

Enhanced Sovereignty: The Tribal Law and Order Act and the Violence Against Women Act



Tribal Law and Policy Institute

2013 NADCP Conference
Tuesday, July 15
Gaylord National Resort & Convention Center/Chesapeake 10-12

National Harbor, MD
5:00-6:15PM

Outline of Presentation

1. Overview of Tribal Law and Order Act (TLOA) – especially *TLOA tribal court enhanced sentencing authority*
2. TLOA **Opportunities & Challenges** for Tribal Wellness Courts
3. Overview of the Violence Against Women Act (VAWA) 2013 – especially *enhanced tribal court jurisdiction authority*
4. VAWA **Opportunities & Challenges** for Tribal Wellness Courts
5. Due Process Requirements for TLOA and VAWA
6. Questions



TRIBAL LAW AND ORDER ACT

Signed into law by President Obama on July 29, 2010.

Public Law 111-211.

TLOA Overall Intent

- Enhanced Funding for Tribal Justice Systems
 - authorization rather than appropriation
- Enhanced Authority for Tribal Justice Systems
 - enhanced Tribal court sentencing authority
- Enhanced Federal Cooperation and Accountability

TLOA Provisions

TLOA Provisions: Expanding Tribal Court Authority

- Federal laws and Supreme Court rulings hamper tribal justice systems and force tribal communities to rely on federal and state justice systems
- Despite reliance, in 2005-09 U.S. Attorneys declined to prosecute 52% of reservation violent crimes, including 67% of crimes of sexual violence
- RESULT: Tribal courts are overseeing more violent cases, but remain subject to ICRA limit on sentencing of only up to 1 year of incarceration and \$3,000 fine

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TLOA Provisions: Expanding Tribal Court Sentencing Authority

- Enhanced tribal court sentencing authority
 - 1-3 years imprisonment, \$15,000 fine, or both
 - Tribal courts can stack sentences
 - 9-year cap on stacked sentencing
- Protections for accused where Defendant is subject to 1+ year of detention
 - Licensed counsel for indigent defendants
 - Licensed/law trained judges
 - Trial must be recorded (audio or video)
 - Must publish laws, rules of evidence and procedure
 - Sentencing options: tribal, BOP, state, alternatives

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TLOA Provisions: Data Sharing

- Evidence sharing and declination data:
 - Requires federal prosecutors to maintain data on criminal declinations in Indian Country, and to share evidence to support prosecutions in tribal court
- Tribal Police Access to Criminal History Records
 - TLOA provides tribal police greater access to criminal history databases that provide them with essential information when detaining or arresting a suspect

TLOA Provisions: Enhanced Prosecutions

- Federal Testimony
 - Requires Federal Officials who work in Indian country to testify about information gained in the scope of their duties to support a prosecution in tribal court
- Authorizes Deputization of Special Assistant U.S. Attorneys to prosecute reservation crimes in Federal courts

TLOA Provisions: Enhanced Law Enforcement

- Increases Deputization of Tribal and State Police to Enforce Federal Law
- Authorizes the Drug Enforcement Agency to deputize tribal police to assist on reservation drug raids
- Increases recruitment and retention efforts for BIA and Tribal police
- Expands training opportunities for BIA and Tribal police to receive training at state police academies and tribal, state, and local colleges – where Federal law enforcement training standards are met

TLOA Provisions: PL 280

- Amends mandatory “Public Law 280” (18 U.S.C. § 1162 & 25 U.S.C. § 1321(a))
- Prior to TLOA:
 - Retrocession required state concurrence; Secretary of Interior decided
- Now:
 - Allows for re-assumption to concurrent federal jurisdiction; no state concurrence; Attorney General decides
- DOJ issued final rule – effective January 5, 2012
- 1st assumption of federal jurisdiction: White Earth (MN) – March 15, 2013

TLOA Provisions: Improving Tribal Detention Programs

- *Sec. 234. BOP Pilot, alternatives to incarceration*
- *Sec. 211. BIA-OJS Responsibilities*
 - BIA-OJS long-term plan for incarceration in Indian Country
 - Coordinate with DOJ
 - Consult with tribal leaders and tribal justice officials
- *Sec. 241. IASA Reauthorization*
 - DOI (OJS/BIE)-DOJ-HHS (IHS) long-term plan for juvenile centers
 - Consult with tribal and BIA juvenile detention centers
- *Sec. 244. Tribal Jails Program Reauthorization / Expansion*
 - DOJ long-term plan to for incarceration in Indian Country
 - Coordinate with BIA-OJS, IHS, BIE
 - Consult with tribal leaders and tribal justice officials

