

SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON RESTORING JUSTICE: ADDRESSING VIOLENCE IN NATIVE COMMUNITIES
THROUGH VAWA TITLE IX SPECIAL JURISDICTION

TESTIMONY OF THE HONORABLE STACIE FOURSTAR
CHIEF JUDGE OF THE FORT PECK ASSINIBOINE & SIOUX TRIBES

DECEMBER 8, 2021

I would like to thank the Chairman, Vice Chairman and committee members for holding this hearing. I am Stacie FourStar, a tribal member of the Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation in Montana, and I serve as the Chief Judge for the Fort Peck Tribes. Today I am providing testimony on behalf of the Fort Peck Tribes in support of the reauthorization of VAWA. The Fort Peck Tribes have been exercising special domestic violence criminal jurisdiction (SDVCJ) since 2015. Initially, we were one of five Indian tribes to attain full pilot project status under VAWA 2013.

The testimony will focus on:

- The historical context of domestic violence issues on the Fort Peck Indian Reservation prior to VAWA 2013 and the jurisdictional maze
- The successes and challenges of SDVCJ on the Fort Peck Indian Reservation
- Restorative justice measures and programs that have been implemented to enhance SDVCJ
- Tribal-state relationships and the Fort Peck Tribes Cross Deputization Agreement

THE HISTORICAL CONTEXT

Fort Peck Indian Reservation spans over four counties in northeast Montana. With over 2 million acres of land base, the reservation closely borders Canada and North Dakota. There are over 14,000 enrolled tribal members with half of them residing on the reservation. The total population of people living within the exterior boundaries of the reservation is 14,000, comprised of one-half Indian and one-half non-Indian persons.

Prior to VAWA 2013, Fort Peck Tribes had no authority to prosecute crimes committed by non-Indian persons. A non-Indian spouse could abuse their Indian spouse and there was no criminal consequence. The Tribe had no jurisdiction to prosecute the non-Indian and the State cannot prosecute the non-Indian because the victim is Indian. There were instances of non-Indians being arrested and charged by the State for a crime of disorderly conduct just to get the abuser away from the victim and allow the abuser time to cool off while the victim sought protective services. Only the federal government had jurisdiction to prosecute a crime of domestic violence between a non-Indian and Indian on the reservation. The charge of DV is a federal misdemeanor, meaning it was of low to no priority with the U.S. Attorney's Office.

Since 2015, the Fort Peck Tribes have worked with stakeholders locally and nationally to develop a comprehensive approach to domestic violence and specifically to the special domestic violence criminal jurisdiction over non-Indians. The Fort Peck Tribes provide an attorney for defendants through our Public Defender's office and have on staff a law trained judge to sit on all VAWA cases. The Fort Peck Tribes have a jury pool that consists of Indian and non-Indian jurors that represent a fair cross section of our communities.

The implementation of SDVCJ under VAWA 2013 has allowed the Fort Peck Tribes to create a domestic violence orientated restorative justice model that has improved local relationships, as well as the Tribe's relationship with state and federal entities.

SUCCESSSES AND CHALLENGES OF SDVCJ

The Fort Peck Tribes have prosecuted 45 VAWA cases under SDVCJ since March 2015, with a total of 37 defendants. We have repeat offenders and defendants with multiple charges. The criminal charges

under SDVCJ are partner family member assault (PFMA) and violations of protection orders. The Fort Peck Tribes have conducted two jury trials that resulted in two acquittals. We have nine guilty pleas on the record and defendants who have opted into diversionary programs or deferred prosecution.

Although we cannot prosecute crimes against non-Indians when children are involved with the domestic violence cases, we do track the data based on law enforcement reporting. Of the 45 VAWA cases prosecuted, there were 21 cases involving children that could not be prosecuted. There were also 19 cases that reported drugs and/or alcohol involved with the primary offenses. Since the Fort Peck Tribes have implemented SDVCJ under VAWA 2013, we have had no federal referrals and no federal declinations to prosecute non-Indians for domestic violence crimes committed on the reservation.

