

## Utilizing Tribal Law to Define SDVCJ Categories of Criminal Conduct, SDVCJ Crimes, and Pleading/Proving Jurisdictional Facts

### Introduction and Overview

In passing the Special Domestic Violence Criminal Jurisdiction (SDVCJ) statute, Congress noted the epidemic rates of violence against native women including that one in three would be raped in their lifetime, three in five will be physically assaulted, and native women were twice as likely to be stalked as other women.<sup>1</sup> Congress stated that the “restoration of inherent tribal authority to investigate, prosecute, convict, and sentence perpetrators of violence against women would allow tribes to protect victims of violence and address these pervasive crimes against Native American women.”<sup>2</sup> Clearly, Congress recognized the epidemic of violence being committed against Native women and focused on supporting tribal authority to address the epidemic of violence occurring in Indian country. Congressional intent provides a critical backdrop for interpreting SDVCJ text and underscores an endorsement of tribal sovereignty.

SDVCJ specifies three broad categories of criminal conduct over which Tribal Nations can exercise criminal jurisdiction over non-Indians: domestic violence; dating violence; and violations of an SDVCJ-qualified protection order.<sup>3</sup> This report discusses 1) the tribal authority to expand on the three categories of criminal conduct, 2) the tribal authority to identify the crimes that fit within those categories, and 3) the tribal authority to plead and prove jurisdictional facts in SDVCJ cases.<sup>4</sup> Where possible, examples of tribal codes are used to illustrate various approaches. Since the discussion of tribal authority and implementing SDVCJ raise questions of both tribal sovereignty and federal interpretation, federal laws and cases are also discussed to inform Tribal Nations on possible federal interpretations stemming from an SDVCJ appeal to a federal court.

The SDVCJ statute addresses three broad categories of criminal conduct over which Tribal Nations can exercise SDCVJ.

#### (c) CRIMINAL CONDUCT

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<sup>1</sup> 25 U.S.C. §1304; Sen. Rep. No. 112-265 at 4-5 (2012).

<sup>2</sup> *Id.* At 6.

<sup>3</sup> 25 U.S.C. 1304 (c) (2) (2) sets forth the requirements of a protection order for purposes of the SDVCJ criminal category of Violation of a Protection order (SDVCJ-Qualified Protection Order). “An act that—(A) occurs in the Indian country of the participating tribe; and (B) violates the portion of a protection order that—(i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; (ii) was issued against the defendant; (iii) is enforceable by the participating tribe; and (iv) is consistent with section 2265(b) of title 18.”

<sup>4</sup> 25 U.S.C. 1304 (b) “...the power of self-government of a participating tribes include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.”

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(1) DOMESTIC VIOLENCE AND DATING VIOLENCE

An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.

(2) VIOLATIONS OF PROTECTION ORDERS

An act that—

(A) occurs in the Indian country of the participating tribe; and

(B) violates the portion of a protection order that—

(i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;

(ii) was issued against the defendant;

(iii) is enforceable by the participating tribe; and

(iv) is consistent with section 2265(b) of title 18.<sup>5</sup>

SDVCJ defines particular terms in the three categories.

(a) DEFINITIONS

In this section:

(1) DATING VIOLENCE

The term “dating violence” means 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.

(2) DOMESTIC VIOLENCE

The term “domestic violence” means 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.

[sections 3-4 omitted]

(5) PROTECTION ORDER

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

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<sup>5</sup> 25 U.S.C. §1304 (c).

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, whether obtained by filing an independent action or as a pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.<sup>6</sup>

In harmony with congressional intent mentioned above, some Tribal Nations utilized the language in the federal statute while other Tribal Nations built upon and expanded these categories to better meet the needs of the tribal community.

