

VAWA 2013: Special Domestic Violence Criminal Jurisdiction, Protection Orders, and Five Year Report

Women Are Sacred Conference

June 9, 2021

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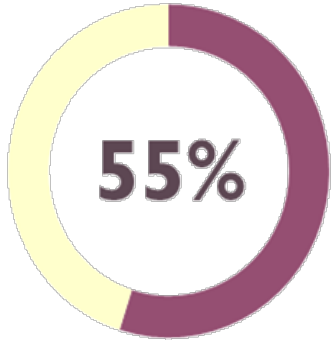
Esther A. Labrado, Staff Attorney, National Congress of American Indians

This project was supported by Grant No. 2016-TA-AX-K005, awarded by the U.S. Department of Justice, Office on Violence Against Women. The opinions, findings, conclusions, and recommendations expressed in this program are those of the presenters and do not necessarily reflect the views of the Department of Justice.

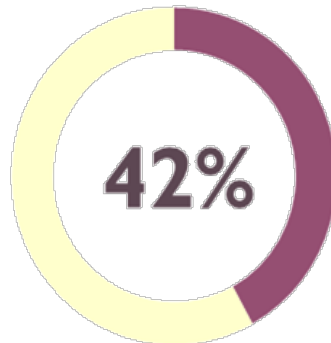


Historical Overview

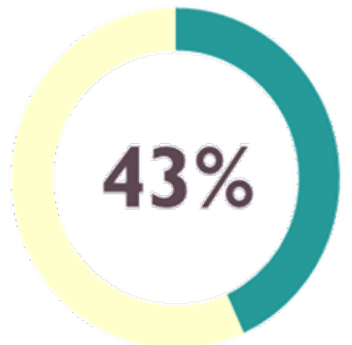
The Problem



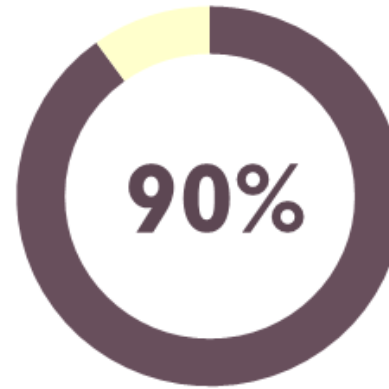
Percent of American Indian & Alaska Native Women who experience Physical Violence from an Intimate Partner in their lifetime



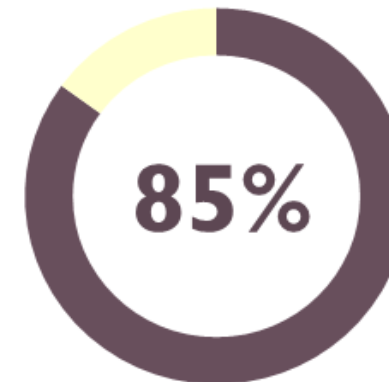
Percent of American Indian & Alaska Native Women who experience Severe Physical Violence from an Intimate Partner in their lifetime



Percent of American Indian & Alaska Native Men who experience Physical Violence from an Intimate Partner in their lifetime



Percent of American Indian & Alaska Native Female Victims of Intimate Partner Physical Violence Report an Inter-Racial Perpetrator



Percent of American Indian & Alaska Native Male Victims of Intimate Partner Physical Violence Report an Inter-Racial Perpetrator

The Problem

- *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978)
 - No Tribal Jurisdiction Over Non-Indian Defendants
- Infrequent prosecutions by federal and state prosecutors

VAWA: A Historic Victory



“Tribal governments have an inherent right to protect their people, and all women deserve the right to live free from fear.”

- President Obama. March 7, 2013



Tribal Sovereignty

VAWA 2013 affirmed tribal **inherent authority** to exercise criminal jurisdiction over non-Indians who commit domestic violence, dating violence, or violations of protection orders in Indian country.

Exercising special DV criminal jurisdiction is **entirely voluntary and elective**. Special DV criminal jurisdiction does not change existing federal (or state) jurisdiction.



**VAWA 2013 and Special
Domestic Violence Criminal
Jurisdiction
(SDVCJ)**

Title IX of VAWA: Safety for Indian Women

- Sec. 901: Grants to Indian Tribal Governments
- Sect. 902: Grants to Indian Tribal Coalitions
- Sec. 903: Consultation
- **Sec. 904: Tribal Jurisdiction over Crimes of Domestic Violence**
- **Sec. 905: Tribal Protection Orders**
- Sec. 906: Amendments to the Federal Assault Statute
- Sec. 907: Analysis and Research on Violence Against Indian Women
- Sec. 908: Effective Dates; Pilot Project
- Sec. 909: Indian Law and Order Commission; Report on the Alaska Rural Justice and Law Enforcement Commission

Section 904: Tribal Jurisdiction over Crimes of Domestic Violence

Recognizes a tribe's inherent criminal jurisdiction over **non-Indians** for the crimes of:

1. Domestic Violence.
2. Dating Violence.
3. Violations of Protection Order.

The **crime** -

- Must occur **within** the tribe's **Indian country**;
- The **victim** must be an Indian; and
- The defendant must have **sufficient ties** to the community.

