

**VAWA – SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION (SDVCJ)
FEDERAL REQUIREMENTS CHECKLIST¹**

Required or Necessary Sections as defined in VAWA	NHBP Current Codes, Policies, Rules	Codes, Policies, Rules Need to Implement	NHBP-DV Code Enacted 3/17/16 ²
<u>REQUIRED ELEMENTS</u>			Required elements can be found at:
1. Constitution – review and ensure no obstacles to assert SDVCJ.	No obstacles in the NHBP Constitution.		
2. Definitions Section – <i>See</i> 25 USC 1304(a); required definitions: a. Dating Violence. b. Domestic Violence. c. Indian Country. d. Participating Tribe. e. Protection Order. f. Special Domestic Violence Criminal Jurisdiction (SDVCJ). g. Spouse or Intimate Partner; <i>See</i> 18 USC 2266.	a. None. b. <i>See</i> Title VIII, Chapter 6, Part 11, Section 1102; Offenses Against the Family, Domestic Abuse. There is no definition in code for Domestic Violence, just domestic abuse. c. Indian Country definition is now in the DV Code definitions section. d. None. e. None. f. None.	a. Need definition for dating violence. b. Need definition for Domestic Violence. c. Need this definition in the “Definitions Section.” d. None. e. Need definition for Protection Order. f. Need definition for SDVCJ. g. Need revised definition; separate definition exclusively	a. § 7.4-8; is included in DV def. b. § 7.4-8; NHBP’s definition of DV. c. § 7.4-8; Title VIII, Chap. 6, Part 1, §101, Jurisdiction, was modified,

¹ This information is compiled from the ITWG’s “Tribal Code Development Checklist for Implementation of SDVCJ” dated 12-01-13; and the ITWG-SDVCJ Issue Tracking Memorandum.

² Technical amendments were made to the DV Code on: April 21, 2016, by Resolution 04-21-16-04; May 19, 2016, by Resolution 05-19-16-10; June 16, 2016, by Resolution 06-16-16-04; and August 18, 2016, by Resolution 08-18-16-11.

	g. Domestic Abuse, as described above, has a definition for who is considered a victim but is not specific to spouse or intimate partner.	for “spouse or intimate partner” as provided for in 18 USC 2266.	Indian Country is now in the definitions section. d. § 7.4-11 (A). e. § 7.4-8. f. § 7.4-11. g. § 7.4-8.
3. Statement of Tribal Jurisdiction – <i>See</i> 25 USC 1304 (b)(1). This section refers to SDVCJ the Tribe is inherently exercising.	No Statement.	Need statement of Tribal jurisdiction for SDVCJ.	§ 7.4-11(B).
4. Offenses: Domestic & Dating Violence; Violations of Protective Orders – <i>See</i> 25 USC 1304 (c). This section defines the criminal conduct applicable for SDVCJ.	None.	Need to list categories of criminal conduct to assert SDVCJ: domestic violence; dating violence; and violations of protection orders.	§ 7.4-12; dating violence is included in DV definition.
5. Rights of Defendants: a. General Application of Indian Civil Rights Act – <i>See</i> 25 USC 1304 (d)(1). b. Jury Drawn From Fair Cross Section – <i>See</i> 25 USC 1304 (d). c. Notice of Right to Habeas Corpus and Petition for	a. Title VIII, Chapter 8, Criminal Procedure, Chapter 2, Section 203, Arrests, Notification of Rights at Time of Arrest; and Title VIII, Chapter 8, Criminal Procedure, Chapter 5, Section 501, Trial Proceedings, Rights of	a. These two sections need to be modified to include the reference to the Indian Civil Rights Act. b. These sections must be modified to include a jury drawn from a “fair cross section of the community.”	§ 7.4-11(C). a. Title VIII, Chap.8, §203 was amended to include rights under 25 USC 1302.