Tribal Nations have the authority to expand the three SDVCJ categories of criminal conduct and have employed various approaches when defining the categories of dating violence, domestic violence, and violation of a protection order. For example, the Eastern Band of Cherokee Indians refers to the federal law in their code.<sup>7</sup> Other Tribal Nations, such as the Confederated Tribes of the Umatilla Indian Reservation and Chitimacha Tribe of Louisiana, used the exact same language from the SDVCJ statute to define the three broad categories directly in their code.<sup>8</sup> Conversely, several Tribal Nations such as Pascua Yaqui Tribe, Standing Rock Sioux Tribe, and Sisseton Wahpeton Oyate each drafted tribally-specific definitions for domestic violence, dating violence, and SDVCJ-compliant protection orders.<sup>9</sup> Some Tribal Nations opted to use the language from SDVCJ as a starting point for the tribal definition and added additional language that spotlighted certain crimes within the broad categories. For example, the Fort Peck Assiniboine and Sioux Tribes additionally define domestic and dating violence as “emotional abuse, controlling or domineering, intimidation, stalking, neglect, or economic deprivation.”<sup>10</sup> In addition to expanding the SDVCJ definitions, many Tribal Nations have expanded the procedural protections for defendants beyond those required by federal law.<sup>11</sup>

Tribal Nations have the authority to identify tribal crimes fitting within SDVCJ’s three categories of conduct. The definitions of the first two categories of criminal conduct, dating violence and domestic violence, focus on the relationship between the perpetrator and the victim and an act that fits within the realm of “violence committed.” SDVCJ requires that the

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<sup>6</sup> 25 U.S.C. §1304 (a).

<sup>7</sup> The Cherokee Code of the Eastern Band of Cherokee, ch. 14, § 14-40.1(c). §14-40.1, which deals with domestic violence, has been heavily amended by Ordinances 526.

<sup>8</sup> Confederated Tribes of the Umatilla Indian Reservation Crim. Code, §1.01 (W-Z); Chitimacha Comprehensive Codes of Justice, tit. III., §603 (a).

<sup>9</sup> Pascua Yaqui Tribal Code, tit. III, Part I, ch. 1-1, sec. 20.t; Standing Rock Sioux Tribal Code of Justice, tit. IV, ch. 17 §§ 4-1703(c), 4-1703(i)(1); Sisseton-Wahpeton Oyate Codes of Law, ch. 52, §52-04-01.

<sup>10</sup> Fort Peck Tribal Code, tit. 7, sec. 249(c).

<sup>11</sup> National Congress of American Indians (NCAI), Special Domestic Violence Criminal Jurisdiction 5-Year Report (2018) at 61-62.

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perpetrator and the victim be a spouse or intimate partner, and the statute provides a federal definition of those terms.<sup>12</sup>

However, the statute does not define the term “violence committed,” and that term is not defined in federal law. The statute places no restrictions on tribal authority to determine what act might constitute “violence committed.” Congress was careful to avoid making the jurisdictional provisions of the statute too narrow thereby providing Tribal Nations with the opportunity to utilize tribal laws to define and/or identify crimes that fall within the categories of dating violence and/or domestic violence. For example, Congress elected not to use the term “crime of violence” that is defined at 18 U.S.C. 16 which requires the “use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony that involves a substantial risk that physical force against the person or property of another maybe used.” Congress did not intend to restrict tribal authority to crimes involving physical force or felonies that involve substantial risk of physical force since not all Tribal Nations possess felony sentencing authority.<sup>13</sup>

In *U.S. v. Castleman* (2014), the Supreme Court held that “whereas the word ‘violent’ or ‘violence’ standing alone ‘connotes a substantial degree of force’...that is not true of ‘domestic violence,’ which is a term of art encompassing acts that one might not characterize as ‘violent’ in a nondomestic context.”<sup>14</sup> The Court went on to note that perpetrators of domestic violence and dating violence are routinely prosecuted under generally applicable assault laws that include crimes that otherwise might not constitute ‘violence’ in the generic sense.<sup>15</sup> It is especially important to interpret ‘violence committed’ broadly to synchronize the interpretation with congressional intent when enacting SDVCJ.<sup>16</sup>

