

Special Domestic Violence Criminal Jurisdiction Pilot Project Report



National
Congress of
American
Indians

Embassy of Tribal Nations
1516 P. Street NW, Washington, DC 20005
Phone: (202) 466-7767
www.ncai.org



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“The first responsibility of any government, tribal or otherwise, is the safety and protection of its people, for there can be no security or freedom for all, if there is insecurity and fear for any of us. Pascua Yaqui tribal officials no longer have to simply stand by and watch their women be victimized with no recourse.”

-- The Honorable Peter Yucupicio Chairman, Pascua Yaqui Tribe of Arizona

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[Indian Reservation application](#), [Pascua Yaqui Tribe application](#), [Tulalip Tribes application](#), [Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation application](#) and [Sisseton-Wahpeton Oyate of the Lake Traverse Reservation application](#). See: www.justice.gov/tribal/vawa-2013-pilot-project

[“Considerations in Implementing VAWA’s Special Domestic Violence Criminal Jurisdiction and TLOA’s Enhanced Sentencing Authority - A Look at the Experience of the Pascua Yaqui Tribe.”](#) compiled by Alfred Urbina, Attorney General, Pascua Yaqui Tribe and Melissa Tatum, Research Professor of Law, The University of Arizona James E. Rogers College of Law. See: indianlaw.org/safewomen/resources

[28 U.S.C. 543\(a\)](#) Special Assistant United States Attorneys (SAUSAs), appointed by the Attorney General, who assist in prosecuting Federal offenses committed in Indian country.

The five pilot project codes: <http://ctuir.org/criminal-code>

Two articles by M. Brent Leonhard, Attorney in the Office of Legal Counsel for the Confederated Tribes of the Umatilla Indian Reservation, on implementing VAWA 2013. The Federal Lawyer, October/November 2015 and [ABA Human Rights Magazine Volume 40 Number 4](#).

[Tulalip Tribal Court Rules](#) including rules regarding indigency standards and rights afforded under VAWA special domestic violence criminal jurisdiction. See: www.codepublishing.com/wa/Tulalip/

[ITWG Code Development Checklist](#) for implementing VAWA 2013. This checklist is designed as a tool to assist tribal governments seeking to develop tribal codes that comply with VAWA 2013’s statutory requirements. It includes citations to existing tribal codes implementing the new law. See: www.ncai.org/tribal-vawa

[Simple checklist for Law Enforcement Officers](#). Implementation of VAWA 2013 may require changes in law enforcement policies and procedures. Training for law enforcement officers will be an important part of implementation. See: www.ncai.org/tribal-vawa

The ITWG has also facilitated ongoing [webinar series](#) on key areas of SDVCJ implementation, including defendants’ rights issues; VAWA 2013’s fair cross-section requirement and jury pool selection; and victims’ rights. The full webinar series can be found on the NCAI website [Resource Center for Implementing Tribal Provisions of VAWA 2013](#). See www.ncai.org/tribal-vawa.

TLPI, one of the technical assistance providers supporting the work of the ITWG, has also developed an [in-depth guide for implementation of Tribal Law and Order Act and VAWA 2013](#), which includes a model code that the ITWG tribes developed. See: www.tlpi.org and www.Home.TLPI.org.

The final report of the [Attorney General’s Task Force on American Indian and Alaska Native Children Exposed to Violence - “Ending Violence So Children Can Thrive.”](#) US Senator Byron Dorgan et al. The task force is part of Attorney General’s Defending Childhood Initiative, a project that addresses the epidemic levels of exposure to violence faced by our nation’s children. The task force was created in response to a recommendation in the Attorney General’s National Task Force on Children Exposed to Violence December 2012 final report. The report noted that American Indian and Alaska Native children have an exceptional degree of unmet needs for services and support to prevent and respond to the extreme levels of violence they experience. See: www.iustice.gov/defendingchildhood

Appendix B

Helpful Resources

[Resource Center for Implementing Tribal Provisions of VAWA 2013](#) was developed and is maintained by the National Congress of American Indians (NCAI) to provide information, news, resources, notice of events, and funding opportunities on the implementation of tribal provisions of VAWA 2013. It also contains information on the [Intertribal Technical-Assistance Working Group \(ITWG\)](#), a group of tribal representatives that met to discuss issues and best practices relative to tribal VAWA 2013 implementation. See: www.ncai.org/tribal-ava

[Tribal VAWA Resource Page](#) is housed on the [Tribal Court Clearinghouse](#) website. This page contains the language of VAWA, videos from the VAWA signing ceremony, publications, reports, articles and other important resources on VAWA's SDVCJ, as well as relevant upcoming and past events focusing on SDVCJ. See: http://www.tribal-institute.org/lists/vawa_2013.htm

[Tribal Protection Order website](#) was developed and is maintained by TLPI. It is a clearinghouse of information and resources on tribal protection orders and tribal enforcement. See: www.TribalProtectionOrder.org

[Federal Register, vol. 78, no. 115, p. 35961, June 14, 2013](#) This notice proposes procedures for an Indian tribe to request designation as a participating tribe under section 204 of the Indian Civil Rights Act of 1968, as amended, on an accelerated basis, pursuant to the voluntary pilot project described in section 908(b)(2) of the Violence Against Women Reauthorization Act of 2013 ("the Pilot Project"), and also proposes procedures for the Attorney General to act on such a request. This notice also invites public comment on the proposed procedures and solicits preliminary expressions of interest from tribes that may wish to participate in the Pilot Project.

[Federal Register, vol. 78, no. 230, p. 71645, Nov. 29, 2013](#) This final notice establishes procedures for Indian tribes to request designation as participating tribes under section 204 of the Indian Civil Rights Act of 1968, as amended, on an accelerated basis, under the voluntary pilot project described in the Violence Against Women Reauthorization Act; establishes procedures for the Attorney General to act on such requests; and solicits such requests from Indian tribes.

The U.S. Supreme Court in [Oliphant v. Suquamish Indian Tribe](#), 435 U.S. 191 (1978), held that tribal sovereignty does not extend to the exercise of criminal jurisdiction over a non-Indian for crimes committed in Indian country.

[Public Law 113-4, 127 Stat. 54 \(2013\)](#) The Violence Against Women Reauthorization Act of 2013 (VAWA 2013), recognized and reaffirmed the inherent sovereign authority of Indian tribes to exercise criminal jurisdiction over certain non-Indians who violate protection orders or commit dating violence or domestic violence against Indian victims on tribal lands.

[25 U.S.C. 1304](#) Tribal jurisdiction over crimes of domestic violence.

[The Tribal Law and Order Act](#) (Public Law 111-211, Congress passed the legislation as part of another bill regarding Indian Arts and Crafts. See Title II.) enhanced tribal authority to prosecute and punish criminals. However, tribes are required to provide certain due process requirements. The requirements are listed in the amended [Indian Civil Rights Act](#) (25 U.S.C. §§ 1301-1304).

[Tribal Law and Order Act Resource Center](#) is a website specifically developed by NCAI to share information and resources relative to TLOA. It contains many of the resources described in this resource sections and many more, as well as news, events, webinars, and other helpful information. See: tloa.ncai.org

The five tribes' applications to participate in the pilot project permitting early use of jurisdiction over non-Indians may also be helpful, as the applications look for compliance with the VAWA 2013 requirements and provide the tribes examples of their compliance. The applications are publically available: [Confederated Tribes of the Umatilla](#)

Introduction

On March 7, 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) into law.¹ For the first time since the U.S. Supreme Court stripped tribal governments of their criminal authority over non-Indians in *Oliphant v. Suquamish Tribe* (1978),² VAWA 2013 recognized and reaffirmed the inherent sovereign authority of Indian tribes to exercise criminal jurisdiction over certain non-Indians who violate protection orders or commit dating violence or domestic violence against Indian victims on tribal lands.³ Known as Special Domestic Violence Criminal Jurisdiction (SDVCJ), this limited tribal criminal jurisdiction over non-Indians has fundamentally changed the landscape of tribal criminal jurisdiction in the modern era. Communities currently exercising SDVCJ have increased safety and justice for victims who had too often slipped through the cracks.