<p>Stay of Detention – <i>See</i> 25 USC 1304 (e)(3).</p> <p>d. Right to Effective Assistance of Counsel – <i>See</i> 25 USC 1302 (c)(1); and provide defense counsel for indigent defendants, <i>See</i> § (c)(2).</p> <p>e. Qualifications of Judges – <i>See</i> 25 USC 1302 (c)(3).</p> <p>f. Recordings of Proceedings – <i>See</i> 25 USC 1302 (c)(5).</p> <p>g. Publication of Laws – <i>See</i> 25 USC 1302 (c)(4).</p>	<p>Defendants in Criminal Cases. These two sections were amended.</p> <p>b. <i>See</i> Title VIII, Chapter 8, Criminal Procedure, Chapter 5, Section 507, Trial Proceedings, Right to Jury Trial. This section references the eligible juror as a “Tribal member” was amended.</p> <p>c. None.</p> <p>d. <i>See</i> Title VIII, Chapter 8, Criminal Procedure, Chapter 2, Section 203 (c), Arrests, Notification of Rights at Time of Arrest. This section notifies the defendant of his right to counsel at his own expense. It does not cover indigent defendants. <i>But See</i>, NHBPCR Chapter 12, Section 3(c), Fundamental Rights of Defendants. This section provides for court-appointed assistance of Counsel, if incarceration possible, and counsel for indigent defendants.</p> <p>e. <i>See</i> NHBP Const. art. XI, § 5(a)(2), Qualifications, “Is a licensed attorney in good standing.” This is the only</p>	<p>c. Need a notice to right of Habeas Corpus.</p> <p>d. Need a Code section referencing indigent defendant’s right to Counsel.</p> <p>e. Need to list the qualifications of Judges as listed in 25 USC 1302(c)(3).</p> <p>f. Need section stating that record of proceeding, including audio or other recording, are available to defendants upon request.</p> <p>g. Tribe has Codes on its website and is currently codifying the laws and should be complete by Fall 2016.</p>	<p>b. Title VIII, Chap.8, § 507 was amended to include jury provisions.</p> <p>c. §7.4-11(C)</p> <p>d. §7.4-11(C)</p> <p>e. §7.4-11(C)</p> <p>f. §7.4-11(C)</p> <p>g. §7.4-11(C)</p>
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	<p>reference to qualifications of a Judge.</p> <p>f. None. Could not locate anything in the Code or Rules referencing that the Court records hearings, but it is a common practice.</p> <p>g. Tribe publishes Code on-line. Rules of evidence, criminal procedure, and recusal of judges are also on-line.</p>		
<u>ADDITIONAL MATTERS FOR CONSIDERATION RELATED TO TRIBAL CODE DEVELOPMENT</u>			Additional Matters for Consideration can be found at:
1. Legislative Findings.	None.	Need a Legislative Findings section in the Code relating to SDVCJ.	§ 7.4-3.
2. Savings Clause.	None.	Need a Savings Clause in the Code.	§ 7.4-89.
3. Victim's Rights, Safety and Accountability.	Not aware of what services are currently provided to victims under grants, if any. Currently victims are referred to State agencies.	Need Code language regarding victim's rights.	§ 7.4-44.
4. Mandatory Arrest Provisions.	None.	Has been discussed in preliminary meetings and it was decided that we will not include this provision in our code.	No references to mandatory arrest.
5. Domestic Violence Offender Gun Bans.	None.	Need to provide a gun ban.	§ 7.4-65 Firearms Disqualification & § 7.4-23 Authority to Seize Weapons.

