

DOMESTIC VIOLENCE COURTS/DOCKETS AND FUNDING

February 6, 2015



Presenters

- Honorable Steven D. Ayccock, (Ret.), Judge-in-Residence, National Council of Juvenile and Family Court Judges
- Kelly Gaines Stoner, Victim Advocacy Legal Specialist, Tribal Law & Policy Institute

Moderators:

- Virginia Davis, Senior Policy Advisor, National Congress of American Indians
- Chia Halpern Beetso, Tribal Court Specialist, Tribal Law & Policy Institute

Outline of Presentation

- Brief Overview of VAWA Title IX on Special Domestic Violence Criminal Jurisdiction
- Domestic Violence Courts/Dockets
- Funding Domestic Violence Courts/Dockets
- FY 2015 CTAS (Coordinated Tribal Assistance Solicitation) RFP
 - CTAS purpose area #5 (OVW Violence Against Women Tribal Governments Program)
- Questions

Title IX of the 2013 VAWA

- Section 904: Tribal Jurisdiction over Crimes of Domestic Violence
 - “Special Domestic Violence Criminal Jurisdiction” which recognizes a tribe’s inherent criminal jurisdiction over **non-Indians** for the crimes of
 - Domestic Violence
 - Dating Violence
 - Violation of Protection Order











March 7, 2015

- Sec. 908 of Title IX of VAWA provided that the “special domestic violence criminal jurisdiction” (SDVCJ) would not take effect until **March 7, 2015**.
- In the meantime, interested tribes were invited to apply to participate in a Pilot Project.
 - Currently the following tribes are exercising SDVCJ under the Pilot Project
 - Confederated Tribes of the Umatilla Indian Reservation
 - Pascua Yaqui Tribe
 - Tulalip Tribes









VAWA BUILDS ON THE TRIBAL LAW AND ORDER ACT (TLOA)

- TLOA: P.L. 111-211 (2010)
- Modifies the Indian Civil Rights Act (ICRA) to provide tribal enhanced sentencing authority for tribes that can meet TLOA benchmarks.





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.

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.

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.		

DOMESTIC VIOLENCE COURTS/DOCKETS

A SPECIALIZED COURT

DOMESTIC VIOLENCE COURTS

- STRENGTHENS TRIBAL SOVEREIGN POWERS
- May be civil and/or criminal
- Allows for incorporation of unique tribal customs/traditions regarding healthy families and communities in all phases of a case
- Allows specialized domestic violence tribal court to implement policies, protocols and trainings for personnel that will come into contact with the family
- Builds strong partner relationships among service partners

DOMESTIC VIOLENCE COURTS

PUTS FOCUS ON VICTIM SAFETY BY:

- Protocols to keep victims informed
- Protocols to link victim with advocate for safety planning
- May empower tribal victim service providers

Puts Focus on Court Safety:

- Protocols to create safe places within and outside the courthouse
- Providing specially trained court/law enforcement personnel
- Safety-driven scheduling of dockets

Domestic Violence Courts

- HOLDING BATTERERS ACCOUNTABLE
- Specially trained court/law enforcement personnel
- Builds strong relationships with multiple service providers
- May allow cross-pollination of batterer records to promote more comprehensive monitoring
- Allows specialized court to determine culturally appropriate batterer programs
- Focus post-adjudication is on batterer accountability and change
- Built in review hearings

DOMESTIC VIOLENCE COURTS

- PROMOTING COORDINATED TRIBAL COMMUNITY RESPONSE TO DOMESTIC VIOLENCE
- May create policy uniformity among various agencies working with the victim
- May provide opportunity for regular meetings among service providers
- Creates environment in which system change can be achieved

POSSIBLE BARRIERS

- Funding for tribal constitution and tribal code review and revisions where needed
- Various policies and procedure reviews (regarding non-Indian jury pool)
- Funding for specialized judges, court personnel and law enforcement
- Funding for court administration
- Funding for incarceration, probation and possible health care of non-Indian batterers
- May need technical assistance and training support to reach and maintain goals

A SPECIALIZED DOCKET

DOMESTIC VIOLENCE DOCKETS

- May be civil and/or criminal
- Provides some measure of continuity for victims and families
- Specialized docket days that focus on victim safety and batterer accountability
- May provide specialized judges and court personnel
- May provide specialized law enforcement
- May enhance relationships with service providers

POSSIBLE BARRIERS

- May not provide the continuity of a Domestic Violence Court regarding victim safety and batterer accountability
- May not provide platform for exercising SDVCJ
- May require funding for tribal constitution and/or code revisions
- May require funding for additional judges
- May require ongoing training on dynamics of domestic violence and victim safety issues

Domestic Violence Court and Domestic Violence Docket RESOURCES

- Tribal Code Development, tribal domestic violence case law resource, tribal protection orders, and other articles found at <http://www.tribal-institute.org/lists/domestic.htm>
- Article on Protecting Sovereignty : The Role of Tribal Courts at http://law.und.edu/tji/_files/docs/protecting-sovereignty-tribal-courts-2013.pdf
- Articles on protocols on prosecuting sexual assaults in Indian Country at www.swclap.org
- Tribal Code Checklist for Implementing Special Domestic Violence Criminal Jurisdiction at <http://www.ncai.org/tribal-vawa/getting-started/tribal-code-development-checklist-for-implementation-aug-20142.pdf>
- Domestic Violence Courts Key Principles (non-tribal specific) at <http://www.courtinnovation.org/research/key-principles-domestic-violence-court-accountability>
- History of Domestic Violence Courts (non-tribal specific) at <http://www.courtinnovation.org/topic/domestic-violence>
- Tulalip's DV Court at <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt/DomesticViolence.aspx>