Successes of VAWA implementation with the Fort Peck Tribes are highlighted through our restorative justice initiatives. Under our Justice for Families grant, we provide services to defendants through an offender accountability program and we provide legal services to victims at no cost. The Fort Peck tribal court developed a domestic violence docket in order to give priority in court scheduling to all DV cases.

Fort Peck Tribes have a Special Assistant U.S. Attorney (SAUSA) assigned to VAWA criminal cases and coordinates as a liaison between the Tribes and the U.S. Attorney's Office. Effectively eliminating the need for federal prosecution of non-Indian perpetrator DV crimes, allowing the USAO to focus on major crimes on the Fort Peck Indian Reservation. A grant was also obtained to purchase case management software for the prosecutor's office and collect data for DV matters. An employee was hired to develop and execute training for law enforcement and create a plan of coordinated community response to domestic violence.

Another success is the ability of the Fort Peck Tribes to provide effective assistance of counsel to all domestic violence defendants at no cost to the defendant. We have a Public Defender office with an attorney who is appointed to represent all non-Indian SDVCJ defendants, and they can also represent Indian DV defendants.

The Fort Peck Tribes developed a jury pool system with the assistance of the local county government to ensure that we have a fair representation of our community members, Indian and non-Indian, to serve as jurors for VAWA trials. We have had great participation from the non-Indian residents of the reservation who have willingly answered juror questionnaires and have appeared for jury duty.

Fort Peck Tribes participate in the Tribal Access Program (TAP) which gives us the ability to share information with other jurisdictions and provide assistance to them in a timely manner. The Fort Peck Tribal Court maintains a website www.fptc.org that houses the Comprehensive Code of Justice (CCOJ) that includes all tribal laws of the Fort Peck Tribes. It is open to the public and contains a wealth of information.

Challenges the Fort Peck Tribes have encountered are medical costs of incarcerated non-Indians. Fort Peck Tribes maintain a tribal jail through a 638 contract with the Bureau of Indian Affairs. Our first VAWA defendant accumulated over \$60,000 in medical expenses due to his pre-existing health conditions. The Tribe covered the costs but have continued to explore other options to assist with medical care of non-Indian defendants. We also utilize alternatives to incarceration, such as house arrest or release with conditions.

RESTORATIVE JUSTICE MEASURES

Fort Peck Tribes are active in pursuing restorative justice measures by implementing programs to assist with offender rehabilitation and victim advocacy services. Since 2015, the Fort Peck Tribal Court has applied for and received federal funding of approximately 2.5 million toward specific domestic violence initiatives to include prosecution under SDVCJ, data collection of DV crimes, case management software, training for law enforcement, coordinated community response to DV, offender accountability, victim legal services and the creation of a domestic violence docket. Most of our restorative justice implementations are highlighted under the successes of SDVCJ.

The Fort Peck Tribes work toward rehabilitation of families and partner relationships to enable individuals to have the tools to break the cycle of domestic violence.

TRIBAL -STATE RELATIONSHIPS

Since 1999, the Fort Peck Tribes have had a successful cross deputization agreement between the Tribes' law enforcement, the county Sheriff's department, the Montana Highway Patrol and the city of Wolf Point. The agreement has allowed a smooth transition with SDVCJ and empowered tribal and state jurisdictions to enforce each other laws and provide aid to one another.

Montana established the nation's first Native American Domestic Violence fatality review team (NADVFRT). The team began reviewing cases in 2014. As I member of the team, I see and hear first-hand the devastating and lifetime affects domestic violence has on the family and communities. Fort Peck alone has had five homicides (2007-2016) reviewed by the Montana DV fatality review commission and the NADVFRT.

The fatality review commission seeks to reduce homicides caused by family violence and identify gaps in protecting domestic violence victims. The commission released a report in 2017, showing that Native Americans remain victims of intimate partner homicide at a disproportionate rate in Montana. Natives are approximately 7% of the state's population, but make up 16% of intimate partner homicides and 15% of intimate partner victims.

In closing, I understand that authorizing Tribes special jurisdiction over non-Indians is only one portion of the VAWA reauthorization but it is a vital instrument to public safety and to effectively addressing domestic violence in Indian Country. Now is the time to move forward collectively. Thank you for your time and attention.