Although the law did not take general effect until March 7, 2015, VAWA 2013 created a "Pilot Project" that enabled Indian tribes who received prior approval from the United States Department of Justice (DOJ) to exercise SDVCJ on an accelerated basis.⁴ After consultation with tribal governments, DOJ established a process for interested tribes to submit applications demonstrating that the tribe was in compliance with the federal law and afforded adequate due process to non-Indian defendants.⁵ DOJ approved three tribes—the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) in Oregon, the Pascua Yaqui Tribe in Arizona, and the Tulalip Tribes of Washington—to implement SDVCJ in February 2014. Two additional tribes—the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation in Montana and the Sisseton- Wahpeton Oyate of the Lake Traverse Reservation in North and South Dakota—were approved to exercise SDVCJ on March 6, 2015, the last day of the pilot project period.

All five of the pilot project tribes participated along with 40 other tribes in an Inter-Tribal Technical-Assistance Working Group on SDVCJ Intertribal Working Group (ITWG), which is composed of tribes who expressed preliminary interest in exploring implementation of SDVCJ to DOJ and agreed to work peer-to-peer to answer questions about implementation of SDVCJ and develop best practices.

Tribes currently exercising SDVCJ have increased safety and justice for victims who have too often slipped through the cracks.

¹ Pub. L. No. 113-4, 127 Stat. 54 (2013).

² *Oliphant v. Suquamish*, 435 U.S. 191 (1978).

³ 25 U.S.C. 1304.

⁴ Pub L. No. 113-4, 127 Stat. 54 (2013), Sec. 908(b).

⁵ 78 Fed. Reg. 35,961 (June 14, 2013); 78 Fed. Reg. 71,645 (Nov. 29, 2013).

This report provides a brief report on activities during the Pilot Project period (February, 2014 through March 6, 2015) and shares recommendations for next steps.

Overview of Special Domestic Violence Criminal Jurisdiction

As of March 7, 2015, two years after Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was enacted, Indian tribes across the country can exercise criminal jurisdiction over non-Indians for certain acts of domestic violence or dating violence and protection order violations so long as the statutory requirements of VAWA 2013 are met.⁶ The full text of the statute is included as Appendix A to this report. In summary, for a tribe to exercise jurisdiction over a non-Indian offender:

- 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 “ties to the Indian tribe,” which means the defendant:
 - resides in the Indian country of the participating tribe;
 - is employed in the Indian country of the participating tribe; or
 - is a current or former spouse, intimate partner, or dating partner of a member of the participating tribe, or an Indian who resides in the Indian country of the participating tribe.⁷

VAWA 2013 requires that any tribe exercising SDVCJ must provide certain due process protections to defendants. Specifically, the tribe must provide all of the protections that have long been guaranteed by the Indian Civil Rights Act, many of which mirror the U.S. Bill of Rights.⁸ In addition, VAWA 2013 requires implementing tribes, in any SDVCJ case where a term of imprisonment may be imposed, to provide a number of additional rights. Many of these rights are the same as those that were required of tribes in order to exercise felony jurisdiction under the Tribal Law and Order Act of 2010:

- “provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution”;⁹
- “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 States that

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.

(e) Petitions to Stay Detention.—

1. In general.—A person who has filed a petition for a writ of habeas corpus in a court of the United States under section 203 [25 USC § 1303] may petition that court to stay further detention of that person by the participating tribe.
2. Grant of stay.—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.
3. Notice.—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 203 [25 USC § 1303].

⁶ 25 U.S.C. 1304; see also id. at 1304 note.

⁷ 25 U.S.C. 1304(b)(4).

⁸ 25 U.S.C. 1304(a)'s protections include: freedom of speech and religion; freedom from illegal or warrantless search or seizure; a prohibition on double jeopardy; the right not to be compelled to be a witness against oneself; the right to a speedy trial and to confront witnesses; the right to a jury trial; and the right not to be subjected to cruel or unusual punishment, excessive fines, or excessive bail.

⁹ 25 U.S.C. 1302(c)(1).

- i. In general.—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.
 - ii. Definition of victim.—In this subparagraph and with respect to a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction based on a violation of a protection order, the term ‘victim’ means a person specifically protected by a protection order that the defendant allegedly violated.
- (B) Defendant lacks ties to the Indian tribe.—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—
 - 1. a member of the participating tribe; or
 - 2. an Indian who resides in the Indian country of the participating tribe.

(c) Criminal Conduct.—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.—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, United States Code.

d) Rights of Defendants.—In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant—

1. all applicable rights under this Act;
2. if a term of imprisonment of any length may be imposed, all rights described in section 202(c) [25 USC 1302(c)];
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

applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys”;¹⁰

- “require that the judge presiding over the criminal proceeding has sufficient legal training to preside over the criminal proceedings and is licensed to practice law in any jurisdiction in the United States”;¹¹
- make publicly available the tribe’s “criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances)”;¹² and
- “maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.”¹³

VAWA 2013 also guarantees a defendant in a SDVCJ case:

- “the right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians”;¹⁴ and
- “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 SDVCJ over the defendant.”¹⁵

Overview of the Pilot Project

Although the tribal criminal jurisdiction provision of VAWA 2013 was generally not effective until March 7, 2015,¹⁶ tribes could implement SDVCJ on an accelerated basis before that date with approval from the Attorney General during a “Pilot Project” period.¹⁷ The DOJ developed a Pilot Project Application Questionnaire, which interested tribes used to request that the Attorney General designate them as “participating tribes” and approve their accelerated implementation of SDVCJ.¹⁸ This Application Questionnaire

Five tribes received approval to implement SDVCJ during the Pilot Project Period

¹⁰ 25 U.S.C. 1302(c)(2).

¹¹ 25 U.S.C. 1302(c)(3).

¹² 25 U.S.C. 1302(c)(4).

¹³ 25 U.S.C. 1302(c)(5).

¹⁴ 25 U.S.C. 1304(d)(3).

¹⁵ 25 U.S.C. 1304(d)(4).

¹⁶ Pub. L. No. 113-4, 127 Stat. 54 (2013), Sec. 908(b)(1).

¹⁷ Pub. L. No. 113-4, 127 Stat. 54 (2013), Sec. 908(b)(2).

was DOJ's final notice and solicitation of applications for the pilot project, which was published in the Federal Register on November 29, 2013.¹⁹

Three tribes received approval to implement SDVCJ in February 2014—the CTUIR in Oregon, the Pascua Yaqui Tribe in Arizona, and the Tulalip Tribes in Washington. These tribes exercised SDVCJ for a little more than a year during the Pilot Project period before the law took general effect on March 7, 2015. Two additional tribes' applications were approved during the Pilot Project period on March 6, 2015—the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, and the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation. Since these tribes received approval the day before VAWA 2013 took general effect nationwide, these tribes did not have any SDVCJ cases during the Pilot Project period.

Exercise of Special Domestic Violence Criminal Jurisdiction during Pilot Period

While ultimately five tribes were approved to exercise SDVCJ during the pilot period, only the first three tribes were approved early enough to have any SDVCJ cases before the

conclusion of the Pilot Project on March 7, 2015. During the first year of SDVCJ implementation, the three original pilot tribes had a total of 27 SDVCJ cases involving 23 separate offenders. Of the 27 cases, 11 were ultimately dismissed for jurisdictional or investigative reasons, 10 resulted in guilty pleas, 5 were referred for federal prosecution and 1 offender was acquitted by a jury. None of the SDVCJ non-Indian defendants have petitioned for habeas corpus review in federal court. All of the Pilot Project tribes have had additional cases since the conclusion of the Pilot Project period. This report, however, only discusses those cases that occurred between February 20, 2014 and March 7, 2015.

Pilot Project Statistics:

- **28 arrests of 24 offenders**
- **13 guilty pleas**
- **2 referrals for federal prosecution**
- **1 acquittal**
- **11 dismissals**
- **1 outstanding warrant**
- **No habeas corpus appeals**

¹⁸ Although completing the Application Questionnaire is no longer required for a tribe who wants to implement SDVCJ, it is a useful guide for a tribe to conduct a self-assessment prior to implementing SDVCJ. In addition, the completed Application Questionnaires from the Pilot Project tribes provide helpful information about options for meeting the requirements of the statute. The completed questionnaires can be found at www.ncai.org/tribal-vaawa.

¹⁹ Fed. Reg., vol. 78, no. 230, p. 71645, Nov. 29, 2013.

2. *Domestic Violence*.—The term 'domestic violence' 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.
3. *Indian country*.—The term 'Indian country' has the meaning given the term in section 1151 of title 18, United States Code.
4. *Participating tribe*.—The term 'participating tribe' means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.
5. *Protection order*.—The term 'protection order'—
 - (A) means 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
 - (B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a Pendente lite order in another proceeding, 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.
6. *Special domestic violence criminal jurisdiction*.—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.
7. *Spouse or intimate partner*.—The term 'spouse or intimate partner' has the meaning given the term in section 226 of title 18, United States Code.

