



VAWA 2013 AND TRIBAL JURISDICTION OVER NON-INDIAN PERPETRATORS OF DOMESTIC VIOLENCE

Congress recently passed the Violence Against Women Reauthorization Act of 2013, or “VAWA 2013.” This new law includes significant provisions addressing tribal jurisdiction over non-Indian perpetrators of domestic violence. These tribal provisions were proposed by the Justice Department in 2011.

WHAT WILL TRIBES BE ABLE TO DO UNDER THE NEW LAW? Tribes will be able to exercise their sovereign power to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses or dating partners or violate a protection order in Indian country. VAWA 2013 also clarifies tribes’ sovereign power to issue and enforce civil protection orders against Indians and non-Indians.

WHEN DOES THIS NEW LAW TAKE EFFECT? Although tribes can issue and enforce civil protection orders now, generally tribes cannot criminally prosecute non-Indian abusers until at least **March 7, 2015**.

WILL THIS BE VOLUNTARY? Yes, tribes will be free to participate, or not. The authority of U.S. Attorneys (and state/local prosecutors, where they have jurisdiction) to prosecute crimes in Indian country remains unchanged.

WHAT CRIMES ARE COVERED?

Covered offenses will be determined by tribal law. But tribes’ criminal jurisdiction over non-Indians will be limited to the following, as defined in VAWA 2013:

- Domestic violence;
- Dating violence; and
- Criminal violations of protection orders.

WHAT CRIMES ARE NOT COVERED?

The following crimes will generally not be covered:

- Crimes committed outside of Indian country;
- Crimes between two non-Indians;
- Crimes between two strangers, including sexual assaults;
- Crimes committed by a person who lacks sufficient ties to the tribe, such as living or working on its reservation; and
- Child abuse or elder abuse that does not involve the violation of a protection order.

WHAT IS THE PILOT PROJECT? A tribe can start prosecuting non-Indian abusers sooner than March 7, 2015, if—

- The tribe’s criminal justice system fully protects defendants’ rights under Federal law;
- The tribe asks to participate in the new Pilot Project; and
- The Justice Department grants the tribe’s request and sets a starting date.

WHAT RIGHTS DO NON-INDIAN DEFENDANTS HAVE? A tribe must—

- Protect the rights of defendants under the Indian Civil Rights Act of 1968, which largely tracks the Federal Constitution’s Bill of Rights, including the right to due process.
- Protect the rights of defendants described in the Tribal Law and Order Act of 2010, by providing—
 - Effective assistance of counsel for defendants;
 - Free, appointed, licensed attorneys for indigent defendants;
 - Law-trained tribal judges who are also licensed to practice law;
 - Publicly available tribal criminal laws and rules; and
 - Recorded criminal proceedings.
- Include Indians and non-Indians in jury pools.
- Inform defendants ordered detained by a tribal court of their right to file Federal habeas corpus petitions.

IS THERE NEW FUNDING FOR THE TRIBES? In VAWA 2013, Congress authorized up to \$25 million total for tribal grants in fiscal years 2014 to 2018, but Congress has not yet appropriated any of those funds. However, tribes may continue to apply for funding through DOJ’s Coordinated Tribal Assistance Solicitation (CTAS), which can support VAWA implementation. Additional funding sources may be available through other Federal agencies.

HOW CAN WE LEARN MORE? Please contact the Justice Department’s Office of Tribal Justice (OTJ) at 202-514-8812 or Office on Violence against Women (OVW) at 202-307-6026, or visit www.justice.gov/tribal.