U.S.<sup>114</sup> However, it was not until the 2005 amendment to VAWA that Congress first instituted provisions aimed at combating domestic violence on tribal land.<sup>115</sup>

1. Requirements for Coverage under Section 904

Despite the amendments made to VAWA in 2005, the Act continued to inadequately deal with the domestic violence faced by Native women, including the jurisdictional gap that allowed perpetrators to escape prosecution.<sup>116</sup> This inadequacy was remedied in the Violence Against Women Reauthorization Act of 2013, which grants tribes limited criminal jurisdiction over non-Native perpetrators of domestic violence on tribal land.<sup>117</sup> This Act, specifically Title IX, aims to reduce the spread of violence against Native women by amending the Indian Civil Rights Act of 1968 to grant tribal courts concurrent “special domestic violence criminal jurisdiction” over non-Native wrongdoers for crimes of domestic violence, dating violence, and violations of protection orders.<sup>118</sup>

Tribes may now issue and enforce civil protection orders, but, in general, tribes may not criminally prosecute non-Native abusers until March 7, 2015.<sup>119</sup> Tribes are free to participate in prosecuting non-Natives but they are not required to participate.<sup>120</sup> A participating tribe, or a tribe that utilizes the special domestic violence criminal jurisdiction, may prosecute a non-Native defendant for acts of domestic violence that occur on tribal

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110. *Violence Against Women Act (VAWA) Reauthorization 2013*, U.S. DEP’T OF JUST. (Sept. 17, 2014), <http://www.justice.gov/tribal/violence-against-women-act-vawa-reauthorization-2013-0>.

111. Shefali Singh, *Article: Closing the Gap of Justice: Providing Protection for Native American Women through the Special Domestic Violence Criminal Jurisdiction Provision of VAWA*, 28 COLUM. J. GENDER & L. 197 (2014).

112. *Id.*

113. *Id.*

114. Violence Against Women Act, 108 Stat. at 1902.

115. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (2006).

116. Singh, *supra* note 111, at 211.

117. *Id.*

118. Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 § 904(b)(3) (2013).

119. *Violence Against Women Act (VAWA) Reauthorization 2013*, *supra* note 110.

120. *Id.*

land of the participating tribe, dating violence that occurs on tribal land of the participating tribe, and violations of protection orders occurring on the land of the participating tribe.<sup>121</sup> Native women are disproportionately victims of domestic and sexual violence.<sup>122</sup> The Violence Against Women Reauthorization Act of 2013 is an exceptional attempt to provide Native victims of domestic abuse the ability to seek justice.<sup>123</sup>

## 2. Tribal Courts Ability to Exercise Special Domestic Violence Criminal Jurisdiction

The scope of the restored tribal jurisdiction in the Violence Against Women Reauthorization Act of 2013 is very narrow.<sup>124</sup> The National Crime Victimization Surveys from 1992 to 2005 show that American Indian and Alaska Native women suffer higher rates of intimate partner violence than women of any other race.<sup>125</sup> However, VAWA applies only to a small category of people who have established a marriage or intimate relationship of substantial duration with a tribal member.<sup>126</sup> An offender who has no connection to the tribe would not be subject to criminal prosecution by the tribal court.<sup>127</sup>

Section 904 is designed to ensure that people who live or work with Native Americans are not “above the law” when it comes to violence against their domestic partners.<sup>128</sup> Through the special domestic violence jurisdiction provision, tribes will finally be able to eliminate the escape route of non-Native domestic abusers by having the criminal jurisdiction to prosecute them, but only if they or their victims have significant ties to the tribe.<sup>129</sup>

While Section 904 is a step in the right direction, it still falls short of protecting all Native women from the widespread violence encountered on tribal lands.<sup>130</sup> Section 904 covers domestic violence committed by non-Native husbands and boyfriends, but it does not cover sexual assault or rape committed by non-Natives who are strangers to their victims or who are not in an intimate partner relationship.<sup>131</sup>

### B. Section 904 Fails to Address the Growing Problem of Human Trafficking of Native American Women

The United States has a long history of sex trafficking within its borders.<sup>132</sup> Since the first colonizers arrived in the United States, the sexual exploitation of minority women

121. *Introduction to the Violence Against Women Act*, *supra* note 20.

122. Singh, *supra* note 111, at 226.

123. *Id.*

124. Sen. Patrick Leahy, et al., *Constitutionality of Tribal Government Provisions in VAWA Reauthorization*, 4 (April 21, 2012) <http://lawprofessors.typepad.com/files/vawa-letter-from-law-professors—tribal-provisions.pdf>.

125. Ronet Bachman et al., *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known*, U.S. DEP'T OF JUSTICE, 47 (Aug. 2008), <https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>.

126. Leahy, *supra* note 124, at 4.

127. *Id.*

128. *Id.* at 4-5.

129. Singh, *supra* note 111, at 226.

130. Horwitz, *supra* note 22.

131. *Id.*

132. Johnson, *supra* note 36, at 619.

has been an integral part of colonial, expansionist, nationalist, and racist projects.<sup>133</sup> Throughout the westward expansion, Native women were continually subject to sexual exploitation as part of their forced removal by the government to reservations, boarding schools, foster homes, and urban centers.<sup>134</sup> While the government eventually abandoned its exploitative practices, the legacy of sexual oppression leaves Native women vulnerable to sexual exploitation at the hands of private actors.<sup>135</sup> As a result, the trafficking of Native women and girls continues at disproportionate rates.<sup>136</sup> Years of exploitation at the hands of the government create a psychological, socio-economic, and legal dynamic in tribal communities that facilitates the sexual exploitation of Native women and girls at the hands of private actors.<sup>137</sup>

### 1. The Prevalence and Characteristics of Native Women Human Trafficking

There are certain characteristics that all domestic trafficking victims share, but they combine to form a perfect storm, which unequally affects tribal communities and renders Native women and girls especially susceptible to sex trafficking.<sup>138</sup> The common characteristics shared among Native women who are involved in sex trafficking are that they were victims of sexual abuse as children, they have a history of family substance abuse, they were homeless, and they suffer from generational trauma.