Tribal Nations that are exercising SDVCJ have utilized various code drafting approaches to identify the specific crimes that fit within the three categories. For example, while the

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<sup>12</sup> 25 U.S.C. §1304(a)(7). See also 18 U.S.C. §2266(7) that sets forth: (7) SPOUSE OR INTIMATEPARTNER.—The term “spouse or intimate partner” includes (A) for purposes of (i) sections other than 2261A: (I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or (II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and (ii) section 2261A—(I) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or (II) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship. (B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

<sup>13</sup> Only Tribal Nations complying with 25 U.S.C. §1302(b) may exercise enhanced sentencing authority.

<sup>14</sup> *U.S. v. Castleman*, 134 S. Ct. 1405, 1407 (2014).

<sup>15</sup> *Castleman* at 1411-12.

<sup>16</sup> See *Stand Against Violence and Empower Native Women Act Senate Report*, Sen. Rep. No. 112-265 at 2 (2012). Additionally, Congress noted the epidemic rates of violence against Native women including that 1 in 3 would be raped in their lifetime, 3 in 5 will be physically assaulted and are twice as likely to be victims of stalking. Sen. Rep. No. 112-265 at 4-5 (2012).

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Nottawaseppi Huron Band of the Potawotomi (NHBP) defined the categories of criminal conduct, NHBP did not specifically identify specific crimes that fall within those categories.<sup>17</sup> Other Tribal Nations such as Lower Elwha Klallam Tribe, Muscogee (Creek) Nation, Cherokee Nation of Oklahoma, Port Gamble S'Klallam Tribe, and Gila River Indian Community spotlighted certain crimes that are a priority in their communities.<sup>18</sup> The Tulalip Tribes' tribal code indicates that any criminal offense in the tribal code can be charged as domestic violence based on the relationship of the victim and defendant. The Tulalip Tribes' code acknowledges that domestic violence can take "many forms" and provides many examples of behaviors and acts that constitute domestic violence including using demeaning language, harming household pets, and preventing someone from accessing services.<sup>19</sup> The code of the Sac and Fox Nation of Missouri provides for enhancements to their basic domestic abuse offenses when it is committed against a pregnant victim, in the presence of children, by strangulation, or is "aggravated" in that it causes severe injury.<sup>20</sup> Additionally, banishment is specifically authorized as a punishment for many of Sac and Fox Nation of Missouri's domestic violence offenses.<sup>21</sup>

The third category of criminal conduct is a violation of a protection order. Protection orders are one of the most important tools for a victim-centered approach to addressing domestic violence. Protection orders are often used to rebalance some of the power and control a perpetrator is exerting over the victim through manipulation and abuse. Protection orders can also address victim safety by providing a unique legal remedy; while the order is civil in nature, it carries both civil and criminal penalties for violations of any provision of the order. SDVCJ removed restrictions that previously prevented tribal governments, *inter alia*, from criminally enforcing protection orders against non-Indians.<sup>22</sup> This discussion focuses on the SDVCJ criminal prosecution of violations of protection order that occur in Indian country. SDVCJ defines a protection order as:

- Any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violence or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
- Includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a *pendente lite* order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.<sup>23</sup>

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<sup>17</sup> Nottawaseppi Huron Band of Potawotomi Tribal Code, tit. VII-04 § 7.4-35(A).

<sup>18</sup> Lower Elwha Klallam Code, ch. 16, art 1, §16.01.13.; Muscogee designated a list of crimes considered as domestic or dating offenses. The list includes, *inter alia*, assault and battery, sexual assault offenses, stalking, trespass and vandalism. Muscogee Code tit. 6 §3-301(A).

<sup>19</sup> Tulalip Tribal Code, tit. 4, sec. 4.25.050-100.; Tulalip Tribal Code, tit. 4, sec. 4.25.100(11).

