



National Congress of American Indians

Washington, DC

www.ncai.org and <http://www.ncai.org/tribal-vawa>

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Comprehensive Training and Technical Assistance: Tribal Jurisdiction Program



Project Summary:

Through the NCAI comprehensive T/TA project, OVW Tribal Jurisdiction program grantees and potential grantees receive support and technical assistance for planning, developing and implementing changes in their criminal justice systems necessary to exercise SDVCJ.

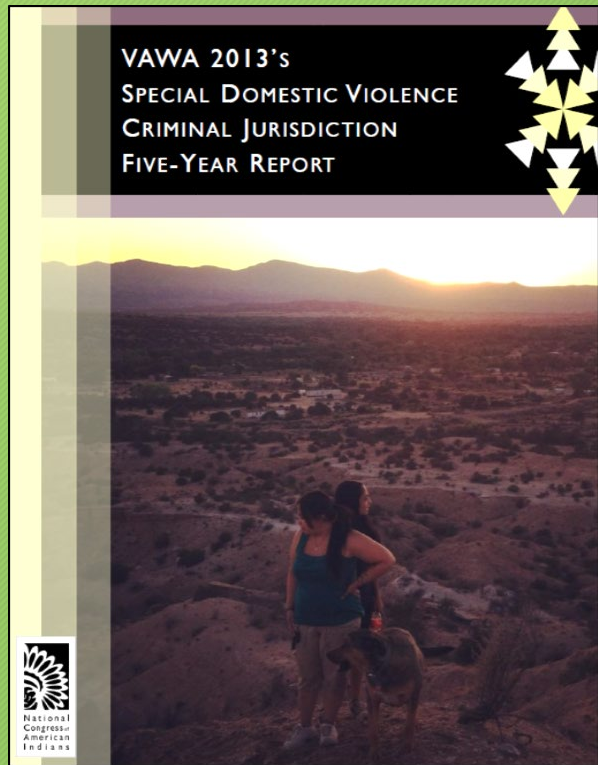
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Project Partner: Tribal Law & Policy Institute



NCAI TA Project: Comprehensive T/TA Available



- ▶ OYW Training Events - annual New Grantee Orientation, semi-annual Inter-Tribal Technical-Assistance Working Group meetings, and subject-matter expert support for other OYW events
- ▶ Webinars - Jury Pool Development, Health Care for non-Indian Defendants, and more...
- ▶ Regularly scheduled peer-networking conference calls
- ▶ 5th Anniversary SDVCJ Implementation Report and other publications
- ▶ Tailored Grantee Technical Assistance
 - On-site SDVCJ team training
 - 1:1 consultation and support for Tribal Jurisdiction grantee projects
 - Code review - Administrative policies/procedures review
 - Other support and consultation to plan, implement, and exercise SDVCJ

NCAI T/TA Project: Intertribal Technical-Assistance Working Group

- DOJ launched the Intertribal Technical- Assistance Working Group (ITWG) on Violence Against Women Reauthorization Act of 2013 special domestic violence criminal jurisdiction (SDVCJ) as a key part of the Pilot Project.
- 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 in-person meeting is tentatively set for **June 22, 2020, St. Paul, Minnesota**

Interested in joining the ITWG or looking for VAWA SDVCJ implementation resources?

www.ncai.org/tribal-vawa Email: tribal-vawa@NCAI.org



National Congress of American Indians

Founded in 1944, the National Congress of American Indians (NCAI) is the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and communities.

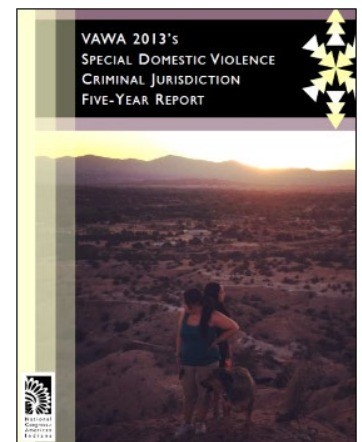
Through the NCAI comprehensive T/TA project, OVW Tribal Jurisdiction program grantees and potential grantees receive support and technical assistance for planning, developing and implementing changes in their criminal justice systems necessary to exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ) under VAWA 2013.