#### a. Sexually Abused as Children

According to a study conducted by the Minnesota Indian Women's Resource Center (MIWRC), on average, prostituted Native women enter into prostitution as minors, many as young as twelve or thirteen.<sup>139</sup> The study also found that sixty-three percent of clients entered prostitution or pornography before turning eighteen.<sup>140</sup> Further, the study found that most, if not all, of the prostituted Native women they encountered were sexually abused as children.<sup>141</sup> Many of the advocates who participated in the study described childhood sexual abuse as the key factor for Native girls' entry into the sex trade.<sup>142</sup> Childhood sexual abuse is the primary reason Native girls run away from home, utilizing prostitution as a means to survive.<sup>143</sup> The MIWRC study reported that sixty to seventy percent of youth in prostitution and fifty-five to ninety percent of adult women in prostitution were sexually abused at home.<sup>144</sup>

Tragically, the impact of childhood sexual abuse by a family member impairs Native

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133. Deer, *supra* note 17, at 624.

134. *Id.* at 661-69.

135. Johnson, *supra* note 36, at 619.

136. *Id.*

137. *Id.* at 621.

138. *Id.* at 625.

139. Alexandra (Sandi) Pierce, *Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota*, MINN. INDIAN WOMEN'S RESOURCE CTR., 37 (2009), <http://www.miwrc.org/wp-content/uploads/2013/12/Shattered-Hearts-Full.pdf>.

140. *Id.*

141. *Id.* at 60.

142. *Id.* at 60-61.

143. *Id.*

144. *Shattered Hearts*, *supra* note 139, at 61.

women's ability to recognize sexual exploitation.<sup>145</sup> They often see it as less harmful if it is at the hands of a family member rather than a stranger.<sup>146</sup>

*b. Family History of Substance Abuse*

Another common characteristic among trafficked Native women and girls is a history of family and personal drug and alcohol abuse.<sup>147</sup> The MIWRC report showed that family substance abuse strongly correlates with minors running away, which puts them at a higher risk of sexual exploitation.<sup>148</sup> The study also cited Canadian studies demonstrating that prostituted youth have "identified parental substance abuse as a primary factor in the physical and sexual abuse of Native youth, Native youth's decision to run away from home, and their resulting recruitment for prostitution."<sup>149</sup>

The MIWRC study further found that Native women's addiction to drugs and alcohol was a major factor for facilitating their entry into prostitution and then keeping them involved in sex trafficking even when they wanted to leave.<sup>150</sup> Pimps often exploit Native women's addiction as a tool to keep them enslaved.<sup>151</sup> The pimps provide these women and girls with free drugs, get them addicted, and then begin prostituting them.<sup>152</sup>

This particular risk factor is disproportionately prevalent in tribal families.<sup>153</sup> Native American women are more likely than any other racial group to become dependent on alcohol because of childhood sexual abuse.<sup>154</sup> An early exposure and use of alcohol is also a common problem in tribal communities.<sup>155</sup> Native high school girls in Minnesota reported the early use of alcohol at much higher rates than girls in the general population reported the early use of alcohol.<sup>156</sup>

*c. Homelessness*

Many Native women and girls who are victims of sex trafficking run away from home and are homeless as a result of abuse, neglect, and family substance abuse.<sup>157</sup> According to MIWRC author, Alexandra Pierce, women often engage in survival sex in which they trade sex for a place to live, for transportation, for food, and other basic needs, as well as for drugs and alcohol.<sup>158</sup> Often women and girls who are engaged in survival sex do not view it as prostitution but simply as a means to survive.<sup>159</sup> U.S. and Canadian

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145. *Id.*

146. *Id.*

147. Johnson, *supra* note 36, at 629.

148. *Shattered Hearts*, *supra* note 139, at 72.

149. *Id.* at 73 (citing Cherry Kingsley and Melanie Mark, *Sacred lives: Canadian Aboriginal children and youth speak out about sexual exploitation*, NAT'L ABORIGINAL CONSULTATION PROJECT (2000), [http://www.gov.mb.ca/fs/traciustrust/pubs/sacred\\_lives.pdf](http://www.gov.mb.ca/fs/traciustrust/pubs/sacred_lives.pdf).)

150. *Shattered Hearts*, *supra* note 139, at 74.

151. *Id.*

152. *Id.*

153. Johnson, *supra* note 36, at 630.

154. *Shattered Hearts*, *supra* note 139, at 75.

155. *Id.*

156. *Id.*

157. Johnson, *supra* note 36, at 630.

158. *Id.* at 642.

159. *Shattered Hearts*, *supra* note 139, at 26.

studies show that traffickers deliberately target homeless Native women who are desperate to survive.<sup>160</sup>

#### *d. Generational Trauma*

One of the most significant and defining characteristics of Native sex trafficking is the unique generational trauma from which victims suffer.<sup>161</sup> From the first colonizers to sail to the New World to present-day pimps, generations of Native American women have been regularly and forcibly exploited.<sup>162</sup> The history of sexual exploitation leads to “generational trauma;” the MIWRC explained: “U.S. government actions such as extermination policies, religious persecution, forced migration to Indian reservations, and systematic removal of Native children to boarding schools caused repeated exposure to trauma, which impeded a natural grieving process.”<sup>163</sup> Each time this occurred, the past and current trauma transferred to the next generation.<sup>164</sup>

Generational trauma is a major contributor to tribal communities’ “high rates of poverty, violent victimization, depression, suicide, substance abuse, and child abuse.”<sup>165</sup> Generational trauma, in conjunction with previous physical or sexual abuse, can increase Native women’s vulnerability to traffickers, especially those traffickers that characterize the sex trade as an immediate path to empowerment and financial freedom.<sup>166</sup>

### 2. Avenues of Trafficking of Native Women Occurs

There exist many different avenues for sex traffickers to recruit or exploit Native women into the sex trade.<sup>167</sup> Native girls enter the sex trade through stripping or nude dancing, through direct recruitment by pimps or boyfriends, through gangs, and through survival sex.<sup>168</sup>

#### *a. Stripping and Nude Dancing*

The MIWRC study found that the trafficking of Native women occurs from reservation to reservation, off reservations to cities in the region, and wholly within reservations.<sup>169</sup> The study found girls often enter the sex trade through stripping or nude dancing and then progress into other areas of commercial sexual exploitation.<sup>170</sup> Most of the younger Native women and girls did not consider stripping and nude dancing as sexual exploitation but instead viewed it as a glamorous way to make money quickly.<sup>171</sup> Advocates in the study explained that bars and strip clubs serve as recruiting grounds for

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160. Pierce & Koeplinger, *supra* note 38, at 3.

161. *Id.* at 2.