6. Separate Domestic Violence Court or Docket.	Some Tribes are developing a Domestic Violence Court or Docket to ensure all DV offenders are treated equally and to ensure appropriate services and protections are provided to victims and offenders.	Develop a Domestic Violence Court. Tribal Court will hold a domestic violence Court docket for domestic violence cases.	§ 7.4-9.
7. Juvenile Codes. NHBP needs to consider situations where non-Indian juveniles could be treated as adults for domestic or dating violence offenses.	NHBP Juvenile Justice Code provides for non-Indian juveniles residing on the reservation and provides discretion to the prosecuting officer for adjudication or charge alternatives.		§ 7.4-48 (F).
8. Complaint - Elements of a Charging Document.	None.	To be discussed and considered; Umatilla provides for it in their Code; to be discussed if we want this section in our Code.	Elements of the charging doc are not in the DV Code.
9. Neutral Language.	None.	Use of the word “person(s)” instead of “Indian” or “non-Indian.”	Yes, DV Code uses neutral language.
<u>MISCELLANEOUS MATTERS FOR CONSIDERATION</u>			Mis. Matters are not included in the DV Code.
1. Notice and Community Engagement. <ul style="list-style-type: none"> • Notice will create deterrent. • Educate about domestic violence. • Develop community support. 			Media/Press Releases in March and May 2016 upon enactment of the DV Code. The Battle Creek Enquirer ran a front page article titled: Tribe Gets Leeway

<ul style="list-style-type: none"> • Non-Indians w/i community will be on juries & subject to tribal laws. • If tribal employees are being considered for jury pool, provide notice in HR policies. 			<p>on Prosecutions, on May 8, 2016. Also articles in local Battle Creek Shopper News on March 24, 2016.</p>
<p>2. Guidance for Law Enforcement on Detaining Non-Indian Offenders and DV generally.</p> <ul style="list-style-type: none"> • Tribal Police should receive guidance and training on promoting victim safety while exercising the authority to arrest and detain offenders and affording the right to due process. Training may also be needed for other employees, i.e., social services, etc. 			
<p>3. Detention.</p> <ul style="list-style-type: none"> • Review and determine status of Tribe's detention facilities, including any limitations on detention of non-Indians, if applicable. 	<p>Health care is probably the biggest issue here.</p>		<p>May 2016 amended our Agreement for Housing Prisoners and sent draft to County Sheriff for review.</p>

Review health care and treatment policies for inmates. Consider needs for medical parole.			
<p>4. Jury Selection Plan.</p> <ul style="list-style-type: none"> Develop a jury selection plan that explains how the tribal court will choose a jury pool that represents a fair cross section of the community. The plan may address the “community” that will be subject to jury summons. 			Tribal Court drafting the jury selection plan.
<p>5. Probation.</p> <ul style="list-style-type: none"> May need to review Tribal Code provisions on probation to ensure that tribal courts are able to impose conditions of probation on non-Indian defendants. 			No issues with Tribal Code regarding provisions to impose conditions on probationers. See revised jurisdiction Criminal Laws – Title VIII, Chap. 6 Part 1, §101.
<p>6. Federal Criminal Database.</p> <ul style="list-style-type: none"> Tribal Code could address the provision of information on 		Nothing proposed for DV Code.	Tribal Court has requested an ORI number with the State and a lien

<p>tribal convictions and protective orders to the NCIC and other criminal information databases in order to facilitate sentencing for repeat offenders and assist in the enforcement of protective orders.</p>			<p>terminal. The Probation Officer will have primary responsibility for the terminal. Tribal Court should be ready to start entering orders by the end of 2016.</p>
<p>7. Relationship to Customary and Traditional Laws.</p> <ul style="list-style-type: none"> Many Tribes have customary and traditional laws that are important to protect. A full system of defendant's rights is not required if there is no sentence of incarceration. Temporary or permanent exclusion from reservation could be conditioned on sentencing to treatment or rehabilitation. Some Tribes raised the question, however, regarding the need for strict oversight of DV offenders. 	<p>The NHBP Constitution provides for exclusion of persons, <i>See</i> NHBP Const. art. VI, § 1(k). The Legal Department has drafted an Exclusion/Banishment Code.</p>		<p>NHBP Exclusion Code was enacted on May 19, 2016. The DV Code provides for a custom and tradition policy at §7.4-4 & §7.4-6 to promote Bodéwadmí values and traditions in all processes and procedures of the Tribe. Tradition and culture will be utilized to the greatest extent possible in all areas of domestic violence including victim's services and rehabilitating</p>