(b) Nature of Criminal Jurisdiction.—

1. In general.—Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 201 and 203 [25 USC § 1301 and 1303, respectively], 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.
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.
4. Exceptions.—
 - (A) Victim and defendant are both non-Indians.—

(d) Sentences

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant—

1. to serve the sentence—
 - (A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;
 - (B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c)[1] of the Tribal Law and Order Act of 2010
 - (C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or
 - (D) in an alternative rehabilitation center of an Indian tribe; or
2. to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

(e) Definition of offense

In this section, the term "offense" means a violation of a criminal law.

(f) Effect of section

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.

§ 1303. Habeas corpus

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.

§ 1304. Tribal Jurisdiction over Crimes of Domestic Violence

(a) Definitions.—In this section:

1. *Dating Violence*.—The term ‘dating violence’ 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.



Pascua Yaqui Tribe

The Pascua Yaqui Tribe submitted its final Pilot Project Application Questionnaire to DOJ on December 30, 2013. The Tribe received approval to begin exercising SDVCJ on February 6, 2014, and jurisdiction went into effect on February 20, 2014. The Tribe immediately issued a press release and formal notice to the community regarding implementation of the new law. After the Pilot Project concluded, the Tribe released an Implementation Timeline and comprehensive Pilot Project Summary of SDVCJ implementation at Pascua Yaqui. All of these materials are available online at www.ncai.org/tribal-vawa.

The Pascua Yaqui Tribe is located on a 2,200-acre reservation in southwest Arizona near Tucson, Arizona, approximately 60 miles north of the United States-Mexico border. The Tribe has approximately 19,000 members, with 4-5,000 members living on the reservation. Approximately 90 percent of the reservation population is American Indian and the most common household demographic on the reservation is single-mother households, which account for nearly 43 percent of all Pascua Yaqui households. The vast majority of criminal cases filed in the Pascua Yaqui Tribal Court are domestic-violence related offenses. Several of the Pascua Yaqui prosecutors are designated as Special Assistant United States Attorneys (SAUSAs), which allow them to also serve as prosecutors in federal court. The Tribe funds a full-fledged Public Defenders Office (originally opened in 1995) with four licensed defense attorneys who represent those accused of crimes. The Tribe also funds four private contracted defense attorneys for those cases where a conflict of interest exists. The Tribe has employed law-trained judges and recorded its court proceedings since long before VAWA 2013.

Of the three original Pilot Project tribes, Pascua Yaqui has had the highest number of SDVCJ cases. Between February 20, 2014 and March 6, 2015, the Tribe handled 18 SDVCJ cases, involving 15 separate offenders. Four of these cases resulted in guilty pleas, four were referred for federal prosecution due to the seriousness of the violence, 10 cases were declined for jurisdictional, investigative, or evidentiary problems, and one resulted in an acquittal. Significantly, the 18 cases at Pascua Yaqui involved 18 children as either witnesses or victims. In the four-year period prior to their arrest, the 15 non-Indian defendants charged under SDVCJ had more than 80 documented tribal police contacts, arrests, or reports attributed to them.



Pascua Yaqui Judge Melvin Stoof conferring with attorneys at SDVCJ trial.

In the four-year period prior to the implementation of the VAWA Pilot Project and during the Pilot Project period, the 15 non-Indian defendants charged under SDVCJ had more than 80 documented tribal police contacts, arrests, or reports attributed to them.

Because of jurisdictional limitations in place at the time under federal law, the tribal court could not prosecute any of these prior incidents that involved criminal violations.

Pascua Yaqui is the only tribe to have had a jury trial for a SDVCJ case during the Pilot Project period.²⁰ The case was a domestic violence assault involving two men allegedly in a same-sex relationship. The defendant was acquitted by the jury. Interviews with the jurors

suggest that the jury was not convinced that the two individuals had a relationship that would meet the requirements for tribal jurisdiction under VAWA 2013, which limits tribal jurisdiction to “domestic violence” defined as “violence committed by a current or former spouse, or intimate partner of the victim, by a person with who the victim shares a child in common, by a person who is cohabitating 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 violation occurs.”²¹ There was no question that the assault occurred. In fact, if the defendant had been an Indian, the prosecutor would not have had to prove any particular relationship between the offender and the victim. But because SDVCJ is limited to the specific crimes of domestic or dating violence, both of which require a particular relationship, that was not an option in this case. The non-Indian defendant was subsequently extradited to the State of Oklahoma on an outstanding felony warrant.

²⁰ As of the date of this report, the Pascua Yaqui case discussed here is still the only jury trial in a SDVCJ case.

²¹ 25 U.S.C. 1304(a)(2).

- (C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or
- (D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;
- 8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- 9. pass any bill of attainder or ex post facto law; or
- 10. deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000

A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who—

- 1. Has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or
- 2. Is being prosecuted for any offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

(c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

- 1. provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and
- 2. 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 States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
- 3. 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;
- 4. prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and
- 5. maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

Appendix A

Indian Civil Rights Act, 25 U.S.C. §§ 1301-1304, as amended by VAWA 2013:

§ 1301. Definitions: For purposes of this subchapter, the term

1. "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government.
2. "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
3. "Indian court" means any Indian tribal court or court of Indian offense, and
4. "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 19, United States Code, if that person were to commit an offense listed in that section in Indian country to which that section applies.

§ 1302. Constitutional Rights: No Indian tribe in exercising powers of self-government shall:

(a) In general

No Indian tribe in exercising powers of self-government shall—

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
2. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
3. subject any person for the same offense to be twice put in jeopardy;
4. compel any person in any criminal case to be a witness against himself;
5. take any property for a public use without just compensation;
6. deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
7.
 - (A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;
 - (B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

Pascua Yaqui: Pilot Project Stats-at-a-Glance

- 18 SDVCJ cases, involving 15 separate offenders.
 - 1 jury trial resulted in an acquittal and subsequent extradition to Oklahoma
 - 5 guilty pleas
 - 1 referral for federal prosecution
 - 10 dismissals
 - 1 defendant on warrant status
- The 15 non-Indian defendants had over 80 documented tribal police contacts, arrests, or reports attributed to them over the past 4 years.
- 11 defendants had criminal records in Arizona.
- 2 of the defendants had outstanding felony arrest warrants.
- 18 children involved as witnesses and/or victims.

Pascua Yaqui: Case Study

Defendant, a non-Indian, Hispanic male, was charged with Domestic Violence Assault and Domestic Violence Threatening and Intimidating. On March 4, 2015, Defendant was arrested for threatening to harm his live-in girlfriend and mother of his six children. This was Defendant's third VAWA arrest. In this instance, a relative of the victim witnessed the Defendant dragging the victim by her hair across the street back towards their house. Defendant pled guilty to Domestic Violence Assault and was sentenced to over two months of detention followed by supervised probation and domestic violence counseling.

Defendant had at least 7 prior contacts with Pascua Yaqui Law Enforcement and 3 felony convictions out of Pima County, Arizona. This was the defendant's second domestic violence conviction, and the first on the Pascua Yaqui Reservation. Because of the tribal conviction, if the defendant reoffends, he will now be eligible for federal domestic violence prosecution as a habitual offender.



Tulalip Tribes

The Tulalip Tribes submitted their final Pilot Project Application Questionnaire to the DOJ on December 19, 2013. The Tribes received approval to implement SDVCJ on February 6, 2014, and jurisdiction took effect on February 20, 2014. The Tribes issued a press release regarding implementation of the new law on February 6, 2014. All of these materials are available online at www.ncai.org/tribal-vawa.

The Tulalip Tribes are located on a 22,000-acre reservation in western Washington State, approximately 30 miles north of Seattle. The Tribes have 4,533 members, about 2,500 of whom live on the reservation. The Tulalip Tribal Court operates a separate Domestic Violence Court docket and SDVCJ cases are handled there. The Tribe also employs a specialized domestic violence and sexual assault prosecutor, who was approved as a Special Assistant United States Attorney (SAUSA) at the beginning of the Pilot Project. The Tribes obtained retrocession in 2001 and created a police department and criminal court shortly thereafter.