TLOA Provisions: Tribal Prisoner Pilot Program

- DOJ Bureau of Prisons Tribal Prisoner Pilot Program
- Up to 100 prisoners at BOP expense
- Must be sentenced under new tribal court felony sentencing authority
- Must be for a violent crime
- Sentence must be for at least two years

TLOA Provisions: Prisoner Re-Entry

- Requires notice to Tribes when releasing a person convicted of violent crime, drug trafficking, or sex offense
- Authorizes Federal Pretrial & Probation Services to appoint officers in Indian Country

TLOA Provisions: Law and Order Commission

- Creates new Indian Law & Order Commission to conduct a comprehensive study of Indian Country criminal justice system
- Will submit report to President & Congress



Overall TLOA Opportunities

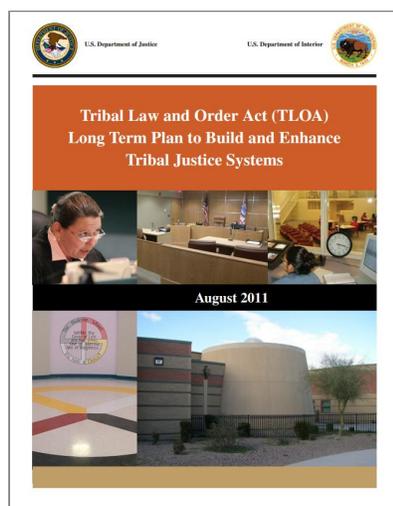
TLOA has focused federal government attention on:

- American Indian/Alaska Native Criminal Justice Issues
- Tribal Law Enforcement
- Tribal Justice Systems
- Tribal Healing to Wellness Courts

TLOA Opportunities for Tribal Wellness Courts

- Enhanced Federal Cooperation and Accountability
- Enhanced Authority for Tribal Justice Systems
- Access to Federal detention facilities
- Added leverage over Tribal Healing to Wellness Court participants
 - Enhanced sentencing for up to 3 years provides a great incentive for participation
- August 2011 TLOA Tribal Justice Plan highlights and prioritizes Tribal Healing to Wellness Courts as an alternative to detention

August 2011 TLOA Long Term Plan to Build and Enhance Tribal Justice Systems: Tribal Healing to Wellness Courts



- Half of the comments received on the draft plan indicated strong support for Tribal Healing to Wellness Courts.
- Highlights Tribal Healing to Wellness Courts as the very first illustration of Indian Country alternatives to incarceration program.
- Wellness Courts are one of the most important short term resources that federal agencies will make available within six months.

Some Overall TLOA Challenges

- TLOA was not able to effectively address some of the most important issues due to political limitations
- TLOA was only able to provide funding *authorization* rather than *appropriation*
- Limited consultation with tribes
- So many moving parts – TLOA provisions, reports consultations, webinars, trainings, etc.

TLOA Challenges for Tribal Wellness Courts

- Lack of capacity to implement TLOA: infrastructure and funding
- Many requirements for Tribes to enact enhanced sentencing authority
- If a tribe does enact enhanced sentencing authority, then the drug court funding violent offender prohibition would apply

BJA Drug Courts Funding: Violent Offender Prohibition

- Programs funded through this solicitation may not, with Adult Drug Court Discretionary Grant Program funding or matched funding, serve violent offenders. As defined in 42 U.S.C. 3797u-2, a “violent offender” means a person who—
 - (1) is charged with or convicted of an offense that is punishable by a term of imprisonment exceeding one year, during the course of which offense or conduct— (A) the person carried, possessed, or used a firearm or dangerous weapon; (B) there occurred the death of or serious bodily injury to any person; or (C) there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A) or (B) is an element of the offense or conduct of which or for which the person is charged or convicted; or
 - (2) has 1 or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm
- A BJA Adult Drug Court Discretionary Grant Program-funded drug court may, at its own discretion and after taking a valid assessment of risk into consideration, choose to provide services to an offender that is otherwise excluded from this program if the grantee is using non-federal (including match) funding to provide the services to that offender. BJA strongly encourages the use of valid risk assessment instruments and consideration of public safety needs in this local decision making process.
- For example – using Byrne formula grant funding to serve veterans with violent charges.