			the perpetrators in the BIP.
8. Retaining Existing Tribal Justice Systems. <ul style="list-style-type: none"> Some Tribes may need to retain their existing justice systems and implement SDVCJ as a stand-alone offense that would be applied only as needed. 			
9. Equal Protection and Other Constitutional Concerns.	These issues were discussed within the ITWG-SDVCJ.		
10. Education/PR <ul style="list-style-type: none"> Community Level. Dating violence and violation of protection orders, need to educate community through public relations piece. State Level. What sorts of educational efforts are being offered at state level? Federal Judges. Possibly have a VAWA Panel at the Federal Circuit Court Conference. 			NHBP conducted DV Code review meetings with the Community and provided info on DV. Comments were requested and appreciated from the Community. There was a DV questions and answers segment in the June 2016 Turtle Press. And a DV Awareness postcard was sent to all tribal households for

			October's DV Awareness month.
<p>11. Funding.</p> <ul style="list-style-type: none"> • Projections of how much caseloads are going to increase. How do you figure out costs? • How to acquire funding. How do you decide where to appropriate? Do you have to prioritize for defense, etc. 			NHBP received an FY 2015 DOJ-OVW CTAS Grant Award.

APPLICATION QUESTIONNAIRE FOR THE VAWA PILOT PROJECT ON TRIBAL CRIMINAL JURISDICTION

Completing the Application Questionnaire was only necessary if a Tribe was to commence exercising special domestic violence criminal jurisdiction (SDVCJ) on an accelerated basis (prior to March 7, 2015) under the voluntary Pilot Project described in section 908(b)(2) of VAWA. The following questions were listed in the Application Questionnaire and are provided for reference purposes regarding the requirements for Tribes in implementing SDVCJ.

1. The Right to Trial by an Impartial Jury.
 - a. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe provide to the defendant 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?
2. The Right to Effective Assistance of Counsel.

- a. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution?
3. The Right to Indigent Defense Counsel.
 - a. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to each indigent defendant, at no cost to the defendant, the right to 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?
4. The Right to Indigent Defense Counsel (cont'd).
 - a. For each licensed defense attorney that the Tribe anticipates will be appointed to represent an indigent defendant in a criminal proceeding in which the Tribe will exercise SDVCJ during the Pilot Project (prior to March 7, 2015) and in which a term of imprisonment of any length may be imposed, please provide a list of all jurisdictions in which the defense attorney is licensed to practice law.
5. The Right to a Law-Trained, Licensed Judge.
 - a. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the defendant the right to a criminal proceeding presided over by a judge who has sufficient legal training to preside over criminal proceedings and is licensed to practice law by any jurisdiction in the United States?
6. The Right to a Law-Trained, Licensed Judge (cont'd).
 - a. For each judge that the Tribe anticipates will preside over a criminal proceeding in which the Tribe will exercise SDVCJ during the Pilot Project (prior to March 7, 2015) and in which a term of imprisonment of any length may be imposed, please provide (a) a brief description of the judge's legal training to preside over criminal proceedings, and (b) a list of all jurisdictions in which the judge is licensed to practice law.
7. The Right to Publicly Available Laws and Rules.
 - a. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe, 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 recusal of judges in appropriate circumstances) of the tribal government?
8. The Right to Records of the Criminal Proceeding.
 - a. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding?

