

**US Department of Justice
Tribal Consultation
Violence Against Women Act Reauthorization 2022 Alaska Pilot Project**

Framing Paper

This paper supports the Department of Justice (DOJ) government-to-government consultations to discuss implementation of the Alaska Pilot Program, established in the Violence Against Women Act Reauthorization Act of 2022, for the designation of participating Alaska Tribes to exercise special Tribal criminal jurisdiction pursuant to section 813 of the Act. Information about how to participate in these discussions is described in the [invitation letter](#), which is available on the DOJ's Tribal Justice and Safety Website, www.doj.gov/tribal.

BACKGROUND

The Violence Against Women Act of 2013 (VAWA 2013) included a historic provision that recognized the inherent authority of Tribes to exercise special domestic violence criminal jurisdiction (SDVCJ) over non-Indian offenders who commit domestic violence or dating violence or violate certain protection orders in Indian country.¹ This provision enabled Tribes to exercise criminal jurisdiction over non-Indian offenders for the first time since the Supreme Court's 1978 decision in *Oliphant v. Suquamish Indian Tribe*, which held that, absent express Congressional authorization, Tribes lack jurisdiction over all crimes committed by non-Indians. Tribes in Alaska, however, were generally unable to exercise SDVCJ because there is so little Indian country in Alaska,² which is a statutory prerequisite to the exercise of SDVCJ.

The 2022 VAWA Reauthorization expands the recognition of special Tribal criminal jurisdiction for all Tribes to include non-Indian offenders who commit crimes of sexual violence, sex trafficking, stalking, child violence, obstruction of justice, and assault of Tribal justice personnel in Indian country. VAWA 2022 also includes a provision specific to Tribes in Alaska that “recognizes and affirms the inherent authority of any Indian tribe occupying a Village in the State [of Alaska] to exercise criminal and civil jurisdiction over all Indians present in the Village”³ and establishes a pilot program for that would enable Alaska Tribes designated by the Attorney General to exercise special Tribal criminal jurisdiction over persons who are not Indians.⁴

2013 PILOT PROJECT

¹ 25 U.S.C. § 1304

² The Annette Islands Reserve is the only Reservation in the State of Alaska.

³ VAWA 2022, Pub. L. No. 117-103, div. W, 136 Stat. 49, section 813(a)

⁴ *Id.* at section 813(d)

The Department of Justice developed the first pilot project to enable Tribes to exercise special domestic violence jurisdiction in 2013 after a series of Tribal consultations. The 2013 VAWA Pilot Project process had two phases: a planning and self-assessment phase that commenced with the publication of a notice in the Federal Register on June 14, 2013, and an implementation phase that commenced with the publication of a final Federal Register notice on November 29, 2013.

In Phase One, Tribes that preliminarily expressed interest in the Pilot Project engaged in ongoing consultations with the Departments of Justice and the Interior to address questions and concerns. In addition, these Tribes were strongly encouraged to join the InterTribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG) to exchange views, information, and advice about how Tribes could best exercise SDVCJ, combat domestic violence, recognize victims' rights and safety needs, and fully protect defendants' rights.

Phase Two of the Pilot Project process, the implementation phase, commenced with the publication of a final Federal Register notice,⁵ which specified how Tribes could certify that they met the statutory requirements to exercise SDVCJ on an accelerated basis. During this phase, Tribes were able to request designation as a participating Tribe and the Department of Justice evaluated the requests based on the statutory criteria, after the required consultation with affected Tribes and coordination with the Department of the Interior. The Department worked with each requesting Tribe to establish a “start” date to begin prosecuting non-Indian perpetrators of domestic violence.

ALASKA PILOT PROGRAM STATUTORY PARAMETERS

Section 813(d) of VAWA 2022 establishes the Alaska Pilot Program as follows:

- Participating Tribes are subject to title II of Public Law 90–284, commonly known as the Indian Civil Rights Act of 1968.⁶
- The Attorney General shall designate up to 5 Indian Tribes per calendar year as “participating Tribes” to exercise special Tribal criminal jurisdiction over all persons present in the Village of the Indian Tribe.
- The Tribe may request designation as a participating Tribe at any time until March 15, 2023, and annually thereafter.⁷

⁵ <https://www.federalregister.gov/documents/2013/11/29/2013-28653/pilot-project-for-tribal-jurisdiction-over-crimes-of-domestic-violence>

⁶ 25 U.S.C. § 1301 et seq.

