

Sentencing:

For SDVCJ cases a tribe may sentence a defendant as follows

imprisonment for a term of upto 1 year or a fine of up to \$5,000, or both

If the defendant has been convicted of the same or a comparable offense by any jurisdiction in the U.S. or is being prosecuted for an offense comparable to an offense that would be punishable as a felony in Federal or State court, the tribal court can impose an enhanced sentence of any one offense, a term of imprisonment not to exceed 3 years or a fine of \$15,000, or both. A total term of imprisonment not to exceed 9 years.

For a Defendant sentenced to a total term of imprisonment of more than one year, a tribal court may require the defendant to serve an alternative form of punishment, as determined by the tribal judge under tribal law, or to serve a sentence in -

1. A tribal correctional center approved by BIA for long-term incarceration
2. The nearest appropriate Federal facility, at the expense of the U.S. pursuant to the Bureau of Prisons tribal prisoner pilot program
3. A State or local government-approved detention or correctional center pursuant to an intergovernmental agreement
4. A tribal alternative rehabilitation center

Concurrent Jurisdiction

The exercise of SDVCJ by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both. Nothing in this law creates or eliminates any Federal or State criminal jurisdiction over Indian country or 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. The Indian Civil Rights Act expressly prohibits Indian tribes from "subject[ing] any person," Indian or non-Indian, "for the same offense to be twice put in jeopardy." 25 U.S.C. § 1302(a)(3). Because the federal and tribal governments are two separate sovereigns, however, the "dual sovereignty" doctrine, and the Federal Constitution's Double Jeopardy Clause does not bar successive prosecutions brought by separate sovereigns.

Civil Protection Orders

Amendment to Full Faith & Credit Statute - Tribal Protection Orders
Effective date March 7, 2013

"For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe."

Clarifies that tribes have full civil jurisdiction to issue and enforce protection orders involving any person (Indian or non-Indian) in matters arising anywhere in the tribe's Indian Country or otherwise within the tribe's authority.



Pascua Yaqui Tribal Court Bench Card for Cases Involving Special Domestic Violence Criminal Jurisdiction

"...[T]he 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."

- 25 U.S.C. § 1304(b)(1)

As of February 20, 2014, Pascua Yaqui began exercising the newly restored powers.

The Defendants:

Despite the fact that the language of the statute refers to jurisdiction over "all persons," tribes already possessed inherent criminal jurisdiction over all Indians.

Thus, VAWA 2013 is targeted at non-Indians who commit one of the specified crimes. Portions of the statute make it clear that tribal jurisdiction over non-Indians is being restored only as to non-Indians who have a connection with the tribe or a citizen of the tribe.

Tribal SDVCJ applies only to non-Indians whose victim is an Indian and who

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

The Crimes:

A participating tribe may exercise special domestic violence criminal jurisdiction over certain defendants for criminal conduct that falls into one or more of the following categories and that occur in the Indian country of the participating tribe.

1. Domestic Violence
2. Dating Violence
3. Certain violations of protection orders

Domestic Violence that occurs in the Indian country of the participating tribe.

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.

Dating Violence that occurs in the Indian country of the participating tribe.

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.

Violations of protection orders that occur in the Indian country of the participating tribe. This crime does not extend to all violations of protection orders. Rather, it is limited to 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 (and to protect the person who was the victim); (iii) is enforceable by the participating tribe; and (iv) is consistent with section 2265(b) of title 18, United States Code.

18 USC Section 2265(b) states that A protection order issued by a State, tribal, or territorial court is consistent with this subsection if-

- (1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and
- (2) 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 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.

Defendant's Rights

As part of exercising its SDVCJ, a participating tribe must guarantee certain rights to defendants. Some of these rights are part of the Indian Civil Rights Act, some are found in the Tribal Law and Order Act, and some are found in VAWA 2013.

Defendants' Rights under ICRA pre-TLOA

The right to the equal protection of the tribe's laws.

The right not to be deprived of liberty or property without due process of law.

The right against unreasonable search and seizures.

The right not to be twice put in jeopardy for the same tribal offense.

The right not to be compelled to testify against oneself in a criminal case.

The right to a speedy and public trial.

The right to a trial by jury of not less than six persons.

The right to be informed of the nature and cause of the accusation in a criminal case.

The right to be confronted with adverse witnesses.

The right to compulsory process for obtaining witnesses in one's favor.

The rights against excessive bail, excessive fines, and cruel and unusual punishments.

Rights of Defendants under TLOA:

The Indian tribe shall:

(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the U.S. Constitution;

(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 U.S. 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 (i) has sufficient legal training to preside over criminal proceedings; and (ii) is licensed to practice law in any jurisdiction in the U.S.;

(4) prior to charging the defendant, 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); and

(5) maintain a record of the criminal proceeding, including an audio or other recording of the trial

Requirements of VAWA 2013:

if a term of imprisonment of any length may be imposed, all rights described in section ICRA as amended by the TLOA, plus 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 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.

A person who has filed a petition for a writ of habeas corpus in a court of the United States under 25 USC Section 1303 may petition that court to stay further detention of that person by the participating tribe. A court shall grant a stay if the court-

(A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(B) after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

An Indian tribe that has ordered the detention of any person has a duty to timely notify such person of his rights and privileges under this subsection and under section 203.