<sup>20</sup> Sac and Fox Nation of Missouri Tribal Code tit. 10, §207.

<sup>21</sup> Sac and Fox Nation of Missouri Tribal Code tit. 10, §207.4.

<sup>22</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

<sup>23</sup> 25 U.S.C. §1304(a)(5).

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An SDVCJ violation of a protection order in Indian country encompasses an act that violates a particular portion of a protection order that:

- occurs in the Indian country of the participating tribe; and violates the portion of a protection order that prohibits or provides protection 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).<sup>24</sup>

Note that unlike dating violence and domestic violence, the crime of violation of a protection order does not require a showing of a certain relationship between the protected party and the defendant.<sup>25</sup> This is an important distinction that may allow a Tribal Nation broader latitude to prosecute non-Indians for violating certain protection order provisions against any named protected party assuming other SDVCJ requirements are met. SDVCJ focuses on five criteria in a violation of protection order prosecution: 1) protection order violation must occur in Indian country; 2) protection order must be a SDVCJ-qualified protection order meaning that the full faith and credit provisions set forth in 18 USC §2265(b) have been met; 3) protection order must be issued against the defendant; 4) protection order must be enforceable utilizing the enforcing tribe's tribal law; and 5) defendant must violate that portion of the protection order that prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to another person.<sup>26</sup>

To illustrate concept (5), the Tribal Nation may prosecute a non-Indian defendant for violating an SDVCJ-qualified protection order in Indian country when the non-Indian defendant has contacted a child and the child is a named protected party in the protection order that specifically prohibits contact or communication with the named child. Unlike the categories of dating violence and domestic violence, the prosecution for violating a protection order would not be required to prove an intimate relationship existed between the defendant and the named protected party. Another example might include prosecuting a non-Indian defendant for a violation of a protection order in Indian country whereby the defendant assaulted a family member named as a protected party in an SDVCJ-qualified protection order that specifically prohibited violent or threatening acts against that named family member. Again, unlike the categories of dating violence and domestic violence, the prosecution for violating a protection order would not require showing an intimate relationship existed between the defendant and the named protected party.

Both the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Code and the Cherokee Nation Tribal Code conform to the SDVCJ text on the violation of a protection order and provide

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<sup>24</sup> 25 U.S.C. §1304(c)(2).

<sup>25</sup> Although SDVCJ definition of 'violation of a protection order' does not require a showing of a qualified relationship between the defendant and the protected party, tribal law might require such a showing.

<sup>26</sup> 25 U.S.C. §1304(c)(2); 18 U.S.C. §2265(a-b).

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tribal criminal penalties for the crime.<sup>27</sup> The Chehalis Tribe defines the crime of violation of a protection order generally but then conforms to the SDVCJ text on violations of a protection order in another segment of the tribal code.<sup>28</sup> Port Gamble S'Klallam Tribe's definition of the crime of violation of a protection order conforms to SDVCJ and notes that the crime may also fall within the category of domestic violence if the requisite relationship is alleged and proven.<sup>29</sup> Santa Clara Pueblo's code notes which protection order violations fall within SDVCJ and then sets forth the elements of a violation of a protection order.<sup>30</sup> The Santa Clara code sets apart crimes for violating a court order to include violation of a court order prohibiting possession of or using firearms, ammunition, or weapons as well as a violation of an order of protection. The code also delineates jurisdictional facts that are to be determined by the judge or jury.

Tribal Nations that prosecute tribal crimes that vary from but fit within the SDVCJ categories of domestic violence, dating violence, or violation of a protection order may face the issue of pleading and proving additional jurisdictional facts to satisfy the requirements of SDVCJ.<sup>31</sup> The next section discusses pleading and proving additional jurisdictional facts that may bring various crimes within the purview of an SDVCJ category of crimes.<sup>32</sup>

### **Tribal Authority to Plead and Prove Jurisdictional Facts in SDVCJ Prosecutions**

Tribal Nations have the authority to draft tribal laws that address various jurisdictional facts when pleading and proving SDVCJ cases. Some of these jurisdictional facts may be included as elements of the tribal crime charged, while other facts are not but must be pleaded and proven to bring the crime within one of the three categories of SDVCJ criminal conduct.