⁷ The effective date of the provisions related to special Tribal criminal jurisdiction, however, is October 1, 2022. Therefore, if the Attorney General designates an Alaska Tribe to participate prior to that date, the Tribe cannot exercise criminal jurisdiction over non-Indians before October 1, 2022. *See* VAWA 2022, section 4.

- The Attorney General, in consultation with the Secretary of the Interior and affected Tribes, shall establish a process to designate Tribes to participate in the pilot program. The process must:
 - Give preference to Tribes occupying Villages the populations of which are predominantly Indian.
 - Give preference to Tribes occupying Villages that do not have a permanent State law enforcement physical presence.
 - Include a determination by the Attorney General that the criminal justice system of the requesting Tribe has adequate safeguards in place to protect defendants' rights.
 - The process may include "other criteria" identified by the Attorney General.

Importantly, VAWA 2022 caps the number of participating Tribes at 30, absent notice to Congress and the public of the Attorney General's intention to designate additional Tribes.

- Two or more Tribes (or a Tribal organization exercising delegated authority from a participating Tribe) may elect to participate jointly in the pilot program by providing shared resources to carry out the purposes of the pilot program and will be considered a single participating Tribe.
- Additional Tribes may join such an interTribal partnership any time after it is established.

REQUIRED SAFEGUARDS TO PROTECT DEFEDANTS' RIGHTS

Participating Tribes must provide each defendant all rights described in section 204(d) of the Indian Civil Rights Act of 1968. Tribes' ability to provide these rights is a critical element to the designation process. In a special Tribal criminal jurisdiction proceeding, these rights include:

- The right to trial by an impartial jury 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
- If a term of imprisonment may be imposed, the right to effective assistance of counsel
- If a term of imprisonment may be imposed, for an 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 licensing standards and ensures competence and professional responsibility of its licensed attorneys
- If a term of imprisonment may be imposed, 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 in any jurisdiction of the United States
- If a term of imprisonment may be imposed, the right to publicly available laws and rules
- If a term of imprisonment may be imposed, the right to records of the criminal proceeding

- All applicable rights under the Indian Civil Rights Act of 1968, as amended, including but not limited to (a) 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 or affirmation, and particularly described the place to be searched and the person or thing to be seized; (b) the right not to be twice put in jeopardy for the same offense; (c) the right not to be compelled to be a witness against himself; (d) the right to a speedy and public trial; (e) the right to be informed of the nature and cause of the accusation; (f) the right to be confronted with the witnesses against him; (g) the right to have compulsory process for obtaining witnesses in his favor; (h) the right to be free from excessive bail; (i) the right to be free from excessive fines; (j) the right against cruel and unusual punishments; (k) the right to the equal protection of the Tribe's laws; (l) the right not to be deprived of liberty or property without due process of law; (m) the right not to be subjected to an ex post facto law; and (n) the right to a trial by jury of not less than six persons

In addition, for any person detained by order of the Tribe, these rights include timely written notice of the person's rights and privileges to file in a court of the United States a petition for a writ of habeas corpus under 25 U.S.C. 1303 and a petition to stay further detention under 25 U.S.C. 1304(e).

A more complete description of these rights can be found in the attached Appendix A, which is the Application Questionnaire used for the VAWA 2013 Pilot Project.

RESOURCES AND SUPPORT

The [ITWG](#), established in June 2013, provides an important ongoing forum for Tribes to exchange views, information, and advice about how they can best implement and exercise SDVCJ. Since then, over 50 Tribes have voluntarily joined the group, which has been supported by a technical assistance award from the DOJ's Office on Violence Against Women (OVW).

OVW also administers a Tribal Jurisdiction Program, which makes grants both to implementing Tribes and Tribes working to make necessary changes to their criminal codes and justice systems to begin implementing SDVCJ. The Fiscal Year 2023 President's Budget includes a \$5,500,000 request for this program. VAWA 2022 expanded this grant program to address all the crimes now covered by special Tribal criminal jurisdiction and to make clear that Alaska Pilot Program Tribes are eligible for funding. VAWA 2022 also authorizes the Attorney General to reimburse Tribal governments for certain expenses incurred in exercising special Tribal criminal jurisdiction.