Along with our project partner, the Tribal Law and Policy Institute (TLPI), we are able to provide comprehensive training and technical assistance, including:

- ❖ OVW Training Events – annual New Grantee Orientation, semi-annual Inter-Tribal Technical-Assistance Working Group (ITWG) meetings, and subject-matter expert support for other OVW events
- ❖ Webinars – For some tribes, implementation of SDVCJ requires changes to existing policies and procedures. We have hosted a series of webinars to help tribes navigate these changes, covering topics such as Jury Pool Development, defendants’ rights, health care for non-Indian defendants, victims’ rights, and [more...](#)
- ❖ Regularly scheduled peer-networking conference calls
- ❖ 5th Anniversary SDVCJ Implementation [Report](#) and other [publications](#) including guidance documents for revising codes.

NCAI is also able to provide tailored Grantee Technical Assistance, including:

- ❖ On-site SDVCJ team training
- ❖ 1:1 consultation and support
- ❖ Code review - Administrative policies/procedures review
- ❖ Other support and consultation to plan, implement, and exercise SDVCJ



In 2013, DOJ launched the Intertribal Technical- Assistance Working Group (ITWG) on Violence Against Women Reauthorization Act of 2013 special domestic violence criminal jurisdiction (SDVCJ) as a key part of the Pilot Project. 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.

Since 2013, the ITWG has had in-person meetings twice a year. The next ITWG in-person meeting is tentatively scheduled for June 22, 2020. More information can be found at www.ncai.org/tribal-vawa or by emailing: tribal-vawa@NCAI.org



The ITWG at the 12th in-person meeting in May 2019, hosted by the National Advocacy Center.

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.

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



FREE RESOURCES TO HELP TRIBES IMPLEMENT VAWA

Currently, **25 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

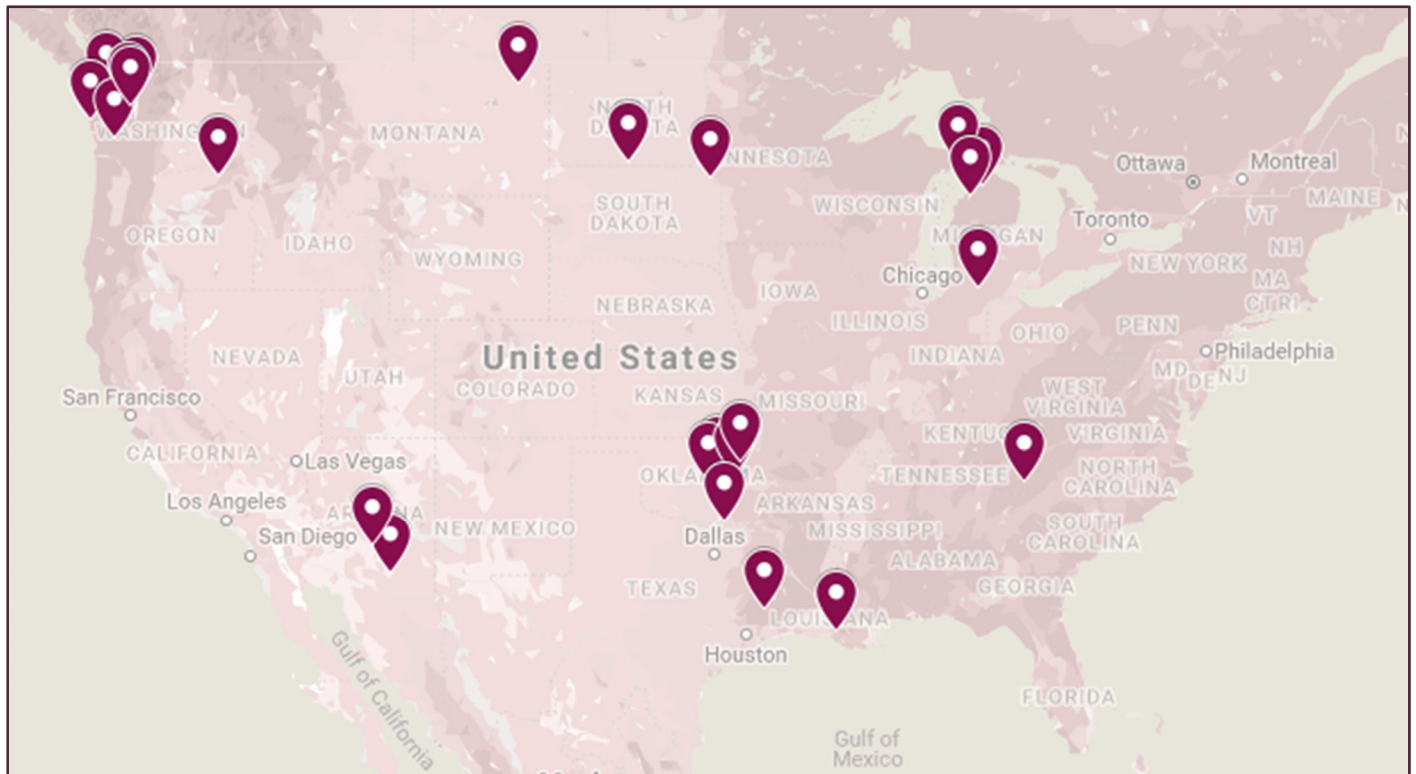
- Tribal Code Checklist
- Implementation Considerations prepared by the Pascua Yaqui Tribe
- TLPI's Guide to Revising Tribal Codes for VAWA/TLOA
- SDVCJ Model Code
- Pilot Project Report
- 5 Year Report
- Center for Jury Studies Materials on Jury Selection
- White papers
- Checklist for Law Enforcement 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