Requires tribes to provide certain **due process** protections for non-Indian defendants.

- Indigent counsel
- Non-Indians in jury pools, etc.

Section 904: Definitions

Domestic Violence – 25 U.S.C. §1304(a)(2)

“Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.”

Section 904: Definitions

Dating Violence – 25 U.S.C. §1304(a)(1)

“Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.”

Note: This definition would NOT likely be interpreted to cover a single “hook-up”.

Section 904: Definitions

Protection Orders – 25 U.S.C. §1304(a)(5)

The term “protection order”

(A) means any injunction, restraining order, or other order issued by a civil or criminal court ***for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person***; and

(B) includes any temporary or final order issued by a civil or criminal court . . . if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of the person seeking protection.”

To criminally prosecute for Violation of Protection Orders under VAWA § 904

SDVCJ over violation of protection orders applies **only** if the violation is of the portion of the protection order that:

- Protects against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
- Was issued against the defendant;
- Is enforceable by the participating tribe; and
- Is consistent with 18 U.S.C. § 2265(b), governing Full Faith and Credit given to Civil Protection Orders
 - *Includes jurisdictional and notice requirements*

What VAWA 2013 Section 904 Does NOT Cover

- Victim and Defendant are both non-Indian
- Non-Indian Defendant lacks sufficient ties to the Indian Tribe –
Defendant must either:
 - Reside in the Indian country of the participating tribe; or
 - Be employed in the Indian country of the participating tribe; or
 - Be a spouse, intimate partner, or dating partner of a tribal member, or an Indian who resides in the Indian country of the participating tribe.
- The crime did not take place in the Indian Country of a participating tribe.
- Tribe chooses not to exercise this VAWA 2013 section 904 jurisdiction.

VAWA Special Domestic Violence Criminal Jurisdiction (SDVCJ) Due Process Requirements

1. Tribal court ensures “all applicable rights” under the Indian Civil Rights Act – 25 U.S.C. 1302(a); and
2. If any term of imprisonment, all rights described in Tribal Law & Order Act (TLOA) for enhanced sentencing – 25 U.S.C. 1302(c); and
3. Additional rights required just by VAWA.

ICRA Due Process Requirements (All defendants)

- No unreasonable searches and seizures
- No double jeopardy
- No self-incrimination
- Right of confrontation
- No excessive bail or fines or cruel and unusual punishments
- Due process and equal protection
- Right to a jury trial

TLOA Due Process Requirements

(All SDVCJ defendants facing incarceration)

- Effective assistance of counsel equal to what would be available in federal or state court.
- Free, appointed licensed attorneys for indigent defendants.
- Law-trained tribal judges who are licensed to practice law in any jurisdiction.
- Publicly available tribal criminal laws and rules of evidence and criminal procedure.
- Maintain a record of criminal proceeding, including audio or video recording of trial proceedings.







VAWA Due Process Requirements (All SDVCJ defendants)

- Tribal court must provide the right to a trial by an impartial jury.
 - Drawn from sources that reflect a fair cross-section of the community.
 - Does not systematically exclude any distinctive group, including non-Indians.
- Tribal court must ensure defendants are timely notified of the right to *habeas corpus* and right to petition for stay of detention.



Due Process Protections Required by TLOA and/or VAWA

TLOA and VAWA Due Process Requirements		TLOA	VAWA
1.	Defendants are provided with effective assistance of counsel equal to at least that guaranteed in the U.S. Constitution.*	✓	✓
2.	Tribal government provides, at their expense, to an indigent defendant a defense attorney licensed to practice by any jurisdiction in the United States.*	✓	✓
3.	Defense attorney is licensed by a jurisdiction that applies appropriate licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.*	✓	✓
4.	Judges presiding over criminal proceedings subject to enhanced sentencing/non-Indian defendants have sufficient legal training to preside over criminal trials.*	✓	✓
5.	Any judge presiding over criminal proceedings subject to enhanced sentencing/non-Indian defendants are licensed to practice law by any jurisdiction in the United States.*	✓	✓

**Note:* These due process protections are required under VAWA *if* a term of imprisonment of any length may be imposed.

TLOA and VAWA Due Process Requirements		TLOA	VAWA
6.	The tribe's criminal law, rules of evidence, and rules of criminal procedure are made available to the public prior to charging the defendant.*		
7.	Tribal court maintains a record of the criminal proceeding, including an audio or other recording.*		
8.	Any defendant sentenced to greater than 1-year imprisonment to be served in a tribal facility, that facility must pass the BIA jail standards for long-term incarceration.		
9.	Tribal court provides the defendant the right to a trial by an impartial jury that is drawn from sources that: <ul style="list-style-type: none"> • Reflects a fair cross section of the community. • Do not systematically exclude any distinctive group in the community, including non-Indians 		

**Note:* These due process protections are required under VAWA *if* a term of imprisonment of any length may be imposed.

TLOA and VAWA Due Process Requirements		TLOA	VAWA
10.	Tribal court ensures that anyone detained under the special domestic violence criminal jurisdiction is “timely notified” of his/her rights and privileges (right to petition for habeas corpus and a stay of detention).		
11.	Tribal court ensures that “all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant” are provided.		

