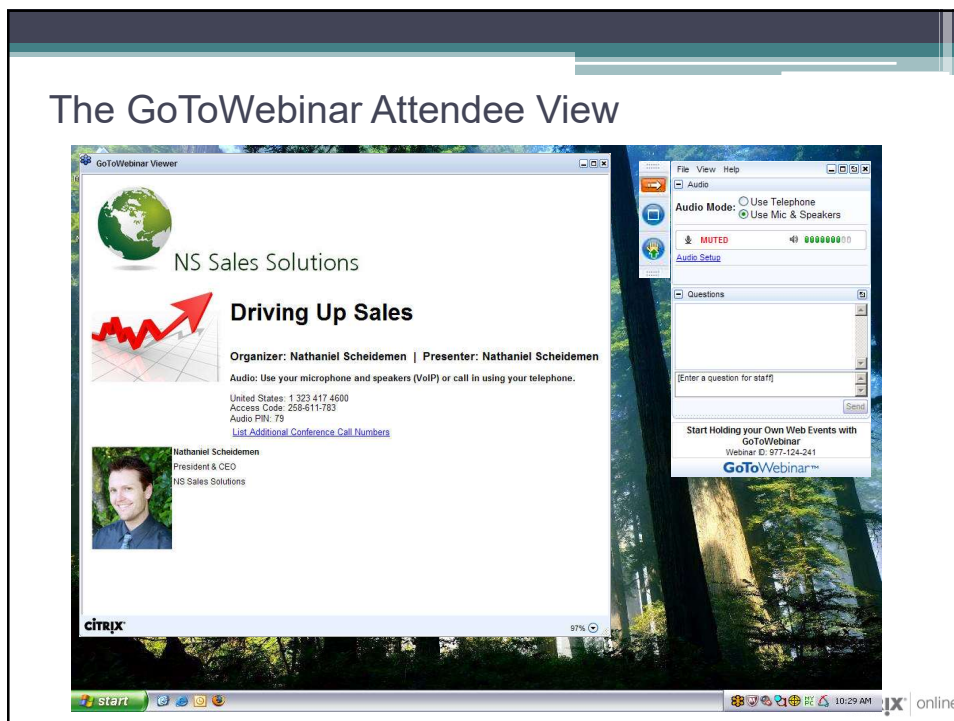


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- Recorded webinar will be made available

## Implementing Criminal Jurisdiction over Non-Indians: Lessons Learned from the VAWA Pilot Tribes



**Chia Beetso**, Tribal Court Specialist, Tribal Law and Policy Institute

**Fred Urbina**, Attorney General, Pascua Yaqui Tribes

**Brent Leonhard**, Attorney, Confederated Tribes of the Umatilla Indian Reservation

## Special Domestic Violence Criminal Jurisdiction

VAWA 2013 affirmed tribes' inherent authority to exercise criminal jurisdiction over non-Indians who commit domestic violence, dating violence, or violations of protection orders involving a Native victim in Indian country

- Exercising special DV criminal jurisdiction is entirely voluntary and elective.
- Special DV criminal jurisdiction does not change existing federal (or state) jurisdiction.

## WHAT CRIMES ARE COVERED?

Tribes' criminal jurisdiction over non-Indians is limited to the following, as defined in VAWA 2013:

- Domestic violence;
- Dating violence; and
- Criminal violations of protection orders.

The crime must occur within Indian country, the victim must be a Native person, and the defendant must have sufficient ties—such as living, working or having an intimate relationship on the reservation.

## Due Process Rights under VAWA

- Provide counsel for indigent defendants
- Law-trained tribal judges licensed to practice law
- Publicly available tribal criminal laws
- Maintain a record of criminal proceedings
- Provide trial by an impartial jury
  - Drawn from a fair cross-section of the community, including non-Indians.
- Timely notify defendants of their right to habeas corpus and right to petition for stay of detention.

## VAWA 2013 Pilot Tribes

- Pascua Yaqui Tribe (AZ)
- Confederated Tribes of Umatilla (OR)
- Tulalip Tribes (WA)
- Ft. Peck Assiniboine & Sioux Tribes (MT)\*\*
- Sisseton-Wahpeton Oyate (SD)\*\*

## **VAWA Pilot Project period ended March 7, 2015**

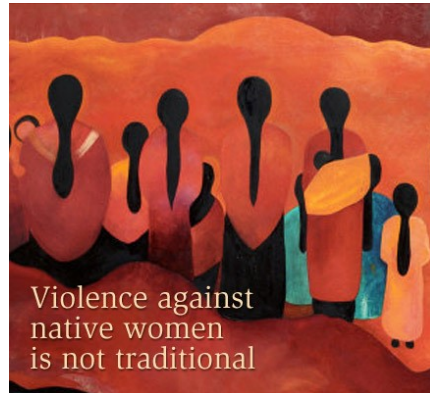
Now any tribe that meets the statutory requirements can begin exercising jurisdiction. DOJ approval is no longer needed.