VAWA 2013's SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION 5-YEARS IN

25 TRIBES EXERCISING CRIMINAL JURISDICTION OVER NON-INDIANS



Pascua Yaqui Tribe (AZ)

*Exercising jurisdiction since February 20, 2014.**
73 Arrests. 28 Convictions.

Tulalip Tribes of Washington

*Exercising jurisdiction since February 20, 2014.**
39 Arrests. 17 Convictions.

Confederated Tribes of the Umatilla Indian Reservation (OR)

*Exercising jurisdiction since February 20, 2014.**
14 Arrests. 8 Convictions.

Sisseton-Wahpeton Oyate (SD/ND)

*Exercising jurisdiction since March 6, 2015.**
9 Arrests. 7 Convictions.

Assiniboine & Sioux Tribes of the Fort Peck Reservation (MT)

*Exercising jurisdiction since March 6, 2015.**
26 Arrests. 6 Convictions.

** Denotes Pilot Project Tribe*
Continued on next page

Little Traverse Bay Bands of Odawa Indians (MI)

Exercising jurisdiction since March 7, 2015.
No Arrests.

Alabama-Coushatta Tribe of Texas

Exercising jurisdiction since March 7, 2015.
5 Arrests. 3 Convictions.

Choctaw Nation of Oklahoma

Exercising jurisdiction since May 9, 2015.
3 Arrests. 3 Convictions.

Eastern Band of Cherokee Indians (NC)

Exercising jurisdiction since June 8, 2015.
45 Arrests. 18 Convictions.

Seminole Nation of Oklahoma

Exercising jurisdiction since July 6, 2015.
No arrests.

Sac and Fox Nation (OK)

Exercising jurisdiction since March 1, 2016.
1 arrest. 1 Conviction.

Kickapoo Tribe of Oklahoma

Exercising jurisdiction since March 15, 2016.
No arrests.

Nottawaseppi Huron Band of Potawatomi (MI)

Exercising jurisdiction since March 18, 2016.
No arrests.

Muscogee (Creek) Nation (OK)

Exercising jurisdiction since March 28, 2016.
3 arrests.

Standing Rock Sioux Tribe (SD/ND)

Exercising jurisdiction since May 1, 2016.
4 Arrests. 4 Convictions.