9. The Right to Timely Notice of Federal Habeas Corpus Rights and Privileges.
 - a. Will the Tribe provide to each person detained by order of the Tribe timely notice of the person’s right and privileges to file in a court of the United States a petition for writ of habeas corpus under 25 U.S.C. 1303 and a petition to stay further detention under 25 U.S.C. 1305(e)?
10. Other Rights Protected by the Indian Civil Rights Act of 1968.
 - a. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe provide to the defendant all applicable rights under the Indian Civil Rights Act of 1968, as amended, including but not limited to:
 - i. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, and not to be subjected to a warrant unless it was issued upon probable cause, was supported by oath and affirmation, and particularly described the place to be searched and the person or thing to be seized;
 - ii. The right not to be twice put in jeopardy for the same offense;
 - iii. The right not be compelled to be a witness against himself;
 - iv. The right to a speedy and public trial;
 - v. The right to be informed of the nature and cause of the accusation;
 - vi. The right to be confronted with the witnesses against him;
 - vii. The right to have compulsory process for obtaining witnesses in his favor;
 - viii. The right to be free from excessive bail;
 - ix. The right to be free from excessive fines;
 - x. The right against cruel and unusual punishments;
 - xi. The right to the equal protection of the Tribe’s laws;
 - xii. The right not be to deprived of liberty or property without due process of law;
 - xiii. The right not be subjected to an ex post facto law; and
 - xiv. The right to a trial by a jury of not less than six persons?
11. Tribal Criminal Jurisdiction.
 - a. Will the Tribe exercise SDVCJ over a defendant only for criminal conduct constituting, within the meaning of 25 U.S.C. 1304, either (a) an act of domestic violence or dating violence that occurs in the Indian country of the Tribe, or (b) an act that occurs in the Indian country of the Tribe and violates the portion of a protection order that (1) 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; (2) was issued against the defendant; (3) is enforceable by the Tribe; and (4) is consistent with 18 U.S.C. 2265(b)³?

³ A protection order issued by a state, tribal, or territorial court is consistent with 18 U.S.C. 2265(b) if “such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and ... reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person’s right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time

12. Tribal Criminal Jurisdiction (cont'd).
 - a. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe convict a non-Indian defendant at trial only if the Tribe proves that the alleged victim is an Indian?
13. Tribal Criminal Jurisdiction (cont'd).
 - a. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe convict a defendant at trial only if the Tribe proves that the defendant resides in the Indian country of the Tribe; is employed in the Indian country of the Tribe; or is a spouse, intimate partner, or dating partner either of a member of the Tribe or of an Indian who resides in the Indian country of the Tribe?
14. This final question is optional. If the Tribe believes it would be helpful to the Departments of Justice and the Interior in fulfilling their statutory duties related to the Pilot Project, the Tribe may provide any additional information or relevant legal materials addressing the Tribe's readiness to commence exercising SDVCJ on an accelerated basis while protecting defendant's rights, consistent with 25 U.S.C. 1304. Additional information or relevant legal materials may focus on any of the following topics:
 - a. The Tribe's history of compliance with the Indian Civil Rights Act of 1968, as amended;
 - b. The Tribe's recent history, following the 2010 enactment of 25 U.S.C. 1302(b)-(c), of imposing total terms of imprisonment of more than one year;
 - c. The Tribe's formal or informal policies for coordinating with federal or state criminal investigators and prosecution in cases where the Tribe may have concurrent criminal jurisdiction;
 - d. The Tribe's efforts to combat domestic violence and dating violence, including issuing and enforcing protection orders;
 - e. The Tribe's efforts to protect the rights and safety of victims of domestic violence and dating violence;
 - f. The Tribe's methods for summoning, selecting, and instructing jurors;
 - g. The Tribe's efforts to strengthen law enforcement, prosecution, trial and appellate courts, probation systems, detention and correctional facilities, alternative rehabilitation centers, culturally appropriate services and assistance for victims and their families, criminal codes, rules of criminal procedures, rules of appellate procedure, rules of evidence, and the capacity of law enforcement or court personnel to enter information into and obtain information from the national crime information database;
 - h. The Tribe's needs for training, technical assistance, data collection, and evaluation of the Tribe's criminal justice system;
 - i. The date on which the tribe would like to commence exercising SDVCJ under the Pilot Project;
 - j. The Tribe's plans to notify the public before commencing to exercise SDVCJ; and

required by State, Tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights." 18 U.S.C. 2265(b).

- k. Any other pertinent topic that the Tribe would like the Departments of Justice and Interior to consider when reviewing the Tribe's Application Questionnaire.