DOJ's Bureau of Justice Assistance provides funding to support: 1. Comprehensive Strategic Planning (CTAS Purpose Area 2); support Tribal justice operational needs from prevention to courts operations and services to probation, jails and reentry (CTAS Purpose Area 3); and to renovate and/or expand existing facilities or erect permanent modular facilities to enhance Tribal

justice physical infrastructure capacity (CTAS Purpose Area 4). Historically, over \$40,000,000 has been budgeted for these programs. BJA also has training that support a range of needs including technical assistance specifically for Alaskan Native Villages and for Tribal courts, for violent crime prosecution, for Tribal probation and Tribal jails and reentry, including support for the SDVCJ as part of BJA's collaboration with OVW.

All federally recognized Tribes, whether they participate in the Alaska pilot or not, are eligible to participate in the Office for Victims of Crime (OVC)-administered Tribal Victim Services- Set-Aside formula grant program (TVSSA) each year that Congress appropriates funds for that program. Funding under the TVSSA Formula Program can be used to support activities such as:

- a community needs assessment;
- strategic planning;
- victim service program development and implementation;
- community outreach and education;
- purchasing or procuring tangible items related to victim services; and
- other activities needed to address the needs of a wide variety of crime victims in Tribal communities.

Information about the TVSSA is available on [OVC's website](#); information about additional resources may be found at <https://www.justice.gov/tribal/grants>.

QUESTIONS FOR CONSIDERATION

The following questions are not intended to limit discussion; the Department welcomes any question or topic of interest to consultation participants.

1. What do you see as your biggest challenges to participating in the Pilot? What resources, financial or other, will your Tribe need to ensure that you have adequate safeguards in place to protect defendants' rights? For example, will you need technical assistance to re-write your criminal code? Or will you need funding to establish a criminal court? Or to provide counsel for indigent defendants?
2. The Department believes that the ITWG has been successful in supporting Tribal efforts to implement SDVCJ through peer-to-peer technical assistance. Do Alaska Tribes want to join the ITWG to learn from Tribes that already have implemented SDVCJ? Or, would Alaska Tribes prefer that the Department support a new InterTribal working group of Alaska Tribes that will focus on the unique challenges of implementing special Tribal criminal jurisdiction in Alaska?
3. As the Pilot Program moves ahead, the Department recognizes the importance of communicating with Alaska Tribes and their community members. How can the Department

ensure that its communication and outreach about the Pilot Program are effective and culturally and linguistically appropriate?

4. The Department must develop a process to designate Tribes as pilot program participants and give preference to certain Alaska Tribes.
 - a. How might Tribes demonstrate that the majority of their citizens are Native?
 - b. How might Tribes demonstrate that they do not have permanent State law enforcement presence?
 - c. Determining that a Tribe can meet all the [requirements in the Indian Civil Rights Act of 1968](#) is a significant component of the selection process.
 - i. Do you think the process used in the 2013 Pilot, which included Tribal certifications, a questionnaire, and providing supporting documentation, should be replicated, amended, or replaced?
 - ii. Of the requirements listed in Appendix A, which present the biggest challenges and why?
 - iii. Are there other criteria that Attorney General should consider before designating an Alaska Tribe to participate in the Pilot Program?

5. The Department made use of Federal Register notices during the 2013 Pilot Project as a primary means of communication. Do you think Federal Register notices would be helpful in communicating with Alaska Native Tribes and organizations?

APPENDIX A: VAWA 2013 QUESTIONNAIRE

Application Questionnaire for the VAWA Pilot Project on Tribal Criminal Jurisdiction

Instructions

Completing this Application Questionnaire is a necessary step for any Indian Tribe that wishes to commence exercising special domestic violence criminal jurisdiction (SDVCJ) on an accelerated basis (i.e., prior to March 7, 2015) under the voluntary Pilot Project described in section 908(b)(2) of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Please review this Application Questionnaire in its entirety before beginning to fill it out.