Sault Ste. Marie Tribe of Chippewa (MI)

Exercising jurisdiction since December 13, 2016.
12 Arrests. 2 Convictions.

Chitimacha Tribe of Louisiana

Exercising jurisdiction since February 1, 2017.
No arrests.

Lower Elwha Klallam Tribe (WA)

Exercising jurisdiction since June 5, 2017.
1 arrests.

Quinault Indian Nation (WA)

Exercising jurisdiction since May 1, 2018.
No arrests.

Cherokee Nation (OK)

Exercising jurisdiction since May 17, 2018.
No arrests.

Gila River Indian Community (AZ)

Exercising jurisdiction since Sept. 2018
10 Arrests. 1 Conviction.

Port Gamble S'Klallam Tribe (WA)

Exercising jurisdiction since September 17, 2018
1 arrest.

Confederated Tribes of the Chehalis Reservation (WA)

Exercising jurisdiction since October 24, 2018.
1 arrest.

Grand Traverse Band of Ottawa & Chippewa Indians (MI)

Exercising jurisdiction since October 31, 2018.
2 arrests. 1 conviction.

Suquamish Tribe (WA)

Exercising jurisdiction since April 10, 2019.
2 arrests.

Please note that the arrest and conviction information may not be up to date.



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Legislative Update – Prepared by National Congress of American Indians (as of 2/21/2020)

- *Violence Against Women Act (VAWA) Reauthorization*: Congress has been actively considering VAWA reauthorization legislation. The House passed a Violence Against Women Act (VAWA) Reauthorization bill (H.R. 1585) last year with bipartisan support. The bill contains key provisions that reaffirm tribal jurisdiction over non-Indians for certain crimes involving children and elders, sexual violence, stalking, sex trafficking, obstruction of justice, and assaults against law enforcement and corrections personnel. The bill also includes provisions to improve the response to cases of missing and murdered Indian women; creates a pilot project for Alaska tribal nations to exercise criminal jurisdiction; and clarifies that tribal nations in Maine are able to implement the VAWA 2013 jurisdiction provisions.

A companion bill, S. 2843, has been introduced in the Senate by Senator Feinstein (D-CA) and contains similar provisions. A competing VAWA Reauthorization bill, S. 2920, was also introduced in the Senate by Senator Ernst (R-IA) in November. Like H.R. 1585/S. 2843, the Ernst bill recognizes the need to expand tribal jurisdiction to cover additional crimes committed by non-Indians against Indians and to improve the response to cases of missing and murdered Indians. However, S. 2920 also includes provisions that would establish new requirements for tribal courts including:

- A provision altering existing law so that federal habeas petitioners do not need to exhaust tribal remedies (in contrast, defendants in State custody must exhaust all state remedies before petitioning for federal habeas review) and that federal courts cannot apply any of the limits or procedural requirements imposed on habeas petitions from state and federal courts.
- A provision replacing existing Indian Civil Rights Act (ICRA) protections for defendants with a requirement that tribes “provide all rights under the U.S. Constitution afforded criminal defendants by the courts of the United States, as interpreted by the courts of the United States.” ICRA has been interpreted by tribal courts and upheld by federal courts for decades. In its place will be a regime that imposes on tribes largely the same rights ICRA already provides. The two new rights that would be guaranteed by the new language are both requirements that have never been extended to the states—the right to indictment by a grand jury and a requirement that the jury pool be drawn from the federal district where the crime occurred.
- A provision to create a civil action in federal court for deprivation of rights by tribal officials.
- A provision that would require all tribal judges at all levels to be barred by a state or territory. Under currently law, tribal judges can also be barred by the tribe.
- A provision imposing strict timelines for tribal appellate decisions that do not apply to state or federal courts.
- A provision giving the U.S. Attorney General the authority to “audit or review a participating tribe to determine if the tribe is in compliance with all requirements,” and directing DOJ to ensure “appropriate action” is taken if a tribe is not in compliance.