162. Johnson, *supra* note 36, at 631.

163. *Shattered Hearts*, *supra* note 139, at 4.

164. *Id.*

165. Pierce & Koeplinger, *supra* note 38, at 2.

166. *Id.* at 3.

167. Johnson, *supra* note 36, at 636-37.

168. *See Shattered Hearts*, *supra* note 139, at 39, 44, 58; Johnson *supra* note 36, at 639.

169. *Shattered Hearts*, *supra* note 139, at 40; *see also* Johnson, *supra* note 36, at 636-37.

170. *Shattered Hearts*, *supra* note 139, at 39.

171. *Id.*

pimps.<sup>172</sup> Pimps will recruit Native women to dance on the circuit, which travels through the state or from state to state.<sup>173</sup> Once the girls begin the circuit, pimps take them over and begin prostituting them out in the bars and strip clubs.<sup>174</sup>

*b. Recruitment Through Pimps and Boyfriends*

Another common entryway into sex trafficking for Native women is through direct recruitment by pimps and boyfriends.<sup>175</sup> Often, pimps pose as rescuers getting runaway girls off the streets and promising to take care of them.<sup>176</sup> Then the pimps begin pressuring the girls to financially contribute and suggest stripping or other sexual activities to earn money.<sup>177</sup> Pimps or boyfriends lure Native women in with “flattery, romantic promises, gifts, shopping trips, alcohol, and drugs.”<sup>178</sup> Pimps often begin to move Native women from place to place to sever her relationships with friends and family members and to isolate her.<sup>179</sup> Then the pimps and boyfriends break the girls’ self-esteem through verbal and physical abuse.<sup>180</sup> This process results in the girl forming a deep attachment with the pimp or boyfriend, making it virtually impossible for her to refuse his demands of prostitution and effectively enslaving her to the sex trade.<sup>181</sup> Due to the fact that many of these prostituted Native women experienced sexual exploitation as children, it is unsurprising that they are reluctant to view themselves as victims of sex trafficking but continue to insist that their boyfriends love them, despite their demands that the women help out through prostitution.<sup>182</sup>

*c. Recruitment Through Gangs*

Gangs are another tool used to introduce Native women into the sex trade.<sup>183</sup> The MIWRC report cited a study finding that male gang members expect the girls in Native gangs to be emotionally supportive, including providing sex on demand.<sup>184</sup> A second study found that Native American gangs prostituted their girl members more frequently than Latino and other gangs.<sup>185</sup> Native girls who were current or former gang members reported that most girls involved with their gang provided sex on demand and/or were trafficked for drugs or money.<sup>186</sup> Senator Dorgan stated that gangs exploit the lack of police presence and complex jurisdictional issues that exist on tribal land.<sup>187</sup> Gang activity

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172. *Id.*

173. *Id.*

174. *Shattered Hearts*, *supra* note 139, at 39.

175. Johnson, *supra* note 36, at 639.

176. *Shattered Hearts*, *supra* note 139, at 42.

177. *Id.*

178. Johnson, *supra* note 36, at 639.

179. *Shattered Hearts*, *supra* note 139, at 45.

180. *Id.*

181. *Id.*

182. Alexandra (Sandi) Pierce, *American Indian Adolescent Girls: Vulnerability to Sex Trafficking, Intervention Strategies*, 19 AM. INDIAN & ALASKA NATIVE MENTAL HEALTH RES. 37, 51 (2012).

183. *Shattered Hearts*, *supra* note 139, at 44.

184. *Id.* at 46.

185. *Id.*

186. *Id.*

187. *Examining the Increase of Gang Activity in Indian Country: Hearing Before the S. Comm. on Indian*

is one other symptom of a culture of violence that exists on too many reservations.<sup>188</sup> Along with the gang trafficking of Native women between urban areas and reservations, there is also gang trafficking of drugs.<sup>189</sup> Senator Franken quoted a *Native American Times* article, stating “Reservations offer near perfect hideouts and lucrative markets. They’re often remote, with few businesses or job opportunities.” This further fosters gang activity on reservations, putting more Native women at risk of sexual exploitation.<sup>190</sup>

*d. Survival Sex*

Finally, poverty is a prevalent precursor of Native women’s entry into the sex trade.<sup>191</sup> The MIWRC study cited a report that American Indians are more likely to live in poverty than any other group in the nation.<sup>192</sup> Poverty is a major contributor to homelessness.<sup>193</sup> As discussed above, homelessness is a factor that contributes to Native women’s entry into the sex trade.<sup>194</sup> Homelessness makes Native women especially vulnerable to survival sex in order to have their basic needs met.<sup>195</sup>

There are many risk factors recognized as indicators of a higher likelihood of entering into the sex trade, including a history of sexual or physical abuse, alcohol abuse, drug abuse, homelessness, gang involvement, and generational trauma.<sup>196</sup> Because Native women and girls experience many of these key predictive risk factors for prostitution, they are at a heightened risk of being trafficked into the sex industry.<sup>197</sup>

Native American women and girls embody the perfect storm of vulnerability.<sup>198</sup> Even with the passage of the Violence Against Women Reauthorization Act of 2013, VAWA still fails to protect these women from exploitation by sex traffickers.<sup>199</sup>

3. Segments of Native Women Left Unprotected Under VAWA

The sex trafficking of Native women and girls is a serious problem in the United States and Canada.<sup>200</sup> Sex traffickers specifically target this group in some regions, often focusing on Native women and girls who are in dire situations and who are particularly susceptible because of the variety of risk factors that generally accompany them.<sup>201</sup> The Violence Against Women Reauthorization Act of 2013 fails to cover crimes committed off of tribal land; crimes that involve two non-Natives; crimes between strangers, including sexual assaults; crimes perpetrated by a person who lacks adequate ties to the tribe,

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*Affairs*, 111th Cong. 1, 2 (2009) (statement of Sen. Dorgan, Chairman, S. Comm. on Indian Affairs).

188. *Id.* at 3.

189. *Id.* at 4 (statement of Sen. Franken, Member, S. Comm. on Indian Affairs).

190. *Id.* at 4-5.

191. Johnson, *supra* note 36, at 642.

192. *Shattered Hearts*, *supra* note 139, at 59.

193. *Id.*

194. *Id.* at 58.

195. *Id.*

196. Deer, *supra* note 17, at 677-78.

197. *Id.* at 626.

