

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 987

To restore safety to Indian women.

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IN THE SENATE OF THE UNITED STATES

MAY 10, 2005

Mr. MCCAIN (for himself and Mr. DORGAN) introduced the following bill;  
which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To restore safety to Indian women.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Restoring Safety to  
5       Indian Women Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) national studies indicate that Indian women  
9       experience domestic and sexual assaults at a far  
10       greater rate than other groups of women in the na-  
11       tional population;

1           (2) there is relatively little data on the rate of  
2 domestic violence perpetrated upon Indian women in  
3 Indian country or the costs associated with respond-  
4 ing to acts of domestic violence in Indian country;

5           (3) Indian tribes have criminal jurisdiction to  
6 prosecute Indians who commit violations of tribal  
7 law;

8           (4) the Federal Government has jurisdiction to  
9 prosecute specific enumerated crimes that arise in  
10 Indian country under section 1153 of title 18,  
11 United States Code (commonly known as the Major  
12 Crimes Act);

13           (5) the Major Crimes Act does not include pro-  
14 visions to provide Federal prosecutors the ability to  
15 prosecute domestic violence assaults unless they rise  
16 to the level of serious bodily injury or death;

17           (6) national studies conducted by law enforce-  
18 ment organizations show that domestic violence dis-  
19 turbance calls are the most dangerous situations and  
20 pose the highest risk to responding law enforcement  
21 officers;

22           (7) the limited arrest authority of the Bureau  
23 of Indian Affairs and Indian tribal law enforcement  
24 agencies impacts the ability of law enforcement to  
25 properly respond to acts of domestic violence; and

1           (8) Federal and tribal prosecutors and law en-  
2           forcement services are hampered in their efforts to  
3           address domestic violence by the lack of available  
4           criminal history information for tribal ordinance of-  
5           fenders.

6 **SEC. 3. PURPOSES.**

7           The purposes of this Act are as follows:

8           (1) To obtain data on the rates of domestic vio-  
9           lence perpetrated upon Indian women in Indian  
10          country.

11          (2) To close existing gaps in Federal criminal  
12          laws to enable Federal, State, and tribal law enforce-  
13          ment, prosecution agencies, and courts to address  
14          incidents of domestic violence.

15          (3) To address the public safety concerns expe-  
16          rienced by tribal police officers that arise in respond-  
17          ing to incidents of domestic violence.

18          (4) To prevent the serious injury or death of  
19          Indian women subject to domestic violence.

20 **SEC. 4. DEFINITIONS.**

21          In this Act:

22          (1) ATTORNEY GENERAL.—The term “Attorney  
23          General” means the Attorney General of the United  
24          States.

1           (2) SECRETARY.—The term “Secretary” means  
2           the Secretary of the Department of the Interior.

3           (3) INDIAN TRIBE.—The term “Indian Tribe”  
4           has the same meaning as in section 4 of the Indian  
5           Self-determination and Education Assistance Act  
6           (25 U.S.C. 450b).

7   **SEC. 5. DOMESTIC VIOLENCE HABITUAL OFFENDER.**

8           Chapter 7 of title 18, United States Code, is amended  
9           by adding at the end the following:

10   **“§ 117. Domestic assault by a habitual offender**

11           “(a) Any person who commits a domestic assault  
12           within the special maritime and territorial jurisdiction of  
13           the United States or Indian country and who has a final  
14           conviction on at least two separate prior occasions in Fed-  
15           eral, State, or Indian tribal court proceedings for offenses  
16           that would be, if subject to Federal jurisdiction—

17                   “(1) any assault, sexual abuse, or serious vio-  
18                   lent felony against a spouse or intimate partner; or

19                   “(2) an offense under chapter 110A,  
20           shall be fined under this title, imprisoned for a term of  
21           not more than 5 years, or both, except that if substantial  
22           bodily injury results from a violation under this section,  
23           the offender shall be imprisoned for a term of not more  
24           than 10 years.

