

VAWA 2013's Special Domestic Violence Criminal Jurisdiction OVC Indian Nations Pre-Conference Institute December 4, 2018



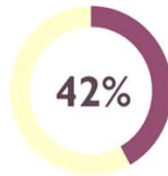
HON. STEVE AYCOCK (RET.), CONSULTANT, NATIONAL CONGRESS OF AMERICAN INDIANS
 ESTHER LABRADO, PROJECT ATTORNEY, NATIONAL CONGRESS OF AMERICAN INDIANS
 HON. KELLY GAINES STONER, VICTIM ADVOCACY LEGAL SPECIALIST, TRIBAL LAW AND POLICY INSTITUTE

This project was supported by Grant No. 2016-TA-AX-K005, awarded by the U.S. Department of Justice, Office on Violence Against Women. The opinions, findings, conclusions, and recommendations expressed in this program are those of the presenters and do not necessarily reflect the views of the Department of Justice.

The Problem



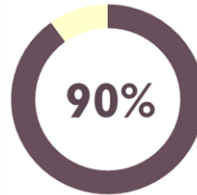
Percent of American Indian & Alaska Native Women who experience Physical Violence from an Intimate Partner in their lifetime



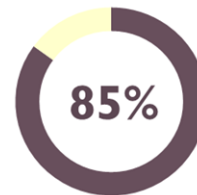
Percent of American Indian & Alaska Native Women who experience Severe Physical Violence from an Intimate Partner in their lifetime



Percent of American Indian & Alaska Native Men who experience Physical Violence from an Intimate Partner in their lifetime



Percent of American Indian & Alaska Native Female Victims of Intimate Partner Physical Violence Report an Inter-Racial Perpetrator



Percent of American Indian & Alaska Native Male Victims of Intimate Partner Physical Violence Report an Inter-Racial Perpetrator

SOURCE: DEPARTMENT OF JUSTICE, NAT'L INST. OF JUSTICE, VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN: 2010 FINDINGS FROM THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY 26 (May 2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

The Problem

- Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978)
 - No Tribal Jurisdiction Over Non-Indian Crimes
- Infrequent prosecutions by federal and state prosecutors

Nature of the Jurisdiction 25 USC 1304(b)

(l) In general

Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 1301 and 1303 of this title, the powers of self-government of a participating tribe include the **INHERENT POWER** of that tribe, which is hereby **recognized and affirmed**, to exercise special domestic violence criminal jurisdiction over all persons.

Nature, Cont'd.

(2) Concurrent jurisdiction

The exercise of special domestic violence criminal jurisdiction by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both.

(3) Applicability Nothing in this section—

(A) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or

(B) affects the authority of the United States or any State government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian country.

Special domestic violence criminal jurisdiction 1304(a)(6)

The term “special domestic violence criminal jurisdiction” means the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise.

What crimes does it cover? – I 304(c)

A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

(1) Domestic violence and dating violence

An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.

(2) Violations of Protection Orders

Domestic Violence – I 304(a)(2)

Means 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.

Dating Violence – 1304(a)(1)

Means 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.

Indian Country – 1304(a)(3)

The term “Indian country” has the meaning given the term in section 1151 of title 18.

18 USC 1151 – Indian country means:“(a) all land within the limits of any Indian reservation, (b) all dependent Indian communities, and (c) all Indian allotments, . . .”

Violations of Protection Order - 1302(c)(2)

An act that—

- (A) occurs in the Indian country of the participating tribe; and
- (B) violates the portion of a protection order that—
 - (i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
 - (ii) was issued against the defendant;
 - (iii) is enforceable by the participating tribe; and
 - (iv) is consistent with section 2265(b) of title 18.

Not So Fast – Exceptions 1304(b)(4)(A)(i) and (ii)

- A participating tribe may not exercise special domestic violence criminal jurisdiction over an alleged offense if neither the defendant nor the alleged victim is an Indian.
(b)(4)(A)(i)
- In a prosecution for a violation of a protection order – “the term ‘victim’ means a person specifically protected by a protection order that the defendant allegedly violated.”

Ties to the Tribe – I 304(b)(4)(B)

A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant—

- (i) resides in the Indian country of the participating tribe;
- (ii) is employed in the Indian country of the participating tribe; or
- (iii) is a spouse, intimate partner, or dating partner of—
 - (I) a member of the participating tribe; or
 - (II) an Indian who resides in the Indian country of the participating tribe.