198. Johnson, *supra* note 36, at 643.

199. Horwitz, *supra* note 22.

200. Pierce & Koeplinger, *supra* note 38, at 8.

201. *Id.*

such as living or working on its reservation; and child abuse or elder abuse not involving the violation of a protection order.<sup>202</sup>

*a. VAWA Fails to Protect Native Women from Sexual Assaults by “Strangers”*

It is significant to note that the special domestic violence criminal jurisdiction that tribes can exercise under VAWA does not include the crime of sexual assault.<sup>203</sup> If an offender commits a sexual assault and the assault does not occur within the narrow confines of either domestic violence, dating violence, or a violation of a protection order, then the tribal court remains without a remedy.<sup>204</sup> The definitions of domestic violence and dating violence require a preexisting relationship between the offender and the victim.<sup>205</sup> There must be a preexisting intimate-partner relationship in order to trigger the special domestic violence criminal jurisdiction.<sup>206</sup> Therefore, the prosecution of a defendant for sexual assault occurring during a hook-up or any other instance in which the offender and victim do not have a prior romantic relationship avoids prosecution by the tribe.<sup>207</sup> VAWA fails to provide relief to Native women who are victims of a sexual assault or rape committed by non-Natives who are “strangers” to their victims.<sup>208</sup>

*b. VAWA Only Protects Women from Perpetrators with Connection to a Tribe*

Further, the ability for tribes to prosecute non-Native perpetrators under VAWA does not extend to prosecuting defendants who lack a connection to a participating tribe.<sup>209</sup> The special domestic violence criminal jurisdiction does not apply when: the victim and the offender are both non-Native; the non-Native offender lacks sufficient ties to the tribe; or the crime did not take place on the tribal land of a participating tribe.<sup>210</sup> In order for a defendant to have sufficient ties to a tribe, the defendant must either reside on tribal land of the participating tribe; be employed in the Indian country of the participating tribe; or be a spouse, intimate partner, or dating partner of a tribal member or an Indian who resides in the Indian country of the participating tribe.<sup>211</sup> Therefore, VAWA offers no protection to Native women from sex traffickers who come onto the reservation with no connection to the tribe and commit sexual assault or rapes.<sup>212</sup>

*c. VAWA Fails to Protect Children who are Sexually Abused at Home*

The Violence Against Women Reauthorization Act of 2013 also fails in protecting

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202. *Violence Against Women Act (VAWA) Reauthorization 2013*, *supra* note 110.

203. *Introduction to the Violence Against Women Act*, *supra* note 20.

204. *Id.*

205. *Id.*

206. Leahy, *supra* note 124, at 3-4.

207. *Introduction to the Violence Against Women Act*, *supra* note 20.

208. Horwitz, *supra* note 22.

209. *Introduction to the Violence Against Women Act*, *supra* note 20.

210. *Id.*

211. *Id.*

212. Horwitz, *supra* note 22.

children who are living at home from sexual violence committed by a family member.<sup>213</sup> Child abuse is not a crime covered under VAWA.<sup>214</sup> As discussed earlier, childhood sexual abuse is often a main factor contributing to Native youth running away from home.<sup>215</sup> Sexual predators target these runaways and lure them into the sex industry by initially having them engage in survival sex as their only means of survival.<sup>216</sup>

*d. VAWA Fails to Protect Alaskan Native Women*

An Alaskan Native woman living in the fishing village of 800 in the Yukon River delta was nineteen when an intruder broke into her home and raped her.<sup>217</sup> After the man left she called the tribal police, consisting of only three officers.<sup>218</sup> It was late at night and no one answered her call for help.<sup>219</sup> She left a message on the voicemail and her call was never returned.<sup>220</sup> The special domestic violence criminal jurisdiction in VAWA only applies to the Metlakatla Indian Community, Annette Island Reserve.<sup>221</sup> Therefore, all the other tribes in Alaska are exempt from this enlargement of criminal jurisdiction.<sup>222</sup>

The rate of sexual assault for Native American women is more than twice the national average.<sup>223</sup> Women's advocates claim there is "no place . . . more dangerous than Alaska's isolated villages, where there are no roads in or out, and where people are further cut off by undependable telephone, electrical, and Internet service."<sup>224</sup> According to the Alaska Federation of Natives, the rate of sexual violence in rural villages is as much as twelve times the national average.<sup>225</sup> Rape is more expected than unexpected and has become a norm for young Alaskan Native women.<sup>226</sup> The Department of Justice reported that in Anchorage alone, the rate of sexual assaults between 2000 and 2004 for Native women was five times that of African American women and seven times that of white women.<sup>227</sup>

These staggering statistics did nothing to entice legislators to include Alaskan tribes in the Violence Against Women Reauthorization Act of 2013.<sup>228</sup> Section 910 of VAWA states: "In the State of Alaska, the amendments made by Sections 904 and 905 shall only

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213. *Violence Against Women Act (VAWA) Reauthorization 2013*, *supra* note 110.

214. *Id.*

215. Johnson, *supra* note 36, at 630.

216. *Id.* at 631.

217. Timothy Williams, *For Native American Women, Scourge of Rape, Rare Justice*, N.Y. TIMES, May 22, 2012.

218. *Id.*

219. *Id.*

220. *Id.*

221. *Introduction to the Violence Against Women Act*, *supra* note 20.

222. *Id.*

223. Williams, *supra* note 217.

224. *Id.*

225. *Id.*

226. *Id.*

227. Pierce & Koeplinger, *supra* note 38, at 2.

228. Rebecca Siegel, *Who is Left Out of VAWA?*, THE BLACK SHEEP JOURNAL, Mar. 27, 2013, <http://sites.hampshire.edu/blacksheepjournal/2013/03/27/who-is-left-out-of-vaawa>.

apply to the Indian country of the Metlakatla Indian Community, Annette Island Reserve.”<sup>229</sup> Alaska has 229 tribes within its borders and VAWA excludes all but one.<sup>230</sup> Alaskan tribes cannot issue protection orders to protect women who are experiencing domestic violence or arrest or detain non-Native perpetrators of domestic violence or sexual assault.<sup>231</sup> Metlakatla is singled out for inclusion because it is the only reservation in Alaska.<sup>232</sup> The remaining tribes in Alaska have a system of regional and village corporations.<sup>233</sup>