Please note that the questions discussed below are open to statutory interpretation. The complexity of the jurisdictional and statutory scheme in implementing SDVCJ led to discussion among the Inter-Tribal Working Group (ITWG) Tribal Nations about how and when to make findings of fact on jurisdictional issues and how to develop the necessary charging instruments, jury instructions, and court procedures. Relevant to these questions is the nature of the facts themselves and specifically how to differentiate between facts which are elements of the crime, and facts which are jurisdictional but not elements of the crime.

First, if the jurisdictional fact at issue is an 'element of the crime,' then it must be charged in the charging document and be proven to the jury or judge beyond a reasonable doubt. Of course, parties can stipulate to the existence of one or more jurisdictional facts, and if those stipulated

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<sup>27</sup> Grand Traverse Band of Ottawa and Chippewa Indians Code, ch. 3, sub. G, §362.; Cherokee Nation Code, Title 21 and Title 22.

<sup>28</sup> See [Chehalis Tribal Code 4.65.020 Violation of a protection order](#) and §4.100.202 for SDVCJ violation of a protection order.

<sup>29</sup> Port Gamble S'Klallam Code, Title 15.

<sup>30</sup> Santa Clara Pueblo Special Domestic Violence Criminal Jurisdiction Code (NARF NILL).

<sup>31</sup> For a draft memo discussing whether Tribal Nations have tribal authority to prosecute non-Indians for stalking committed in Indian country see ['Stalking and VAWA 2013.'](#)

<sup>32</sup> For an internal NCAI memo discussing jurisdiction facts, see [Treatment of So-Called Jurisdictional Facts for Special Domestic Violence Criminal Jurisdiction \(SDVCJ\) under the Indian Civil Rights Act \(ICRA\).](#)

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facts are elements of the crime, the jury in a jury trial would be instructed that the parties have reached a stipulation regarding the element(s). If the trial is a bench trial, the judge would note the stipulation. The tribal code will dictate whether or not a jurisdictional fact is an element of the criminal offense in the tribal code.

Second, if the jurisdictional fact is not an “element of the crime,” then the fact need not be charged as an “element of the crime” and a) need not be decided by the jury in a jury trial and may instead be decided by a judge; and b) need not be proven beyond a reasonable doubt.<sup>33</sup>

This scenario presents a range of possibilities to consider when drafting tribal codes. If the jurisdictional fact is not an “element of the crime,” then the options to consider for tribal code drafting include: a) requiring the defendant to raise an objection to jurisdiction in a timely fashion or the issue will be waived but the tribal prosecutor would retain the burden of demonstrating the existence of the jurisdictional fact when the issue is timely raised; b) proving the jurisdictional fact at lesser standard of proof than beyond a reasonable doubt such as a preponderance of the evidence or clear and convincing evidence; or c) considering the jurisdictional fact as an “affirmative defense” and the burden may be shifted to the defendant to assert the “affirmative defense” and prove the non-existence of that jurisdictional fact by a preponderance of the evidence or clear and convincing evidence.

Note that tribal courts are courts of general jurisdiction similar to state courts but are unlike federal courts, which are courts of limited jurisdiction set by the U.S. Constitution and federal statutes. In a court of general jurisdiction, a jurisdictional fact to be decided by the judge by a preponderance of the evidence.<sup>34</sup> In a tribal court, the Indian Civil Rights Act, tribal constitutions, and tribal law may affect the way jurisdictional facts are addressed.