It is the Tribe's responsibility to ensure that the application is complete and accurate. To the extent that future changes in the Tribe's laws, rules, policies, or personnel render the answers incomplete or inaccurate during the Pilot Project (i.e., prior to March 7, 2015), the Tribe's authorized point of contact (POC) will have the responsibility of providing the Department of Justice with updated information.

Most questions can be answered with a "Yes" or a "No." If the Tribe wishes to provide a longer answer to a particular question, the Tribe should please feel free to attach additional pages, but on each additional page please identify by number the question(s) being answered.

Most questions expressly call for "relevant legal materials." When answering these questions, any of the following types of legal materials might be relevant:

- Tribal constitutional provisions
- Tribal code or statutory provisions
- Tribal court rules, such as tribal rules of criminal procedure, tribal rules of evidence, or tribal rules of appellate procedure
- Tribal judicial opinions
- Tribal court administrator's or clerk's manuals
- Tribal regulations
- Tribal administrative orders
- Tribal written policies
- Tribal written procedures
- A concise written description of an otherwise unwritten tribal practice (whether or not the practice is based in the Tribe's customs or traditions)

These "relevant legal materials" will form the core of the Tribe's application, so please be sure (1) to include all legal materials that are actually relevant to the question whether the Tribe's

criminal justice system has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304, and (2) not to include irrelevant materials, as doing so may slow down the review process that the Departments of Justice and the Interior are statutorily required to undertake. In determining which legal

materials are relevant, the Department recommends that the Tribe review the materials created or gathered by the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG) and the list of substantive questions appended to the Department's June 2013 Federal Register notice, see

78 FR 35961, 35969-74 (June 14, 2013).

These “relevant legal materials” collected from the tribes that successfully apply to participate in Phase Two of the Pilot Project eventually will be made publicly available on the Department of Justice's Web site. The posted materials will serve as a resource for other tribes, including those that may elect to commence exercising SDVCJ after the Pilot Project has concluded.

The Tribe may submit “relevant legal materials” in either of two ways. First, if the particular document (e.g., a tribal code provision or court rule) is freely and publicly available on the Internet, the Tribe may provide a full legal citation to the precise material that the Tribe deems relevant to answering the question, such as a specific subsection of a tribal code provision, along with the exact URL (i.e., Web address) where the material can be found on the Internet. Second, the precise material that the Tribe deems relevant to answering the question may be attached to the Tribe's completed Application Questionnaire as an electronic copy (if the Tribe is submitting the application by email) or as a paper copy (if the Tribe is submitting the application by mail).

Please send the completed Application Questionnaire, along with all attachments, by email (or, if necessary, by mail) to:

Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530, E-Mail: OTJ@usdoj.gov.

If you have questions or need assistance, please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, at (202) 514-8812 (not a toll-free number).

A tribe may apply at any time before March 7, 2015. All applications received at any time within 30 days after the publication of the Department of Justice's final notice in the Federal Register (i.e., the final notice to which this Application Questionnaire is appended) will be given the same priority consideration. There is no advantage to be gained by submitting an Application Questionnaire immediately after publication of the final notice. The Tribe should ensure that it completely and accurately answers all questions and attaches all relevant legal materials.

The Department of Justice will not consider an application that is incomplete, but will attempt to notify the Tribe's POC regarding any deficiencies. The Tribe may submit a revised application at

any time prior to March 7, 2015. Final decisions regarding whether or when a tribe may commence exercising SDVCJ on an accelerated basis are not appealable.

Questions

The Right to Trial by an Impartial Jury

1. 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? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

The Right to Effective Assistance of Counsel

2. 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? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

The Right to Indigent Defense Counsel

3. 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? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

4. 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 (i.e., 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. Please provide a separate list of jurisdictions for each attorney (who can be identified either by name or anonymously as “Attorney 1,” “Attorney 2,” etc.).

The Right to a Law-Trained, Licensed Judge

5. 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? Please answer “Yes” or “No.” Please provide relevant

legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

6. For each judge that the Tribe anticipates will preside over a criminal proceeding in which the Tribe will exercise SDVCJ during the Pilot Project (i.e., 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 that judge is licensed to practice law. Please provide a separate answer for each judge (who can be identified either by name or anonymously as “Judge 1,” “Judge 2,” etc.).

