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Combating Jurisdictional Barriers That Cause Susceptibility of Native American Women to Rape

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Preventing the High Rates of Sexual Violence Against Native American Women

By Heidi Strawgate

What I have researched?

After learning that Native American women are 2.5 times more likely to be raped than women of other races or ethnicities I wanted to know why the rate was so high and research ways to prevent sexual violence against women.

Conceptualizing the Information

To redress this issue, I evaluated legal cases, interviews of women whose experience is relevant to my topic, government and health agencies' findings, media coverage and secondary scholarship. To display the results I organized a chronological timeline of events, mostly laws, to conceptualize my findings

Questions I want to answer:

- Why the rate of rape of Native American women is so high and bring attention to this issue
- Address the pros and cons of previous laws and actions taken to improve this problem and what we can learn when applying laws in the future
- Use 1 and 2 to create solutions

Jurisdictional Maze

The jurisdictional maze has been pinned as the main reason for many years which is the term for the concept of the complexity of criminal jurisdiction when handling a crime committed against a Native American victim. This term refers to the concept that the complexity comes from how 3 traits of the crime which are if the perpetrator is not a member of the tribe, the severity of the crime, and if the crime occurred inside or outside Tribal lands affect if the prosecution takes place in a tribal, state or federal court (Owens, 2012).

Additional Reasons: Lack of resources for tribal police, cultural barriers such as discrimination and language, and distance to seek help cause complications for prosecution (*The Never-Ending Maze*, 2023). This produces two problems: (1) Criminals take advantage of this situation assuming they will not be caught since prosecution under these specific circumstances is tough. Over 80% of this crime is committed by men who have no relation to the tribe (2) Native American women who are victims of crime may not receive or seek justice due to barriers.