BJA Drug Courts Funding: Application of Violent Offender Prohibition

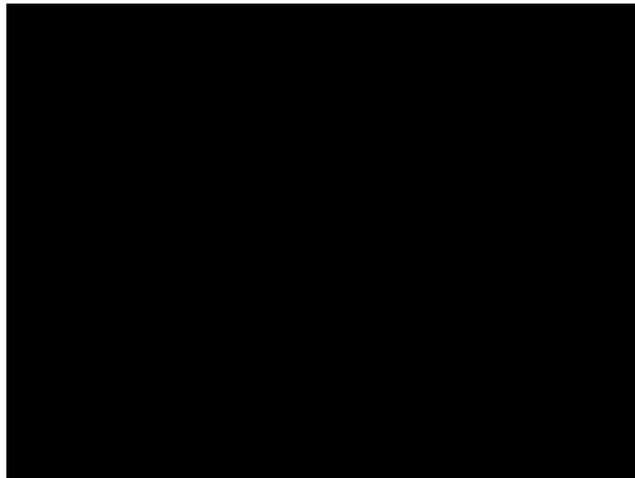
- Any Courts – including Tribal Healing to Wellness Courts – funded under BJA *drug court specific* funding can ***only serve nonviolent offenders as defined by statute***
- General rule is that Violent Offender Prohibition is not applicable to either current or prior tribal court charges since tribal courts had been unable to provide sentences for more than one year.
- Violent Offender Prohibition ***applies if***
 - Adopt TLOA enhanced sentencing;
 - The specific **charge** is punishable in excess of 1 year of detention; and
 - The court receive *drug court-specific* federal funding



VIOLENCE AGAINST WOMEN ACT

Signed into law March 7, 2013.

President Obama on the Tribal Provisions in VAWA 2013



http://youtu.be/kMX3j6VX_rY

VAWA – Title IX: Safety for Indian Women

- Section 901: Grants to Indian Tribal Governments
- Section 902: Grants to Indian Tribal Coalitions
- Section 903: Consultation
- **Section 904: Tribal Jurisdiction over Crimes of Domestic Violence**
- **Section 905: Tribal Protection Orders**
- Section 906: Amendments to the Federal Assault Statute
- Section 907: Analysis and Research on Violence Against Indian Women
- Section 908: Effective Dates; Pilot Project
- Section 909: Indian Law and Order Commission; Report on the Alaska Rural Justice and Law Enforcement Commission
- Section 910: Special Rule for the State of Alaska

Purposes of Section 904

- Decrease the incidence of crimes of domestic violence in Indian country
- Strengthen the capacity of Indian tribes to exercise their sovereign power to administer justice and control crime
- Ensure that perpetrators of domestic violence are held accountable for their criminal behavior.

VAWA Section 904: Tribal Jurisdiction over Crimes of Domestic Violence

- Section 904 of the re-authorization of the Violence Against Women Act (VAWA) of 2013 makes several amendments to the Indian Civil Rights Act (ICRA) of 1968.
- Most notably, it authorizes tribes to exercise “special domestic violence criminal jurisdiction” over non-Indians.
 - A “participating” tribe is a tribe that has opted to exercise this special domestic violence criminal jurisdiction.

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What VAWA Section 904 Covers



- A participating tribe may exercise “special domestic violence criminal jurisdiction” over a non-Indian defendant for
 - Acts of domestic violence or dating violence that occur in the Indian country of the participating tribe; and
 - Violations of Protection Orders that are violated in the Indian country of the participating tribe.

VAWA Section 904 Definitions: *Dating and Domestic Violence*

- 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, 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”.
- Domestic Violence – “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.”

VAWA Section 904 Definitions: *Protection Order*

- “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
- 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.”

Requirements in order to criminally prosecute for Violation of Protection Orders under VAWA § 904

- Special Domestic Violence Criminal Jurisdiction over violation of protection orders applies *only* if the violation is of the portion of the protection 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 - A tribe may not exercise special domestic violence criminal jurisdiction if neither the defendant nor the alleged victim is an Indian.
- Non-Indian Defendant Lacks Sufficient Ties to the Indian Tribe – Defendant must either
 - Reside in the Indian country of the participating tribe;
 - 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

What VAWA Section 904 Does Not Cover— External and Practical Limitations

- While Congress has authorized this special domestic violence criminal jurisdiction over non-Indians, tribes may nevertheless be otherwise restricted or at least currently unable to assert this expanded jurisdiction.