Implementing SDVCJ

VAWA 2013 Pilot Project

Pilot Project Tribes Approved February 6, 2014

- Pascua Yaqui Tribe (AZ)
- Confederated Tribes of Umatilla (OR)
- Tulalip Tribes (WA)

Pilot Project Tribes Approved March 6, 2015

- Ft. Peck Assiniboine and Sioux Tribes (MT)
- Sisseton-Wahpeton Oyate (SD)

Pilot Project Period ended
March 7, 2015

Now any tribe that meets the statutory requirements can exercise jurisdiction. DOJ approval is not needed.

27 SDVCJ EXERCISING TRIBES

Alabama-Coushatta Tribe of Texas	Chippewa Indians (MI)	Sault Ste. Marie Tribe of Chippewa (MI)
Assiniboine & Sioux Tribes of the Fort Peck Reservation (MT)*	Kickapoo Tribe of Oklahoma	Seminole Nation of Oklahoma
Cherokee Nation (OK)	Little Traverse Bay Bands of Odawa Indians (MI)	Sisseton-Wahpeton Oyate (SD/ND)*
Chitimacha Tribe of Louisiana	Lower Elwha Klallam Tribe (WA)	Standing Rock Sioux Tribe (SD/ND)
Choctaw Nation of Oklahoma	Muscogee (Creek) Nation (OK)	Suquamish Tribe (WA)
Confederated Tribes of the Chehalis Reservation (WA)	Nottawaseppi Huron Band of Potawatomi (MI)	Swinomish Tribe (WA)
Confederated Tribes of the Umatilla Indian Reservation (OR)*	Pascua Yaqui Tribe (AZ)*	Tulalip Tribes of Washington*
Eastern Band of Cherokee Indians (NC)	Port Gamble S'Klallam Tribe (WA)	
Gila River Indian Community (AZ)	Quinault Indian Nation (WA)	As of 3/10/2020
Grand Traverse Band of Ottawa &	Sac and Fox Nation (OK)	
	Santa Clara Pueblo (NM)	

** Denotes Pilot Project Tribe*

What Tribal Governments Need to Do to exercise SDVCJ under VAWA

1. Ensure that nothing in current tribal constitution/code prohibits exercise of SDVCJ.
2. Add specific provisions protecting defendant rights.
3. Consider the following questions.
 - ❖ What changes would be required in our criminal code?
 - ❖ Does our tribe have a public defender program?
 - ❖ Do our existing judges have the requisite training?
 - ❖ What kind of facilities exist for incarceration of non-Indian defendants?
 - ❖ How would we make the jury system changes needed?
 - ❖ How can we fund the changes?

Protection Orders

Parts of a Final Protection Order

1. Heading or Style
2. Introduction and Procedural Posture
3. Jurisdiction over the subject matter, Person and Due Process
4. Findings
5. Remedies
6. Warnings to Respondent
7. Service Language

Style or Heading

- Which court is hearing the case?
- Names of the parties.
- Type of case.
- Court docket number.
- NCIC identifiers.

Introduction

- Which judge is presiding over the case?
- Date the court hearing is held.
- Who appeared before the judge and whether each party is Indian or non-Indian.
- If counsel appears, lists counsel's names.
- How the case came before the judge (what was filed and when was it filed to get to this point).
- List the citation to the protection order statute.

Jurisdiction Over the Subject Matter, Person and Due Process

- What tribal constitutional provision states that this court may hear this type of case.
- What tribal code provision(s) indicates that this court may hear this case.
- If either party is non-Indian, be sure to explain clearly the jurisdictional basis (VAWA 2013 codified at 18 U.S.C. 2265(e) or address the *Montana* test).

Jurisdiction Over the Subject Matter, Person and Due Process

For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe. 18 U.S.C. 2265(e).

Jurisdiction Over the Subject Matter, Person and Due Process

The *Montana* test requires the tribal court to find that:

1. the parties entered into a consensual relationship with the tribe or its members through commercial dealing, contracts, leases or “other arrangements”; **or**
2. the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

If neither of the two factors listed in the *Montana* test are present, the tribal courts may not exercise civil jurisdiction over non-members on non-Indian lands.

Jurisdiction Over the Subject Matter, Person and Due Process

- List any requirements in the statute regarding who may file a protection order.
- Identify any contacts the petitioner and defendant have to the tribe (e.g. is a tribal member, work for tribe, child is a member).
- Identify what the statute requires to serve a protection order.
- Identify what the statute requires with respect to hearing dates if this is an emergency protection order.