## **Why is SDVCJ necessary?**

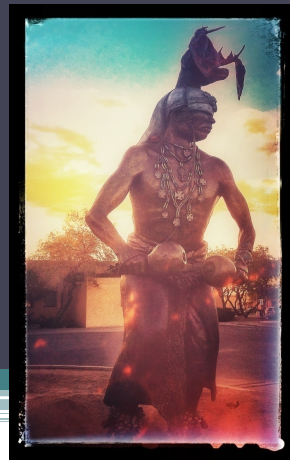
- 39% of American Indian and Alaska Native women will be subjected to domestic violence in their lifetimes
- 56% of American Indian women have non-Indian husbands
- Non-Indians commit 88% of all violent crimes against Native women

## Questions?

Please submit questions by typing your inquiry in the Questions pane and hitting “send” or raise your hand.



## Pascua Yaqui Tribe & VAWA Implementation



*“Tribal governments have an inherent right to protect their people, and all women deserve the right to live free from fear.”*

- President Barack Obama



## Pascua Yaqui Tribe

- The Pascua Yaqui Tribe has a two square-mile reservation located seven miles from Tucson, AZ and 60 miles from the Border with Mexico.
- The tribe has approximately 20,000 enrolled members and 7 off-reservation Yaqui communities.
- 4–5,000 people reside on the Reservation.
- Approximately 800 non-Indians work for the tribal government and the casino, which is 32% of all employees.
- A reported 500 non-Indian community members reside on the reservation (U.S. Census).

## Pascua Yaqui History



**1533- First contact with Non-Indians (Spanish):** “Up to this line and as far as the eye can see in these three directions, is Yaqui land. No invaders will be allowed to enter.” –1610 Peace Treaty with Spain



## PYT VAWA JUSTICE SYSTEM

- **Police, Victim Services, and Court System**  
(Prosecutor, Court, Probation) funded partially by 638 contract and federal grants.
- **Detention Services:** Provided by B.I.A. through federal contract with a private prison facility run by Emerald Correctional Management, in Yuma, Arizona.
- Public Defender, Fire Department, Defense contracts, on-call Interpreters, Pro-Tem Judges, & Pre-trial Services operate mainly on tribal funds.
- Major Crime investigations conducted by Tribal Police Investigators and local F.B.I.

## PYT VAWA JUSTICE SYSTEM cont.

- **Other Programs:** SLEC & State certified officers, SAUSA prosecutors, MDT for Major, Child, & Sex crimes, support from Univ. of Arizona Rogers School of Law.
- **Technology:** NCIC access, regional radio system, and digital video court recording equipment.
- **Health:** 638 contract provides medical, treatment, & behavioral health services (local hospitals used)



## PYT VAWA OVERVIEW

- Since February 26, 2014 (the date of the first arrest of a non-Indian), the Tribe has had **19 reported cases** involving non-Indian defendants. The 19 cases with non-Indian defendants involve **15 defendants** (4 re-offended).



## Of those 18 SDVCJ cases:

- **4 active cases**
- **3 jury trials** (one occurred Nov. 12, 2014; same-sex couple) and two are set for April 28, 2015 & June 2, 2015)
- **1 stayed** pending a mental health evaluation; 1 person is out on an outstanding tribal warrant
- 4 convictions by **plea agreement**
- 4 referred for **federal prosecution**
- 10 were **dismissed/declined** for jurisdictional, investigative, or witness related problems

## PYT VAWA DEFENDANTS

- **Total defendants:** 15 (19 cases)
- **Age:** 19-50      Median age: 31
- **Race/ethnicity:**
  - 9 Hispanic offenders (1 female); 2 Mexican Legal Permanent Residents; 3 African-American males, 2 Caucasian males, 1 Asian male
- **Sex:** 14 male, 1 female (1 same-sex case)
- **Law enforcement contacts:** 85 with Pascua Yaqui Police pre- and post-VAWA
- **Violent injuries:** 10 (Hair dragging, strangulation, bruising, closed fist strikes to face)
- **Reoffenders:** 4 defendants post-VAWA (due to *Castleman* issues primarily)