Possible restrictions include:

- Congressional Recognition/Settlement Acts that specifically limit jurisdiction over non-Indians
- Limitations within Tribal Constitutions or Tribal Code
- Tribes not currently exercising criminal jurisdiction

Clarifying Full Tribal Civil Jurisdiction to Issue and Enforce Tribal Protection Orders against *All Persons*

- Section 905 of VAWA Title IX fulfills the intent of VAWA 2005 regarding tribal civil jurisdiction to issue protection orders.
- VAWA 2005 intended for tribes to have full civil authority to issue and enforce protection orders against Indians and non-Indians alike. Unfortunately, at least one federal court has suggested that tribes lack civil jurisdiction to issue and enforce protection orders against non-Indians who reside on tribal lands. That ruling undermines the ability of tribal courts to protect victims.
- Section 905 of VAWA Title IX carries out the congressional intent of VAWA 2005 by clarifying that every tribe has full civil jurisdiction to **issue** and enforce protection orders **against all persons** regarding matters arising on tribal lands, and that such orders are entitled to full faith and credit by non-tribal jurisdictions.

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VAWA Section 908 Effective Date of VAWA Section 904



- Tribes may *not* exercise special domestic violence criminal jurisdiction for **2 years** (March 7, 2015).
- There is a limited exception for tribes that request to operate a *pilot program* from the Attorney General.

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Pilot Project

- Sec. 908 (2) –
 - (A) In general—At any times during the 2-year period beginning on the date of enactment of this Act, an Indian tribe may ask the Attorney General to designate the tribe as a participating tribe under section 204(a) of Public Law 90-284 on an accelerated basis.
 - (B) Procedure—The Attorney General may grant a request under subparagraph (A) after coordinating with the Secretary of the Interior, consulting with affected Indian tribes and concluding that the criminal justice system of the requesting tribe has adequate safeguards in place to protect defendants' rights, consistent with section 204 of Public Law 90-284.

Pilot Project

- Pilot Project focuses on the exercise of Special Domestic Violence Criminal Jurisdiction
- March 2013 – March 2015
- Interested tribes can be part of the “Inter-Tribal Working Group” (ITWG), which will conduct bi-monthly conference calls and several in-person meetings.
- June 14, 2013 Federal Register notice (115 Fed. Reg. 35, 961) proposed procedures for an Indian Tribe to be included in pilot project. Preliminary expressions of interest from Tribes are due on or before July 15th. Comments on the proposed procedures are due on or before September 15th.

\$5 million authorized to assist with implementing VAWA Section 904

- VAWA authorizes the Attorney General to award grants to the governments of Indian tribes to
 - strengthen tribal criminal justice systems to assist in exercising special domestic violence criminal jurisdiction
 - to provide indigent criminal defendants with effective assistance of licensed defense counsel
 - to ensure that jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and
 - to assist victims of domestic violence, dating violence, and violations of protections orders.
- However, funds have not yet been actually appropriated.

VAWA Opportunities for Tribal Wellness Courts

- Participating Tribes will may now have more authority for their Wellness Courts to include Non-Indian participants
- Non-Indians who take part in Wellness Courts are less likely to challenge tribal jurisdiction over them
- VAWA 2013 clarifies Full Tribal Civil Jurisdiction to Issue and Enforce Tribal Protection Orders against All Persons
- VAWA 2013 provides Tribal criminal authority to prosecute Non-Indians for Violations of Tribal Protection Orders
- Wellness Courts have the opportunity to be involved in the Tribal decision-making process concerning whether to be a participating tribe and to be involved in the tribal court strategic planning necessary to implement VAWA provisions

Some Overall VAWA Challenges

- Special domestic violence criminal jurisdiction is extremely limited, and does not include sexual assault.
- Lack of capacity to implement VAWA: infrastructure and funding
- Many requirements for Tribes to special domestic violence criminal jurisdiction
- Non-Indians charged with domestic violence and dating violence may not be eligible or appropriate as wellness court participants (their participation in some cases might even violate violent offender prohibition)