Rights of Defendant – I 304(d)

- (1) all applicable rights under this Act;
- (2) if a term of imprisonment of any length may be imposed, all rights described in section I 302(c) of this title;
- (3) the right to a trial by an impartial jury that is drawn from sources that—
 - (A) reflect a fair cross section of the community; and
 - (B) do not systematically exclude any distinctive group in the community, including non- Indians; and
- (4) 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.

All Applicable Rights Under This Act

Indian Civil Rights Act 25 USC 1302(a)

No unreasonable search and seizures

No warrants, but upon probable cause

No double jeopardy

Cannot compel a person to be a witness against themselves

Speedy and public trial

Informed of the nature and cause of the accusation

Criminal Rights, Cont'd - 1301

Confronted with the witnesses against him,

Compulsory process for obtaining witnesses,

At his own expense to have the assistance of counsel for his defense;

No excessive bail, excessive fines, inflict cruel and unusual punishments;

Maximum Punishments:

For conviction of any 1 offense a term of 1 year or a fine of \$5,000, or both;

For conviction of any 1 offense a term of 3 years or a fine of \$15,000, or both;

In a criminal proceeding a total penalty of imprisonment for a term of 9 years;

Criminal Rights, Cont'd

Equal protection of the Tribal laws;

Due process of law;

No bill of attainder or ex post facto law; or

In any offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

All Rights Described In Section 1302(c)

- Right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and
- At the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United;
- Require that the judge presiding over the criminal proceeding—
 - (A) has sufficient legal training to preside over criminal proceedings; and
 - (B) is licensed to practice law by any jurisdiction in the United States;
- Prior to charging the defendant, make publicly available the criminal laws, rules of evidence, and rules of criminal procedure of the tribal government; and
- Maintain a record of the criminal proceeding

Petitions To Stay Detention – 1304(e)

A person who has filed a petition for a writ of habeas corpus in a court of the United States under section 1303 of this title may petition that court to stay further detention of that person by the participating tribe. 1304(e)(1)

25 USC 1303 – “The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.”

Stay of Detention, Cont’d – 1304(e)(2) and (3)

A court shall grant a stay described in paragraph (1) if the court—

- (A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
- (B) after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

An Indian tribe that has ordered the detention of any person has a duty to timely notify such person of his rights and privileges under this subsection and under section 1303 of this title.

Grants – I 304(f)

The Attorney General may award grants—
 to strengthen tribal criminal justice systems to assist Indian tribes in exercising special domestic violence criminal jurisdiction
 to provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to the defendant
 to ensure that, . . . , jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and
 to accord victims of domestic violence, dating violence, and violations of protection orders rights that are similar to the rights of a crime victim described in section 3771(a) of title 18, consistent with tribal law and custom.

What is not covered

- Stranger crimes
- Unwanted touching
- Child custody, visitation, support
- Violence against non-intimate or dating partners
 - Children
 - Grandparents
 - Other household members

Police, correctional officers

Drug crimes/resisting arrest/other crimes at arrest

Summary

- Inherent jurisdiction
- DV, Dating Violence, and Violations of Protection Orders
- Victims must be Indian
- Defendant must have ties to the Reservation
- Heightened process – Defense counsel, Jury, Judges, Public laws
- Stay of Detention

Why Are Protection Orders Important?



Benefits of Protection Orders

- Sets forth clear commands from the court
- Issued with victim safety in mind
- Sets parameters of acceptable behavior for the batterer as determined by the court
- Takes some power and control away from the batterer
- Used to hold batterers accountable

Why are Carefully Crafted Domestic Violence Protection Orders so Critical to Victim Safety?

- Promotes enforcement in all jurisdictions as victims cross jurisdictional lines so that victims do not need to refile every time they travel into a new jurisdiction
- Promotes consistency in enforcement of protection order provisions across jurisdictional lines
- Promotes victim safety by creating a framework to determine protection order violations

Issuing Protection Orders That Require Full Faith and Credit in all Jurisdictions

(a) FULL FAITH AND CREDIT.— Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory).... 18 USC 2265.

What Is Required for a Protection Order to be enforceable in all Jurisdictions?



Full Faith and Credit Requirements

- Subject matter jurisdiction
- Personal jurisdiction
- Notice and opportunity to be heard
- Ex parte order – will be given notice and opportunity within reasonable time
- Order has not expired

29

What Happens if a Protection Order Does Not Meet The VAWA Full Faith and Credit Requirements?