For example, in an SDVCJ prosecution, the tribal code may require the defendant to raise and prove the issue or it is waived if the fact is not an element of the crime charged. If the defendant raises the issue, the prosecutor must prove the existence of the fact according to tribal law. If tribal law permits, the jurisdictional issue can be decided by the judge, even in a jury trial, and the judge may decide the question by a preponderance of the evidence.

If tribal law sets forth the issue as an “affirmative defense,” the burden may be shifted to the defendant to assert the “affirmative defense” and prove the non-existence of that jurisdictional fact by a preponderance of the evidence or clear and convincing evidence. However, shifting the burden of proof to the defendant in a criminal case by means of an affirmative defense may have constitutional limits. In *Patterson v. New York*, the U.S. Supreme Court held that a state, within

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<sup>33</sup> Tribal law may dictate whether the jurisdictional fact is not an element of the crime may/may not be required in the charging document. Note that in *Eagle v. Yerington Paiute Tribe*, 603 F.3d 1161 (9<sup>th</sup> Cir. 2010), the court held that when a tribe prosecutes an Indian, the jurisdictional fact of the defendant’s Indian statute need not be charged in the charging instrument or proved to the jury beyond a reasonable doubt because tribal courts are courts of general jurisdiction and ICRA, by defining the term “Indian” as having the meaning it has for purposes of federal jurisdiction.

<sup>34</sup> According to *People v. Betts*, 103 P.33d 883 (Cal. 2005) the jurisdictional fact that a crime was committed within the territorial jurisdiction of the state can be decided by the judge by a preponderance of the evidence.

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certain limits, may define an ingredient of an offense as an affirmative defense and require the defendant to prove it to the jury by a preponderance of the evidence.<sup>35</sup> In *Patterson*, the affirmative defense was whether the defendant acted under extreme emotional distress sufficient to reduce a second-degree murder charge to manslaughter. The Court noted that there are (undefined) constitutional limits beyond which a state may not go in reallocating burdens of proof by labeling as affirmative defenses at least some of the elements of the crimes defined in a statute.

Treating jurisdictional facts listed under the SDVCJ “exceptions” as facts that are not elements of the crime is not an unreasonable statutory construction since Congress has established a framework for tribal authority in SDVCJ cases, and arguably tribal courts, as courts of general jurisdiction, have trial authority and discretion to navigate within the framework of SDVCJ.<sup>36</sup> Nevertheless, this issue is open for statutory interpretation based on congressional intent and interpretation of SDVCJ text.

In contrast, the nature of the relationship in an SDVCJ prosecution of ‘dating violence’ or ‘domestic violence’ may be interpreted as an element of those offenses since Tribal Nations may not exercise SDVCJ over those two categories of crimes without establishing that relationship as defined by federal law. There would seem to be a very strong argument that the relationship requirement between the defendant and the victim in those two categories of offenses is an element of the crime that must be proven to the jury (or judge if a bench trial) beyond a reasonable doubt

## **Conclusion**

In SDVCJ, Congress reaffirmed inherent tribal authority to investigate, prosecute, convict, and sentence perpetrators of violence against Native women. This congressional intent underscores an endorsement of tribal sovereignty. Tribal authority and discretion to fit within the framework of SDVCJ allows Tribal Nations to protect victims of violence and address these pervasive crimes against Native women. SDVCJ intentionally allows Tribal Nations the flexibility to build upon the three categories of criminal conduct and identify tribal crimes that fit within those categories in ways that fit the needs of tribal communities. This flexibility results in a great deal of creativity, increased community buy-in, and more sustainable tribal court systems that are a better match for tribal priorities, history, and culture and are more reflective of tribal communities. Ultimately, Tribal Nations are drafting tribal statutes in their own voices and incorporating tribal values underscoring the diverse issues Tribal Nations face with respect to domestic violence.

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<sup>35</sup> *Patterson v. New York*, 432 U.S. 197 (1977).

<sup>36</sup> 25 U.S.C. §1304(b)(4).

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