References



The Jurisdictional Maze Simplified

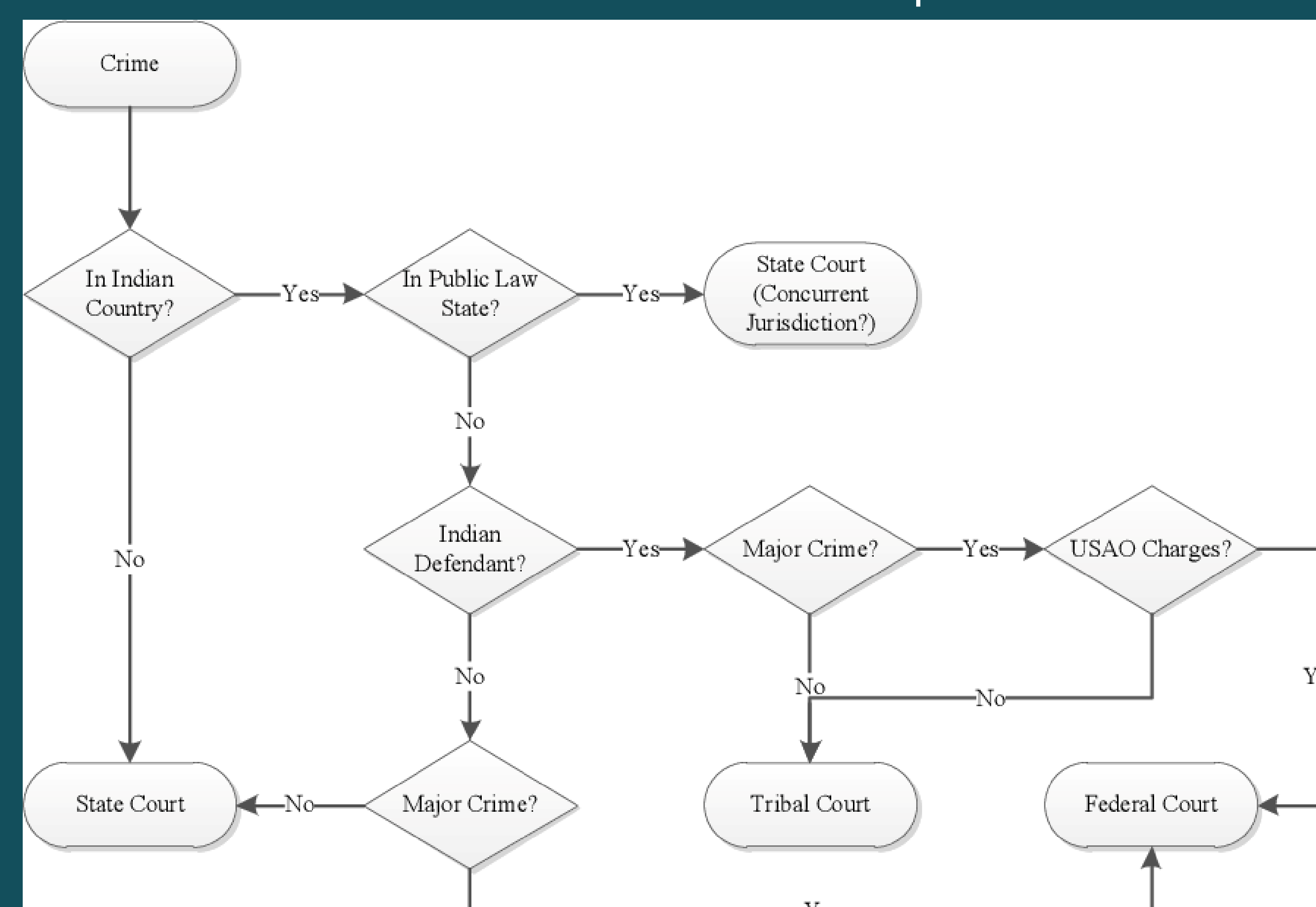
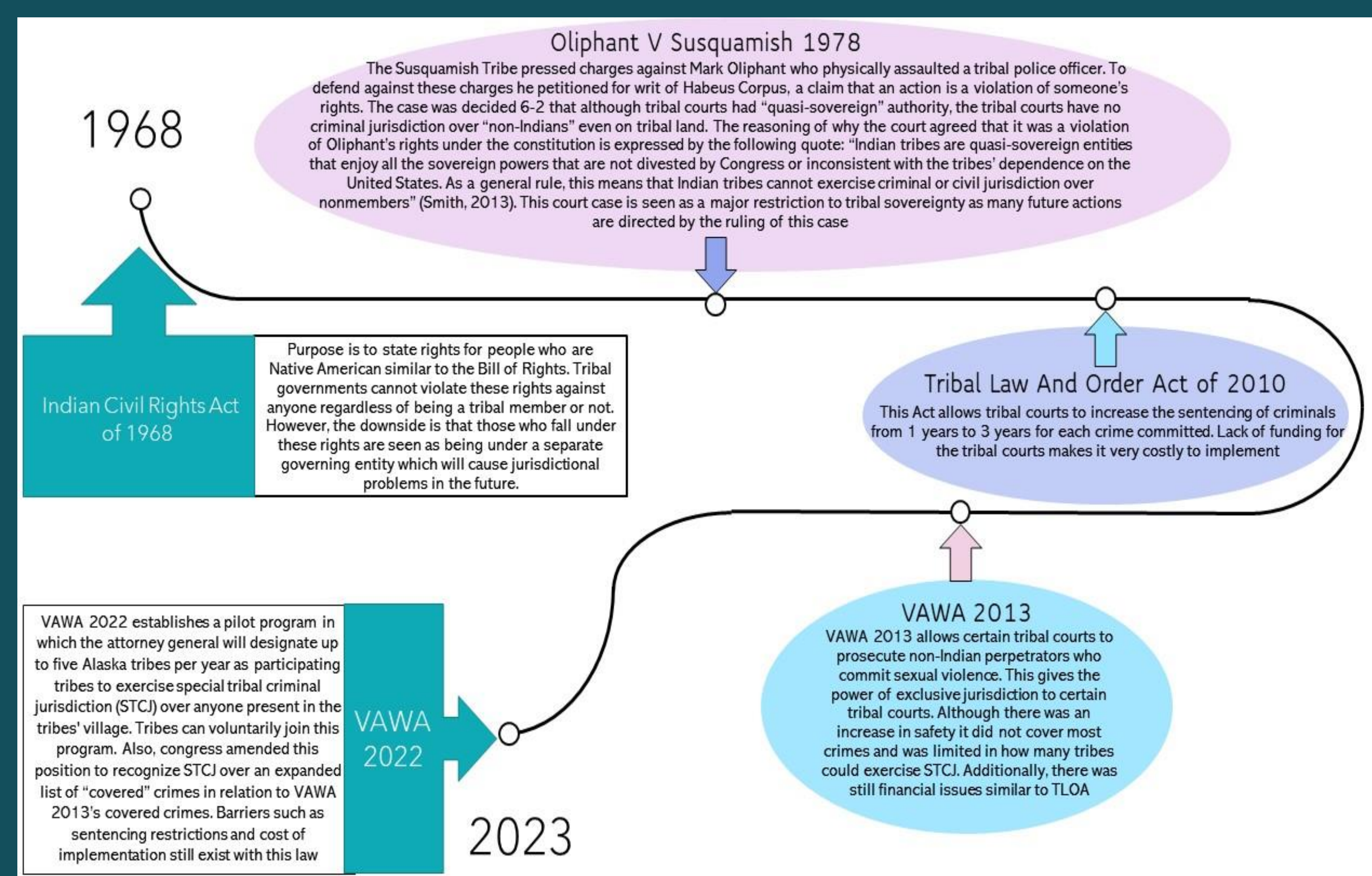