- Enforcing court may refuse to enforce the protection order in its entirety
- Enforcing court may enforce only certain provisions of the protection order that are consistent with enforcing court's laws

30

Which Jurisdiction's Laws Apply?

The **ISSUING** Jurisdiction Determines:

- ✓ whom the order protects
- ✓ terms and conditions of the order
- ✓ duration

ENFORCING PROTECTION ORDERS IN TRIBAL COURT



VAWA and Enforcing Protection Orders in Tribal Court

- **(a) FULL FAITH AND CREDIT.**— Any protection order issued that is consistent with subsection (b) of this section ...shall be accorded full faith and credit by the court of another State, Indian tribe, or territory ... and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe. 18 USC 2265.

Which Jurisdiction's Laws Apply?

The **ENFORCING** Jurisdiction Determines:

- ✓ how order is enforced (e.g. whether it is contempt of court or crime)
- ✓ the arrest authority of responding law enforcement
- ✓ penalties & sanctions for violations
- ✓ detention & notification procedures

VAWA 2013: 18 USC 1304(C)

- If the requirements to exercise SDVCJ are met, a tribe may exercise SDVCJ over a defendant for:
 - An act that occurs in the Indian country of the tribe
 - Violates a portion of the protection order that meets the VAWA full faith and credit requirements that:
 - Prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to another person protected by the terms of the order.

23 SDVCJ IMPLEMENTING TRIBES

Pascua Yaqui Tribe (AZ)

Exercising jurisdiction since February 20, 2014.*
40 Arrests. 20 Convictions.

Tulalip Tribes of Washington

Exercising jurisdiction since February 20, 2014.*
25 Arrests. 16 Convictions.

Confederated Tribes of the Umatilla Indian Reservation (OR)

Exercising jurisdiction since February 20, 2014.*
13 Arrests. 8 Convictions.

Sisseton-Wahpeton Oyate (SD/ND)

Exercising jurisdiction since March 6, 2015.*
8 Arrests. 7 Convictions.

Assiniboine & Sioux Tribes of the Fort Peck Reservation (MT)

Exercising jurisdiction since March 6, 2015.*
18 Arrests. 6 Convictions.

Little Traverse Bay Bands of Odawa Indians (MI)

Exercising jurisdiction since March 7, 2015.
No Arrests.

Alabama-Coushatta Tribe of Texas

Exercising jurisdiction since March 7, 2015.
2 Arrests. 1 Conviction.

Choctaw Nation of Oklahoma

Exercising jurisdiction since May 9, 2015.
3 Arrests. 3 Convictions.

Eastern Band of Cherokee Indians (NC)

Exercising jurisdiction since June 8, 2015.
25 Arrests. 12 Convictions.

Seminole Nation of Oklahoma

Exercising jurisdiction since July 6, 2015.
No arrests.

Sac and Fox Nation (OK)

Exercising jurisdiction since March 1, 2016.
No arrests.

Kickapoo Tribe of Oklahoma

Exercising jurisdiction since March 15, 2016.
No arrests.

Nottawaseppi Huron Band of Potawatomi (MI)

Exercising jurisdiction since March 18, 2016.
No arrests.

Muscogee (Creek) Nation (OK)

Exercising jurisdiction since March 28, 2016.
No arrests.

Standing Rock Sioux Tribe (SD/ND)

Exercising jurisdiction since May 1, 2016.
1 Arrest. 1 Conviction.

Sault Ste. Marie Tribe of Chippewa (MI)

Exercising jurisdiction since December 13, 2016.
8 Arrests. 2 Convictions.

Chitimacha Tribe of Louisiana

Exercising jurisdiction since February 1, 2017.
No arrests.

Lower Elwha Klallam Tribe (WA)

Exercising jurisdiction since June 5, 2017.
No arrests.

Quinault Indian Nation (WA)

Exercising jurisdiction since May 1, 2018.
No arrests.