VAWA Challenges for Tribal Wellness Courts

- Tribal Wellness Court may be unsuitable for some non-Indian participants – and their involvement might even be disruptive to other Wellness Court participants
- Wellness Court procedures and programs (such as traditional services and treatment) may not be appropriate for Non-Indian participants
- Special domestic violence criminal jurisdiction's limitation to domestic and dating violence are too limited in scope

TLOA and VAWA Provisions and Due Process Requirements and other Limitations

Limitations on Utilizing TLOA Enhanced Sentencing and/or VAWA Criminal Jurisdiction

Limitations	TLOA	VAWA
<u>Particular Offenses Only:</u> Defendant must either (1) previously have been convicted of same or comparable offense by any jurisdiction in U.S.; or (2) is being prosecuted for a “felony” (an offense that would be punishable by more than 1 year imprisonment if prosecuted by U.S. or any of the States).	✓	
<u>Particular Offenses Only:</u> Defendant must be prosecuted for either (1) domestic violence, (2) dating violence, or (3) violation of a protection order.		✓
<u>Particular Defendants Only:</u> Defendant must have sufficient ties to the community, which could be either (1) residence on the reservation, (2) employment on the reservation, or (3) a relationship with a tribal member or Indian resident.		✓

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 TLOA. But, they are only required under VAWA if a term of imprisonment of any length may be imposed.

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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.		✓
10.	Tribal court ensures that the jury pool reflects a fair cross section of the community.		✓
11.	Tribal court ensures that juries are drawn from sources that do not systematically exclude any distinctive group in the community, including non-Indians.		✓

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

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TLOA and VAWA Due Process Requirements		TLOA	VAWA
12.	Tribal court ensures that anyone detained under the special domestic violence criminal jurisdiction is "timely notified" of his/her rights and responsibilities.		✓
13.	Tribal court ensures that a defendant is notified of their right to file "a petition for a writ of <i>habeas corpus</i> in a court of the United States."		✓
14.	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.		✓
15.	Tribal court ensures that "all applicable rights under the special domestic violence criminal jurisdiction provisions" are provided.		✓

Due Process Requirement Considerations:

- All tribal court judges or defense counsel are *not* required to meet TLOA requirements
- *Judicial* requirements are much less stringent than *defense* counsel
- “Licensed to practice law by any jurisdiction in the United States” includes tribal bar association
 - However, defense counsel requires that the bar association “applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys”
 - The provision concerning tribal court judges does not contain any similar requirement

CONCLUSION

- Tribal participation is critical to effective implementation
- TLOA and VAWA are clearly imperfect = does not mandate funding or overturn *Oliphant*
- But it does provide tribal courts with added tools to combat crime, and lays building blocks for greater local tribal control through stronger tribal courts

Learn more about VAWA at the Tribal Court Clearinghouse



The Violence Against Women Act – Title IX: Safety for Indian Women

The Violence Against Women Act (VAWA) was reauthorized for the third time on March 7, 2013. (*Violence Against Women Reauthorization Act of 2013*, S. 47, 113th Congress, 2013-2014) VAWA of 2013 includes Title IX—Safety for Indian Women.

Among its provisions, Title IX of VAWA of 2013 authorized “special domestic violence criminal jurisdiction.” This jurisdiction authorizes tribes to criminally prosecute non-Indians for the crimes of domestic violence, dating violence, and the violation of protection orders. However, in order for tribes to utilize this criminal jurisdiction, tribes must provide certain enumerated due process protections, including most of the protections required in the Tribal Law and Order Act.

- [Introduction to Violence Against Women Act Reauthorization – Title IX](#)
- [Special Domestic Violence Criminal Jurisdiction](#)
- [Law Takes Effect March 2013](#)
- [Due Process Protection Requirements](#)
- [Special Rules for Alaska](#)
- [Applicability of Other Federal Laws](#)
- [Constitutionality of Title IX](#)
- [Past VAWA Acts](#)

Resources

[Violence Against Women Act 2013 Signing Ceremony – March 7, 2013](#)

[Video of President Obama Addresses Tribal Provisions in VAWA Signing Ceremony – March 7, 2013](#)



[NCAI – Reflections on Passage of VAWA and Tribal Provisions, March 7, 2013](#)

