

25 USC 1304

(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.

(3) Indian country

The term “Indian country” has the meaning given the term in section [1151](#) of title [18](#).

(4) Participating tribe

The term “participating tribe” means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.

(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 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 pendent 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.

(6) Special domestic violence criminal jurisdiction

The term “special domestic violence criminal jurisdiction” means the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise.

(7) Spouse or intimate partner

The term “spouse or intimate partner” has the meaning given the term in section [2266](#) of title [18](#).

(b) Nature of the criminal jurisdiction

(1) In general

Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections [1301](#) and [1303](#) of this title, the powers of self-government of a participating tribe include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.

(2) Concurrent jurisdiction

The exercise of special domestic violence criminal jurisdiction by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both.

(3) Applicability

Nothing in this section—

(A) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or

(B) affects the authority of the United States or any State government that has been delegated authority by the United

States to investigate and prosecute a criminal violation in Indian country.

(4) Exceptions

(A) Victim and defendant are both non-Indians

(i) In general. A participating tribe may not exercise special domestic violence criminal jurisdiction over an alleged offense if neither the defendant nor the alleged victim is an Indian.

(ii) Definition of victim In this subparagraph and with respect to a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction based on a violation of a protection order, the term “victim” means a person specifically protected by a protection order that the defendant allegedly violated.

(B) Defendant lacks ties to the Indian tribe

A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant—

(i) resides in the Indian country of the participating tribe;

(ii) is employed in the Indian country of the participating tribe; or

(iii) is a spouse, intimate partner, or dating partner of—

(I) a member of the participating tribe; or

(II) an Indian who resides in the Indian country of the participating tribe.

(c) Criminal conduct

A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

(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](#).

(d) Rights of defendants

In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant—

(1) all applicable rights under this Act;

(2) if a term of imprisonment of any length may be imposed, all rights described in section [1302 \(c\)](#) of this title;

(3) the right to a trial by an impartial jury that is drawn from sources that—

(A) reflect a fair cross section of the community; and

(B) do not systematically exclude any distinctive group in the community, including non-Indians; and

(4) 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.

(e) Petitions to stay detention

(1) In general

A person who has filed a petition for a writ of habeas corpus in a court of the United States under section [1303](#) of this title may petition that court to stay further detention of that person by the participating tribe.

(2) Grant of stay

A court shall grant a stay described in paragraph (1) if the court—

(A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(B) after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(3) Notice

An Indian tribe that has ordered the detention of any person has a duty to timely notify such person of his rights and privileges under this subsection and under section [1303](#) of this title.

1302(C)

(c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

(2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

(3) require that the judge presiding over the criminal proceeding—

(A) has sufficient legal training to preside over criminal proceedings; and

(B) is licensed to practice law by any jurisdiction in the United States;

(4) prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and

(5) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.