The Ernst bill also includes several other tribal bills including Savanna’s Act, the SURVIVE Act, the Tribal Law and Order Act, all of which are discussed below, and the Tribal Labor Sovereignty Act, which is a bill that addresses the application of the National Labor Relations Act to tribal governments and is unrelated to violence against women. At this time, VAWA reauthorization negotiations appear to be stalled in the Senate.

For a more detailed comparison of the two Senate bills, see the attached table.

SURVIVE Act – S. 211 & H.R. 1351: The SURVIVE Act, which Senator John Hoeven (R-ND) introduced with broad bipartisan support in the Senate, and Representative Tom O’Halloran (D-AZ) introduced with broad bipartisan support in the House, will create a legislative authorization for a tribal grant program within the Department of Justice’s Office for Victims of Crime (OVC) to improve crime victim services. The bill directs that five percent of the total annual outlays from the Crime Victims Fund (CVF) be provided to tribal nations for the next 10 years. S. 211 was reported favorably by the Senate Indian Affairs Committee on May 6, 2019. As noted above, it was also included in S. 2920, one of the VAWA reauthorization bills currently pending in the Senate. H.R. 1351 was referred to the House Committee on the Judiciary.

Relatedly, for the past three years, the primary policy objective of the SURVIVE Act has been achieved through the appropriations process. Since FY 2018, Congress has directed 5% of overall outlays from the CVF to tribal governments through the Commerce, Justice, Science Appropriations bill. For FY 2020, Congress directed \$132 million for tribal crime victims services from the CVF. The Department of Justice has been engaged in consultation with tribal governments about the administration of this funding and is considering a formula for distribution of the funds for FY 2020.

Tribal Law and Order Reauthorization and Amendments Act of 2019 – S. 210: This legislation would reauthorize the grant programs included in the Tribal Law & Order Act of 2010. It also includes other reforms to improve public safety in tribal communities, including an extension of the Bureau of Prisons (BOP) Pilot Project that allowed tribal nations to house certain offenders in BOP facilities; the creation of a federal penalty for violations of a tribal exclusion order; and reforms aimed at improving juvenile justice, data sharing, provision of indigent defense in tribal courts, and the response to substance abuse and human trafficking. The bill was reported favorably by the Senate Committee on Indian Affairs on May 6, 2019. As noted above, it was also included in S. 2920, one of the VAWA reauthorization bills currently pending in the Senate.

The Native Youth and Tribal Officer Protection Act – S. 290 & H.R. 958: In the 115th Congress, identical bills (S. 2233/H.R. 6728) were introduced in the Senate and House to amend 25 U.S.C. § 1304 to reaffirm tribal inherent authority over child abuse and crimes that are committed against police officers and other justice officials exercising special domestic violence criminal jurisdiction. On January 31, 2019, Senator Tom Udall (D-NM) reintroduced the Native Youth and Tribal Officer Protection Act with Senators Lisa Murkowski (R-AK) and Tina Smith (D-MN) as original co-sponsors. On February 4, 2019 the bill was reintroduced in the House by Representatives Tom O’Halloran (D-AZ) and Tom Cole (R-OK). The Senate Committee on Indian Affairs held a hearing on the bill on June 19, 2019. The House bill has been referred to the Subcommittee for Indigenous People of the United States. The substance of the bill has also been incorporated into H.R. 1585, the VAWA reauthorization bill that passed the House in April 2019, and S. 2843, a VAWA reauthorization bill pending in the Senate.

Justice for Native Survivors of Sexual Violence Act – S. 288 & H.R. 3977: In the 115th Congress, Senators Lisa Murkowski (R-AK), Tina Smith (D-MN), and Tom Udall (D-NM) introduced a bill, S. 3216, to amend 25 U.S.C. § 1304 to reaffirm tribal inherent authority over sexual assault, trafficking, and stalking crimes committed by non-Indians against Indians in Indian Country. On January 31, 2019, Senators Murkowski, Smith, and Udall reintroduced the Justice for Native Survivors of Sexual Violence Act, and Representative Deb Haaland (D-NM) and Tom Cole (R-OK) introduced H.R. 3977 as companion legislation. H.R. 3977 was referred to the House Committee on Natural Resources and was reported favorably on Dec. 5, 2019. S. 288 was referred to the Senate Committee on Indian Affairs and a hearing was held on the bill on June 19, 2019. The substance of the bill has also been incorporated into H.R. 1585, the VAWA reauthorization bill that passed the House in April 2019, and S. 2843, a VAWA reauthorization bill pending in the Senate.