Special Domestic Violence Criminal Jurisdiction Resources

- [DOJ's One-Page Factsheet: VAWA 2013 and Tribal Jurisdiction over Non-Indian Perpetrators of Domestic Violence](#)
- [DOJ "Tramline Paper": Implementation of Sections 904 and 905 of the Violence Against Women Act of 2013, April 16, 2013 \(regarding the Pilot Project\)](#)
- [TLPJ PowerPoint presentation regarding the background and provisions of the special domestic violence criminal jurisdiction in the VAWA of 2013](#)
- [NCAI's Hand-Out Indicating How the Indian Civil Rights Act is Amended by the VAWA 2013](#)
- [NCAI and TLPJ PowerPoints Implementing the Expanded Jurisdiction Provisions of VAWA in our Tribal Courts, April 5, 2013](#)
- [NCAI and TLPJ Recording of Webinar: Implementing the Expanded Jurisdiction Provisions of VAWA in our Tribal Courts, April 5, 2013](#)

Tribal Bar Association Resources

- ["Judicial and Attorney Qualifications, Licensure, and Ethical Standards," PowerPoint](#) by Christine Folsom-Smith, the National Tribal Judicial Center, presented at the American Indian Justice Conference, May 10, 2013.

Publications, Reports, and Articles

- [American Bar Association \(ABA\) Resolution Supporting the Reauthorization of VAWA that includes the Tribal Criminal Jurisdiction Provisions – August 6, 2012](#)
- This report, co-authored by TLPJ Executive Director Jerry Gardner and TLPJ Tribal Law Specialist Lauren Frinkman, details the justification for why the ABA supports the tribal provisions of VAWA. This resolution was passed August 6-7, 2012, four months after S.1923 was passed by the Senate on April 26, 2012. Ultimately, the Title IX passed in VAWA 2013 was reintroduced in 2013 in S. 47, passed by the Senate on February 12, 2013, passed by the House on February 28, 2013, and signed into law by President Obama on March 7, 2013.
- [Amnesty International, Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA, Amnesty International USA \(2007\)](#)
- This groundbreaking report detailed for the first time the devastating degree of sexual violence faced by Native women in the United States. In addition, the report details the complex, and subsequently inadequate nature of criminal jurisdiction in Indian country and how that failing system compounds the danger. Statistics from this report were cited in the Congressional Findings of the Tribal Law and Order Act of 2010, and used to support the VAWA 2013 legislation.
- [DOJ Statement on Section 904's Constitutionality, 132 Cong. Rec. H705, 737-39 \(daily ed. Feb. 28, 2013\)](#)
- Thomas J. Ferrell, Associate Attorney General testified before the Senate Committee on Indian Affairs concerning the constitutionality of Sec. 904 under the U.S. Supreme Court precedent, *United States v. Lara*. The statement was later inserted into the Congressional Record prior to the House floor vote on VAWA 2013, on February 28, 2013.
- [N. Reed Leobard, Closing a Gap in Indian Country Justice: Oliphant, Lara, and DOJ's Proposed Fix, 28 Harvard Intl. On Social & Ethnic Justice 117 \(2012\)](#)
- This law review article analyzes whether DOJ's proposed legislative fix to allow tribes to prosecute limited non-Indian domestic violence crimes is legally permissible by closely analyzing the decisions in *Oliphant* and *Lara*. Given the closely circumscribed requirements for the exercise of such power, and past decisions of various Justices, this article concludes that it is within Congress' power to recognize the inherent power of tribes to prosecute non-Indians for domestic violence crimes against Indians.
- [National Indigenous Women's Resource Center, Restoration of Native Sovereignty and Safety for Native Women, Volume XX, June 2012](#)
- The *Restoration of Sovereignty & Safety* magazine is a publication dedicated to informing tribal leadership and communities of emerging issues impacting the safety of American Indian and Alaska Native women. The June 2012 issue includes extensive legislative history of VAWA 2013, profiles of key advocates, as well as powerful stories regarding the survival of violence against Indigenous women and the impetus for VAWA 2013.
- [Zachary S. Price, Dividing Sovereignty in Tribal and Territorial Criminal Jurisdiction, 113 Colum. L. Rev. 657 \(2011\)](#)
- This law review article proposes a framework for resolving constitutional questions raised by the Court's recent cases in the areas federal Indian law concerning unregulated local governmental authority. Focusing on the criminal context, this Article considers three issues: (1) whether and under what circumstances Congress may confer criminal jurisdiction on tribal and territorial governments without requiring that those decisions be subject to federal executive supervision; (2) whether double jeopardy should bar successive prosecution by both the federal government and a tribal or territorial government; and (3) what, if any, constitutional procedural protections apply when a tribal or territorial government exercises criminal jurisdiction pursuant to such federal authorization.
- [VAWA Letter from Law Professors – Tribal Provisions, April 11, 2012](#)
- Then Dean of New Mexico Law School Kevin Washburn (now Assistance Secretary of Indian Affairs), along with Professors Stacy Leeds, Erwin Chemerinsky, Carol E. Goldberg, Robert N. Clinton, Gloria Valencia-Weber, Matthew L.H. Fletcher, along with forty-three other distinguished law professors, signed onto this letter addressed to Senators Patrick Leahy and Charles Grassley and Representatives Lamar Smith and John Conyers, Jr. The letter writes in support of the tribal provisions, as well as details the constitutionality of the those provisions.
- [Written Comments regarding Government-to-Government Consultation with the Department of Justice on Implementation of the Violence Against Women Reauthorization Act of 2013](#)
- On August 16, 2013, the U.S. Department of Justice (DOJ) invited tribal leaders to participate in a government-to-government consultation regarding how best to structure and implement the voluntary Pilot Project established under Sections 904 and 905 of VAWA 2013. DOJ hosted conference calls with tribal court judges on May 8, 2013, and with tribal leaders generally on May 14 and May 17, 2013. DOJ also accepted written comments. Below are written comments from the National Congress of American Indians, the National American Indian Court Judges Association, and the Tribal Law and Policy Institute.
 - [National Congress of American Indians' Comments – May 20, 2013](#)
 - [National American Indian Court Judges Association's Comments – May 23, 2013](#)
 - [Tribal Law and Policy Institute's Comments – May 20, 2013](#)