Cherokee Nation (OK)

Exercising jurisdiction since May 17, 2018.
No Arrests

Gila River Indian Community (AZ)

Exercising jurisdiction since Sept. 2018.
1 arrest

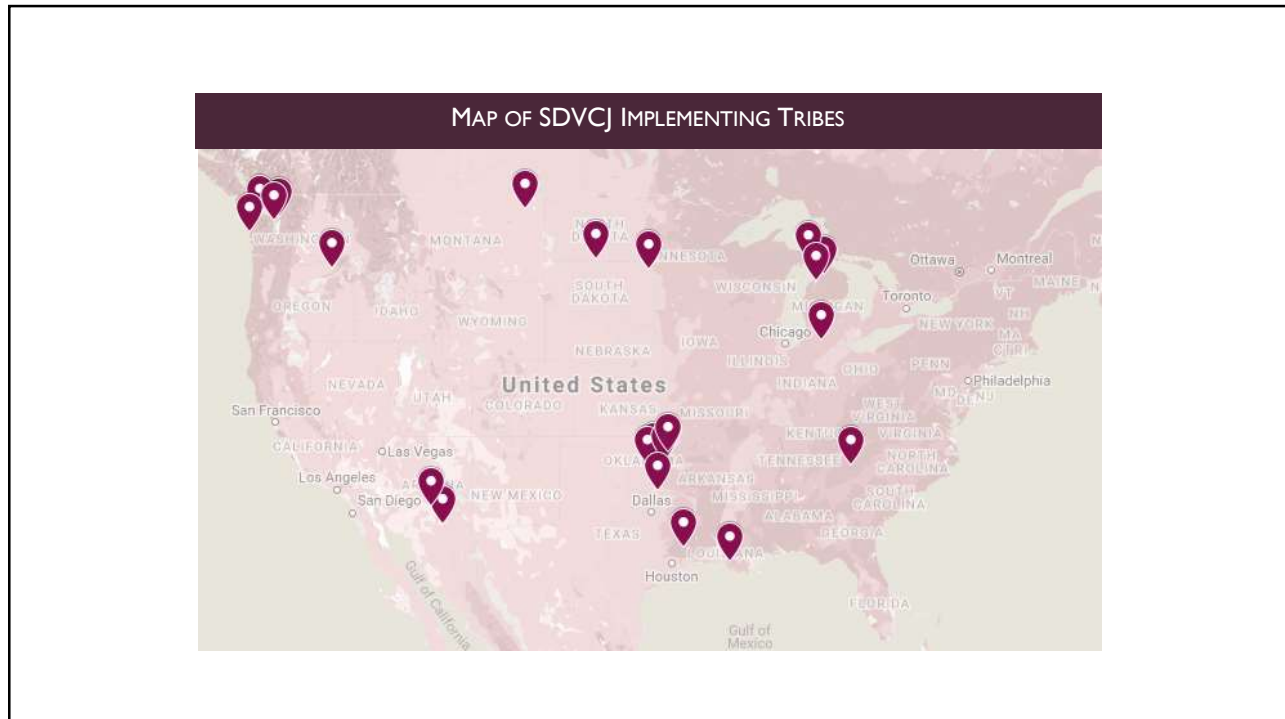
Port Gamble S'Klallam Tribe (WA)

Exercising jurisdiction since September 17, 2018.
No Arrests.

Grand Traverse Band of Ottawa & Chippewa Indians (MI)

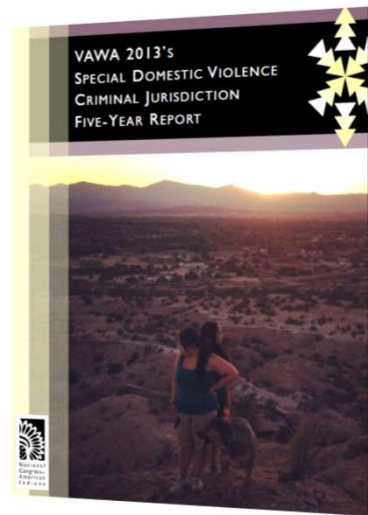
Exercising jurisdiction since October 31, 2018.
No arrests.

* Denotes Pilot Project Tribe



Intertribal Technical Assistance Work Group (ITWG)

- The DOJ launched the Intertribal Working Group (ITWG) on VAWA special domestic violence criminal jurisdiction (SDVCJ) as a key part of the Pilot Project.
- It is a voluntary working group of tribal representatives who **exchange views, information, and advice** about how tribes may best exercise SDVCJ and combat domestic violence.
 - Currently over 50 tribes are represented.
- Interested in joining the ITWG or looking for VAWA SDVCJ implementation resources?
- www.ncai.org/tribal-vaawa
- Email: tribal-vaawa@NCAI.org



Read the full report @ http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf

PROSECUTIONS AND OUTCOMES

(AS OF MARCH 2018)