Savanna's Act – S. 227 & H.R. 2733: Senators Lisa Murkowski (R-AK) and Catherine Cortez Masto (D-NV) reintroduced Savanna's Act, S. 227, along with a number of other original co-sponsors. The legislation, which has bipartisan support, is named in honor of Savanna LaFontaine-Greywind, a young Native woman who was tragically killed in North Dakota in August 2017. Companion legislation was introduced in the House by Representatives Norma Torres (D-CA) and Dan Newhouse (R-WA). The bills aim to improve the response to missing and murdered Native women by: improving tribal access to the federal criminal information databases; requiring data collection on missing and murdered Native people; and directing U.S. Attorneys to review, revise, and develop law enforcement and justice protocols to address missing and murdered AI/ANs. S. 227 has been reported favorably by the Senate Committee on Indian Affairs with amendments. H.R. 2733 was referred to the House Natural Resources and Judiciary Committees.

Not Invisible Act – S. 982 & H.R. 2438: Introduced by Senators Catherine Cortez Masto (D-NV), Jon Tester (D-MT), and Lisa Murkowski (R-AK) and Representatives Deb Haaland (D-NM), Tom Cole (R-OK), Sharice Davids (D-KS), and Markwayne Mullin (R-OK), this bill seeks to improve the response to missing and murdered Indians and violent crime by: directing DOI to designate an official to coordinate across agencies on efforts to address missing, trafficked, and murdered Indians; establishing an advisory committee on violent crime within Indian lands and of Indians; tasking the advisory committee with making recommendations and developing best practices; and requiring the Secretary of the Interior and Attorney General to respond to the recommendations of the committee in writing. The Senate Committee on Indian Affairs held a hearing on the bill on June 19, 2019, and reported it favorably on Nov. 20, 2019. H.R. 2438 was referred to the House Natural Resources and Judiciary Committees.

"BADGES" for Native Communities Act – S. 1853 & H.R. 4289: Introduced with broad bipartisan support in both the House and the Senate, the bill addresses public safety needs in Indian Country by addressing federal inefficiencies that hurt Bureau of Indian Affairs law enforcement recruitment and retention, increasing the effectiveness of federal missing persons resources, and giving tribes and states resources to coordinate responses to the Missing and Murdered Indigenous Women (MMIW) crisis. S. 1853 has been reported favorably by the Senate Committee on Indian Affairs with amendments. H.R. 4289 was referred to the House Natural Resources and Judiciary Committees.

Alaska Tribal Public Safety Empowerment Act – S. 2616: Introduced by Sen. Lisa Murkowski (R-AK), the Alaska Tribal Public Safety Empowerment Act aims to expand the jurisdiction provided in the Violence Against Women Act of 2013 (VAWA) to apply to Alaska Native villages on a pilot basis. This bill would also expand covered crimes to include crimes of sexual violence, sex trafficking, stalking, and assault of law enforcement or corrections officers

Finding and Investigating Native Disappearance (FIND) Act – S. 1893: Introduced by Sen. Steve Daines (R-MT), the FIND Act requires the Comptroller General of the United States to conduct a study on ways to increase reporting of missing Indians and the effects of the use of methamphetamine and other illegal drugs on violent crime in Tribal communities. The FIND Act has been referred to the Senate Committee on Indian Affairs.

Tribal Reporting and Accountability to Congress (TRAC) Act – S. 1892: Introduced by Sen. Steve Daines (R-MT), the TRAC Act amends the Indian Law Enforcement Reform Act to require each tribal liaison within the U.S. Attorneys' Offices to submit to Congress an annual report on missing and murdered Indians. The TRAC Act has been referred to the Senate Committee on Indian Affairs.