## PYT VAWA DEFENDANTS cont.

- Only **3** offenders did **not** have criminal records in the State of Arizona
- **7** of the offenders had been arrested for **violent crimes, weapons, or threats** (assault, threats, weapon misconduct, assaults, trespassing, and domestic violence) in AZ
- **2** offenders are **felons**, both having been convicted for burglary in AZ
- **2** offenders had **active felony warrants**, one out of Oklahoma for armed robbery
- **10** of the offenders have been arrested in AZ for **drug use/possession/DUI or alcohol**

## PYT VAWA cases



- 13 female victims, 2 male victims
- Median age: 30 Ages 19-43 (all adults)
- 8 victims of dating relationships
- 3 female victims= married partners
- 2 female mothers of defendant's children
- 3 cases involved Orders of Protection pre- and post-arrest
- 18 children present during incidents -Ages: Infant – 11 years old Median Age: 4 years old
- 3 cases resulted in open dependency

## Additional Data

- At least 8 offenders were living on the Reservation in Tribal Housing; others were staying intermittently or for a short period of time
- 8 of the incidents involved alcoholic intoxicants
- One incident involved a same-sex relationship
- Most of the offenders and victims appear to be unemployed
- One Defendant, while being arrested stated, "You can't do anything to me anyway."

## VAWA Implementation-Planning Phase

- **Ground level implementation considerations (not specific legal requirements)**
- Assess System & Problem
- Design program, establish timeline, & create communication plan
- Build internal & external political support
- Identify lead agency or project leaders
- Identify logistical challenges
- Cost benefit analysis & funding
- Develop system
- Build capacity & train system actors
- Launch
- Evaluate/Monitor (revise, modify, and improve as needed)



## Pre-Implementation Planning

- Local Publicity/notice
- Court System assessment
- Environmental Assessment
- Data collection
- Meetings
- Police & Court
- Tribal Specific Notification
- Code changes

## Considerations for implementation

- What is the culture of your Tribal Justice System?
- Does the community trust that justice exists in your community?
- How is your system organized?
- How is it working?
- What resources do you need to accomplish your goal?
- What resources can you provide?
- What intrinsic, personnel, and systemic assets do you possess?

## Challenges

- Notice
- Litigious nature of cases
- Interpreter issues and Pro-Tem judges
- Police training to establish DV relationship
- Access to national criminal databases
- Jury Selection
- *U.S. v. Castleman* issues

## Challenges cont.

- Limited jurisdiction
- Yaqui Constitutional limitations on Sentencing
- Costs
- Data collection
- Evaluation & assessment based on reported cases
- Are we doing enough?

## 1<sup>st</sup> VAWA JURY Trial: *PYT v. Garris*

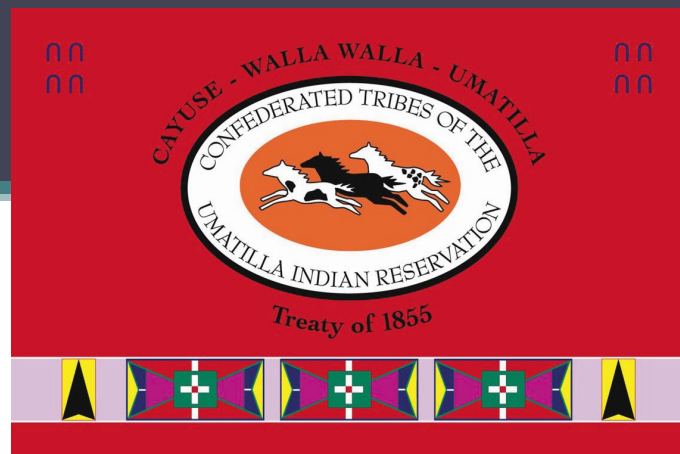


## Questions?



- **Attorney General Alfred Urbina**
- Office: 520-883-5119
- Email: [alfred.urbina@pascuayaqui-nsn.gov](mailto:alfred.urbina@pascuayaqui-nsn.gov)
  
- **Chief Prosecutor OJ Flores**
- Office: 520-879-6265
- Email: [Oscar.j.flores@pascuayaqui-nsn.gov](mailto:Oscar.j.flores@pascuayaqui-nsn.gov)

## CTUIR Implementation of TLOA and VAWA 2013



## Background

- Oregon retroceded PL 280 jurisdiction in 1980.
- It started with a card table in the gym...
- 2007 white paper on improving public safety issues in Indian country
  - Expanded tribal court criminal jurisdiction for non-Indian domestic violence offenders
- Tribal Law and Order Act

