

# VAWA 2013'S SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION (SDVCJ)

## OVERVIEW

### WHAT IS SDVCJ?

The 2013 reauthorization of the Violence Against Women Act (VAWA) affirmed tribes' "inherent power" to exercise criminal jurisdiction over **all persons**, including **non-Indians**, who commit **domestic violence**, **dating violence**, or who **violate protection orders** in Indian Country. VAWA creates a framework for interested tribes to voluntarily **opt-in** and exercise criminal jurisdiction over non-Indians who commit these selected crimes and harm a Native person.

### WHAT CRIMES ARE COVERED?

#### TYPES OF CRIMES:

- Domestic Violence  
*Violence committed by: (i) a current or former spouse or intimate partner of the victim, (ii) a person with whom the victim shares a child, (iii) a person who currently or has previously cohabitated with the victim as a spouse or intimate partner; or (iv) a person similarly situated to the spouse of the victim.*
- Dating Violence  
*Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim*
- Criminal Violations of Protection Orders  
*The protection order must be enforceable by the tribe and protect against violent or threatening acts, harassment, sexual violence, contact, communication, or physical proximity to an Indian person.*

#### ADDITIONAL REQUIREMENTS:

- The victim must be an Indian;
- The crime must take place in the Indian Country of the prosecuting tribe; and
- The non-Indian defendant must have sufficient "ties to the Indian Tribe," by:
  - Residing in the Indian Country of the participating tribe;
  - Being employed in the Indian Country of the participating tribe; or
  - Being a spouse, intimate partner, or dating partner of a tribal member, or an Indian who resides in the Indian Country of the participating tribe.

### WHO CAN EXERCISE SDVCJ?

Any tribe may exercise SDVCJ jurisdiction so long as they meet all of the statutory requirements of VAWA. DOJ approval is **not** required.

### DOES SDVCJ CHANGE OTHER JURISDICTIONAL POWERS?

No. If a tribe chooses to exercise SDVCJ it does not change existing federal or state jurisdiction.

### WHAT DO TRIBES HAVE TO DO TO OPT-IN?

VAWA requires that non-Indian SDVCJ defendants have certain rights. Implementing tribes must:

- Guarantee all rights under the Indian Civil Rights Act (ICRA).
- Provide indigent defendants with effective assistance of a licensed defense counsel.
- Ensure any Judge presiding over SDVCJ cases has sufficient legal training.
- Make all criminal laws, rules of evidence, and rules of criminal procedure publically available.
- Give defendants timely notice of their rights, including their right to *habeas corpus* and to petition for stay of detention.
- Maintain a record of the criminal proceeding, including an audio or other recording.
- Give the defendant a right to trial by an impartial jury drawn from a jury pool that includes non-Indians.
- Provide all other rights whose protection is necessary under the Constitution of the United States



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# FREE RESOURCES TO HELP TRIBES IMPLEMENT VAWA

Currently, **25 different tribes** are exercising SDVCJ across the country. Implementation generally requires significant revisions to tribal codes, policies, procedures, and occasionally, constitutions. Tribes have developed different ways to meet the statutory requirements of VAWA. The VAWA **technical assistance providers** are committed to helping tribes who are interested in implementing VAWA SDVCJ develop a method of implementing VAWA that works for their community. TA providers are available to **review draft tribal codes**, policies, or procedures. TA providers are also available to help address issues that may come up with the **investigation or prosecution of individual cases**.

*There is more than one way to implement VAWA.*

## INTER-TRIBAL WORKING GROUP

The ITWG 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 in their communities. The over 40 participating tribes are in varying stages of preparing to implement SDVCJ. *To join email:* [tribal-vaawa@ncai.org](mailto:tribal-vaawa@ncai.org).



### Topics discussed by the ITWG at their bi-annual meetings include:

- Tribal Code Development
- Jury Selection and Judicial Requirements
- Criminal Defense and Defendants' Rights
- Law Enforcement Arrest Authority
- Law Enforcement Training
- Detention Policies at Interior
- Habeas Corpus and Legal Challenges
- Coordination with U.S. Attorneys
- Victims' Rights and Victims' Safety
- Access to Criminal Databases
- Application to Real Life Facts
- Trauma Informed Investigations

## RESOURCES

### Technical Assistance Team

**The National Congress of American Indians** is the largest and oldest organization of American Indian and Alaska Native tribal governments in the nation.

**The Tribal Law and Policy Institute** is an Indian owned and operated non-profit corporation designed to promote the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples.

For information on receiving technical assistance, contact [tribal-vaawa@NCAI.org](mailto:tribal-vaawa@NCAI.org)

### Online Resources

- Tribal Code Checklist
- Implementation Considerations prepared by the Pascua Yaqui Tribe
- TLPI's Guide to Revising Tribal Codes for VAWA/TLOA
- SDVCJ Model Code
- Pilot Project Report
- 5 Year Report
- Center for Jury Studies Materials on Jury Selection
- White papers
- Checklist for Law Enforcement Officers
- 13 Webinars on Victims' Rights, Jury Selection Plans, Jury Instructions, Using Contract Attorneys, Confidentiality, Privilege, and more.
- Other resources

All available at

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