Links

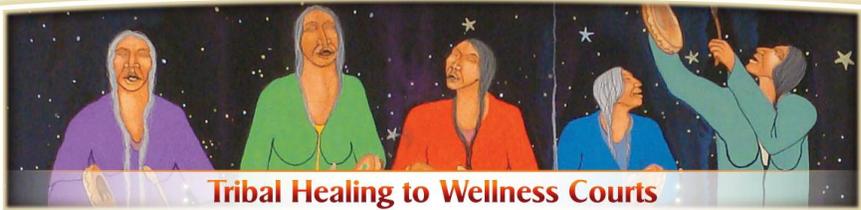
- [American Bar Association \(ABA\) VAWA](#)
- [Department of Justice's \(DOJ\) Office of Violence Against Women \(OVW\) – Tribal Communities](#)
- [Department of Justice's \(DOJ\) Tribal Justice and Safety – Violence Against Women Act \(VAWA\) Reauthorization 2013](#)
- [National Congress of American Indians' \(NCAI\) Violence Against Women Act](#)

For More TLOA Information

- NCAI Tribal Law and Order Act (TLOA) website: www.tloa.ncai.org
- Tribal Court Clearinghouse: www.tlpi.org
- Walking on Common Ground: www.WalkingOnCommonGround.org

www.WellnessCourts.org

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Tribal Healing to Wellness Courts

Home | About Us | **Services** | Technical Assistance Partners | Federal Funding Agencies

Welcome

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- Request Technical Assistance
- Funding Announcements
- Upcoming Events
- Drug Court TTA Calendar
- Prior Event Resources

Resources & Tools | Wellness Court Resources | Tribal Key Components | Forms & Policies | **Drug Court Research & Treatment** | State Resources

Tribal Law and Policy Resources

www.tribal-institute.org/lists/drug_court.htm

- Tribal Healing to Wellness Court Publications
 - Tribal 10 Key Components
 - Overview
 - Judicial Bench Book
 - Policies and Procedures
- Judicial Bench Cards
- Training Calendar



Upcoming Event



SAVE THE DATE

**Tribal Healing to Wellness Court
Enhancement Training**

*September 11-13th, 2013
Renaissance Hotel
Agua Caliente Reservation, California*

enhtraining.tlpi.org

Tribal Law and Policy Institute

The Tribal Law and Policy Institute (TLPI) is a Native American owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples.

Tribal Court Clearinghouse

www.tlpi.org

Tribal Law and Policy Institute



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