25           “(b) For purposes of this section—

1           “(1) the term ‘domestic assault’ means an as-  
2           sault committed by a current or former spouse, par-  
3           ent, child, or guardian of the victim, by a person  
4           with whom the victim shares a child in common, by  
5           a person who is cohabitating with or has cohabitated  
6           with the victim as a spouse, parent, child, or guard-  
7           ian, or by a person similarly situated to a spouse,  
8           parent, child, or guardian of the victim;

9           “(2) the term ‘final conviction’ means the final  
10          judgment on a verdict of finding of guilty, a plea of  
11          guilty, or a plea of nolo contendere, but does not in-  
12          clude a final judgment which has been expunged by  
13          pardon, reversed, set aside, or otherwise rendered  
14          void;

15          “(3) the term ‘order of protection’ has the  
16          meaning given to such term by section 2265(b);

17          “(4) the term ‘serious violent felony’ has the  
18          meaning given to such term by section  
19          3559(c)(2)(F);

20          “(5) the term ‘State’ has the meaning given to  
21          such term by section 3559(c)(2)G);

22          “(6) the term ‘substantial bodily injury’ has the  
23          meaning given to such term by section 113(b)(1);  
24          and

1           “(7) the term ‘sexual abuse’ has the meaning  
2           given to such term by section 2242.”.

3 **SEC. 6. ENHANCED ARREST AUTHORITY.**

4           Section 4 of the Indian Law Enforcement Reform Act  
5 (25 U.S.C. 2803) is amended—

6           (1) in paragraph (2)(A), by striking “, or” and  
7           inserting “; or”; and

8           (2) in paragraph (3)—

9           (A) in subparagraph (A), by striking “,  
10           or” and inserting a semi-colon;

11           (B) in subparagraph (B), by adding “or”  
12           at the end; and

13           (C) by adding at the end the following:

14           “(C)(i) the offense is a misdemeanor of-  
15           fense of domestic violence (as defined in section  
16           117 of title 18, United States Code); and

17           “(ii) the employee has reasonable grounds  
18           to believe that the person to be arrested has  
19           committed, or is committing, the offense;”.

20 **SEC. 7. CRIMINAL RECORDS DATABASE PILOT PROJECT.**

21           (a) IN GENERAL.—The Attorney General shall make  
22           grants available pursuant to section 2001(b) of the Omni-  
23           bus Crime Control and Safe Streets Act of 1968 (42  
24           U.S.C. 3796gg(b)) to Indian tribes for the development  
25           of tribal criminal history databases to document final con-

1 victims of tribal domestic violence court adjudications, or-  
2 ders of protection, stay away orders, and such other do-  
3 mestic violence criminal history.

4 (b) REQUIREMENTS.—A database developed under  
5 subsection (a) shall include—

6 (1) final convictions by a tribal court order;

7 (2) orders of protection that are currently in ef-  
8 fect and meet the requirements of section 2265(b) of  
9 title 18, United States Code;

10 (3) a means to provide tribal, Federal, and  
11 State law enforcement agencies with access to the  
12 information in the database; and

13 (4) safeguards to prevent the dissemination of  
14 the information contained therein for other than a  
15 criminal justice or law enforcement purpose.

16 **SEC. 8. STUDY OF DOMESTIC VIOLENCE IN INDIAN COUN-**  
17 **TRY.**

18 (a) IN GENERAL.—The Attorney General, in con-  
19 sultation with the Secretary, the Director of the Indian  
20 Health Service, and Indian tribes, shall conduct a study  
21 on the incidents of domestic violence in Indian country.

22 (b) CONTENTS.—The study conducted under sub-  
23 section (a) shall—

24 (1) determine the extent of domestic violence in  
25 Indian country and its causes; and

1 (2) identify obstacles to—

2 (A) the prevention of incidents of domestic  
3 violence;

4 (B) the appropriate response to incidents  
5 of domestic violence;

6 (C) adequate treatment for victims of do-  
7 mestic violence; and

8 (D) criminal prosecution of domestic vio-  
9 lence offenders.

10 (c) REPORT.—Not later than 1 year after the date  
11 of enactment of this Act, the Attorney General shall trans-  
12 mit to Congress a report regarding the study conducted  
13 under this section. This report shall include recommenda-  
14 tions, including legislative recommendations, to address  
15 domestic violence in Indian country.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated such sums as are nec-  
18 essary to carry out this section.

19 **SEC. 9. CONFORMING AMENDMENTS.**

20 Section 2001(b) of the Omnibus Crime Control and  
21 Safe Streets Act of 1968 (42 U.S.C. 3796gg(b)) is amend-  
22 ed—

23 (1) in paragraph (10), by striking “and” after  
24 the semicolon;

1           (2) in paragraph (11), by striking the period  
2           and inserting “; and”; and

3           (3) by adding at the end the following:

4           “(12) to develop tribal domestic violence crimi-  
5           nal history databases for use by Indian tribal courts  
6           and tribal, State, and Federal law enforcement offi-  
7           cers engaged in a law enforcement function”.

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