Sex traffickers intentionally target Alaskan Native women and girls.<sup>234</sup> In 2010, the FBI and the Anchorage Police Department’s Sex Crimes Unit warned Alaska tribes and villages that sex traffickers were targeting young girls from rural tribal communities who were attending Alaska Federation of Natives conventions and other Native events in Anchorage.<sup>235</sup> The police noted that a third of the women arrested for prostitution were Native.<sup>236</sup> Pimps were luring girls from rural Alaska to Anchorage and forcing them into prostitution.<sup>237</sup> Often these girls run away from home in search of better opportunities but pimps then lure them into prostitution.<sup>238</sup>

Due to the failure of VAWA to include Alaskan Native women, the Act forces tribal communities to rely on state law enforcement to protect them from sexual predators.<sup>239</sup> About 140 rural Alaskan communities do not have their own law enforcement.<sup>240</sup> In these rural villages, state police and state courts are often a long airplane ride away and weather conditions often prevent planes from reaching destinations.<sup>241</sup> The remoteness of these villages prevents police from providing the efficient and timely services necessary.<sup>242</sup> According to the Justice Department, nationwide, an arrest is made in just thirteen percent of the sexual assaults reported by Native American women compared with thirty-five percent for black women and thirty-two percent for white women.<sup>243</sup>

Tribes are better equipped to deal with these crimes and are often the only place women can go for help in Alaska.<sup>244</sup> However, VAWA takes the authority away from the tribes by mandating that VAWA only applies to the Indian country of Metlakatla.<sup>245</sup> Tribes have authority to handle certain problems that impact the health and safety of its

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229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. Siegel, *supra* note 228.

234. Pierce & Koeplinger, *supra* note 38, at 4.

235. *Id.*

236. *Id.*

237. *Id.*

238. Johnson, *supra* note 36, at 639.

239. Siegel, *supra* note 228.

240. *Id.*

241. *Id.*

242. *Id.*

243. Williams, *supra* note 217.

244. Natalie Landreth, *Alaska Native Women Lose in Violence Against Women Act Renewal*, ALASKA DISPATCH NEWS, Mar. 12, 2013, <http://www.adn.com/article/20130312/alaska-native-women-lose-violence-against-women-act-renewal>.

245. *Id.*

members.<sup>246</sup> The most common exercise of this power is to issue a protection order and tribes in Alaska have done this for many years.<sup>247</sup> Section 905 of VAWA expanded this power but then Alaska was excluded in Section 910.<sup>248</sup> But for the Alaska exclusion, Alaskan tribal courts would have the ability to issue protection orders and the ability to arrest or detain any offender whether he is Native or not.<sup>249</sup> Considering the high rate of domestic violence and sexual assault in rural Alaska, it is unbelievable that Alaskan Natives are excluded from this ability.<sup>250</sup> VAWA fails to protect a vulnerable group of people and should be amended so the tribal communities can offer some amount of protection to its citizens.<sup>251</sup>

#### 4. Jurisdictional Maze Attracts Sex Traffickers

The jurisdictional morass between state, federal, and tribal prosecutorial authority creates complexity and confusion for victims of sexual violence seeking justice.<sup>252</sup> The law fails to reach non-Native perpetrators of sexual violence against Native women in Indian country.<sup>253</sup> “Non-Indian men victimize American Indian women because there is literally nothing stopping them from treating their partners in any manner they choose . . . . [T]he laws against domestic violence have no deterrent effect when it comes to non-Indian on Indian crimes because these crimes are not prosecuted.”<sup>254</sup>

For Native women and girls who are victims of sexual violence, the general hesitancy to prosecute sex traffickers is further exacerbated by the jurisdictional maze that hinders—and often blocks—successful prosecutions.<sup>255</sup> On tribal land, the interplay of federal statutes, regulations, tribal law, and case law creates a jurisdictional knot which is characterized by criminal jurisdiction overlaps and confusion that delays investigation and prosecution.<sup>256</sup> The usual line by the tribal police was that there was nothing they could do for the Native women who were assaulted if the perpetrator was white and not enrolled in the tribe.<sup>257</sup> Often there was no recourse.<sup>258</sup> A “combination of reluctance, indifference, and vulnerability” allows sex traffickers to get a foothold in Native American communities.<sup>259</sup>

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246. *Id.*

247. *Id.*

248. *Id.*

249. Landreth, *supra* note 244.

250. *Id.*

251. *Id.*

252. Maze of Injustice, *supra* note 6, at 8.

253. Singh, *supra* note 111, at 209.

254. Amy Radon, *Tribal Jurisdiction and Domestic Violence: The Need for Non-Indian Accountability on the Reservation*, 37 U. MICH. J.L. REFORM 1275, 1282 (2004).

255. Johnson, *supra* note 36, at 684.

256. Laura C. Sayler, *Back to Basics: Special Domestic Violence Jurisdiction in the Violence Against Women Reauthorization Act of 2013 and the Expansion of Inherent Tribal Sovereignty*, 2014 CARDOZO L. REV. DE NOVO 1, 3-4 (2014).

257. Horwitz, *supra* note 22.

258. *Id.*

259. Johnson, *supra* note 36, at 636.

Sex trafficking crimes are often not a high priority for state and federal investigators.<sup>260</sup> Amnesty International found that the FBI rarely investigates sex trafficking crimes and, when it does, delays are lengthy before investigations begin.<sup>261</sup> Further, Amnesty International found that the FBI often will not pursue a case if tribal enforcement has already begun an investigation, giving tribal police an incentive to not take steps to preserve evidence or immediately pursue justice.<sup>262</sup> The MIWRC study found that police officers' limited staff time and budget constraints are often the reason pimps are not investigated.<sup>263</sup> These costs limit officers to investigating large prostitution rings that traffic minors, which are usually those that also traffic drugs.<sup>264</sup>

Thomas J. Perelli, a former associate attorney general, pointed out that there are tribal communities in which the federal government has no jurisdiction, but the state law enforcement, which does have jurisdiction, does nothing.<sup>265</sup> Then there are situations on tribal lands where there is a dispute about whether anyone has jurisdiction.<sup>266</sup> Perelli stated, "All of this has led to an inadequate response to the plight of many Native American women."<sup>267</sup> Limited law enforcement resources and an unwillingness or inability of tribal, state, and federal police to assume jurisdiction over sex trafficking crimes not only leaves Native women with even fewer chances of receiving protection from law enforcement, but it also increase their risk of being targeted by traffickers.<sup>268</sup> This jurisdictional dynamic has created a sense of "lawlessness" on many reservations that has attracted non-Native crime rings.<sup>269</sup>

Due to the reluctance of police from any level to get involved, sex traffickers specifically target Native women and girls.<sup>270</sup> Kimberly Norris Guerrero, a tribal advocate and native Oklahoman who is Cherokee and Colville Indian, stated, "Over the years, what happened is that white men, non-native men, would go onto a Native American reservation and go hunting—rape, abuse and even murder a native woman, and there's absolutely nothing anyone could do to them. They got off scot-free."<sup>271</sup>

The jurisdictional gap that exists on tribal land prevents Native women from seeking prosecution of their abusers.<sup>272</sup> Violence against Native American women is worsened by an inherent failure to prosecute offenders.<sup>273</sup> De facto exemption from punishment still exists for perpetrators and leaves Native women and girls vulnerable to an increasing number of sex traffickers seeking to exploit the lawlessness that exists.<sup>274</sup> "[T]ribal law en-

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260. *Id.* at 678.