The Tribes implemented the Tribal Law and Order Act enhanced sentencing provisions prior to the passage of VAWA 2013 and have provided indigent defense, included non-Indians in the jury pool, recorded court proceedings, and employed law-trained judges in the criminal court since 2002.

Between February 20, 2014 and March 6, 2015, the Tulalip Tribes had a total of six SDVCJ cases. Four cases resulted in guilty pleas, one was dismissed for insufficient evidence, and one was transferred for federal prosecution because the injuries were so severe and children were also involved as victims. All of the SDVCJ offenders are ordered to undergo tribally-certified batterer's intervention programs.

9. Tribes need resources for SDVCJ implementation

VAWA 2013 authorized \$5,000,000 for each of fiscal years 2014 through 2018 for SDVCJ implementation.⁵² Unfortunately, Congress has not appropriated these funds and no resources have been made available specifically for tribal implementation of SDVCJ. While 45 tribes have been actively participating in the ITWG, as of the date of this report, only 8 tribes have implemented the law. The primary reason tribes report for why SDVCJ has not been more broadly implemented is lack of resources. During and beyond the implementation phase, Tribes need funding and access to resources and services to support implementation.

The primary reason tribes report for why SDVCJ has not been more broadly implemented is lack of resources.

Summary of 9 Lessons Learned

1. Non-Indian domestic violence is a significant problem in tribal communities
2. Most Special Domestic Violence Criminal Jurisdiction defendants have significant ties to the tribal communities
3. Children are impacted by non-Indian domestic violence at high rates
4. Training is critical for success
5. Federal partners have an important role
6. Peer-to-peer learning is important
7. Special Domestic Violence Criminal Jurisdiction is too narrow
8. There is confusion about the statutory definition of "domestic violence"
9. Tribes need resources for Special Domestic Violence Criminal Jurisdiction implementation

⁵² 25 U.S.C. 1304(h)

may occur in a domestic violence incident, they may be more dependent on victim cooperation and the offenders' criminal history may not accurately reflect the severity of his actions.

8. *There is confusion about the statutory definition of "domestic violence"*

Tribal prosecutors from the Pilot Project tribes also report uncertainty regarding the definition of "domestic violence"⁵⁰ in the wake of the Supreme Court's decision in *United States. v. Castleman*.⁵¹ When *Castleman* was decided in March of 2014, it had an immediate impact on the three original Pilot Project tribes' criminal charging decisions when evaluating misdemeanor arrests under SDVCJ authority.

When Castleman was decided in March of 2014, it had an immediate impact on the three original Pilot Project tribes' criminal charging decisions when evaluating misdemeanor arrests under SDVCJ authority.

The Justices suggested in *dicta* in *Castleman* that the domestic violence crime in an SDVCJ case must involve actual "violence," which is not a defined term. As a result, the original Pilot Project tribes have declined to prosecute certain offenses like offensive touching, harassment, or interference with domestic violence reporting that would otherwise constitute "domestic violence" under tribal law, but do not include an element of "offensive touching" or may not be considered a "violent crime." DOJ and the technical assistance team have provided guidance to the ITWG about what type of conduct likely constitutes "violence" for SDVCJ purposes, but confusion persists.

The prosecutors for the Pilot Project tribes report that SDVCJ will be more effective if it is amended to 1) clarify that Indian tribes possess the authority to prosecute a non-Indian for the types of offenses that often occur in the cycle of domestic abuse that might not qualify as "violence" in isolation; 2) reaffirm tribal jurisdiction over crimes that frequently co-occur with domestic violence; 3) reaffirm tribal jurisdiction over all crimes of violence against women or that occur within the family, including child abuse.

Case Study: *A woman called the police to remove her highly intoxicated partner from her home. The defendant returned an hour later. He was so intoxicated that when he swung to punch the victim, he missed and fell to the ground. The tribal prosecutor declined to prosecute because there was no actual physical contact, and they were concerned the incident did not meet the definition of domestic violence in the federal law. The defendant subsequently assaulted the victim again and was arrested.*

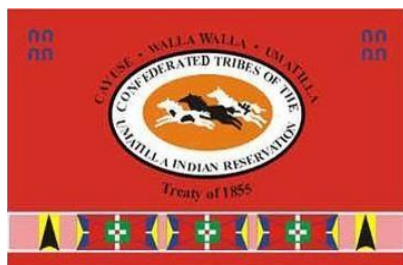
⁵¹ *United States v. Castleman*, 134 S. Ct. 1405 (2014)

Tulalip Tribes: Pilot Project Statistics At-A-Glance

- **6 SDVCJ cases**
 - 4 cases resulted in guilty pleas.
 - 1 referral for federal prosecution because the injuries were so severe and children were involved as victims
 - 1 dismissal
- Those who have been convicted are subject to tribal probation, including the requirement to undergo batterer intervention programming.
- **The 6 non-Indian defendants had over 88 documented tribal police contacts, arrests, or reports attributed to them in the past.**
- 4 defendants had criminal records in Washington.
- **6 children involved as witnesses and/or victims**

Tulalip Tribes: Case Study

Defendant was charged with Assault in the First Degree Domestic Violence and Rape Domestic Violence, but was not immediately apprehended. Based on the conduct alleged, victim/wife petitioned for a civil Order for Protection, which was granted. Prior to defendant's arraignment on the violent crimes, he was served with, and twice violated, the Order for Protection. At the scene of these violations, the defendant was taken into custody. Defendant had nineteen contacts with Tulalip Police prior to these incidents, however, after the implementation of VAWA 2013 SDVCJ the defendant was held accountable for his crimes. Defendant served a significant jail sentence, and is now supervised by Tulalip Probation. He is getting the treatment intervention he needs. The victim and her children were finally able to make a life for themselves away from the violence and abuse.



Confederated Tribes of the Umatilla Indian Reservation

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) submitted their final Pilot Project Application Questionnaire to the DOJ on December 19, 2013. The Tribes received approval to implement SDVCJ on February 6, 2014, and jurisdiction went into effect on February 20, 2014. In conjunction with the U.S. Attorney's Office for the District of Oregon, the Tribes issued a press release regarding implementation of the new jurisdiction on February 6, 2014. All of these materials are available online at www.ncai.org/tribal-vawa.

The CTUIR are located on a land base of 173,470 acres in southeast Oregon with a population of approximately 3,280 people, 46 percent of whom are non-Indian. The Confederated Tribes have exercised expansive criminal jurisdiction since the State of Oregon retroceded Public Law 280 criminal jurisdiction in 1981. The CTUIR implemented felony sentencing under Tribal Law and Order Act (TLOA) in 2011, and the tribal prosecutor serves as a SAUSA. CTUIR has provided indigent counsel, recorded tribal judicial proceedings, employed law-trained judges, and included non-Indians on tribal juries since long before VAWA 2013 was enacted. The Tribes report that in 2011, over 60% of the cases seen by the Umatilla Family Violence Program involved non-Indian.

Between February 20, 2014 and March 6, 2015, there were four SDVCJ cases involving 3 defendants filed in the CTUIR court. The Tribes report that this is double the amount ever prosecuted by the U.S. Attorney's Office. All four cases resulted in guilty pleas. Those who have been convicted are subject to tribal probation, including the requirement to undergo batterer intervention treatment, which the CTUIR provide free of charge. The CTUIR Court issues an automatic protection order in every pending domestic violence criminal case.

ITWG have tackled many difficult questions and have developed a collection of resources that will make it easier for tribes who wish to implement SDVCJ in the future. The ITWG continues to serve as an important resource for the implementing tribes as they encounter new questions and challenges.

The success of the ITWG has been driven by the engagement of dedicated and knowledgeable attorneys and tribal representatives from across Indian country. This engagement has been

possible because of the travel support provided by DOJ, which allowed many of the members to participate in productive in-person meetings. The engagement and expertise of the technical assistance team has provided important coordination and leadership to the ITWG, while also helping the ITWG to track issues as they arise and to connect with necessary resources.