Jurisdiction Over the Subject Matter, Person and Due Process

- Identify whether the defendant has been served with a copy of the petition in compliance with the tribal statute.
- Identify whether the court date has been scheduled according to any timelines set out in the tribal statute.
- If the defendant appeared, was the defendant provided an opportunity to tell the defendant's side of the story or ask questions of the petitioner?

Critical Protection Order Language

- In order to be provided full faith and credit the specific VAWA requirements in 18 U.S.C. 2265(b) *need to be met and in the Protection Order:*
- The court has jurisdiction over the parties and matter under the law of such state, Indian tribe, or territory; and
- Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process.
- In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by state, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

Findings

- Finding must to be clear and detailed.
- You may have to request the judge to make a finding.
- The testimony/evidence must support the finding.
- The Affidavit or Petition will contain some of the Petitioner's story.
- Important because it is a part of the order and lists exactly what the judge finds to be true.
- May kick in presumptions for custody issues.
- May set up habitual offender prosecutions later.
- May provide some of the elements of SDVCJ.

Remedies

- Is the trip wire for the defendant.
- Each provision is a command of the court that addresses the **safety needs** of the petitioner.
- Must be requested by petitioner in most cases.
- May determine whether law enforcement will enforce the protection order.
- May determine whether or not a prosecutor will prosecute a violation.
- Review what type of remedies the tribal statute provides. A judge can only provide remedies within the statutory parameters.
- Does the tribal statute have any wiggle room to provide the judge with discretion in crafting the protection order to meet the petitioner's needs?

Warnings to the Defendant

- Usually in all caps and bold indicating a violation of the order is a crime and/or may be civilly enforced.
- May alert the defendant that the order is entitled to full faith and credit in every tribe, state and territory.
- May alert the defendant to firearms and ammunition prohibitions.
- May alert the defendant that the petitioner cannot violate the order as the order is a command to the defendant.

Service Language

- Determine how the tribal statute indicates a defendant must be served with a copy of the order if the defendant is not present in the courtroom.
- If the defendant is present, be sure to indicate in the protection order that the defendant is served with a copy of the order in open court.

Emerging Issues on Enforcement of Tribal Protection Orders

- How do you assess whether the states or other tribes are enforcing tribal protection orders?
 - Tribal Coalitions.
 - Reports from advocates.
 - Reports from victims to advocates.
 - Data.
 - Meetings with state prosecutors in your area.
 - Meetings with state law enforcement in your area.

Emerging Strategies for Enforcement of Protection Orders

- Washington State Attorney General Opinion. <https://www.atg.wa.gov/ago-opinions/state-obligation-enforce-protection-orders-issued-courts-other-states-or-tribal-courts>
- Requesting an Attorney General Opinion. (A Possible Civil Rights Violation?) Check the Attorney General Website in the relevant state for process and forms.
- Meetings with your state Attorney General's Office. Check the Attorney General Website in the relevant state for meeting request process.
- Meetings with the Tribal Coalition in your state. <https://www.tribaltrafficking.org/tribal-coalitions>