The Right to Publicly Available Laws and Rules

7. 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 the recusal of judges in appropriate circumstances) of the tribal government? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

The Right to Records of the Criminal Proceeding

8. 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? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

The Right to Timely Notice of Federal Habeas Corpus Rights and Privileges

9. Will the Tribe provide to each person detained by order of the Tribe timely notice of the person's rights and privileges to file in a court of the United States a petition for a writ of habeas corpus under 25 U.S.C. 1303 and a petition to stay further detention under 25 U.S.C. 1304(e)? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right to timely notice.

Other Rights Protected by the Indian Civil Rights Act of 1968

10. 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 (a) 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 or affirmation, and particularly described the place to be searched and the person or thing to be seized; (b) the right not to be twice put in jeopardy for the same offense; (c) the right not to be compelled to be a witness against himself; (d) the right to a speedy and public trial; (e) the right to be informed of the nature and cause of the accusation; (f) the right to be confronted with the witnesses against him; (g) the right to have compulsory process for obtaining witnesses in his favor; (h) the right to be free from excessive bail; (i) the right to be free from excessive fines; (j) the right against cruel and unusual punishments; (k) the right to the equal protection of the Tribe's laws; (l) the right not to be deprived of liberty or property without due process of law; (m) the right not to be subjected to an ex post facto law; and (n) the right to a trial by jury of not less than six persons? Please answer "Yes" or "No." Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect these rights.

Tribal Criminal Jurisdiction

11. 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)? * Please answer "Yes" or "No." Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

12. 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? Please answer "Yes" or "No." Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

13. 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? Please answer "Yes" or "No." Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Other Considerations

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 defendants' 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 prosecutors 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 procedure, rules of appellate procedure, rules of evidence, and the capacity of law enforcement or court personnel to enter information into and obtain information from national crime information databases; (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 (k) any other pertinent topic that the Tribe would like the Departments of Justice and the Interior to consider when reviewing the Tribe's Application Questionnaire.

Certifications

The completeness and accuracy of this Application Questionnaire must be certified by (1) the chief executive officer of the Tribe (e.g., the tribal chairperson, president, governor, principal chief, or other equivalent official); (2) the chief judicial officer of the Tribe (e.g., the tribal chief justice, chief judge, or other equivalent official); (3) the chief legal officer of the Tribe (e.g., the tribal attorney general, attorney, general counsel, or other equivalent official); and (4) the person authorized by the Tribe's governing body to be the Tribe's point of contact (POC) for the Department of Justice in this application process. The POC may be either one of the three officers listed above or a fourth individual selected by the Tribe's governing body. Each of these individuals must sign and certify the Application Questionnaire below.

Certification of the Tribe's Chief Executive Officer

1. I am the chief executive officer of ____ [enter the name of the requesting tribe] (“the Tribe”).

2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304.

Signature:

Date:

Name:

Title or Position:

Address:

City/State/Zip:

Phone:

FAX:

Email:

Certification of the Tribe's Chief Judicial Officer

1. I am the chief judicial officer of ____ [enter the name of the requesting tribe] (“the Tribe”).
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the “Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence” published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304.

Signature:

Date:

Name:

Title or Position:

Address:

City/State/Zip:

Phone:

FAX:

Email:

Certification of the Tribe's Chief Legal Officer

1. I am the chief legal officer of ____ [enter the name of the requesting tribe] (“the Tribe”).
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the “Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence” published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304.

Signature:

Date:

Name:

Title or Position:

Address:

City/State/Zip:

Phone:

FAX:

Email:

Certification of the Tribe's Point of Contact

1. I have been authorized by the governing body of ____ [enter the name of the requesting tribe] (“the Tribe”) to serve as the Tribe's point of contact (POC) with the Department of Justice for purposes of the VAWA Pilot Project.
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the “Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence” published by the Department of Justice in the Federal Register on November 29, 2013.

4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.

