



U.S. Department of Justice

Office of Tribal Justice

*Room 2318, RFK Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001*

*(202) 514-8812
FAX (202) 514-9078*

September 18, 2015

Dear Tribal Leader:

In accordance with Executive Order 13175 and Department of Justice’s (DOJ’s) Consultation Policy, DOJ invites you to a consultation regarding setting aside funds from existing tribal programs to assist Indian tribes in exercising special domestic violence criminal jurisdiction (SDVCJ) pursuant to section 904 of the Violence Against Women Reauthorization Act of 2013 (codified at 25 U.S. C. § 1304). DOJ’s Office on Violence Against Women and the Office of Justice Programs’ Bureau of Justice Assistance are considering ways to support tribes that wish to exercise SDVCJ in the absence of a Fiscal Year 2016 Congressional appropriation for this purpose and would like to initiate formal consultation with officials of federally recognized Indian tribes to discuss this proposal. The enclosed framing paper presents background information on the proposal and raises several questions and issues for your consideration.

The first consultation on this topic will take place at the annual convention of the National Congress of American Indians on October 18, 2015 at 1 p.m. Pacific Time in San Diego, CA. This in-person consultation will be preceded by two telephonic listening sessions as follows:

Monday, October 5, 2015 Listening Session	
3:30 – 5:30 p.m. Eastern	Link to register for the call and receive the call-in: https://attendee.gotowebinar.com/rt/4310816025885906690
Wednesday, October 13, 2015 Listening Session	
3:30 – 5:30 p.m. Eastern	Link to register for the call and receive the call-in information: https://attendee.gotowebinar.com/rt/4310816025885906690

Please note that you will be asked to provide your name and Tribal affiliation when you register.

DOJ will also solicit input from members of the Inter-Tribal Technical Assistance Working Group (ITWG) on SDVCJ at a listening session to be held during the ITWG’s next in-person meeting, scheduled for November 2-3, 2015 at the Squaxin Island Reservation in Shelton, WA.

In addition, DOJ will accept written comments until the close of business on Friday, October 30, 2015. Please submit them via email to OTJ@usdoj.gov or (if necessary) via regular mail to:

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue NW, Room 2318
Washington, DC 20530

Finally, DOJ will circulate the same framing paper to tribal leaders in advance of its Tenth Annual Government-to-Government Tribal Consultation on Violence Against Women, to be held on November 4, 2015 at the Squaxin Island Reservation in Shelton, WA. Information on registering for this annual tribal consultation on violence against women issues can be found at <http://ovwconsultation.org/>.

If you have questions or have trouble using the links to register, please contact the Office of Tribal Justice at (202) 514-8812 (not a toll-free number) or OTJ@usdoj.gov. We hope you will be able to participate in this important government-to-government consultation and look forward to working with you on this important issue.

Sincerely,



Tracy Toulou
Director, Office of Tribal Justice
U.S. Department of Justice

Attachment



September 2015

Consultation Question 1: Should the Office on Violence Against Women (OVW) and the Bureau of Justice Assistance (BJA), in the absence of a FY 2016 Congressional appropriation, set aside funds from OVW's Grants to Indian Tribal Governments Program (CTAS Purpose Area 5) and BJA's Indian Assistance funding (CTAS Purpose Areas 3 and 4) to support tribes who wish to exercise special domestic violence criminal jurisdiction (SDVCJ)?

Consultation Question 2: How much funding should be set aside from OVW's Tribal Governments' Program and BJA's Indian Assistance funding for this SDVCJ program?

Consultation Question 3: Given that there may be very limited funding available in FY 2016, should there be any restrictions on which federally recognized tribes may apply for this SDVCJ program? For example, should eligibility be limited to tribes with Indian country? To those with law enforcement? To those with tribal courts? To those who are ready to or already have implemented SDVCJ? To those who have participated in the Inter-Tribal Technical Assistance Working Group on SDVCJ?

Consultation Question 4: What activities should be funded through this SDVCJ program?

Consultation Question 5: If available, would your tribe be interested in seeking a grant to help exercise SDVCJ? If so, what additional steps would your tribe need to take to be ready to begin exercising SDVCJ? Or, has your tribe already implemented SDVCJ?

BACKGROUND

Rates of domestic violence against Native women in Indian country are among the highest in the United States. Since the Supreme Court's 1978 opinion in *Oliphant v. Suquamish Indian Tribe*, however, tribes have been prohibited from exercising criminal jurisdiction over non-Indian defendants. This included domestic violence and dating violence committed by non-Indian abusers against their Indian spouses, intimate partners, and dating partners.