7. Special Domestic Violence Criminal Jurisdiction is too narrow

One area of major concern among the Pilot Project tribes is the narrow class of crimes covered under SDVCJ.⁴⁹ The limitations with regard to children who are victimized by domestic abusers was discussed above. Additionally, since tribal jurisdiction is limited to domestic violence, dating violence, and protection order violations, any other attendant crimes that occur also fall outside the scope of the tribe's jurisdiction. The Pilot Project tribes reported, for example, cases where the offender also committed a drug or alcohol offense or a property crime that the tribe was unable to charge. There is also uncertainty about a tribe's authority to charge an offender for crimes that may occur within the context of the criminal justice process, like resisting arrest, assaulting an officer, witness tampering, juror intimidation, or obstruction of justice. Because tribal prosecutors are unable to charge the full range of criminal conduct that

Case Study: *At 2:00am, the tribal police were called to a domestic violence incident involving a non-Indian man. Methamphetamines were found on the premises, and tribal police requested an oral search warrant from the tribal judge to perform a urine analysis on the non-Indian. While being under the influence could be relevant to a DV investigation, the tribal judge ruled against issuing the search warrant. Some state case law has held that tribal police lack the authority to investigate crimes where they do not have jurisdiction, and the judge did not want to compromise a potential state case for drug possession.*

⁴⁹ We note that there are many crimes, in addition to the ones discussed in this section, that also fall outside the scope of SDVCJ and leave tribal victims without access to justice in too many cases. Sexual assault committed by a stranger or acquaintance and elder abuse, for example, are also not covered by SDVCJ.

for tribal law enforcement officers, prosecutors, judges, and other key stakeholders. Oftentimes the need for training became evident as the tribes encountered an unexpected obstacle of one kind or another. For example, the day after SDVCJ was enacted on one reservation, a non-Indian offender was arrested and delivered to the county authorities where he was promptly released.

That incident served as a reminder that tribal and Bureau of Indian Affairs (BIA) officers needed to be fully trained about the scope of the tribe's authority. Similarly, Pascua Yaqui's experience with its jury trial demonstrated the importance of training law enforcement about how to properly investigate whether there is a qualifying relationship sufficient to trigger SDVCJ in a particular case.

5. Federal partners have an important role

The implementing tribes have worked closely with Bureau of Indian Affairs (BIA) and DOJ officials to address challenges that have come up as a result of the complicated and fragmented criminal justice system at work in Indian Country. It has been important, for example, to clarify that BIA detention facilities are permitted to house non-Indian SDVCJ offenders and that tribes can use their 638 contract funds to pay for costs associated with housing non-Indian SDVCJ offenders. Likewise, the Pilot Project tribes have all worked closely with their local U.S. Attorney's Offices to make decisions about which jurisdiction is most appropriate to prosecute a particular case.

The Pilot Project tribes have all worked closely with their local U.S. Attorney's Offices to make decisions about which jurisdiction is most appropriate to prosecute a particular case.

6. Peer-to-Peer learning is important

The ITWG has proven to be an incredibly 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. With the logistical support and substantive expertise of a group of DOJ funded technical assistance providers,⁴⁸ the tribes participating in

⁴⁸ The National Congress of American Indians and the National Center for Juvenile and Family Court Judges have been supporting the work of the ITWG and providing technical assistance to implementing tribes through grants from the Office on Violence Against Women. The Tribal Law and Policy Institute has also partnered in this effort with support from the Bureau of Justice Assistance

Confederated Tribes of Umatilla Indian Reservation: Pilot Project Statistics At-A-Glance

- **4 SDVCJ cases involving 3 offenders**
 - 4 guilty pleas
 - Those who have been convicted are subject to tribal probation, including the requirement to undergo batterer intervention treatment provided by the Tribes.
 - At least 3 children involved as witnesses.

Confederated Tribes of Umatilla Indian Reservation: Case Study

On October 21, 2014, during an argument with his girlfriend, a male non-Indian defendant ripped her clothes off, pushed her to the bed, and strangled her while a comforter was over her face, all while repeatedly delivering death threats. All of this occurred in front of their infant child. The police found the victim with scratch marks on her neck and in such fear that she was only partially dressed, hyperventilating, and unable to maintain balance. The defendant is an Iraq war veteran who suffers from PTSD, and he reportedly missed taking his medication immediately preceding the assault. He wished to take responsibility at arraignment; however, the Tribe suggested that they appoint him an attorney. After being appointed an attorney, the defendant ultimately pled guilty to felony DV assault with terms consistent to what he would see if prosecuted in the State. Specific terms include compliance with his VA treatment recommendations and completion of a tribally funded 12-month batterer's intervention program. He is currently on track to graduate from the batterer's program in February and will be the first tribal VAWA defendant to graduate, while otherwise remaining under tribal supervision for another 2 years.



Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation

The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation submitted their initial Pilot Project Application Questionnaire to the DOJ on December 26, 2013. After amending their application, the Fort Peck Tribes received approval to implement SDVCJ on March 6, 2015. Jurisdiction took effect on March 7, 2015. Articles have appeared in tribal and county newspapers explaining the jurisdiction. All of these materials are available online at www.ncai.org/tribal-vawa.

The Fort Peck Indian Reservation is home to the Assiniboine and Sioux Tribes, which are two separate Nations comprised of numerous bands and divisions. Located in northeast Montana, the Reservation extends over four counties and is the 9th largest Indian reservation in the United States. The Assiniboine and Sioux Tribes of Fort Peck have an estimated 10,000 enrolled members with approximately 6,000 members living on the Reservation. The population on the reservation is 60% Indian and 40% non-Indian. The Fort Peck Tribal Court operates a domestic violence docket. The Tribes implemented felony sentencing under TLOA in 2012. The Tribes did not have any SDVCJ cases prior to the end of the Pilot Project period on March 7, 2015.



Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation submitted its final Pilot Project Application Questionnaire to DOJ on March 4, 2015. The Tribe received approval to implement SDVCJ on March 6, 2015. All of these materials are available online at www.ncai.org/tribal-vawa.

The Sisseton-Wahpeton Oyate is comprised of two subdivisions of Dakotah Indians that reside on the Lake Traverse Reservation, established by treaty in 1867. This reservation extends into five counties in northeast South Dakota and two counties in southeast North Dakota. The Tribe has 13,177 enrolled members with approximately 9,894 members living on the Reservation. According to the 2010 Census, more than 6,000 non-Indians also reside on the Lake Traverse Reservation. The Tribe has implemented felony sentencing under TLOA. The Tribe did not have any SDVCJ cases prior to the end of the Pilot Project on March 7, 2015.

tribal subsidized housing; two of the incidents involved married couples who lived on the reservation; four incidents involved children who belonged to the non-Indian offender. At least two of the SDVCJ arrests involved unenrolled Indians from either the U.S. or Canada.

3. Children are impacted by non-Indian domestic violence at high rates

All three of the Pilot Project tribes report that children are usually involved as victims or

The implementing tribes are unable to prosecute non-Indians for many of the crimes against children that co-occur with domestic violence.

witnesses in SDVCJ cases. A majority of SDVCJ incidents involved children who were at home during the domestic violence that occurred. These children have been assaulted or have faced physical intimidation and threats, are living in fear, and are at risk for developing school related problems, medical illnesses, post-traumatic stress disorder (PTSD), and other impairments.⁴⁷

Although children are frequently witnesses to domestic violence or victims themselves, SDVCJ currently only applies to crimes committed against romantic or intimate partners or persons covered by a qualifying protection order. The implementing tribes are unable to prosecute non-Indians for many of the crimes against children that co-occur with domestic violence. Instead, they are left to refer these cases to

Case Study: A non-Indian boyfriend, engaged in a 3-day methamphetamine bender, refused to let his Indian girlfriend and her children leave the home. The non-Indian forced both the woman and her child to sit in a chair while he threw knives at them. Because of the severity of the violence, and because SDVCJ does not provide accountability for the crimes committed against the child, the case was referred to the U.S. Attorney for prosecution.

state or federal authorities, who may not pursue them.

4. Training is critical for success

While much of the work as tribes prepare to implement SDVCJ focuses on revising tribal codes, policies, and procedures, the Pilot Project tribes all devoted considerable resources to training

⁴⁷ See Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence, U.S. Department of Justice, Report of the Advisory Committee on American Indian and Alaska Native Children Exposed to Violence: Ending Violence so Children Can Thrive (November 2014).

about implementation of VAWA 2013.

Lessons Learned from the Pilot Project & Recommendations

The Pilot Project proved incredibly successful in allowing the participating tribes to prosecute many long-time repeat offenders who had threatened the tribal community. At the same time, however, the Pilot Project revealed a number of inherent limitations in SDVCJ, as well as unforeseen obstacles in implementation. These issues are discussed in more detail below.