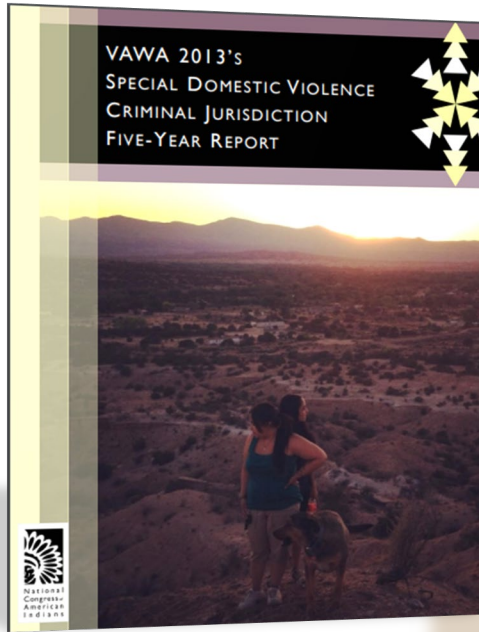
Resources

Free One-on-One Technical Assistance

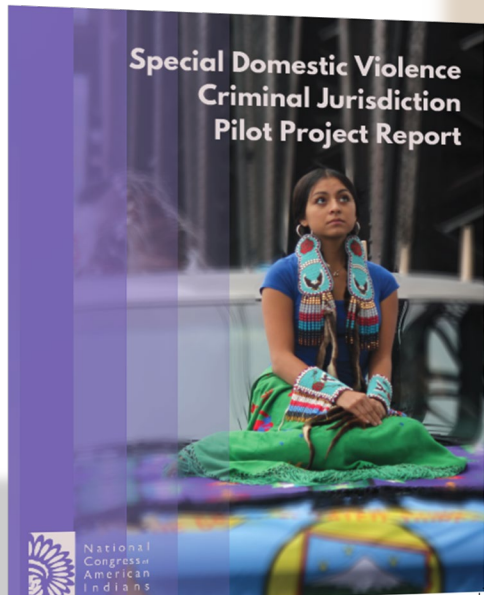
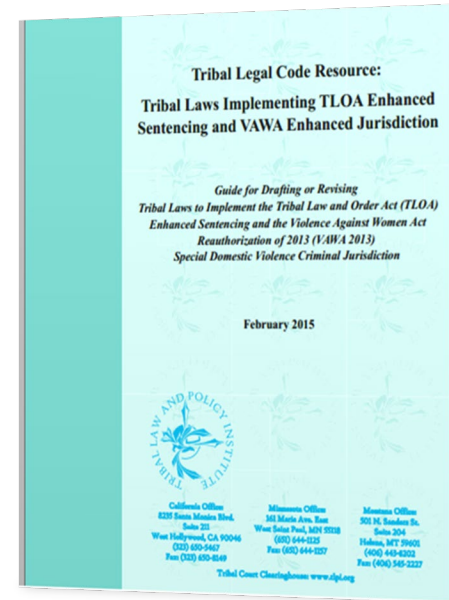
- **Review draft tribal codes**, policies, or procedures to implement the law.
- Help address specific **questions about VAWA's jury requirements** and the logistics of creating a jury pool system that complies with VAWA.
- Help address issues that may come up with the **investigation or prosecution of individual cases**.

To access any of these free technical assistance resources, please email elabrado@ncai.org.

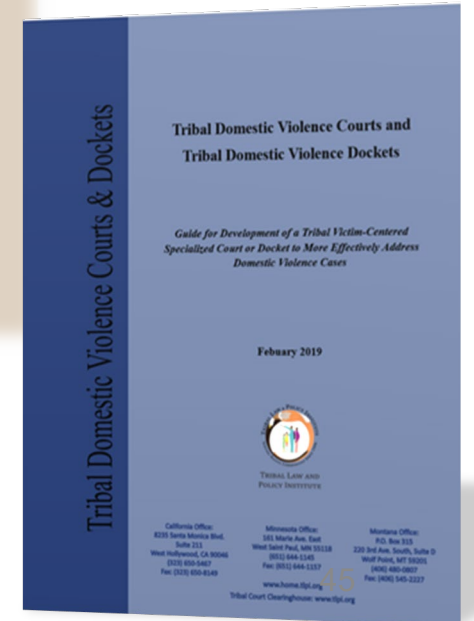
VAWA Special Domestic Violence Criminal Jurisdiction Resources



The screenshot shows a web browser at the URL www.ncai.org/tribal-vawa. The page has a navigation bar with "HOME", "SDVCJ OVERVIEW", "THE FIRST 5 YEARS", "FOR TRIBES", and "RESOURCES". The main heading is "TRIBAL VAWA IMPLEMENTATION" with the subtitle "VAWA Special Domestic Violence Criminal Jurisdiction". Below this is a large banner for the "VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five-Year Report" with a "Read Full Report Here" button. To the left of the banner are three smaller report covers: "VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five-Year Report", "Interested in Implementing VAWA Tribal Provisions? Get Started Here!", and "Intertribal Technical Assistance Working Group Report: Identifying Successful Practices & Cross-Cutting Issues".



NCAI Tribal VAWA Resources: <http://www.ncai.org/tribal-vawa>
TLPI Publications: www.TLPI.org or www.Home.TLPI.org



www.tribalprotectionorder.org



TRIBAL PROTECTION ORDER RESOURCES

An Online Resource for Drafting and Enforcing Tribal Protection Orders

A Project of the Tribal Law and Policy Institute

[HOME](#)

[DRAFTING PROTECTION ORDERS](#) ▾

[ENFORCING PROTECTION ORDERS](#) ▾

[RESOURCES](#) ▾

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🏠 / Home

Home

This website is intended to serve as an online resource pertaining to drafting and enforcing tribal protection orders. Note that each tribe is unique with respect to tribal constitutions and codes. The reader should consult the specific tribal constitution and tribal codes for additional requirements regarding drafting and enforcement of tribal protection orders.

1. What is a protection order?

Protection orders may be known by a variety of names to include injunctions, restraining orders, civil restraining order or victim protection order just to name a few. A protection order is a legal document that is available to victims of domestic violence in most jurisdictions. A protection order is a legal order issued by a court to protect a certain person from abuse. Statutes usually require a certain relationship between the petitioner and defendant that will vary from jurisdiction to jurisdiction. Protection orders can be either civil or criminal and protection order remedies may vary from jurisdiction to jurisdiction depending upon the law of the issuing jurisdiction. Enforcement of violations of a protection order may also be civil and/or criminal in nature.