Please contact Virginia Davis, vdavis@ncai.org, 202-321-6515 with any questions.



VAWA Legislation Tables for ITWG (as of 2/21/2020)

Provision	Current Law	Ernst Bill (S. 2920)	Feinstein Bill (S. 2843)
Scope of conduct covered	Domestic violence, dating violence, protection order violations. 25 U.S.C. § 1304(c).	Adds crimes against children, sexual violence, stalking, trafficking, and assaults against tribal law enforcement and detention officers so long as those officers are Indian. Does not include obstruction of justice.	Adds crimes against children, sexual violence, stalking, trafficking, obstruction of justice, and assaults against tribal law enforcement and detention officers, both Indian and non-Indian.
Tribes included	Tribes in Maine and Alaska largely excluded.	Includes Maine tribes.	Includes Maine tribes and creates a pilot project for Alaska.
Defendants covered	Tribes can only prosecute non-Indians if they reside or work in the tribe's Indian country or are in a relationship with a tribal member or a non-member Indian who lives on the reservation ("limited scope"). 25 U.S.C. § 1302(c)(1)(3).	Applies limited scope to all new categories of crime added.	Allows tribes to prosecute non-Indians who commit covered crimes against Indians in Indian country generally and without limited scope.
Qualifications of tribal judges and attorneys	Judges must have sufficient legal training to preside over criminal proceedings and be licensed by any jurisdiction in the United States. 25 U.S.C. § 1302(c)(1)(3).	Removes requirement that judges have "sufficient legal training" to preside over criminal trials and instead requires all tribal judges, including appellate judges to be licensed by a state or territorial bar. Would prohibit tribes from including elders and traditional knowledge holders on tribal appellate courts or from relying on judges barred solely by the tribe.	Existing law unchanged.
Qualifications of prosecutors and defense attorneys	Indigent defendants guaranteed "the assistance of a defense attorney licensed to practice law by any jurisdiction in the U.S. that applies appropriate professional licensing standards and effectively ensure the competence and professional responsibility of its licensed attorneys." 25 U.S.C. § 1302(c)(1)(2)	Changes existing law to say each attorney prosecuting or defending the defendant must be licensed by a state or territorial bar. This prohibits the tribe from using attorneys who are solely members of a tribal bar and may also prevent a defendant from proceeding pro se if they chose to.	Existing law unchanged.
Certification before tribes exercise jurisdiction and oversight by DOJ	Not required. The current statute recognizes the inherent sovereignty of tribes to make this decision.	Tribes must provide written notification to DOJ that they plan to exercise "special tribal jurisdiction" and the Attorney General then has the authority to "audit or review a participating tribe to determine if the tribe is in compliance with all requirements." Directs DOJ to promulgate regulations and ensure "appropriate action" is taken if a tribe is not in compliance. This provision would apply to all Indian tribes, even those already exercising SDVCJ.	Existing law unchanged.



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VAWA Legislation Tables for ITWG (as of 2/21/2020)

<p>Rights of Defendants</p>	<ul style="list-style-type: none"> • The right not to be deprived of liberty or property without due process; • The right to equal protection of law. • The right against unreasonable search and seizures. • The right not to be twice put in jeopardy for the same tribal offense. • The right not to be compelled to testify against oneself in a criminal case. • The right to be informed of the nature and cause of the accusation in a criminal case. • The right to be confronted with adverse witnesses. • The right to compulsory process for obtaining witnesses in one’s favor. • The right to have the assistance of defense counsel. • The right to effective assistance of counsel at least equal to that guaranteed by the U.S. Constitution. • The right of an indigent defendant to the assistance of a licensed defense attorney at the tribe’s expense. • The right against excessive bail, excessive fines, and cruel and unusual punishment. • The right to access the tribe’s criminal laws, rules of evidence, and rules of criminal procedure. • The right to an audio or other recording of the trial proceedings and a record of other criminal proceedings. • All other rights whose protection is necessary under the constitution. <p>25 U.S.C. §§ 1302-1304</p>	<p>Removes the list of enumerated rights from VAWA 2013 and replaces it with a requirement that tribes provide to all non-Indian defendants “all rights under the Constitution afforded criminal defendants by the courts of the United States, as interpreted by the courts of the United States.”</p> <p>This new statutory regime would apply only to non-Indian defendants. Two new rights that would be guaranteed by the new language are both requirements that have never been extended to the states —the right to indictment by a grand jury and a requirement that the jury pool be drawn from the federal district where the crime occurred.</p>	<p>Existing law unchanged.</p>
<p>Selection of detention facilities</p>	<p>Not addressed</p>	<p>States that tribes can house a defendant in a tribal detention facility or with the permission of the AG, in a</p>	<p>Existing law unchanged.</p>