18 TRIBES

EXERCISING CRIMINAL JURISDICTION OVER NON-INDIANS

143 ARRESTS	74 CONVICTIONS	24 CASES PENDING	5 ACQUITTALS
14 FEDERAL REFERRALS	73 GUILTY PLEAS	21 DISMISSALS	19 DECLINATIONS
6 TRIALS	5 JURY TRIALS	1 BENCH TRIAL	1 JURY TRIAL CONVICTION

DEMOGRAPHICS (AS OF MARCH 2018)			
128 DEFENDANTS		128 VICTIMS	
90% MALE DEFENDANTS	10% FEMALE DEFENDANTS	90% FEMALE VICTIMS	10% MALE VICTIMS
115 MALE DEFENDANTS	13 FEMALE DEFENDANTS	115 FEMALE VICTIMS	13 MALE VICTIMS
8 NON-U.S. CITIZEN DEFENDANTS		19 VICTIMS REQUIRED MEDICAL CARE	

MAJOR TAKEAWAYS (AS OF MARCH 2018)			
0 PETITIONS FOR A FEDERAL WRIT OF HABEAS CORPUS	51% INCIDENTS INVOLVED DRUGS OR ALCOHOL¹	58% INCIDENTS INVOLVED CHILDREN²	AT LEAST 73 DEFENDANTS HAD CRIMINAL RECORDS³
125 DOMESTIC OR DATING VIOLENCE CASES	34 PROTECTION ORDER VIOLATIONS	AT LEAST 33 DEFENDANTS SENTENCED TO INCARCERATION⁴	3 YEARS LONGEST INCARCERATION SENTENCE
85 DEFENDANTS ACCOUNT FOR 378 PRIOR CONTACTS WITH TRIBAL POLICE BEFORE THEIR TRIBE IMPLEMENTED SDVCJ⁵			
51% DEFENDANTS SENT TO BATTERER INTERVENTION, OR OTHER REHABILITATION PROGRAM			

¹Pascua Yaqui, Fort Peck Tribes, and Tulalip provided approximate values.
²Fort Peck Tribes provided an approximate value.
³Fort Peck Tribes provided an approximate value, and Pascua Yaqui could only confirm 18 of their defendants had criminal records. Like many tribes, Pascua Yaqui did not always have access to state conviction records—including through the FBI's National Instant Criminal Background Check System (NIC) program—prior to their inclusion in the Tribal Access Program (TAP) program as discussed later in this report in Section II, Finding 4.3.
⁴Pascua Yaqui did not provide this information.
⁵This number does not include contacts from Fort Peck Tribes, Eastern Band of Cherokee Indians, and Choctaw Nation who reported arrests, but do not track that information.
⁶Tulalip provided an approximate.

Special Domestic Violence Criminal Jurisdiction Five Year Report



1. Tribes use SDVCJ to combat domestic violence by prosecuting offenders harming their communities

- 1-1. Non-Indian perpetrated domestic violence is a real problem
- 1-2. Many defendants had numerous prior contacts with tribal police, demonstrating SDVCJ can end impunity
- 1-3. Many SDVCJ defendants have criminal records or outstanding warrants
- 1-4. A diverse array of tribes have been able to successfully implement SDVCJ

85 Defendants Account for 378 Prior Tribal Police Contacts

73 Defendants Had Criminal Records

Implementing Tribes Geographically and Demographically Diverse, from 11 Different States



VAWA demonstrates that tribal courts can function as truly excellent community courts that can quickly respond and competently address violence in their multi-ethnic communities.

CASE FROM THE ALABAMA-COUSHATTA TRIBE

Tribe ensures that a mother gets the help she needs so she can ultimately get her kids back

The defendant, a non-Indian woman, is married to a tribal member and is the mother of five tribally enrolled children. One evening the defendant used methamphetamine and started hitting her husband. Later she tried to hit him again and he also became violent. Both parents were arrested on separate counts of assault and possession.

The tribe charged her with family violence and she was appointed counsel. If the defendant was prosecuted in state court, she likely would have faced an additional drug possession charge, and been given a longer sentence given her criminal record. However, the tribe was determined to keep the case in tribal court so they could focus on holding her accountable while also getting her the help she needed so she would not reoffend.

The tribe was able to use additional resources and work closely with her and her family to get her appropriate mental health services and drug rehabilitation services. She ultimately took a plea deal that required her to attend rehab, and then placed her on probation where she was required to follow her doctor's instructions, and to attend mental health, anger management, and batterer intervention counseling. All of her substance abuse and mental health supports work in conjunction with the work services she completes through child protective services with the goal of getting her children back. The defendant is drug tested every month, and has not failed a single one of her drug tests.