On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), which includes an historic provision to address the jurisdictional loophole that has left many Native American women without sufficient protection. The Act recognizes the inherent power of "participating tribes" to exercise "special domestic violence criminal jurisdiction" (SDVCJ) over both Indians and non-Indians who commit violence against Indian spouses, intimate partners, or dating partners, or who violate protection orders, in Indian country. The Act also specifies the rights that a participating tribe must provide to defendants in SDVCJ cases.



SDVCJ Grant Program Consultation Framing Paper

September 2015

Under VAWA 2013, tribes generally could not exercise SDVCJ until March 7, 2015 (two years after the date of the statute's enactment). The Act, however, established a "Pilot Project" that authorized the Attorney General to grant a tribe's request to be designated as a "participating tribe" on an accelerated basis. Prior to March 7, 2015, five tribes were designated as pilot tribes under this authority. Since that date, the Department has been informed that an additional three tribes have implemented SDVCJ.

In June, 2013, the Department established an Intertribal Technical-Assistance Working Group on SDVCJ (ITWG) to exchange views, information, and advice about how tribes can best exercise SDVCJ, combat domestic violence, recognize victims' rights and safety needs, and fully protect defendants' rights. Approximately 40 tribes have voluntarily joined the ITWG. Through awards to the National Congress of American Indians (NCAI) by the Office on Violence Against Women (OVW) and to the Tribal Law and Policy Institute by the Bureau of Justice Assistance (BJA), the Department is supporting the ITWG with training and technical assistance.

In working with the pilot tribes and members of the ITWG, the Department has heard repeatedly about the substantial costs that tribes that choose to exercise SDVCJ have incurred or will incur in assuming this new responsibility. These many costs include the expenses of updating criminal codes, providing counsel to indigent defendants, changing and managing jury pools to meet the requirements of the Act, hiring law-trained prosecutors and judges, enhancing pre-trial services, probation and parole, serving victims, and incarcerating non-Indians (including providing those individuals with health care).

Section 904 of VAWA 2013 authorized \$5 million annually for the Attorney General to award grants to tribal governments and their authorized designees to assist tribes who choose to exercise SDVCJ. To date, Congress has not appropriated funding for this purpose, and the eight tribes that have implemented SDVCJ have done so without a designated source of federal funding. To support tribes that wish to implement and exercise this new jurisdiction, the President's FY 2016 Budget requested \$5 million for the new SDVCJ grant program. At the present time, we cannot know whether Congress will appropriate funds for this purpose.

Furthermore, in the FY 2015 Coordinated Tribal Assistance Solicitation (CTAS), the Department announced that funding from CTAS Purpose Areas 3 (BJA Tribal Courts Assistance program and Indian Alcohol and Substance Abuse Prevention program) and 5 (OVW –Violence Against Women Tribal Governments program) could be used for tribal SDVCJ implementation. The Department recognizes, however, that other factors limited the practical availability of CTAS funding for this purpose: in particular, some tribes with open CTAS awards could not apply for new projects under Purpose Areas 5, while other tribes would have had to choose between continuing existing, valuable projects funded through Purpose Areas 3 and 5 and seeking funds to implement SDVCJ in their communities.

In the absence of a Congressional authorization and faced with the limitations on relying on current CTAS Purpose Areas, OVW and BJA have begun examining ways that they can support

*September 2015*

tribes that wish to implement the new jurisdiction. Before taking any steps that would affect the Department's administration of funding for tribes, however, OVW and BJA have agreed to consult with tribal leaders about their ideas for funding SDVCJ implementation in FY 2016. To meet the deadlines of the grant-making cycle in FY 2016, the two components have developed this framing paper to solicit tribal input through three listening sessions and two in-person tribal consultation sessions:

- 1) Conference Call with Tribal Leaders, 3:30 p.m. Eastern Time, October 5, 2015
- 2) Conference Call with Tribal Leaders, 3:30 p.m. Eastern Time, October 13, 2015
- 3) NCAI 72nd Annual Convention, October 18, 2015, 1 p.m. Pacific Time, Town and Country Resort, San Diego, CA
- 4) Listening Session with ITWG Members, November 2, 2015, Little Creek Resort, Squaxin Island Reservation, Shelton, WA
- 5) Tenth Annual VAWA Tribal Consultation, November 4, 2015, Little Creek Resort, Squaxin Island Reservation, Shelton, WA

QUESTIONS

Consultation Question 1: Should the Office on Violence Against Women (OVW) and the Bureau of Justice Assistance (BJA), in the absence of a FY 2016 Congressional appropriation, set aside funds from OVW's Grants to Indian Tribal Governments Program (CTAS Purpose Area 5) and BJA's Indian Assistance funding (CTAS Purpose Areas 3 and 4) to support tribes who wish to exercise special domestic violence criminal jurisdiction (SDVCJ)?