261. Maze of Injustice, *supra* note 6, at 42.

262. *Id.*

263. *Shattered Hearts*, *supra* note 139, at 89.

264. *Id.*

265. Horwitz, *supra* note 22.

266. *Id.*

267. *Id.*

268. Johnson, *supra* note 36, at 679.

269. *Id.*

270. Johnson, *supra* note 36, at 636.

271. Horwitz, *supra* note 22.

272. Singh, *supra* note 111, at 199.

273. *Introduction to the Violence Against Women Act*, *supra* note 20.

274. Johnson, *supra* note 36, at 691.

forcement officials and victim advocates have reported a substantial increase in the number of non-Indian criminals who exploit this gap in jurisdiction and commit crimes on reservations.<sup>275</sup>

The Violence Against Women Reauthorization Act of 2013 fails to protect Native women from sexual assaults at the hands of strangers.<sup>276</sup> With the increase in sex trafficking of Native women and girls, this failure is a major and tragic oversight.<sup>277</sup> VAWA further fails to protect children from sexual abuse in the home by a family member, leaving them vulnerable to sex traffickers in the event they run away from home.<sup>278</sup> There is also another group of Native women left unprotected under VAWA—Alaskan Native women and girls.<sup>279</sup>

### C. Implementation of the Violence Against Women Reauthorization Act of 2013

The Violence Against Women Reauthorization Act raises several issues in execution. First is whether expanding tribal court's jurisdiction will be successful.<sup>280</sup> Legislators have instituted a pilot program to answer that question.<sup>281</sup> Second is whether there are appropriate constitutional and due process safeguards to ensure that non-Native perpetrators will receive a fair trial.<sup>282</sup> Each question will be examined in turn.

#### 1. Expanding Tribal Jurisdiction through the Pilot Project

The Violence Against Women Reauthorization Act of 2013 takes effect on March 7, 2015, but also authorizes a voluntary pilot project to allow certain tribes to begin exercising special domestic violence criminal jurisdiction earlier.<sup>283</sup> On February 6, 2014, the Pascua Yaqui Tribe of Arizona, the Tulalip Tribes of Washington, and the Umatilla Tribes of Oregon were selected as participants in the pilot project.<sup>284</sup> On March 6, 2015, the Assiniboine and Sioux Tribes of Montana and Sisseton Wahpeton Oyate Tribe of South Dakota were selected as participants in the pilot project.<sup>285</sup> Section 908(b)(2) of VAWA authorizes the Attorney General to grant a tribe's request to be designated as a participating tribe on an accelerated basis and to exercise its expanded jurisdiction earlier.<sup>286</sup> To participate, the tribe's criminal justice system must have adequate safeguards in place to protect

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275. Marie Quasius, *Native American Rape Victims: Desperately Seeking an Oliphant-Fix*, 93 MINN. L. REV. 1902, 1906 (2009).

276. Horwitz, *supra* note 22.

277. *Id.*

278. Johnson, *supra* note 36, at 630-31.

279. Horwitz, *supra* note 22.

280. *Introduction to the Violence Against Women Act*, *supra* note 20.

281. *Id.*

282. Leahy, *supra* note 124, at 1.

283. *Violence Against Women Act (VAWA) Reauthorization 2013*, *supra* note 110.

284. *Id.*

285. *VAWA 2013 PILOT PROJECT*, U.S. DEP'T OF JUST., (Mar. 13, 2015), <http://www.justice.gov/tribal/vawa-2013-pilot-project>.

286. *Introduction to the Violence Against Women Act*, *supra* note 20.

defendants' rights.<sup>287</sup> The purpose of the pilot project is to determine how to better exercise the special domestic violence criminal jurisdiction.<sup>288</sup> The pilot project will support tribes in their efforts to work together to create best practices that other tribes can consider when implementing the special domestic violence criminal jurisdiction in 2015.<sup>289</sup>

Associate Attorney General Tony West called the pilot project “a historic turning point” for justice in Indian country.<sup>290</sup> West said, “We believe that by certifying certain tribes to exercise jurisdiction over these crimes, we will help decrease domestic and dating violence in Indian Country, strengthen tribal capacity to administer justice and control crime, and ensure that perpetrators of sexual violence are held accountable for their criminal behavior.”<sup>291</sup> The Associate Attorney General recognizes that the way to adequately protect Native women from sexual violence is by putting more control back in the hands of the tribe, but VAWA still falls short of protecting women from sex traffickers who are strangers to their victims.<sup>292</sup> Attorney General Eric Holder stated that VAWA is “game-changing.”<sup>293</sup> He went on to say, “But there are still attitudes that have to be changed. There are still resources that have to be directed at the problem. There’s training that still needs to go on. We’re really only at the beginning stages of reversing what is a horrible situation.”<sup>294</sup> VAWA is a step in the right direction but does not extend as far as it should.<sup>295</sup>

## 2. Constitutional and Due Process Safeguards

Not everyone has trumpeted the Violence Against Reauthorization Act of 2013 as a victory for Native women.<sup>296</sup> Some Republicans opposed the Act because it would reinstate limited criminal jurisdiction over non-Natives to tribal courts.<sup>297</sup> They implied that tribal courts would intrude on the rights of non-Native defendants.<sup>298</sup> Opponents feared retribution by Natives for the long history of mistreatment by white Americans.<sup>299</sup> However, absent from this discussion was any consideration about how federal restrictions on tribal criminal jurisdiction cripple the human rights of Native women and girls by depriving them of equal protection under the law, judicial protection, and an effective judicial remedy.<sup>300</sup> Representative Gwen Moore asked “When we talk about the constitutional

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287. *Id.*

288. *Id.*

289. *Id.*

290. Sari Horwitz, *3 Tribes Authorized to Prosecute Non-Native American Men in Domestic Violence Cases*, WASH. POST (Feb. 6, 2014), [http://www.washingtonpost.com/world/national-security/3-tribes-authorized-to-prosecute-non-native-american-men-in-domestic-violence-cases/2014/02/06/27bc1044-8f58-11e3-b46a-5a3d0d2130da\\_story.html](http://www.washingtonpost.com/world/national-security/3-tribes-authorized-to-prosecute-non-native-american-men-in-domestic-violence-cases/2014/02/06/27bc1044-8f58-11e3-b46a-5a3d0d2130da_story.html).

