



National Indigenous Women's Resource Center

November 30, 2017

The Honorable Senator Steve Daines
United States Senator for Montana
320 Hart Senate Office Building
Washington, D.C. 20510

Re: Repurposing of Funding from the National Tribal Sex Offender and Protection Order Registry to the Tribal Access Program for National Crime Information

Dear Senator Daines,

We appreciate your inquiry regarding the repurposing of the funding allocated under VAWA 2005 to create a National Tribal Sex Offender and Order of Protection Registry to support the National Tribal Sex Offender and Protection Order Registry to the Tribal Access Program for National Crime Information (TAP). Access to the National Crime Information Center databases is essential to the safety of American Indian women and their families. The expansion of the Tribal Access Program for National Crime Information (TAP) is an important step to provide Indian tribes access to National Crime Information Center databases and should be made available to all Indian tribes seeking to participate in the program. The repurposing of the tribal registry funds will support and increase the number of Indian tribes able to participate in TAP and as a result enhance the safety of American Indian women.

Tribal law enforcement access to federal criminal databases is a foundational element of an effective law enforcement response to tribal victims of domestic violence, sexual assault, and other VAWA-related crimes. The National Crime Information Center (NCIC) maintains 21 national data files many of which are directly related to the emergency response of tribal law enforcement to assist victims. Law enforcement responding to a domestic violence incident with NCIC access can verify a protection order, whether the suspect is a convicted sex offender in violation of registration requirements, is prohibited from possessing firearms, has an outstanding warrant, or is in violation of terms of parole. In addition to enhancing the immediate response of law enforcement by providing essential information to alert tribal justice officials of an individual's status, tribal entries of certain misdemeanor domestic violence convictions could trigger federal felony charges such as the Federal Tribal Habitual Offender. Lastly, actual full access by tribal law enforcement to NCIC is essential to the safety of officers whose daily duties often place them in dangerous situations.

Not only is access to NCIC federal databases essential, but also the ability to enter tribal court information, which is critical to the safety of Native women. Unfortunately, when abusers are held accountable by family or law enforcement for battering or raping Native women, the perpetrator may simply relocate to a different tribal community where community members are unaware of the danger the abuser poses to the community. The effect is to essentially give the abuser a clean slate as he moves from place to place. The ability to alert other Indian tribes of an abuser's violence, past convictions, and other lifesaving information requires the capability to not only access and obtain such critical information but also to enter information into federal criminal databases immediately.

In 2003, tribal leaders and the grassroots movement who witnessed this barrier in preventing Indian tribes from accessing and entering such information, worked to educate elected leaders. As a result of this groundswell, Congress authorized the creation of a National Tribal Sex Offender and Order of Protection Registry in 2005.

The tribal registry was intended to make available lifesaving information to protect Native women and their tribal communities from such offenders. It directed the Attorney General to contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain a national tribal sex offender and tribal protection order registry. The National Tribal Registry was intended to provide all federally recognized Indian tribes the ability to enter lifesaving information into a national registry. A separate tribal registry was viewed as necessary because administrative barriers delayed and prevented the inclusion of tribal data into the National Sex Offender Public Registry and the National Order of Protection Registry. Since passage of this provision under the reauthorization of VAWA in 2005, the USDOJ has not implemented the provision.

Following passage of the Tribal Registry provision, the Adam Walsh Act became law, further complicating the issue of the participation of Indian tribes in a national sex offender registry. All Indian tribes located in states having been granted concurrent jurisdiction with Indian tribes under PL 280 or similar jurisdiction cannot operate a tribal sex offender registry under the Sex Offender Registration and Notification Act (SORNA), which is a key component of the Adam Walsh Act. Currently, many of these state governments are not in compliance with SORNA, which negatively impacts the ability of the Indian tribes located in these states to register sex offenders under SORNA.

It is important to note that Section 905(a) of VAWA 2005 amended the federal code to require the Attorney General to permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from, federal criminal information databases. Passage of the Tribal Law and Order Act (TLOA) in 2010 amended the law once more to provide that “the Attorney General shall ensure that tribal law enforcement officials that meet applicable federal or state requirements be permitted access to national crime information databases.” **This again confirmed Congress’ intent that tribal law enforcement be granted full access to federal criminal information databases.** Under the TLOA amendment, Congress broadened tribal access beyond the four crimes specified under VAWA 2005. While TAP is a significant step toward implementation of these provisions, at this time it is not available to all Indian tribes opting to participate and particularly restricts access to Alaska Native Villages, many of which lack law enforcement.

Tribal information entry into national registries that is prevented, restricted, delayed or inaccurate can place a Native woman at immediate risk. The repurposing of the tribal registries funds to support the increased participation of additional Indian tribes under TAP will remove the barriers preventing certain Indian tribes from protecting Native women and enhance the safety of Native women. To provide the same protections to all Native women TAP should be open to all Indian tribes.

We appreciate the opportunity to share our expertise on this issue and look forward to working with you in the future to increase the safety of Native women.

Sincerely,



Lucy Simpson
Executive Director, NIWRC