The Pilot Project proved incredibly successful in allowing the participating tribes to prosecute many long-time repeat offenders who had threatened the tribal community

1. Non-Indian domestic violence is a significant problem in tribal communities

When VAWA 2013 was pending before Congress, many policy-makers and commentators questioned whether the tribal jurisdiction provision was needed and whether a significant number of non-Indians were committing domestic violence crimes in Indian country. The experience of the three original Pilot Project tribes provides an unequivocal answer to that question.

Where Special Domestic Violence Criminal Jurisdiction was implemented during the Pilot Period, impunity ended for non-Indian domestic abusers.

Since beginning to exercise SDVCJ, Pascua Yaqui has found that 25% of its domestic violence caseload involves non-Indians. The statistics collected by Pascua Yaqui and Tulalip about the prior police contacts of their SDVCJ offenders demonstrate that the non-Indian offenders menaced the tribal community for years and had been a drain on the tribes' law enforcement resources. Where SDVCJ was implemented during the Pilot Period, impunity has ended for non-Indian domestic abusers.

2. Most Special Domestic Violence Criminal Jurisdiction defendants have significant ties to the tribal communities

Most SDVCJ offenders had established themselves in the tribal community. For example, Pascua Yaqui reports that at least 9 of the SDVCJ offenders were living on the reservation in

Comparing the Implementing Codes of the Five Pilot Tribes

Each of the five Pilot Project tribes submitted an application to the DOJ demonstrating how they met the statutory requirements of VAWA 2013 and subsequently received approval from the Attorney General to implement SDVCJ. Because the tribal codes, policies, and procedures from the Pilot Project tribes had the benefit of review by DOJ, they provide particularly instructive examples of how other Indian tribes can implement the statutory requirements in VAWA 2013. This section analyzes the codes and procedures of the five Pilot Project tribes and highlights areas of major difference. Two primary areas of difference that emerge are how each tribe has approached the jury pool and indigent defense requirements of VAWA 2013.

JURY POOLS

In order to exercise SDVCJ, a tribe must ensure that non-Indian defendants have the right to a trial by an impartial jury that is drawn from sources that—

1. reflect a fair cross section of the community; and
2. do not systematically exclude any distinctive group in the community, including non-Indians.²²

Both the Tulalip Tribes and CTUIR included non-Indians in their jury pools for a number of years prior to the passage of VAWA 2013. For the other Pilot Project tribes, implementation of VAWA 2013 required them to change their tribal codes and procedures to include non-Indians in their jury pools. Pascua Yaqui chose to include non-Indians in their jury pool for all cases. The Fort Peck Tribes and Sisseton Wahpeton, in contrast, include non-Indians in the jury pool only for SDVCJ cases.

Although VAWA 2013 requires the jury pool to reflect a “fair cross section of the community,” it is left to the tribe to define their “community” for these purposes. There are slight variations in the approaches taken by the Pilot Project tribes. All of the Pilot Project tribes include non-Indian residents on the reservation in the jury pool. Some also include, non-Indians employed by the tribe, non-Indian spouses of tribal members, or non-Indian leaseholders. These differences are discussed below.

²² 25 U.S.C. 1304(d)(3).

Fort Peck Tribes: The Fort Peck Tribes have devised two separate jury pools, utilizing a process that incorporates non-member residents of the reservation for SDVCJ cases only.²³ The Tribes' Jury Management Plan for SDVCJ cases states that the jury pool will be drawn from a master juror list utilizing the list of enrolled members of the Tribes and a jury source list prepared by the clerk of the 15th Judicial District of Montana, which comprises 98% of the Reservation. In order to avoid underrepresentation of non-Indians, who make up 40% of the reservation population, the Tribes will select 50 non-Indian residents for the jury pool and 50 enrolled members. The Tribes will randomly summon 21 people from each list for each jury trial, and then choose six persons to serve on each jury. The tribal code requires unanimous verdicts for six person juries.

The tribal code sets out a process to issue subpoenas for jurors in order to compel non-member resident attendance. Jurors will be compensated at the rate paid by Roosevelt County, which overlays a significant portion of the reservation. The presiding judge has discretion to compensate jurors for mileage.

Sisseton-Wahpeton Oyate: The Sisseton-Wahpeton Oyate Codes of Laws also creates two separate jury pools. For cases outside of SDVCJ, jurors must be an adult resident member of the Tribe. For SDVCJ cases, potential jurors may be selected from a variety of sources including but not limited to enrolled members of the Sisseton-Wahpeton Oyate, residents within the jurisdiction of the Lake Traverse Reservation, full-time employees of the Tribe or its entities, and persons leasing lands from the Tribe. A list of at least 21 potential jurors is prepared and maintained by the Clerk. Each voting district on the Reservation is to be represented on the list. Defendants have the right to a trial by a jury made up of at least six persons.²⁴

Pascua Yaqui: Pascua Yaqui uses the same jury pool for all crimes, and empanels its juries using enrolled members, spouses of tribal members, employees of the Tribe, and permanent residents of the reservation. In order to qualify for jury duty, enrolled members must be residents of Arizona, with preference given to those living in nearby counties. The Tribe draws its jury pools from the Tribal Census Roll, Housing Department records, and Human Resources records of the Tribe. Failure to appear for jury duty constitutes contempt of court and every jury summons includes a warning to this effect. The Tribe also incorporates a "severe hardship"

²³ This process is set out in the Fort Peck Tribes' Comprehensive Code of Justice (CCOJ) at Title 6, Section 507, available at http://www.ftpc.org/ccoj/title_6/title_6.html.

²⁴ SWO Codes of Law, Chapter 23, Sections 23-10-01 through 23-10-10, available at <http://www.swo-n.gov/departments/justice-department/legal-department/>.

The ITWG has also facilitated an ongoing webinar series on key areas of SDVCJ implementation, including defendants' rights issues; VAWA 2013's fair cross-section requirement and jury pool selection; and victims' rights. The full webinar series includes the following topics:

- **Jury Pools & Selection**
 - Part I - Developing an Effective and Defensible Jury Plan for Tribal Courts
 - Part II - Jury Selection Plans
- **Defendants' Rights**
 - Part I - Competency of Defenders & Timing of Appointment
 - Part II - Use of Contract Attorneys for Primary and Conflict Counsel
 - Part III - Indigency
- **Victims' Rights**
 - Part I - Victims' Rights Overview
 - Part II - Confidentiality and Privilege
- **Protection Orders**
 - Crafting, Serving, and Enforcing Protection Orders
- **Prosecution Skills**
 - Jury Instructions
 - Improving Victim Participation While Preparing for Non-Participation
- **Pilot Project Application Questionnaire**
 - Application Questionnaire Overview (VAWA Pilot Project)
- **Lessons Learned**
 - Lessons Learned from the VAWA Pilot Period
- **Code Revision and Drafting**
 - VAWA Code Drafting
 - Law School Clinical Assistance: Tribal Violence Against Women Act

TLPI, one of the technical assistance providers supporting the work of the ITWG, has also developed an in-depth guide for implementation of Tribal Law and Order Act and VAWA 2013.⁴⁶ In addition, representatives of the Pilot Project tribes and the technical assistance team have presented at numerous conferences and meetings across Indian country with the goal of educating other tribes



Representatives of the Pilot Project Tribes at 2014 Indian Nations Conference

⁴⁶ Tribal Law and Policy Institute, "Tribal Law and Policy Institute, "Tribal Law and Policy Institute, "Sentencing and VAWA Enhanced Jurisdiction," http://www.tlpi.org/download/codes/TLOA_VAWA_3-1-13.pdf.

The fourth in-person meeting of the ITWG was held on December 9-10, 2014 on the Agua Caliente reservation in California. The meeting included an update from the two tribes with pending applications for Pilot Project approval; an update from the three Pilot Project tribes; an update from the Bureau of Indian Affairs on law enforcement arrest authority and detention guidance; an update and discussion on access to the National Crime Information Center; and a presentation on risk assessment and lethality in domestic violence cases. The meeting also included in-depth discussion sessions on complaint drafting and jury instructions; jury selection and composition; pleas agreements; data collection; and code development.