291. *Id.*

292. Horwitz, *supra* note 22.

293. *Id.*

294. *Id.*

295. *Id.*

296. Carlson, *supra* note 71, at 358.

297. *Id.*

298. *Id.* at 358-59.

299. Horwitz, *supra* note 22.

300. Carlson, *supra* note 71, at 359.

rights, don't women on tribal lands deserve their constitutional right of equal protection and not to be raped and battered and beaten and dragged onto native lands because they know they can be raped with impunity?"<sup>301</sup>

Several U.S. Senators and Representatives concluded that the constitutional concerns about Section 904 were unfounded.<sup>302</sup> "Congress has the power to recognize the inherent sovereignty of Indian tribal governments to prosecute non-Native perpetrators of domestic violence on reservations."<sup>303</sup> While the Supreme Court did hold that tribal courts did not have criminal jurisdiction over non-Natives in *Oliphant*, that decision had its basis in common law and not in the Constitution.<sup>304</sup> Thus, Congress retains the authority to overrule that decision through legislation.<sup>305</sup> The Supreme Court essentially said the same thing in *Oliphant* when it stated that tribal courts do not have the power to prosecute non-Native defendants "except in a manner acceptable to Congress."<sup>306</sup> And in *United States v. Lara*, the Supreme Court held that "Congress does possess the constitutional power to lift the restrictions on the tribes' criminal jurisdiction."<sup>307</sup> The Court concluded that Congress has continuously possessed the ability to decide the status and powers of tribal courts and that this power is rooted in the Constitution.<sup>308</sup> Thus, *Lara* demonstrates that the expansion of tribal jurisdiction by Congress, as proposed in Section 904, is constitutional.<sup>309</sup>

It is significant that Section 904 does not constitute a full restoration of all tribal criminal jurisdiction but it only applies to events that would fall under the special domestic violence criminal jurisdiction.<sup>310</sup> The scope of the expanded jurisdiction is very narrow and only applies to a small category of persons who have an intimate-partner relationship with a tribal member.<sup>311</sup> Further, defendants in tribal courts will not be denied any of the Constitutional rights that they would be afforded in state or federal courts.<sup>312</sup> Section 904 provides sufficient safeguards to ensure that non-Native defendants receive all rights guaranteed by the Constitution.<sup>313</sup> The Indian Civil Rights Act already requires tribal courts to provide defendants with all rights they would be afforded in state and federal court.<sup>314</sup> Section 904 reinforces the protections accorded to perpetrators under the Indian Civil Rights Act.<sup>315</sup> VAWA creates an even playing field for all defendants and enables tribal courts to ensure no person who commits an act of violence against an intimate partner is above the law.<sup>316</sup> However, these constitutional and due process safeguards could also extend

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301. Horwitz, *supra* note 22.

302. Leahy, *supra* note 124, at 1.

303. *Id.* at 2.

304. *Id.*

305. *Id.*

306. *Id.*

307. Leahy, *supra* note 124, at 3.

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.* at 3-4.

312. Leahy, *supra* note 124, at 4.

313. *Id.*

314. *Id.* at 5.

315. *Id.*

316. *Id.* at 6.

tribal courts jurisdiction to encompass strangers and traffickers in order to provide protection for Native women who are victims of sex traffickers.<sup>317</sup>

#### IV. PROPOSED ACTION

The Violence Against Women Act 2013 should expand tribal courts' criminal jurisdiction even further to enable tribal courts to prosecute "strangers" and sex traffickers who are targeting Native women and girls.<sup>318</sup> While VAWA allows tribal courts to prosecute non-Native defendants who are in an intimate-partner relationship with Native women, it offers no protection for women who are victims of sex trafficking.<sup>319</sup> The main objection to allowing tribal courts to prosecute non-Native defendants is that they would not receive a fair trial.<sup>320</sup> However, this view ignores the fact that legislators are essentially declaring that non-Natives' rights are more important than Native women's rights.<sup>321</sup> The same constitutional and due process safeguards that are incorporated into VAWA currently could be extended to allow tribal courts to prosecute sex traffickers within the same confines.<sup>322</sup>

##### A. *Non-Native Defendants Would Receive a Fair Trial*

The primary concern in extending the tribe's jurisdiction to not only cover non-Natives involved in an intimate-partner relationship but to also cover sex traffickers and strangers is the concern that non-Natives could be deprived of due process if prosecuted by tribal courts.<sup>323</sup> However, the Indian Civil Rights Act already imposes nearly all of the constitutional requirements of the Bill of Rights on tribal courts and allows for federal habeas corpus review of detention ordered by a tribe.<sup>324</sup> The Indian Civil Rights Act's main purpose is to "protect individual rights from intrusion or violation by tribal governments."<sup>325</sup>

Under the Indian Civil Rights Act, tribal courts are required to "observe due process and enforce other rights analogous to those arising under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments."<sup>326</sup> The Act applies to Native and non-Native criminal defendants and would protect the non-Natives who are subject to the tribe's jurisdiction for crimes against women if tribes were allowed to exert jurisdiction over them.<sup>327</sup> With additional federal funds, tribal courts could meet the remaining requirement that non-Native defendants have access to legal representation provided by the court.<sup>328</sup>

Under the Indian Civil Rights Act, non-Native defendants would have their constitutional and due process rights protected.<sup>329</sup> Therefore, if VAWA were expanded to allow

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317. Horwitz, *supra* note 22.

318. *Id.*

319. *Id.*

320. *Id.*

321. Carlson, *supra* note 71, at 358-59.

322. Johnson, *supra* note 36, at 704.

323. *Id.*

324. *Id.*

325. Pacheco, *supra* note 26, at 19.

326. *Id.*

327. *Id.* at 20.