There are generally two types of Civil protection orders available to victims of abuse. **Ex parte orders** are available in most jurisdictions in emergency situations. Ex parte orders are issued without a full hearing if the

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Meta

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Funding Opportunities

- Department of Justice, Office on Violence Against Women
Grants to Tribal Governments to Exercise Special Domestic Violence
Criminal Jurisdiction (Tribal Jurisdiction Program)
 - FY 2016: 7 awards totaling \$2,219,939
 - FY 2017: 7 awards totaling \$3,465,000
 - FY 2018: 6 awards totaling \$2,601,156
 - FY 2019: 9 awards totaling \$3,389,906
 - FY 2020: 10 awards totaling \$3,266,458

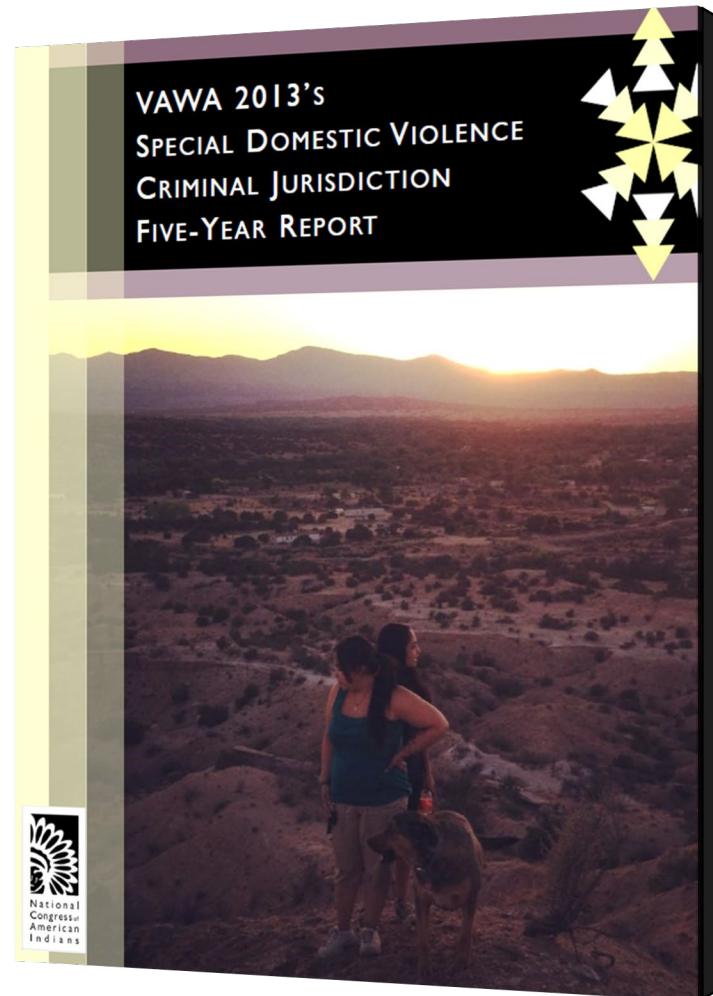
Intertribal Technical Assistance Working Group (ITWG)

- The DOJ launched the Intertribal Technical Assistance Working Group (ITWG) on VAWA special domestic violence criminal jurisdiction (SDVCJ) as a key part of the Pilot Project in 2013.
- It is a voluntary working group of tribal representatives who **exchange views, information, and advice** about how tribes may best exercise SDVCJ and combat domestic violence.
 - Currently over 50 tribes are represented.
 - Next meeting is tentatively scheduled for **September 2021 (virtual)**
- Interested in joining the ITWG, attending the upcoming meeting, or looking for VAWA SDVCJ implementation resources?

Email: elabrado@ncai.org

www.ncai.org/tribal-vawa

Special Domestic Violence Criminal Jurisdiction Five Year Report



Read the full report at:

[http://www.ncai.org/resources/ncai-publications/SDVCJ 5 Year Report.pdf](http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf)

PROSECUTIONS AND OUTCOMES
(AS OF MARCH 2018)

18 TRIBES

EXERCISING CRIMINAL JURISDICTION OVER NON-INDIANS

143 ARRESTS	74 CONVICTIONS	24 CASES PENDING	5 ACQUITTALS
14 FEDERAL REFERRALS	73 GUILTY PLEAS	21 DISMISSALS	19 DECLINATIONS
6 TRIALS	5 JURY TRIALS	1 BENCH TRIAL	1 JURY TRIAL CONVICTION

DEMOGRAPHICS <i>(AS OF MARCH 2018)</i>			
128 DEFENDANTS		128 VICTIMS	
90% MALE DEFENDANTS	10% FEMALE DEFENDANTS	90% FEMALE VICTIMS	10% MALE VICTIMS
115 MALE DEFENDANTS	13 FEMALE DEFENDANTS	115 FEMALE VICTIMS	13 MALE VICTIMS
8 NON-U.S. CITIZEN DEFENDANTS		19 VICTIMS REQUIRED MEDICAL CARE	

