

Reauthorization of the Violence Against Women Act

The Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022) was included as a part of the Consolidated Appropriations Act (H.R. 2471) and signed into law by President Biden on March 15, 2022. The Act includes a number of important provisions for tribal communities, including amendments to the scope of jurisdiction that can be exercised over non-Indian offenders. VAWA was first enacted in 1994 and has been reauthorized three times since—in 2000, 2005, and 2013. Each time VAWA has been reauthorized, it has included new provisions aimed at addressing the high rates of violence against Native women. The key provisions of VAWA 2022 are summarized below.

The tribal provisions of VAWA 2022 are included in Title VIII of Division W of the overall Act. Subtitle A of Title VIII includes:

- **Sec. 801. Findings and purposes**

This section takes note of the very high rates of violence against Native women and the need for additional efforts on the part of Federal, State, Tribal, and local governments to address this violence.

- **Sec. 802. Tribal Access Program**

This section provides formal authorization for the DOJ Tribal Access Program (TAP) and authorizes \$6 million per year through 2027 to support it. TAP is aimed at facilitating tribal access to the federal criminal information databases for criminal justice purposes and other authorized purposes. It also amends 34 USC 41101 to empower Tribes to enact laws authorizing access to Federal Bureau of Investigation (FBI) criminal history record information for Tribally-authorized background check purposes.

- **Sec. 803. Bureau of Prisons Tribal Prisoner Program**

This section permanently authorizes the former Bureau of Prisons (BOP) Pilot Program that required the federal BOP to house certain inmates sentenced in tribal court. To be eligible for the program, the offender needs to have been sentenced to more than one year for a violent crime. The program is limited to 100 tribally-sentenced inmates at any one time and includes a provision directing BOP to notify Congress if tribal demand exceeds 100 inmates. VAWA 2022 directs the BOP to establish the program within 120 days of the date of enactment of VAWA 2022, which was March 15, 2022.

- **Sec. 804. Tribal jurisdiction over covered crimes**

This section includes a number of amendments to 25 USC 1304, which was originally enacted as part of VAWA 2013 and is the law that reaffirmed tribal jurisdiction over certain non-Indian offenders. These amendments will take effect on Oct. 1, 2022.

Specifically, the amendments in this section will:

- replace the term “special domestic violence criminal jurisdiction (SDVCJ)” with “special tribal criminal jurisdiction (STCJ)” throughout the law;

- build on VAWA 2013’s tribal jurisdiction provision by incorporating additional categories of criminal conduct that can be prosecuted by tribes against non-Indians. The newly added categories are sexual violence, stalking, sex trafficking, child violence, obstruction of justice, and assaults against justice personnel;
- amend the definitions of “domestic violence” and “dating violence” to give additional deference to how these terms may be defined in tribal law;
- clarify that for cases involving obstruction of justice or assaults against tribal justice personnel by a non-Indian, the tribe has jurisdiction even if the victim is also non-Indian;
- clarify that tribes in Maine are able to implement the law if they choose to;
- remove the existing requirement under VAWA 2013, which limits tribal jurisdiction to those non-Indians who live or work in the Indian country of the tribe or are in a qualifying relationship with a member of the tribe or non-member Indian resident (often referred to as the “substantial ties” provision);
- add a requirement that notice to defendants of their habeas corpus rights must be made in writing;
- codify the requirement that a defendant must exhaust their tribal court remedies before seeking habeas relief in federal court unless certain exceptions are met. This section borrows language from 18 USC 2254 that currently applies to habeas petitions arising out of state court proceedings;
- create a reimbursement program for tribes to recoup certain costs associated with exercising jurisdiction over non-Indians. DOJ is directed to consult with Indian tribes and promulgate rules for this program before March 15, 2023;
- increase the authorization of funding to support tribal implementation of the law, including through the reimbursement fund mentioned above, from \$5 million to \$25 million.

In addition, Title VIII includes “Subtitle B–Alaska Tribal Public Safety Empowerment” (Sections 811-813). These sections address the unique jurisdictional and safety challenges in Alaska Native Villages and:

- clarifies tribal authority to address civil and criminal matters, including protection orders, involving Alaska Natives in the Villages;
- creates a pilot project for Alaska Native tribes to implement Special Tribal Criminal Jurisdiction and exercise jurisdiction over non-Indians who commit certain crimes in Alaska Native Village Statistical Areas.