VAWA Legislation Tables for ITWG (as of 2/21/2020)

		federal detention facility. As drafted, this provision likely excludes county and local facilities, which many tribes have had success contracting with for detention services.	
Tribal appeals process	Not specifically addressed. Tribal appellate procedures are a matter of tribal law.	States that defendants may request an appeal by a tribal appellate court within 14 days of the tribal court's decision and the tribal appellate court must render a decision within 90 days. This would apply to all defendants in tribal court, not just non-Indians or participating tribes. It is unclear how this provision would apply to a tribe with multiple levels of appeals available, and whether this provision intends to impose a requirement that all Indian tribes have an appellate court.	Existing law unchanged.
Federal habeas relief	Any person detained by a tribe has a right to petition for habeas corpus review in federal court. 25 U.S.C. § 1303. Tribes must provide affirmative notice to any person detained of their right to file a habeas petition. 25 U.S.C. § 1304(e)(3). A defendant who has filed a writ in federal court has a right to petition that court to stay the detention of that person while their habeas petition is considered. 25 U.S.C. § 1304(e)(1).	Creates a new habeas provision that applies post-conviction and states that a habeas petition can be filed without exhausting tribal remedies and at any time after a conviction becomes final. States that a reviewing court shall review the conviction and any deprivation of rights and cannot apply any of the standards for habeas petitions from state or federal courts found in section 2254 or 2255 of title 28. This is intended to eliminate the exhaustion requirement that exists for state defendants and to eliminate the 1 year limit to bring a petition that exists for federal defendants.	Existing law unchanged.
Civil Action	Not addressed.	The legislation create a federal civil action for deprivation of rights, privileges or immunities under the U.S. constitution and federal law by any person acting under tribal authority. The civil case has a four year statute of limitations and also provides for immunity for tribal officials that is "the same immunity afforded public officials in actions brought under" 42 U.S.C. § 1983.	Existing law unchanged.
Grant Program	Currently authorized at \$5 million. 25 U.S.C. § 1304(f).	Provides \$15 million/year to help tribes implement VAWA provisions until 2029. Does not include the	Provides \$7 million/year to help tribes implement VAWA until 2025 (we have



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VAWA Legislation Tables for ITWG (as of 2/21/2020)

		amendments to the grant program that were included in the House bill.	been told they are happy to amend to the higher \$15 million/year level). Amends the existing grant program to create a reimbursement fund that will allow tribes to be reimbursed for actual costs, including inmate health care costs.
Reporting requirements	Not addressed.	Requires DOJ and DOI to report annually on the "details of prosecutions for each participating tribe." It is unclear how DOJ and DOI would get this information from the tribes.	Existing law unchanged.
Access to Federal Databases	Not addressed.	Includes former stand alone legislation that would create a commission to help Indian tribes access federal databases with information about domestic violence	Includes language explicitly reauthorizing the critical Tribal Access Program (TAP) and making it more accessible to all tribes.
Other Items	N/A	S. 2920 is packaged with a number of other tribal bills including: Savanna's Act (which creates a commission on MMIW), Tribal Law and Order Act reauthorization, SURVIVE Act (which authorizes a set-aside in the Crime Victims Fund for tribes), and the Tribal Labor Sovereignty Act.	This bill is a "clean" bill that does not include unrelated items.



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