- To view 3 approved SDVCJ tribes applications to DOJ: <http://www.ncai.org/tribal-vawa/pilot-project-itwg/application-questionnaire>
- Confederated Tribes of the Umatilla Indian Reservation Code and VAWA directive: <http://ctuir.org/court-code>
<http://ctuir.org/criminal-court-directive-vawa>
- Pascua Yaqui Tribe code: http://www.pascuayaqui-nsn.gov/_static_pages/tribalcodes/index.php
- Tulalip Tribes DV Court: <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt/DomesticViolence.aspx>

HOW TO FUND A DV COURT/DOCKET

CTAS

Purpose Area #5

CTAS: Application Timeline

□ Solicitation:

- Opened November 20, 2014
- ***Closes February 24, 2015*** (9pm Eastern)
- Recommended to register for GMS no later than February 3, 2015.
- DOJ expects to award grants no later than September 30, 2015

CTAS Purpose Area #5 Violence Against Women Tribal Governments Program (OVW)

Purpose Area	Estimated Amount of Funding Available	Estimated Number of Awards to be made; Estimated Award Amounts	Length of Award
5) Violence Against Women Tribal Governments Program	\$32 million	Approximately 60 awards; Approximately \$450,000 for new grantees; up to \$900,000 for current grantees	3 years

- Last Year: 83 applications were received, 54 awards were made

OVW Point of Contact:

Lorraine Edmo: Lorraine.Edmo@usdoj.gov

Notes on the Violence Against Women Tribal Governments Program

- FY 2013 and 2014 grantees are not eligible to apply for new or continuation funding.
 - Limitations on eligibility of FY 2012 grantees
- Collaborative partnership requirement
 - Indian victim services provider organization;
 - Tribal domestic violence or sexual assault coalition; or
 - Advisory committee
- Application must reflect “sound strategies to enhance victim safety and offender accountabilities”
 - See RFP for list of discouraged activities
- Funds for legal assistance require certification

JUSTICE FOR FAMILIES PROGRAM

Justice For Families Program

- Purpose: to improve the response of all aspects of the civil and criminal justice system to families with a history of domestic violence, dating violence, sexual assault, and stalking, or in cases involving allegations of child sexual abuse.
- Purpose Area 1 – Supervised Visitation and Safe Exchange
- Purpose Area 3 - Training for Court-based and court-related personnel
- Purpose Area 4 – Juvenile Court Resources
- Purpose Area 5 – Court and Court-based Programs and Services
- Purpose Area 6 – Civil Legal Assistance

Justice For Families: Application Timeline

- ❑ Solicitation:
 - ❑ Opened December 30, 2014
 - ❑ ***Closes February 11, 2015*** (11:59 pm Eastern)
 - ❑ Must register for GMS
 - ❑ OVW expects to award grants no later than September 30, 2015

Eligibility

- National in scope, **NOT** limited to Tribal entities
- New Applicants only
 - Current and former Safe Havens and Courts grantees are considered new applicants (some restrictions if your current funding lasts past September 30, 2015).
- Justice for Families grant recipients that received funding for 24 months in FY 2014 are not eligible to apply.
- Eligible Entities: states, units of local government, courts, Indian tribal governments, nonprofit organizations, legal services providers, and victim services providers

Purpose Area 3

- Covers court-based, court-related, court-appointed personnel (includes custody evaluators and guardian ad litem) and child protective service workers
- Dynamics of domestic violence, dating violence, sexual assault, and stalking
- Perpetrator behavior
- Evidence based risk factors
- Needs of victims – safety, security, privacy, confidentiality and self-represented victims

Purpose Area 5

Enables courts or court-related programs to develop or enhance:

- Court infrastructure (specialized dockets, intake centers, etc.)
- Community based initiatives (court watch, victim assistants, pro se assistance)
- Offender management, monitoring and accountability programs
- Information storage and sharing
- Community education and outreach
- Projects likely to improve court responses

Purpose Area #3 & 5

Purpose Area	Maximum Award Amounts	Length of Award
3) Training	\$500,000	3 years
5) Court programs	\$500,000	3 years

OVW Point of Contact:

202-307-6026

RURAL SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE AND STALKING PROGRAM

Purpose Area #5

Rural Program

Purpose:

- Enhance the safety of rural victims of sexual assault, domestic violence, dating violence and stalking
- Support projects uniquely designed to address and prevent these crimes in rural areas
- Collaboration is encouraged
- Recognizes the richness of diversity in rural communities
- Capacity building and partnerships

Rural Program

Solicitation:

- Opened January 21, 2015
- Closes March 4, 2015 (11:59 pm Eastern)***
- Must register for DUNS, System Awards Manager and Grants.gov by February 11, 2015
- Strongly recommend letter of registration by February 11, 2015
- DOJ expects to award grants no later than September 30, 2015

Eligibility and Purpose Areas

- Rural state – population density no greater than 57 people per square mile or targets county is less than 250,000
- Rural area/community – any area or community not defined within a metropolitan statistical area, or not in a metropolitan statistical area and located in a rural census tract, or a federally recognized Tribe

Purpose areas:

- Encourage collaboration
- Establish and expand nonprofit and nongovernmental, government victim services
- Dealing directly with or creating and implementing strategies to increase and prevent DV, SA, dating violence, and stalking

Rural Program

Purpose Area	Award Amounts	Length of Award
All	No minimum or maximum \$175,000 - \$1,000,000 Total of \$33,000,000	3 years

Estimate of 40 awards

OVW Point of Contact:

202-307-6026

Questions