



United States Senate Committee on

# INDIAN AFFAIRS

Senator Lisa Murkowski (R-AK), Vice Chairman

## VAWA 2022 – SUBTITLE B - ALASKA TRIBAL PUBLIC SAFETY EMPOWERMENT

*Numerous studies and news reports have documented a dire public safety crisis facing Alaska Natives, particularly in rural Alaska. According to one estimate, one in three Alaska Native villages lack any law enforcement presence; and Alaska communities that lack law enforcement and are off the road system have almost four times as many sex offenders per capita compared to the national average. In June 2019, Attorney General Barr declared a law enforcement emergency in rural Alaska, a recognition that more resources are needed in Alaska Native communities to support federal, state and tribal public safety efforts.*

*In VAWA 2013, Congress sought to close the gap in tribal jurisdiction for Tribes specifically with respect to domestic violence. However, VAWA 2013 limited Special Domestic Violence Criminal Jurisdiction to crimes that occur in Indian country and to Tribes that exercise control over such territory; thus Alaska Tribes were largely left out.*

*The bipartisan VAWA 2022 includes the draft text of SCIA's Tribal Title - Safety For Indian Women, which includes the Alaska Tribal Public Safety Empowerment Pilot. Recognizing the specific jurisdictional complexities that Tribes in Alaska face, this Pilot would permit selected Alaska Tribes, that apply and meet certain standards to protect defendant's rights, to exercise special criminal tribal jurisdiction over covered crimes committed in their villages by non-Indian perpetrators. DoJ is required to give preference in the selection process to Tribes occupying villages where the population is predominantly Indian or where there is no permanent state law enforcement physical presence. The provisions of Title VIII were proposed by Tribal advocates, survivors, lawyers, experts, prosecutors, and law enforcement. This special criminal jurisdiction remains concurrent with any criminal jurisdiction of the State of Alaska or the United States. Title VIII does not create new Indian country nor does it repeal Public Law 280 for Alaska.*

### WHAT CRIMES WILL BE COVERED?

Covered crimes will be determined by Tribal law. But Tribes' special criminal jurisdiction over non-Indian perpetrators will be limited to the following crimes, as defined in VAWA 2022 Title VIII:<sup>1</sup>

- Assault of Tribal justice personnel;
- Domestic violence;
- Dating violence;
- Criminal violations of protection orders;
- Child violence;
- Obstruction of justice;
- Sexual violence;
- Sex trafficking; and
- Stalking.

### WHAT CRIMES WILL NOT BE COVERED?

The following crimes will generally **not** be covered:

- Crimes committed outside of Indian country or an Alaska Native Village;
- Crimes between two non-Indians except in the cases of assault of tribal justice personnel or obstruction of justice.

### WHAT RIGHTS WILL DEFENDANTS HAVE UNDER THE ALASKA PILOT? A Tribe must—

- Protect the rights of defendants under the Indian Civil Rights Act of 1968, which largely tracks the U.S. Constitution's Bill of Rights, including the right to due process.
- Protect the rights of defendants described in the Tribal Law and Order Act of 2010, by providing—
  - Effective assistance of counsel for defendants;
  - Free, appointed, licensed attorneys for indigent defendants;
  - Law-trained tribal judges who are also licensed to practice law;
  - Publicly available tribal criminal laws and rules; and
  - Recorded criminal proceedings.
- Include a fair cross-section of the community in jury pools and not systematically exclude non-Indians.
- Inform defendants ordered detained by a tribal court of their right to file federal habeas corpus petitions.

<sup>1</sup> VAWA 2013 limited Tribes criminal jurisdiction over non-Indians to the following, as defined in VAWA 2013: Domestic violence, dating violence and criminal violations of protection orders.