2. Tribal courts uphold the rights of defendants and are committed to their rehabilitation

2-1. SDVCJ case outcomes demonstrate fairness

2-2. Tribes are invested in helping defendants get the help they need

0 Federal Petitions for
a Writ of Habeas
Corpus

5 Jury Trials,
4 Acquittals and 1 Conviction

The most recent VAWA jury
trial had an entirely non-
Indian jury.

51% Defendants Sent to Rehab, BI, or other Support Program

The tribes implementing expanded criminal jurisdiction have made something very clear about the new non-Indian defendants in their courtrooms: they will receive fair treatment.

Many tribes go above and beyond the minimum requirements of VAWA, and work closely with their offenders to ensure that they receive help in addition to punishment.

Many tribal prosecutors describe these non-Indian offenders as members of their communities—often times the spouse or parent of tribal members.

CASE FROM THE TULALIP TRIBES

Defendant with 19 prior contacts with tribal police

An Indian woman was assaulted and raped by the non-Indian father of her children. The couple's 8-year old son disclosed in his statement to police that he was "punched in the face" by his father.

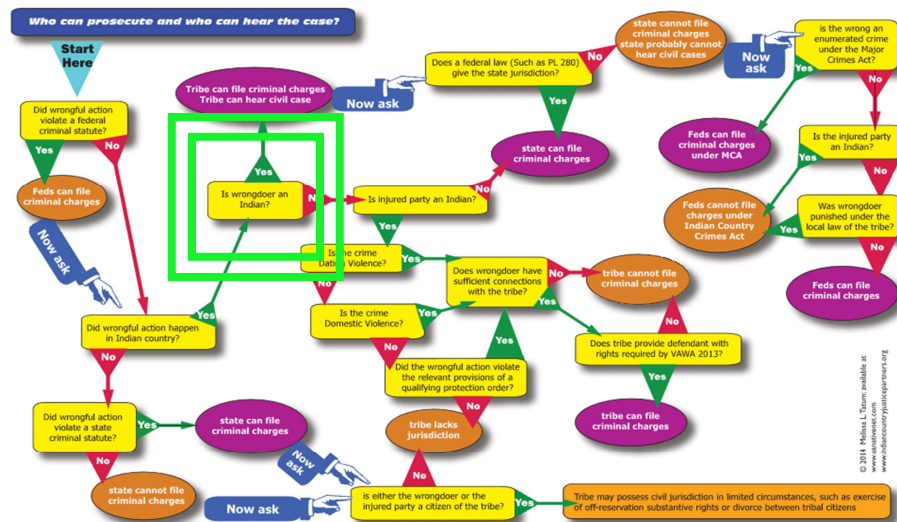
This incident, the latest in a long history of abuse, resulted in charges of Assault in the First Degree Domestic Violence and Rape Domestic Violence, but the defendant was not immediately apprehended. Based on the conduct alleged, the victim petitioned for a protection order, which was granted. Prior to defendant's arraignment on the violent crimes, he was served with, and twice violated, the Protection Order. At the scene of these violations, the defendant was taken into custody.

The defendant had nineteen contacts with Tulalip Police prior to these incidents. However, after the implementation of SDVCJ, the defendant was finally held accountable for his crimes. The defendant served a significant jail sentence and is now supervised by Tulalip Probation. He is getting the treatment he needs. The victim and her children were finally able to make a life for themselves away from the violence and abuse.

3. Implementation has revealed serious limitations in the law

- 3-1. Many crimes against children go unpunished
- 3-2. Many alcohol and drug crimes go unpunished
- 3-3. Crimes that occur within the criminal justice system go unpunished, endangering law enforcement and undermining the integrity of the system
- 3-4. There was initial confusion concerning the scope of the federal statutory definition of "domestic violence"
- 3-5. SDVCJ is prohibitively expensive for some tribes
- 3-6. Detention issues and costs create implementation challenges in some areas
- 3-7. SDVCJ is jurisdictionally complex

Jurisdiction in Indian Country is complex...



It remains frustrating for tribes that stranger rape, violence against children, sexual harassment, and many other crimes remain outside the scope of VAWA.

Tribal prosecutors often describe the narrowness of their charging authority as “prosecuting a case with one hand tied behind their backs.”

