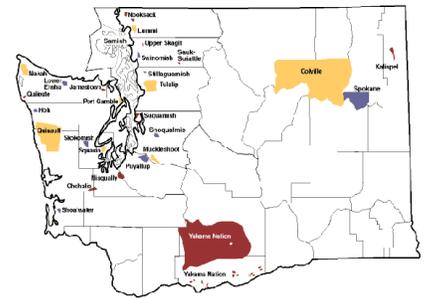


The historical and cultural experience of Native survivors of sexual violence requires that advocates obtain additional knowledge to ensure respectful advocacy.



Message from the Editor:

Native women suffer a higher rate of rape and sexual assault than any other group of people in the United States. (BJS 1999) They suffer more violent rapes, including more injuries received during sexual assaults and a higher rate of weaponry used during their assault than any other race in the United States. (Averages from National Crime Victimization Survey 1992-2001). Because we know that up to 85% of survivors never report their rape, (Rape In America, 1992) we can extrapolated that the actual rate of violent sexual attacks on Native women is much higher.



Indian country in Washington

Our intent with this publication is to provide advocates with a foundation of knowledge about this topic and practical tools. If you have questions or comments about the information provided here, please contact Catherine at catherine@wcsap.org

Sincerely,

Christina Marie Entekin, Former Staff Attorney
WCSAP

PLEASE NOTE: Although both males and females are victims of rape and sexual assault and females can be assailants, in the overwhelming majority of cases, the assailant is male and the victim is female. Therefore, we have chosen here to use the female pronoun when describing the victim and the male pronoun when describing the assailant.

DISCLAIMER: The legal information provided in this newsletter should not be considered legal advice.

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VIOLENT CRIME WITH IMPUNITY:

The Result of Sweeping Limitations to Tribal Sovereignty

By Christina Marie Entrekin

Sexual violence against native persons can be prosecuted by tribal, federal or state authorities. Despite the multiple prosecutorial authorities, sexual violence against native women are the likely the least prosecuted crimes in America. Many factors contribute to this dismal statistic, but one major factor can be attributed to the complex jurisdictional issues created by limitations to tribal sovereignty. The Major Crimes Act is one of the first limitations on tribal sovereignty and has directly contributed to the jurisdictional tangle. Limitations imposed upon tribal sovereignty are also found in Public Law 83-280, the Indian Civil Rights Act and through case law based on arcane, bigoted and erroneous ideology.

The Major Crimes Act was passed by Congress in 1885. At best this Act, although thought to be benevolent, is more illustrative of a Congressional attempt to assimilate and control the native persons and communities in Indian country through increased legal authority. After its passage, the federal government and the tribal courts shared jurisdiction over almost all civil and criminal matters involving those enumerated crimes, regardless of the race of the victim. Today, the Act dictates jurisdiction over murder, manslaughter, kidnapping, maiming, incest, felony sexual abuse, assault with a dangerous weapon, an assault against a child under age 16, arson, burglary, robbery, among others.

States remained without jurisdiction over crimes in Indian country until the enactment of Public Law 83-280 (PL 280). PL 280 is a federal law which transfers criminal jurisdiction to the state government. Some states were "mandatory" states where the federal government gave states jurisdiction to prosecute most misdemeanors and felonies that occur on Indian land. From the beginning, PL 280 inspired widespread criticism and concern from Indians and non-Indians alike. Tribal resistance has focused upon the paternalistic process which imposed state jurisdiction on tribes and the complete failure to recognize tribal sovereignty and tribal self-determination. States were arguably equally frustrated by the enactment of PL 280.

In 1963, the Washington legislature required the state to "assume" civil and criminal jurisdiction over Indians and Indian territory within its exterior boundaries. Notably, the legislature did mandate that all but eight subject-matter areas jurisdiction would not extend to Indians on trust or restricted lands *without the request of the Indian tribe affected*. The eight enumerated areas not requiring consent of the tribe are: compulsory school attendance; public assistance; domestic relations; mental illness; juvenile delinquency; adoptions; dependant children; and the operation of motor vehicles. What we have today are three jurisdictional profiles: 1. Those Tribes who requested Full PL 280 Jurisdiction – Civil and Criminal; 2. Those who Did Not Request, or subsequently asked for

"Tribal resistance has focused upon the paternalistic process which imposed state jurisdiction on tribes and the complete failure to recognize tribal sovereignty and tribal self-determination."