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## Background

- TLOA Implementation: March 2011
  - Several felony prosecutions
  - 3 defendants in federal prison on tribal charges under BOP TLOA Pilot Program
- Developing VAWA provisions
- Building off TLOA
  - All of the TLOA rights must be provided to non-Indians.
  - VAWA adds: jury drawn from fair-cross section
  - Notice to defendant of habeas corpus rights



## Before VAWA implementation

- At Umatilla, in over 80% of non-Indian DV cases where the victim sought help from the Family Violence Program, the victim **did not report** the crime.
- Likely reason: those cases rarely got prosecuted.
  - Most was 2 cases in 2010.

## Umatilla “Implemented” VAWA in July 2013

- Amended Criminal Code in July 2013 to be compliant with VAWA 2013’s non-Indian requirements. Formal approval for early exercise in Feb. 2014.
- All rights are guaranteed to everyone, regardless of misdemeanor, felony, or race of defendant.
- Also required prosecution to plead and prove jurisdictional elements of VAWA 2013.
- Made jury verdict unanimous.

## Additional Actions Associated With VAWA

- CTUIR has an explicit constitutional separation of powers between BOT and Court (2011 amendment):
  - “The judicial power of the Confederated Tribes is vested in the Tribal Court, which shall have general authority to adjudicate disputes and enunciate principles of law.”
- **Adopted a comprehensive Court Code** outlining judge qualifications, rules of conduct, and public rule making process.
- Also created a **tribal habeas corpus** process, and expansive **rules of evidence** similar to federal rules of evidence.

## CTUIR VAWA 2013: 1 Year Later

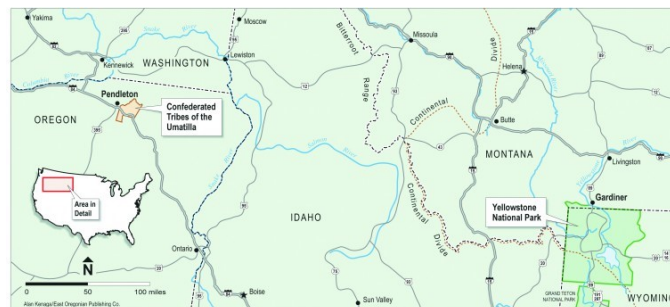
- **Total cases: 4**
  - Double the amount *ever* prosecuted by the federal gov't
  - 3 guilty pleas
  - 1 case pending
- **CTUIR Batterer Intervention treatment**
- Victims appear more willing to report with tribal jurisdiction
- Defendants have not challenged tribal jurisdiction (even when encouraged to do so)

## VAWA 2013: Moving Forward

- No longer need federal approval to implement
- Work closely with the US Attorney's Office
- Resources remain an issue
- Join the Intertribal Working Group
- Be very cautious of cases filed
  - Within definition of "violence committed"
  - No bad facts for the Supremes

## Questions?

- **Brent Leonhard, Tribal Attorney**
- Office: 541-429-7400
- Email: [LegalCounsel@ctuir.org](mailto:LegalCounsel@ctuir.org)



## Intertribal Technical-Assistance Working Group (ITWG)

- The DOJ launched the ITWG as a key part of the Pilot Project.
  - Currently, 41 tribes are represented
- The ITWG is a voluntary working group of tribal representatives who **exchange views, information, and advice** about how tribes may best exercise special domestic violence criminal jurisdiction (SDVCJ) and combat domestic violence.

[www.ncai.org/tribal-vawa](http://www.ncai.org/tribal-vawa)

The screenshot shows a web browser window displaying the NCIA website. The address bar shows 'www.ncai.org/tribal-vawa'. The page has a dark blue header with 'NCIA Home', 'Support Our Work', 'Contact Us', and 'NCIA'. Below the header is a navigation menu with 'GETTING STARTED', 'PILOT PROJECT & ITWG', 'RESOURCES', and 'UPDATES & EVENTS'. The main content area features the NCIA logo and the title 'Tribal Implementation of VAWA' with the subtitle 'Resource Center for Implementing Tribal Provisions of the Violence Against Women Act (VAWA)'. A large banner image shows two women, one in traditional Native American attire, with the text 'Now our most important work begins.' and 'What you need to know to implement VAWA.'.

## Questions?

Interested in joining the ITWG or looking for VAWA implementation resources?

Email [tribal-vawa@NCAI.org](mailto:tribal-vawa@NCAI.org)