328. Quasius, *supra* note 275, at 1927.

329. Pacheco, *supra* note 26, at 19.

tribal courts to prosecute non-Native defendants, they would still be protected under the Indian Civil Rights Act that already protects them under VAWA.<sup>330</sup>

*B. Tribes are Better Structured to Prosecute Sex Traffickers*

The jurisdictional gap developed over the years has removed criminal authority from those best positioned to enforce it, and it has produced confusion in those empowered to prosecute, such that they do not even try.<sup>331</sup> This jurisdictional paradox is one of the main reasons that Native Americans are targets for sex trafficking.<sup>332</sup> Crimes against Native women are committed with impunity.<sup>333</sup> In order to undo the harmful effects of this jurisdictional maze, tribes must be given more authority over crimes committed on tribal land.<sup>334</sup> This jurisdictional problem disables those who are best positioned to effectively intervene—the tribes.<sup>335</sup> Many consider tribal courts the most appropriate forum for adjudicating cases that arise on reservations, especially culturally sensitive cases involving sexual exploitation.<sup>336</sup>

The jurisdictional morass impedes effective prosecution of sex traffickers.<sup>337</sup> Federal prosecutors who are weighed down with heavy workloads and limited resources tend not to prosecute non-Native offenders.<sup>338</sup> Leaving prosecution up to the federal government is extremely harmful to the health and safety of Native women.<sup>339</sup> The Department of Justice found that “[United States] attorneys decline to prosecute about [seventy-five] percent of all cases involving any crime in Indian country,” including crimes against women.<sup>340</sup>

Changes must be made in order to allow tribal courts to handle crimes on reservations and against tribal members.<sup>341</sup> Tribes were once able to deal with offenders of violence against women, and the tribes’ ability to enforce their laws established a society where its women were safe.<sup>342</sup> However, today, the interplay of the three jurisdictions (federal, state, and tribal) has stripped tribal courts’ ability to protect Native women, and those women are suffering disproportionately.<sup>343</sup> Federal courts are not prosecuting sex traffickers of Native women.<sup>344</sup> And state courts and authorities are not prosecuting sex traffickers.<sup>345</sup> Broadening tribal jurisdiction would close the gap that allows perpetrators of trafficking to go unpunished.<sup>346</sup> It would also provide cohesive treatment of criminal

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330. *Id.* at 20.

331. Johnson, *supra* note 36, at 702.

332. Greer, *supra* note 12, at 478.

333. Johnson, *supra* note 36, at 702-03.

334. *Id.* at 703.

335. Maze of Injustice, *supra* note 6, at 30.

336. *Id.*

337. Johnson, *supra* note 36, at 684.

338. Radon, *supra* note 254, at 1275.

339. Pacheco, *supra* note 26, at 28.

340. *Id.*

341. *Id.* at 3.

342. *Id.*

343. *Id.*

344. Johnson, *supra* note 36, at 687.

345. *Id.* at 688.

346. *Id.* at 705.

issues by keeping everything “in house” as opposed to the confusing transfer of cases between tribes, state, and federal authorities that currently occurs.<sup>347</sup>

Further, extending tribal jurisdiction would increase “the internal legitimacy of tribal legal systems.”<sup>348</sup> There are multiple tactics tribes developed in their effort to address the problems presented by their lack of jurisdiction: using tribal police power to arrest and retain the offender for another jurisdiction; using tribal police power to arrest and remove the offender off of the reservation; exercising tribal power of punishment or banishment; exercising tribal jurisdiction through consent or stipulation of non-Natives; and prosecuting perpetrators through civil actions.<sup>349</sup> However, no method can meet the level of protection women would be given against sexual violence if Congress were to grant tribes the ability to exercise criminal jurisdiction over non-Native perpetrators.<sup>350</sup> “Once tribes are permitted to assert jurisdiction over the criminal acts of these abusers, the much-needed deterrent effect of the law will be realized, women will be protected from repeat abuse, and women will know that they are not alone in their struggle for physical and emotional integrity.”<sup>351</sup> Tribal courts are the most appropriate forum to prosecute non-Native perpetrators of violent crimes against women.<sup>352</sup>

#### V. CONCLUSION

It is a sad reality that one in three Native women is assaulted or raped in her lifetime.<sup>353</sup> While the Violence Against Women Reauthorization Act of 2013 is a significant step forward in protecting vulnerable Native women and girls, it still falls short of adequately protecting them from sex traffickers.<sup>354</sup> VAWA should expand tribal courts’ criminal jurisdiction to allow them to prosecute non-Native perpetrators of sex trafficking and to prosecute those perpetrators who are considered strangers.<sup>355</sup>

As a country, the United States has failed to adequately protect a vulnerable and oft exploited segment of its society.<sup>356</sup> The Cheyenne have a saying, “A nation is not conquered until the hearts of the women are on the ground.”<sup>357</sup> “We have always known that non-Indians can come onto our lands and they can beat, rape, and murder us and there is nothing we can do about it,” stated Lisa Brunner of the Ojibwe tribe in Minnesota.<sup>358</sup> “Now,” she continued, “our tribal officers have jurisdiction for the first time to do something about certain crimes. But it is just the first sliver of the full moon that we need to

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347. Quasius, *supra* note 275, at 1930.

348. *Id.*

349. Pacheco, *supra* note 26, at 39-40.

350. *Id.* at 40.

351. Radon, *supra* note 254, at 1302.

352. Maze of Injustice, *supra* note 6, at 30.

353. Horwitz, *supra* note 22.

354. *Id.*

355. *Id.*

356. Johnson, *supra* note 36, at 618-19.

357. Amber Halldin, *Restoring the Victim and the Community: A Look at the Tribal Response to Sexual Violence Committed by Non-Indians in Indian Country Through Non-Criminal Approaches*, 84 N.D. L. REV. 1, 5 (2008).

358. Horwitz, *supra* note 22.

protect us.”<sup>359</sup> The United States legislature must enact legislation expanding tribal courts’ authority over non-Native defendants and allow tribes to adequately protect Native women and girls from those who prey on the weak and vulnerable.<sup>360</sup> Only then will Native women receive the full protection from sex traffickers that they desire.<sup>361</sup>

*Gabrielle Mandeville*

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359. *Id.*

360. Radon, *supra* note 254, at 1285.

361. *Id.*