Implementing expanded jurisdiction is prohibitively expensive for many tribes, and so additional funding and other supports are needed to ensure that more tribes are able to provide justice to all victims, no matter the race of their abuser.

CASE FROM SAULT STE. MARIE TRIBE

Child sexual predator evades tribal prosecution and is subsequently arrested by the county for raping a young girl

The defendant had criminal convictions before he moved to the Sault Ste. Marie Reservation. The defendant entered into an intimate relationship with a tribal member. Sometime thereafter, the defendant began making unwanted sexual advances on his girlfriend's 16-year-old daughter. The defendant sent inappropriate texts to the daughter, would stand outside the windows of their home, and on one occasion groped the daughter and then told her she could not tell anyone about it.


The tribe charged the defendant with domestic abuse, attempting to characterize his actions toward the daughter as tied to the relationship with the mother and thus within SDVCJ, but the tribal judge dismissed the case as beyond the court's jurisdiction.

Two months after the failed prosecution, the girlfriend filed for a temporary ex parte Protection Order for her and her daughter—a violation of which would protect both under SDVCJ. However, the girlfriend could not meet the burden of proof that she was under a threat of irreparable harm in the time before the court could schedule a hearing. When it came time for a hearing on her petition, the girlfriend failed to appear and so her petition was dismissed. When the court served the defendant with notice of the hearing, he was found to be living in a van parked just next to a tribal neighborhood with a large number of low income families.

Four months later, the defendant was arrested and charged by city police with three counts of criminal sexual conduct, one count of attempted criminal sexual conduct, one count of child sexually abusive activity, one count of using a computer to commit a crime, and one count of using a computer network to commit a crime. The alleged incident involves a barely 14-year-old girl who was a tribal member and resided on the Sault Ste. Marie Reservation. Defendant allegedly contacted her online and then kidnapped and held her in an off-reservation motel, repeatedly raping her over the course of 12 hours. Defendant pled not guilty and the case is currently pending in state court.

4. SDVCJ implementation promotes positive changes

- 4-1. SDVCJ promotes positive tribal reforms
- 4-2. Inter-tribal collaboration creates successes beyond SDVCJ
- 4-3. SDVCJ promotes better relationships with other jurisdictions



Passing the tribal legislation necessary to implement SDVCJ generates community reflection and commitment to addressing domestic violence for the implementing tribes.

The ITWG has proven to be a productive and useful mechanism for tribes to share information and best practices among themselves, to discuss challenges, and to jointly strategize about how to overcome obstacles.

Implementation of SDVCJ has been the catalyst for important discussions and improved relationships at the tribal, inter-tribal, and federal levels.

CASE FROM THE TULALIP TRIBES

Serious offense prosecuted in federal court with the assistance of tribal prosecutor

A non-Indian boyfriend, engaged in a three day methamphetamine bender, refused to let his Indian girlfriend and her children leave the home or use the phone. Over the course of several days, the man repeatedly assaulted and threatened his girlfriend, including strangling her with a pipe, throwing knives at her, and threatening to burn down the house with her children inside.

Because of the severity of the violence, and because SDVCJ does not provide accountability for the crimes committed against the children, the case was referred to the U.S. Attorney for prosecution. The Tulalip Tribal Prosecutor, who is also designated as a Special Assistant U.S. Attorney, was able to assist with the prosecution.

The judge in the case noted that the victim suffered “an extended period of hell on earth” and sentenced the defendant to nearly 6 years in prison.

DOJ OVW SDVCJ Grants: Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction

FY 2016 Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction	Award Amount
Yurok Tribe of the Yurok Reservation, California	\$184,371
Grand Traverse Band of Ottawa and Chippewa Indians	\$448,511
Little Traverse Bay Bands of Odawa Indians	\$450,000
Santa Clara Pueblo	\$239,074
Confederated Tribes of the Chehalis Reservation	\$293,820
Port Gamble S'Klallam Tribe	\$184,371
Tulalip Tribes of Washington	\$419,792
Total Award Amount	\$2,219,939
Total Number of Awards	7

FY 2017 Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction	Award Amount
Gila River Indian Community	\$495,000
Los Coyotes Band of Cahuilla and Cupeno Indians	\$495,000
Sac and Fox Tribe of the Mississippi in Iowa	\$495,000
Eastern Band of Cherokee Indians	\$495,000
Standing Rock Sioux Tribe	\$495,000
Comanche Nation	\$495,000
Swinomish Indian Tribal Community	\$495,000
Total Award Amount	\$3,465,000
Total Number of Awards	7