"Non-natives who commit violent crimes against Native persons, like rape, in Indian Country may do so exempt from punishment by any authority."



retrocession of State PL 280 Civil/Criminal Jurisdiction; and 3. Those tribes whose reservation was created after the Indian Civil Rights Act of 1968 (ICRA). ICRA requires that any subsequent extensions of PL 280 jurisdiction by the states be subject to agreement by the tribe.

The Indian Civil Rights Act (ICRA) is similar to the 14th Amendment to the Constitution which guarantees personal freedoms against actions of the federal government, and the Fourteenth Amendment to the Constitution, which extends those protections to actions of state governments. Because Constitutional limitations do not apply to tribal governments, the ICRA is meant to ensure that tribal governments respect basic rights of Indians and non-Indians. Unfortunately, the external imposition of these protections also limits tribal governments from imposing appropriate sentences for violent crimes. Under the ICRA, no sentence may exceed one-year incarceration or a five-thousand dollar (\$5,000) fine. As a result, some tribes do not pursue criminal prosecution of rape and other felony crimes.

Finally, the ability of tribes to prosecute non-natives for the commission of crimes in their communities and against their members has been eliminated. Pursuant to federal case law, tribal courts no longer have criminal jurisdiction over non-Indians, unless Congress delegates such power to them. This effectively means that non-natives who commit violent crimes against native persons, like rape, in Indian Country may do so exempt from punishment by any authority, tribal, state or federal.

RECOGNIZED TRIBES IN WASHINGTON STATE

COUNTY	RECOGNIZED TRIBE(S)
Clallam	Lower Elwa Klallam, Jamestown Klallam, Makah & Quileute
Cowlitz	Cowlitz (not a reservation based tribe)
Ferry	Colville Confederated Tribes
Gray’s Harbor	Chehalis & Quinault
Jefferson	Hoh
King	Muckleshoot & Snoqualmie
Kitsap	Suquamish & Port Gamble S’Klallam
Klickitat	Confederated Tribes of the Yakama Nation
Mason	Skokomish
Okanogan	Colville Confederated Tribes
Pacific	Shoalwater Bay
Pend Oreille	Kalispell Tribe
Pierce	Puyallup & Nisqually
Skagit	Samish, Swinomish & Upper Skagit
Snohomish	Sauk Suiattle, Stillaguamish & Tulalip
Spokane	Spokane Tribe
Stevens	Colville Confederated Tribes
Thurston	Squaxin
Whatcom	Lummi & Nooksack
Yakima	Confederated Tribes of the Yakama Nation

1. Sarah Deer, *Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law*, Suffolk University Law Review, Vol. 38, p. 455 (2005) citing Sydney L. Haring, *Crow Dog’s Case: American Indian Sovereignty, Tribal Law and United States Law in the Nineteenth Century* (1994).

2. Goldberg-Ambrose, Carole, *Planting Tail Feathers: Tribal Survival and Public Law 280*, UCLA American Indian Studies Center Publication (1997).

3. Ada Pecos Melton and Jerry Gardner, *Public Law 280: Issues and Concerns for Victims of Crime in Indian Country*, American Indian Development Associates, <http://www.aidainc.net/Publications/pl280.htm> (2004).

4. *Id.* at <http://www.aidainc.net/Publications/pl280.htm>.

5. 25 U.S.C. § 1321 (grants consent of the United States to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume such jurisdiction, with consent of the tribe) (1968).

6. *Washington v. Confederated Bands and Tribes of Yakima Nation*, 439 U.S. 463 (1979).

7. RCW 37.12.010 (1963).

8. 25 U.S.C. §§ 1301 (1968).

9. *Id.*

10. *Olipphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

Need to Know

There are 29 federally recognized tribes in Washington state, and four seeking recognition. Refer to the chart on Page 3 to see the communities in your area.