Intertribal Technical-Assistance Working Group Resources

In conjunction with a team of technical assistance providers, the ITWG has produced a number of resources to aid tribes seeking to implement SDVCJ. Many of these resources are maintained on the National Congress of American Indians (NCAI) VAWA Implementation website.⁴⁴ Additional implementation resources can also be found on the Tribal Law and Policy Institute’s (TLPI) VAWA website.⁴⁵ The ITWG has produced a “Code Development Checklist,” which is designed as a tool to assist tribal governments seeking to develop tribal codes that comply with VAWA 2013’s statutory requirements. It includes citations to existing tribal codes implementing the new law. The ITWG has also produced a sample tribal code, sample complaints, sample jury instructions, a sample law enforcement pocket card, a sample press release for community notification, training materials, and papers on the following topics:

- Jury Issues
 - Fair Cross Section Requirement
 - Jury size & unanimity
 - Constitutionality of maintaining two jury systems
 - Practical Considerations for Jury Selection in SDVCJ
 - Creating a master jury list
 - Selecting the Jury Pool
 - Summoning Jurors/Venire
 - Terms of Service & Paying for Juries
- Tribal Court Exhaustion
- Habeas Corpus
- Ideas for implementing SDVCJ cost efficiently

⁴⁴ www.ncai.org/tribal-vaawa.

⁴⁵ http://www.tribal-institute.org/lists/vawa_2013.htm

exception for jury duty and jurors may be excused from service for limited reasons, including having to travel more than 150 miles one-way.²⁵

Tulalip Tribes: The Tulalip Tribes use the same jury pool for all crimes. The Tribes include tribal members living on or near the reservation, residents within the boundaries of the reservation, and employees of the Tulalip Tribes. The Tribes devise the juror list from the tribal Enrollment Department and the Human Resources departments of the Tulalip Resort Casino and Quil Ceda Village. The Tribes then compare these numbers with census data to ensure the jury pool reflects a fair cross section of the community. The Tribes randomly select 25 names from the jury pool and issue a jury summons by mail or personal service. Those who fail to appear for jury duty are held in contempt of court.²⁶

Confederated Tribes of the Umatilla Indian Reservation (CTUIR): The CTUIR Court uses the same jury pool for all crimes. Even before SDVCJ implementation, CTUIR had incorporated non-Indians in tribal jury pools by including residents within the boundaries of the reservation. The Court empanels all tribal juries from a voter registration list provided by the local county, which represents a rough overlay of the reservation boundaries. The judge chooses 50 names per year to serve as prospective jurors and 18 names are summoned per trial.²⁷

JURY POOLS	
<i>SAME JURY POOL FOR ALL CRIMES</i>	<i>NON-INDIANS INCLUDED ONLY IN SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION CASES</i>
CONFEDERATED TRIBES OF UMATILLA INDIAN RESERVATION	FORT PECK TRIBES
PASCUA YAQUI TRIBE	SISSETON -WAHPETON OYATE
TULALIP TRIBE	

²⁵ Pascua Yaqui Tribe, SDVCJ Application Questionnaire, available at <http://www.justice.gov/sites/default/files/tribal/legacy/2014/02/06/appl-questionnaire-pascua-yaqui.pdf>.

²⁶ Tulalip Tribal Code, Title 2, Sec. 2.05.110 available at <http://www.codepublishing.com/wa/tulalip/>.

²⁷ CTUIR, SDVCJ Application Questionnaire, available at <http://www.justice.gov/sites/default/files/tribal/legacy/2014/02/06/appl-questionnaire-vaawa.pdf>.

INDIGENT AND EFFECTIVE ASSISTANCE OF COUNSEL

Under VAWA 2013, tribes must afford non-Indian offenders with effective assistance of counsel and pay for defense counsel for indigent offenders whenever a term of imprisonment may be imposed.²⁸ Such counsel must be “licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.”²⁹ All of the Pilot Project tribes were providing indigent counsel before VAWA 2013 was enacted. In the case of Ft. Peck, the tribal public defender office was staffed by experienced lay advocates and a licensed attorney was hired to comply with VAWA 2013’s requirements.

All of the Pilot Project tribes were providing indigent counsel before VAWA 2013 was enacted.

Fort Peck Tribes: The Fort Peck Tribes guarantee indigent counsel for any person charged with the following three separate offenses: special domestic violence criminal offense, severe physical domestic abuse, and domestic abuse.³⁰ The Tribes screen for indigence, with a presumption of indigence if the defendant’s household income is less than 125% of the federal poverty guidelines. The Tribal Public Defender Office is staffed both by a licensed attorney and by experienced lay advocates. If the Public Defender is not available, a licensed attorney will be hired on contract. All SDVCJ defendants will be represented by a licensed attorney.³¹

Pascua Yaqui: The Tribe affords state-licensed indigent defense in all SDVCJ cases, as well as to indigent Indian offenders in “any criminal proceeding in which the Tribe is seeking punishment by loss of liberty.”³² Representation is generally provided by the Pascua Yaqui Public Defender Office. The Tribe also provides for contract attorneys in cases where a conflict of interest arises. All such attorneys must also be barred in the Pascua Yaqui Tribal Court. The Tribe screens for indigence, with a presumption of indigence if the defendant’s household income is less than 125% of the federal poverty guidelines.

²⁸ 25 U.S.C. 1302(c)(1) and (2).

²⁹ 25 U.S.C. 1302(c)(2).

³⁰ Ft. Peck Tribes, SDVCJ Application Questionnaire, submitted Dec. 26, 2013, available at <http://www.justice.gov/sites/default/files/tribal/pages/attachments/2015/03/13/fortpeckapp322015.pdf>.

³¹ Ft. Peck Tribes, SDVCJ Application Questionnaire, submitted Dec. 26, 2013, available at <http://www.justice.gov/sites/default/files/tribal/pages/attachments/2015/03/13/fortpeckapp322015.pdf>.

³² Pascua Yaqui Tribal Code, Title 3, Part II, Ch. 2-2, Sec. 310 available at http://www.pascuayaqui-nsn.gov/static_pages/tribalcodes/.

The ITWG has met in-person four times⁴³ and has also participated in a series of teleconferences and webinars and produced white papers and other resources on a range of topics. As of August 2015, 45 tribes participate in the ITWG (see column on previous page).

The first formal in-person meeting of the ITWG was hosted at DOJ’s National Advocacy Center in Columbia, South Carolina on August 20-21, 2013. The ITWG divided into topical breakouts on: code development and publication; jury selection, judicial requirements, and recording proceedings; and victims’ rights, law enforcement training and detention. Defender issues and defendants’ rights were focused into a “Tribal Defender Advisory Group.” The ITWG also divided into tracks based on readiness: getting started; ramping up; and final stages. Tribal participants from justice systems that were already equipped to implement SDVCJ readily shared information with others who were in more preliminary stages of planning.



Intertribal Technical Assistance Working Group at first formal meeting

The second formal in-person meeting of the ITWG was held on October 29-30, 2013, in Bismarck, North Dakota. The Bismarck meeting included a round-robin from ITWG tribes of their implementation updates; a habeas corpus response panel; a panel on improving communication and coordination with U.S. Attorneys; discussion of arrest authority and detention issues; and a discussion on access to the federal criminal information databases.

The third formal in-person meeting of the ITWG was held on May 28-29, 2014, on the Pascua Yaqui reservation in Arizona. The meeting included a panel discussion from the three approved Pilot Project tribes as well as updates from ITWG tribes on their implementation efforts; a discussion of jurisdictional requirements and habeas responses; a session on prosecution best practices in domestic violence cases; a discussion of access to federal criminal information databases; and a mock first appearance at the Pascua Yaqui Justice Center.

⁴³ A 5th in-person meeting will be held November 2-3, 2015 at the Squaxin Island reservation in Washington.

Intertribal Technical-Assistance Working Group

All five of the tribes that were approved to exercise SDVCJ during the Pilot Project period participated in the ITWG on SDVCJ. In its June 14, 2013 Federal Register Notice, the DOJ asked tribes to indicate interest in joining the ITWG, which is a voluntary working group of designated tribal representatives intended to help exchange views, information, and advice, peer-to-peer, about how tribes may best implement SDVCJ, combat domestic violence, recognize victims’ rights and safety needs, and safeguard defendants’ rights.⁴²

This peer-to-peer technical assistance covers a broad set of issues, from drafting stronger domestic violence codes and victim-centered protocols and policies, to improving public defender systems, to analyzing detention and correctional options for non-Indians, to designing more broadly representative jury pools and strategies for increasing juror compliance with a jury summons. The objective of the ITWG is to develop not a single, one-size-fits-all “best practice” for each of these issues, but rather multiple successful examples that can be tailored to each tribe’s particular needs, preferences, and traditions.

Tribes participating in the ITWG have also had opportunities to engage with DOJ and the Department of Interior (DOI), both of whom have made key staff available to provide technical advice to the working group as a whole and work with individual tribes to address specific issues or concerns as needed.