Pending Legislation

- **House Bill 6545 - Violence Against Women Reauthorization Act of 2018**, Rep. Jackson Lee (D-TX-18)
 - Most comprehensive: SDVCJ to include crimes of sexual assault, sex trafficking and stalking; extend protections to children and law enforcement personnel
- **Senate Bill 3216 – Justice for Native Survivors of Sexual Violence Act**, Sens. Smith (D-MN), Udall (D-NM) and Murkowski (R-AK)
 - SDVCJ to include crimes of sexual assault, sex trafficking and stalking
- **Senate Bill 2233 – Native Youth and Tribal Officer Protection Act**, Sens. Udall (D-NM), Murkowski (R-AK) and Cortez Masto (D-NV)
 - Extend protections to children and law enforcement personnel
- **House Bill 6728 (companion to S.B. 2233) – Native Youth and Tribal Officer Protection Act**, Reps. O'Halleran (D-AZ-1) and Cole (R-OK-4)
 - Extend protections to children and law enforcement personnel

VAWA Special Domestic Violence Criminal Jurisdiction Resources

The collage features several key resources:

- NAI Home Website:** Shows the navigation menu (GETTING STARTED, PILOT PROJECT & ITWG, RESOURCES, UPDATES & EVENTS) and the main heading "Tribal Implementation of VAWA" with the subtitle "Resource Center for Implementing Tribal Provisions of the Violence Against Women Act (VAWA)".
- Publication 1:** "Tribal Legal Code Resource: Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction". It is a guide for drafting or revising tribal laws to implement the Tribal Law and Order Act (TLOA) and the Violence Against Women Act (VAWA).
- Publication 2:** "Special Domestic Violence Criminal Jurisdiction Pilot Project Report". The cover features a woman in traditional dress and the quote: "Now our most important work begins. What you need to know to implement VAWA." Below the quote, it says: "Resources to help you get started on implementing the Violence Against Women Act's tribal provisions."
- Publication 3:** "VAWA 2013'S SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION FIVE-YEAR REPORT". The cover shows a sunset over a desert landscape.
- Publication 4:** "Tribal Court Checklists" for California, Minnesota, and Wisconsin, dated February 2015. It includes contact information for the Tribal Court Checklists website.

TLPI Publications: www.TLPI.org or www.Home.TLPI.org

NAI Tribal VAWA Resources: <http://www.ncai.org/tribal-vaaw>

Tribal Domestic Violence Courts and Dockets | Prepared by TLPI |

59

Full Faith and Credit Resources

- www.tribalprotectionorder.org issues relating to issuing and enforcing tribal protection orders
- www.tlpi.org information related to VAWA 2013
- <http://www.ncai.org/tribal-vaaw/resources/code-development> information related VAWA 2013
- <http://www.bwjp.org/our-work/projects/protection-orders.html> National Center on Full Faith and Credit

60

Full Faith and Credit Resources

- <http://www.ncjfcj.org/resource-library/publications/civil-protection-orders-guide-improving-practice> Civil Protection Orders: A Guide to Improving Practice (CPO Guide)
- <http://www.bwjp.org/resource-center/resource-results/engaging-in-a-best-practice-assessment-of-the-civil-protection-order-system.html> Tool to assess your Protection Order System and CPO Guide
- <http://www.ncjfcj.org/resource-library/publications/passport-safety> Passport to Safety: Full Faith and Credit – A Judge’s Bench Guide
- <http://www.ncjfcj.org/resource-library/publications/domestic-violence> National Council of Juvenile and Family Court Judges domestic violence publications

61

CONTACTS

- **Hon. Steven D. Aycok, (Ret.)**
Consultant
National Congress of American Indians
Email: mjbsconsult@gmail.com
- **Hon. Kelly A. Stoner**
Victim Advocacy Legal Specialist
Tribal Law & Policy Institute
8235 Santa Monica Blvd., Suite 211
West Hollywood, CA 90046
Phone: (405) 226-2050 ~ Fax: (323) 650-8149
Email: Kelly@tlpi.org

62

Intertribal Technical Assistance Work Group (ITWG)

- Interested in joining the ITWG or looking for VAWA SDVCJ implementation resources?
- www.ncai.org/tribal-vawa
- Email: tribal-vawa@NCAI.org
 - vdavis@ncai.org
 - elabrado@ncai.org