Image 1 Source: *Journal of Criminal Law and Criminology*, Owens (2012)

Timeline of Tribal Courts Jurisdictional Powers



Conclusion

Although there have been laws passed to prevent sexual violence against Native American women it has minimal effect on the high rates of sexual violence. Issues in the implementation of these laws such as lack of funding for tribal courts and focusing only on improving one of the three jurisdictions tend to be why the laws aren't as successful as intended.

Despite the federal government granting Special Domestic Violence Criminal Jurisdiction (SDVCJ) to tribal courts to prosecute someone who is recognized as a " non-Indian" under the Violence Against Women Act (VAWA) 2013, it is very limited in which tribes can implement and the costs of doing so are out of the question for most tribes. No act has given full exclusive jurisdiction to tribal courts so tribal courts always, with few exceptions, must act concurrently with either state or federal courts or both. This is a problem since both tend to gloss over these investigations because federal prosecutors focus on investigations that are viewed as higher priority or cases they believe "they can win" (*The Never-Ending Maze*, 2023). Additionally, out of all the acts listed on my timeline none address the problems of inadequate policing, cultural and physical barriers, or lowering the federal courts declination rates who insist on holding jurisdictional responsibility yet reject 65% of cases.

Where Should We Go From Here

VAWA 2022 was implemented in November 2022. This Act allows tribal courts to voluntarily gain the rights for SDVCJ. The current pilot program will allow up to five tribes to participate per year so that the implementation of the law will be given priority covering a past mistake of previous acts. Also, the government funding will be five times greater than the funding for VAWA 2013 to help tribal courts prosecute and set up on their own. However, there are major sentencing restrictions still present and if the perpetrator, person who commits crime, is considered "Non-Indian" and the victim is Native American that it outside tribal lands is still in question (2013 and 2022 Reauthorizations of VAWA, 2022)

The solution is to create a new law that will consider the past mistakes of previous laws and acts It will consider

- Inadequate policing
- Jurisdictional Maze
- Funding issues
- Emphasis on exclusive jurisdiction for tribal courts or at least lowering declination rates of federal and state courts
- Will consider the effectiveness of VAWA 2022

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