

VAWA 2013 IMPLEMENTATION UPDATE: Special Domestic Violence Criminal Jurisdiction

As of September 1, 2015, eight tribes have implemented special domestic violence criminal jurisdiction (SDVCJ) over non-Indians under VAWA 2013 (see reverse for a description of the VAWA requirements). Together, they have made 42 SDVCJ arrests, resulting in 18 guilty pleas, 5 referrals for federal prosecution, 1 acquittal by jury, 12 dismissals, with 6 cases pending. None of the SDVCJ non-Indian defendants have appealed to federal court. A brief summary of the exercise of this jurisdiction by each the implementing tribes is below.

- **Pascua Yaqui Tribe (AZ).** The Pascua Yaqui Tribe began exercising SDVCJ on February 20, 2014 as part of the DOJ Pilot Project. As of September 1, they have had 21 SDVCJ arrests involving 16 separate offenders resulting in 6 guilty pleas, 4 referrals for federal prosecution, 1 acquittal by jury, and 10 dismissals. Pascua Yaqui reports that since they began implementing SDVCJ, cases involving non-Indians make up 25% of the tribes domestic violence caseload.
- **Tulalip Tribes of Washington.** The Tulalip Tribes began exercising SDVCJ on February 20, 2014 as part of the DOJ Pilot Project. As of September 1, they have had 11 SDVCJ arrests involving 9 defendants resulting in 6 guilty pleas, 1 referral for federal prosecution, 2 dismissals, with 2 cases pending.
- **Confederated Tribes of the Umatilla Reservation (OR).** The Umatilla Tribes began exercising SDVCJ on February 20, 2014 as part of the DOJ Pilot Project. As of September 1, they have had 6 SDVCJ arrests resulting in 4 guilty pleas, with 2 cases pending.
- **Sisseton Wahpeton Oyate (SD/ND).** The Sisseton Wahpeton Oyate was authorized to exercise SDVCJ on March 6, 2015 as part of the DOJ Pilot Project. As of September 1, they have had 1 SDVCJ arrest and the case is pending.
- **Assiniboine & Sioux Tribes of the Ft. Peck Reservation (MT).** The Assiniboine & Sioux Tribes were authorized to exercise SDVCJ on March 6, 2015 as part of the DOJ Pilot Project. As of September 1, they have had no SDVCJ arrests.
- **Little Traverse Bay Band of Odawa Indians (MI).** The Little Traverse Bay Band of Odawa Indians began exercising SDVCJ on March 7, 2015. As of September 1, they have had no SDVCJ arrests.
- **Seminole Tribe of Oklahoma.** The Seminole Tribe began exercising SDVCJ in July 2015. As of September 1, they have had no SDVCJ arrests.
- **Eastern Band of Cherokee Indians (NC).** The Eastern Band of Cherokee began exercising SDVCJ in July 2015. As of September 1, they have had 3 SDVCJ arrests resulting in 2 guilty pleas with 1 case pending.

Nearly 40 additional tribes have participated in the Inter-Tribal Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG) and are in varying stages of preparing to implement SDVCJ. Twenty tribes report that they expect to implement SDVCJ in the next year. For more information about the ITWG and implementation of SDVCJ, visit www.ncai.org/tribal-vaawa.

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On **March 7, 2015**, tribes across the country could begin exercising criminal jurisdiction over non-Indians so long as all of the statutory requirements of VAWA 2013 are met.

VAWA 2013 authorizes participating tribes to exercise “special domestic violence criminal jurisdiction” (SDVCJ) over non-Indian defendants for acts of domestic violence or dating violence; and violations of certain protection orders.

However:

- the victim must be Indian;
- the crime must take place in the Indian Country of the participating tribe; and
- the non-Indian defendant must have “sufficient ties to the Indian Tribe,” which could include either:
 - 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.

In addition to existing Indian Civil Rights Act requirements, the tribe must offer certain Due Process Protections, many of which mirror the due process protections required to exercise the enhanced sentencing provisions of the Tribal Law and Order Act (TLOA) of 2010:

VAWA Due Process Requirements
Defendants are provided with effective assistance of counsel equal to at least that guaranteed in the U.S. Constitution.
Tribal government provides to an indigent defendant a defense attorney licensed to practice by any jurisdiction in the United States.
Defense attorney is licensed by a jurisdiction that applies appropriate licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.
Judges presiding over criminal proceedings involving non-Indian defendants have sufficient legal training to preside over criminal trial and be licensed to practice law by any jurisdiction in the United States.
The tribe’s criminal law, rules of evidence, and rules of criminal procedure are made available to the public prior to charging the defendant.
Tribal court maintains a record of the criminal proceeding, including an audio or other recording.
Tribal court provides the defendant the right to a trial by an impartial jury.
Tribal court ensures that the jury reflects a fair cross section of the community.
Tribal court ensures that juries are drawn from sources that do not systematically exclude any distinctive group in the community, including non-Indians.
Tribal court ensures that a defendant is “timely notified” of his/her rights and responsibilities.
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.”
Tribal court provides “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”.