Indian Country, also known as Indian Territory, was land set aside within the United States for the use of Native Americans. The general borders were set by the Indian Intercourse Act of 1834. It was more properly "Indian territory" (lower-case T) than "Indian Territory" (capital T) because the name referred to the unorganized lands set aside for Native Americans, as opposed to an organized territory

meant for settlement by Europeans.

Native Americans are the indigenous peoples from the regions of North America now encompassed by the continental United States, including parts of Alaska. They comprise a large number of distinct tribes, states, and ethnic groups, many of which are still enduring as political communities. There is a wide range of terms used, and some controversy surrounding their use: they are variously known as American Indians, Indians, Amerindians, Amerinds, or Indigenous, Aboriginal or Original Americans..

Tribal Organization means the governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body of a tribe or tribes to be served, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; or any tribal nonprofit organization. domestic violence, dating violence, sexual Sovereignty is the exclusive right to complete control over an area of governance, people, or oneself. A sovereign is the supreme lawmaking authority, subject to no other.

“WE ARE
PUTTING YOU
ON NOTICE. WE
ARE HEALING
OURSELVES. WE
ARE TAKING
BACK OUR
POWER AND
OUR VOICES.”

We’re Breaking the Cycle

REPRINTED WITH PERMISSION FROM THE LUMMI TRIBE’S SKUL QUOL, APRIL 2007

A letter to our fathers, our grandfathers, our uncles, our brothers and our cousins:

When you molested us, you betrayed us. You took away our innocence; you damaged us and made us feel ashamed.

When you raped us, you hurt us, made us feel afraid and turned sex into something ugly instead of the sacred act CREATOR intended it to be. When you forced yourselves upon us, we thought it was normal, but you took away our boundaries and our

voices and left us with rage and fear that still haunts us all these years later. You tricked us, you told us no one would believe us, you threatened us, you made us feel guilty with your quarters and toys and scraps of attention. We are putting you on notice. We are healing ourselves. We are taking back our power and our voices. We are giving up the alcohol and drugs we have used to forget our pain. We are growing stronger and healthier. We are learning to love ourselves and walking with our heads held up high. And you? When

will you stop hurting the ones you are supposed to protect? When will you make amends for the damage you have caused? When will you heal? We know who you are. We remember what you did to us. We are watching you.

From Lummi Women survivors of Incest, Child Sexual Assault, and Rape, your daughters, your granddaughters, your nieces, your sisters and your cousins.



Tribal Project Report Back

Five forums were held across Washington State. Collectively we invited more than 250 community members, attorneys & service providers. The purpose of the forums was to identify, broadly, the causes of sexual violence, what the legal issues are for tribal populations impacted by sexual violence, both on and off the reservation and to use this information to better serve these communities. In collaboration with tribal leaders, community members and service providers, strategies can be developed to address the legal issues faced by Native American survivors of sexual violence.

Our findings were shared with participants from Yakama, Lummi, Kalispel, urban service providers and educators. We are all working together to create an accurate and meaningful recitation of the issues facing Native Survivors in Washington. In each community parallel barriers exist that keep survivors from reporting their sexual assault or seeking services, including but not limited to, lack of culturally relevant services, confidentiality concerns, jurisdictional failure resulting in poor law enforcement response and/or prosecution, self-blame and the geographic location of available services.

National statistics and the data collected during this project underscore the continued need for resources and organizations devoted to the issue of sexual violence against native persons.

Community Resources

**WA State Native American Coalition
Against Domestic Violence & Sexual Assault**

WOMENSPIRIT COALITION

P.O. Box 13260

Olympia, WA 98508

1-888-352-3120

www.womenspiritcoalition.org



**Participants at the Statewide Report Back Meeting,
Day Break Star Indian Cultural Center, Seattle, WA
June 14, 2007**



**The Sexual Violence Law Center,
formerly the legal program of the
Washington Coalition of Sexual
Assault Programs, provides technical
assistance, training and resource
materials to the legal community,
tribal governments and service
organizations within WA State.**

**The goal of the Sexual Violence Law
Center is to develop the capacity of
Washington State's legal, tribal and
service communities to respond more
effectively and appropriately to the
legal needs of survivors of sexual
violence.**

CALL US!

**Sexual Violence Law Center
810 Third Ave, Suite 500
Seattle, WA 98104
206-624-0621**