ITWG Tribes:

1. Cherokee Nation
2. Cheyenne River Sioux Tribe
3. Chickasaw Nation
4. Colorado River Indian Tribes of the Colorado River Indian Reservation
5. **Confederated Tribes of the Umatilla Indian Reservation**
6. Eastern Band of Cherokee Indians
7. Eastern Shawnee Tribe of Oklahoma
8. **Fort Peck Assiniboine & Sioux Tribes**
9. Gila River Indian Community
10. Hopi Tribe of Arizona
11. Iipay Nation of Santa Ysabel
12. Kickapoo Tribe of Oklahoma
13. Little Traverse Bay Band of Odawa Indians
14. Menominee Indian Tribe of Wisconsin
15. Mississippi Band of Choctaw Indians
16. Muscogee (Creek) Nation
17. Nez Perce Tribe
18. Nottawaseppi Huron Band of Potawatomi
19. Oneida Tribe of Indians of Wisconsin
20. **Pascua Yaqui Tribe of Arizona**
21. Passamaquoddy Tribe
22. Pauma Band of Mission Indians
23. Pawnee Nation of Oklahoma
24. Penobscot Nation
25. Pokagon Band of Potawatomi Indians
26. Port Gamble S’Klallam Tribe
27. Prairie Band Potawatomi Nation
28. Pueblo of Isleta
29. Pueblo of Laguna
30. Pueblo of Santa Clara
31. Quapaw Tribe of Oklahoma
32. Quinault Indian Nation
33. Sac and Fox Nation
34. Salt River Pima-Maricopa Indian Community
35. Sault Ste. Marie Tribe of Chippewa Indians
36. Seminole Nation of Oklahoma
37. **Sisseton-Wahpeton Oyate**
38. Spokane Tribe of Indians
39. Standing Rock Sioux Tribe
40. Suquamish Indian Tribe
41. Swinomish Indian Tribal Community
42. Three Affiliated Tribes of the Fort Berthold Reservation
43. **Tulalip Tribes of Washington**
44. White Earth Nation
45. Winnebago Tribe of Nebraska

⁴² 78 Fed. Reg. 35,961 (June 14, 2013).

Confederated Tribes of the Umatilla Indian Reservation (CTUIR): The Tribes appoint state-licensed public defenders to any criminal defendant that requests one, including on appeal. Although the Tribes’ indigence standard is set at 150% of the federal poverty guidelines, as a matter of practice the Tribes provide indigent counsel regardless of income to anyone who requests it.³³



Chief Judge Theresa Pouley, Tulalip Tribal Court

Sisseton-Wahpeton Oyate: The Tribe does not distinguish between Indians and non-Indians, or between those who are indigent or not, for purposes of representation by the Tribal Public Defender’s Office, which was first established in 2000. The tribal code states that all defendants will be provided “with assistance of counsel if requested and if available.”³⁴

Tulalip Tribes: The Tribes provide indigent defense to all criminal defendants, regardless of race. Defense services are primarily provided by the Tribal Court Public Defense Clinic at the University of Washington Native American Law Center. The clinic has handled over 2000 cases in Tulalip Tribal Court since 2002. All clinic advocates must pass the Tulalip Court Bar Exam and be admitted to practice by the Tribal Court. The Tribes also hire attorneys on contract when the clinic is not available because of a conflict. Such attorneys must also be barred in the Tulalip Tribal Court. The Tribes screen for indigence, with a presumption of indigence if the defendant’s household income is less than 200% of the federal poverty guideline.³⁵

RIGHT TO COUNSEL	
INDIGENT COUNSEL FOR ALL	<ul style="list-style-type: none"> • CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION • PASCUA YAQUI TRIBE • TULALIP TRIBE
COUNSEL GUARANTEED FOR SDVCJ AND DOMESTIC ABUSE	<ul style="list-style-type: none"> • FORT PECK TRIBES
INDIGENT COUNSEL FOR ALL “IF AVAILABLE” BUT GUARANTEED FOR SDVCJ	<ul style="list-style-type: none"> • SISSETON - WAHPETON OYATE

³³ CTUIR, SDVCJ Application Questionnaire, available at <http://www.justice.gov/sites/default/files/tribal/legacy/2014/02/06/appl-questionnaire-vawa.pdf>.

³⁴ SWO Codes of Law, Chapter 23, Section 23-08-02, available at <http://www.swo-nsn.gov/wp-content/uploads/2015/03/law3.pdf>

³⁵ Tulalip Tribal Court, Rule 6.

COURT PROCESSES & REFORMS

VAWA 2013 requires that a tribal judge overseeing a SDVCJ case has:

1. “sufficient legal training to preside over criminal proceedings”; and be
2. “licensed to practice law by any jurisdiction in the United States.”³⁶

All five of the Pilot Project tribes have at least one state-barred judge. Although the Fort Peck Tribes hired a state-barred judge to meet this requirement, the long-time chief judge of the Fort Peck Tribal Court is not state-barred. Instead, this judge has an undergraduate degree, is licensed in tribal court, and has two certificates from judicial college for “Tribal Judicial Skills” and “Special Court Trial Skills.” This judge also completes 40 hours of annual training and presides over criminal trials on a weekly basis.

VICTIM’S RIGHTS & SAFETY

The Pascua Yaqui, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and Tulalip Tribes have comprehensive codes that account for victims’ rights and promote victims’ safety. The CTUIR Court issues automatic protection orders in all pending criminal domestic violence cases. The Tulalip and Fort Peck Tribes have instituted a domestic violence docket to handle all cases involving domestic violence, dating violence, or violation of protection orders. This domestic violence docket is separate from the existing criminal docket and allows the court to have an increased focus on victim safety and offender accountability.

The five Pilot Project tribes also have a host of other programs aimed at ensuring the rights and safety of victims. For example, the Umatilla Family Violence Program provides community-based advocacy to domestic violence victims. The Fort Peck Tribes also have a well-established Family Violence Resource Center that provides comprehensive services to domestic violence and sexual assault victims. This program offers a court advocate, housing, counseling and other support services for any victim. The Fort Peck Tribal Court issues a “Hope Card” in conjunction with any orders of protection it grants. This card is wallet-sized and allows the person who has been granted an order of protection to easily prove this in other jurisdictions.

DEFINITION OF OFFENSES

³⁶ 25 USC 1302(c)(3).

The Pilot Project tribes have chosen slightly different ways to define VAWA 2013’s covered offenses.

Fort Peck Tribes: The Tribes incorporate the VAWA 2013 statutory definitions of domestic violence and dating violence, but the tribal code also includes two other offenses of “severe physical domestic abuse” and “domestic abuse” as domestic violence.³⁷

Pascua Yaqui: The Tribe does not use VAWA 2013’s definitions of domestic and dating violence in its tribal code. These offenses are defined by language devised by the Tribe. The tribal code includes a maximum statement of jurisdiction that it has authority over “all subject matters which, now and in the future, are permitted to be within the jurisdiction of any Tribal Court of any Indian tribe recognized by the United States of America.”³⁸



Ft. Peck Family Violence Resource Center

Confederated Tribes of the Umatilla Indian Reservation (CTUIR): The Tribes incorporate the VAWA 2013 statutory definitions to define offenses of domestic violence, dating violence and violations of protection orders.³⁹

Sisseton-Wahpeton Oyate: The Tribe does not use VAWA 2013’s definitions of domestic and dating violence or protection order violations in its tribal code. These offenses are defined by language devised by the Tribe.⁴⁰

Tulalip: The Tribes largely track the federal statutory definitions of domestic and dating violence. However, the tribal code provides illustrative examples of behaviors that constitute domestic violence under tribal law.⁴¹

³⁷ Ft. Peck Tribal Code, Title 7, Sec. 249(c), available at http://www.fptc.org/ccoj/title_7/title_7.html.

³⁸ Pascua Yaqui Tribal Code, Title III, Part I, Ch. 1-1, Sec. 20 available at http://www.pascuayaqui-nsn.gov/static_pages/tribalcodes/.

³⁹ CTUIR Criminal Code, Sec. 1.01, available at <http://ctuir.org/criminal-code>.

⁴⁰ SWO Codes of Law, Chapter 52, Section 52-01-04, available at <http://www.swo-nasn.gov/wp-content/uploads/2015/03/law3.pdf>.

⁴¹ Tulalip Tribal Code, Title 4, Sec. 4.25.050 available at <http://www.codepublishing.com/wa/tulalip/>.