MAJOR TAKEAWAYS <i>(AS OF MARCH 2018)</i>			
0 PETITIONS FOR A FEDERAL WRIT OF HABEAS CORPUS	51% INCIDENTS INVOLVED DRUGS OR ALCOHOL¹	58% INCIDENTS INVOLVED CHILDREN²	AT LEAST 73 DEFENDANTS HAD CRIMINAL RECORDS³
125 DOMESTIC OR DATING VIOLENCE CASES	34 PROTECTION ORDER VIOLATIONS	AT LEAST 33 DEFENDANTS SENTENCED TO INCARCERATION⁴	3 YEARS LONGEST INCARCERATION SENTENCE
85 DEFENDANTS ACCOUNT FOR 378 PRIOR CONTACTS WITH TRIBAL POLICE BEFORE THEIR TRIBE IMPLEMENTED SDVCJ⁵			
51% DEFENDANTS SENT TO BATTERER INTERVENTION, OR OTHER REHABILITATION PROGRAM			

¹ Pascua Yaqui, Fort Peck Tribes, and Tulalip provided approximate values.

² Fort Peck Tribes provided an approximate value.

³ Fort Peck Tribes provided an approximate value, and Pascua Yaqui could only confirm 18 of their defendants had criminal records. Like many tribes, Pascua Yaqui did not always have access to state conviction records—including through the FBI's National Instant Criminal Background Check System (NCIC) program—prior to their inclusion in the Tribal Access Program (TAP) program as discussed later in this report in Section II, Finding 4-3.

⁴ Pascua Yaqui did not provide this information.

⁵ This number does not include contacts from Fort Peck Tribes, Eastern Band of Cherokee Indians, and Choctaw Nation who reported arrests, but do not track that information.

⁶ Tulalip provided an approximate.

1. Tribes use SDVCJ to combat domestic violence by prosecuting offenders harming their communities

1-1. Non-Indian perpetrated domestic violence is a real problem

1-2. Many defendants had numerous prior contacts with tribal police, demonstrating SDVCJ can end impunity

1-3. Many SDVCJ defendants have criminal records or outstanding warrants

1-4. A diverse array of tribes have been able to successfully implement SDVCJ

85 Defendants Account for 378 Prior Tribal Police Contacts

73 Defendants Had Criminal Records

Implementing Tribes Geographically and Demographically Diverse,
from 11 Different States

2. Tribal courts uphold the rights of defendants and are committed to their rehabilitation

2-1. SDVCJ case outcomes demonstrate fairness

2-2. Tribes are invested in helping defendants get the help they need

0 Federal Petitions
for a Writ of Habeas
Corpus

5 Jury Trials,
4 Acquittals and 1 Conviction

The most recent VAWA
jury trial had an entirely
non-Indian jury.

51% defendants sentenced to complete a rehabilitation,
batterer's intervention, or other support program.

3. Implementation has revealed serious limitations in the law

- 3-1. Many crimes against children go unpunished
- 3-2. Many alcohol and drug crimes go unpunished
- 3-3. Crimes that occur within the criminal justice system go unpunished, endangering law enforcement and undermining the integrity of the system
- 3-4. There was initial confusion concerning the scope of the federal statutory definition of “domestic violence”
- 3-5. SDVCJ is prohibitively expensive for some tribes
- 3-6. Detention issues and costs create implementation challenges in some areas
- 3-7. SDVCJ is jurisdictionally complex

4. SDVCJ implementation promotes positive changes

4-1. SDVCJ promotes positive tribal reforms

4-2. Inter-tribal collaboration creates successes beyond SDVCJ

4-3. SDVCJ promotes better relationships with other jurisdictions

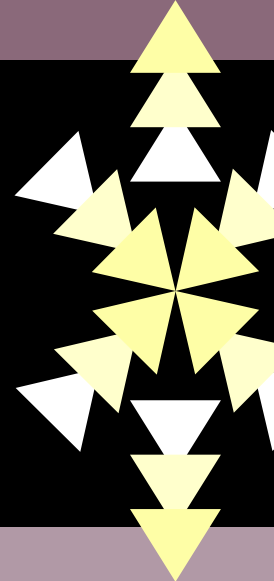
Pending Legislation

- H.R. 1620, Violence Against Women Reauthorization Act of 2021, Rep. Jackson Lee (D-TX)
 - SDVCJ expanded to include crimes of sexual assault, sex trafficking and stalking; extend protections to children and law enforcement personnel

Thank You!!!

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VAWA 2013's
SPECIAL DOMESTIC VIOLENCE
CRIMINAL JURISDICTION
FIVE-YEAR REPORT



National
Congress of
American
Indians

VAWA 2013'S SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION (SDVCJ)

OVERVIEW

WHAT IS SDVCJ?

The 2013 reauthorization of the Violence Against Women Act (VAWA) affirmed tribes' "inherent power" to exercise criminal jurisdiction over **all persons**, including **non-Indians**, who commit **domestic violence**, **dating violence**, or who **violate protection orders** in Indian Country. VAWA creates a framework for interested tribes to voluntarily **opt-in** and exercise criminal jurisdiction over non-Indians who commit these selected crimes and harm a Native person.