The Department's first question for tribal leaders is whether the Department should set aside funding from these two existing funding sources for a SDVCJ program or CTAS Purpose Area. As discussed above, the FY 2015 CTAS noted that funding from both Purpose Areas 3 and 5 could be used for activities related to implementation of SDVCJ. CTAS Purpose Area 5 further explained that, although tribes could use this funding for activities necessary to implement SDVCJ, OVW funds cannot be used to fund criminal defense related activities. Thus, although OVW's Purpose Area 5 funding can be used to fund a wide range of criminal justice interventions and victim services involving violence against women, it is not available to provide counsel to indigent defendants, which is a critical requirement for any tribe choosing to exercise SDVCJ. Accordingly, an OVW Tribal Governments award alone could not address all tribal needs in exercising SDVCJ. To make awards that can address indigent defense, the Department would have to include monies from the more flexible Indian Assistance funding stream.

Consultation Question 2: How much funding should be set aside from OVW's Tribal Governments' Program and BJA's Indian Assistance funding for this SDVCJ program?



September 2015

In FY 2015, Congress appropriated \$30,000,000 for assistance to Indian tribes, which BJA administered through CTAS Purpose Areas 2, 3, and 4, the Tribal Civil and Criminal Legal Assistance (TCCLA) program and training and technical assistance for tribes. That same year, OVW's Tribal Government's Program (Purpose Area 5), which does not have a direct appropriation, received \$35,465,000 set aside by statute from seven other OVW grant programs. These two funding sources were available to support tribal grants across a wide range of purposes, including enhancing tribal justice systems generally, responding to alcohol- and substance abuse-related crimes, developing substance abuse prevention and treatment programs, renovating correctional facilities and multipurpose justice centers, developing correctional alternatives, and enhancing tribal response to violent crimes against Indian women, including domestic violence, sexual assault, dating violence, stalking, and sex trafficking. Although the Department does not know what funding levels will be in FY 2016, we ask that tribal leaders consider that approximately \$60 million will again be made available for these purposes.

Consultation Question 3: Given that there may be very limited funding available in FY 2016, should there be any restrictions on which federally recognized tribes may apply for this SDVCJ program? For example, should eligibility be limited to tribes with Indian country? To those with law enforcement? To those with tribal courts? To those who are ready to or already have implemented SDVCJ? To those who have participated in the Inter-Tribal Technical Assistance Working Group on SDVCJ?

Because of the many tribal needs for funding from Indian Assistance and the Tribal Governments programs, the Department likely will have very limited funding available for a SDVCJ program in FY 2016. The Department therefore asks tribal leaders to consider whether it should impose restrictions on tribal eligibility for any such program. For example, only tribes with Indian country may exercise SDVCJ. Would it therefore be appropriate to restrict program eligibility to tribes with Indian country? Or, given that a tribe will have to have certain components of a criminal justice system in place before exercising SDVCJ, would it be appropriate to limit eligibility to tribes that have law enforcement and courts? Are there any other limits on tribal eligibility that the Department should consider?

Consultation Question 4: What activities should be funded through this SDVCJ program?

In VAWA 2013, Congress authorized the Attorney General to make grants to assist tribes in exercising SDVCJ, including funding law enforcement, prosecution, trial and appellate courts, probation systems, detention and correctional facilities, alternative rehabilitation centers, services for victims and their families, criminal code and rule development, counsel for indigent defendants, jury procedures, and support for victims' rights. *See* 25 U.S. C. § 1304(f). Many (but not all) of these activities, if they involve domestic violence, dating violence, sexual assault, stalking and sex trafficking, could be supported by OVW's Tribal Governments Program. All of



these activities could be supported by BJA's Indian Assistance. The Department seeks input from tribal leaders about whether this statutory grant program encompasses the costs that they anticipate incurring (or have incurred) in exercising SDVJC. Are there other activities that should be included?

Consultation Question 5: If available, would your tribe be interested in seeking a grant to help exercise SDVCJ? If so, what additional steps would your tribe need to take to be ready to begin exercising SDVCJ? Or, has your tribe already implemented SDVCJ?

For planning purposes, it would be immensely helpful for BJA and OVW to know more about how many tribes might be interested in seeking a grant to support exercise of SDVCJ and what their needs are likely to be. For example, some tribes may need funding to start the process of assessing their readiness for SDVCJ; others have already begun implementation. We greatly appreciate any information that tribal leaders can provide about their level of interest and what their tribes may need funding to accomplish.