WHAT CRIMES ARE COVERED?

TYPES OF CRIMES:

- Domestic Violence
Violence committed by: (i) a current or former spouse or intimate partner of the victim, (ii) a person with whom the victim shares a child, (iii) a person who currently or has previously cohabitated with the victim as a spouse or intimate partner; or (iv) a person similarly situated to the spouse of the victim.
- Dating Violence
Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
- Criminal Violations of Protection Orders
The protection order must be enforceable by the tribe and protect against violent or threatening acts, harassment, sexual violence, contact, communication, or physical proximity to an Indian person.

ADDITIONAL REQUIREMENTS:

- The victim must be an Indian;
- The crime must take place in the Indian Country of the prosecuting tribe; and
- The non-Indian defendant must have sufficient "ties to the Indian Tribe," by:
 - Residing in the Indian Country of the participating tribe;
 - Being employed in the Indian Country of the participating tribe; or
 - Being a spouse, intimate partner, or dating partner of a tribal member, or an Indian who resides in the Indian Country of the participating tribe.

WHO CAN EXERCISE SDVCJ?

Any tribe may exercise SDVCJ jurisdiction so long as they meet all of the statutory requirements of VAWA. DOJ approval is **not** required.

DOES SDVCJ CHANGE OTHER JURISDICTIONAL POWERS?

No. If a tribe chooses to exercise SDVCJ it does not change existing federal or state jurisdiction.

WHAT DO TRIBES HAVE TO DO TO OPT-IN?

VAWA requires that non-Indian SDVCJ defendants have certain rights. Implementing tribes must:

- Guarantee all rights under the Indian Civil Rights Act (ICRA).
- Provide indigent defendants with effective assistance of a licensed defense counsel.
- Ensure any Judge presiding over SDVCJ cases has sufficient legal training.
- Make all criminal laws, rules of evidence, and rules of criminal procedure publically available.
- Give defendants timely notice of their rights, including their right to *habeas corpus* and to petition for stay of detention.
- Maintain a record of the criminal proceeding, including an audio or other recording.
- Give the defendant a right to trial by an impartial jury drawn from a jury pool that includes non-Indians.
- Provide all other rights whose protection is necessary under the Constitution of the United States



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This project was supported by Grant No. 2016-TA-AX-K005, awarded by the U.S. Department of Justice, Office on Violence Against Women. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

FREE RESOURCES TO HELP TRIBES IMPLEMENT VAWA

Currently, **27 different tribes** are exercising SDVCJ across the country. Implementation generally requires significant revisions to tribal codes, policies, procedures, and occasionally, constitutions. Tribes have developed different ways to meet the statutory requirements of VAWA. The VAWA **technical assistance providers** are committed to helping tribes who are interested in implementing VAWA SDVCJ develop a method of implementing VAWA that works for their community. TA providers are available to **review draft tribal codes**, policies, or procedures. TA providers are also available to help address issues that may come up with the **investigation or prosecution of individual cases**.

There is more than one way to implement VAWA.

INTER-TRIBAL WORKING GROUP

The ITWG is a voluntary working group of tribal representatives who exchange views, information, and advice about how tribes may best exercise SDVCJ and combat domestic violence in their communities. The over 40 participating tribes are in varying stages of preparing to implement SDVCJ. *To join email:* tribal-vaawa@ncai.org.



Topics discussed by the ITWG at their bi-annual meetings include:

- Tribal Code Development
- Jury Selection and Judicial Requirements
- Criminal Defense and Defendants' Rights
- Law Enforcement Arrest Authority
- Law Enforcement Training
- Detention Policies at Interior
- Habeas Corpus and Legal Challenges
- Coordination with U.S. Attorneys
- Victims' Rights and Victims' Safety
- Access to Criminal Databases
- Application to Real Life Facts
- Trauma Informed Investigations

RESOURCES

Technical Assistance Team

The National Congress of American Indians is the largest and oldest organization of American Indian and Alaska Native tribal governments in the nation.

The Tribal Law and Policy Institute is an Indian owned and operated non-profit corporation designed to promote the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples.

For information on receiving technical assistance, contact tribal-vaawa@NCAI.org

Online Resources

- Tribal Code Checklist
- Implementation Considerations prepared by the Pascua Yaqui Tribe
- TLPI's Guide to Revising Tribal Codes for VAWA/TLOA
- SDVCJ Model Code
- Pilot Project Report
- 5 Year Report
- Center for Jury Studies Materials on Jury Selection
- White papers
- Checklist for Law Enforcement Officers
- 13 Webinars on Victims' Rights, Jury Selection Plans, Jury Instructions, Using Contract Attorneys, Confidentiality, Privilege, and more.
- Other resources

All available at

www.ncai.org/tribal-vaawa