5. I certify that, to assist the Department of Justice in fulfilling its statutory duty to determine whether the criminal justice system of the Tribe has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304, I will make best efforts, for the remainder of the Pilot Project's duration (i.e., prior to March 7, 2015), to promptly answer written or oral questions from the Departments of Justice and the Interior about the Tribe's criminal justice system; to promptly update any answers to this Application Questionnaire if they become incomplete, inaccurate, or outdated; to promptly fix any omissions in the Application Questionnaire; and to promptly submit to the Department of Justice any additions, deletions, or corrections to the Application Questionnaire.

Signature:

Date:

Name:

Title or Position:

Address:

City/State/Zip:

Phone:

FAX:

Email:

Footnotes

1. Public Law 113-4, 127 Stat. 54 (2013); see Remarks on Signing the Violence Against Women Reauthorization Act of 2013, 2013 Daily Comp. Pres. Docs. 139 (Mar. 7, 2013).

Back to Citation

2. See Letter from Ronald Weich, Assistant Attorney General, to the Hon. Joseph R. Biden, Jr., President, United States Senate, at 1-2 & attachments (July 21, 2011).

Back to Citation

3. See S. Rep. No. 112-153, at 8-11, 32 (2012); see also S. 1763, 112th Cong., at 1-2 (as reported by the S. Comm. on Indian Affairs, Dec. 27, 2012) (long title listing bill's purposes); H.R. 757, 113th Cong., at 1 (2013) (same).

Back to Citation

4. See S. Rep. No. 112-153, at 3, 7-11, 32 (2012) (citing studies); see also Tribal Law and Order Act of 2010, Public Law 111-211, tit. II, sec. 202(a)(5), 124 Stat. 2258, 2262.

Back to Citation

5. See S. Rep. No. 112-153, at 9 (2012); U.S. Census Bureau, 2010 Census Briefs, The American Indian and Alaska Native Population: 2010, at 13-14 & tbl. 5 (2012) (showing that 1.1 million American Indians and 3.5 million non-Indians reside in American Indian areas); U.S. Census Bureau, Census 2010 Special Tabulation, Census 2010 PHC-T-19, Hispanic Origin and Race of Coupled Households: 2010, Table 1, Hispanic Origin and Race of Wife and Husband in Married-Couple Households for the United States: 2010 (2012) (analyzing married-couple households nationwide, regardless of whether they reside within or outside Indian country, and showing that more than 54% of Indian wives have non-Indian husbands).

Back to Citation

6. The tribal provisions of VAWA 2013 are gender-neutral; but in the interests of brevity, this final notice sometimes uses male pronouns or examples to describe perpetrators of domestic violence or dating violence and female pronouns or examples to describe their victims.

Back to Citation

7. Treaty with the Wyandot, Delaware, Ottawa, Chippewa, Potawatomi, and Sac Nations, art. IX, Jan. 9, 1789, 7 Stat. 28, 30.

Back to Citation

8. See Treaty with the Shawnee Nation, art. VII, Jan. 31, 1786, 7 Stat. 26, 27.

Back to Citation

9. 435 U.S. 191 (1978).

Back to Citation

10. See *id.* at 195-212.

Back to Citation

11. See *id.* at 195 & n.6, 206, 210-12.

Back to Citation

12. Public Law 90-284, tit. II, 82 Stat. 77 (1968).

Back to Citation

13. *Oliphant*, 435 U.S. at 212; see also *United States v. Lara*, 541 U.S. 193, 206 (2004) (holding that the Constitution allows Congress to override “ ‘judicially made Indian law’ ” (quoting *Oliphant*, 435 U.S. at 206) (emphasis added in *Lara*)).

Back to Citation

14. Public Law 90-284, tit. II, 82 Stat. 77 (1968).

Back to Citation

15. 25 U.S.C. 1304(a)(4). The term “Indian country” means “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”

18 U.S.C. 1151; see also 25 U.S.C. 1304(a)(3).

Back to Citation

16. Due to a Senate amendment, VAWA 2013's section 910(a) provides that the amendments made by section 904 (codified at 25 U.S.C. 1304) apply in Alaska only to the Indian country of the Metlakatla Indian Community, Annette Island Reserve. In addition, the Supreme Court held in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 526-34 (1998), that lands conveyed by the Alaska Native Claims Settlement Act of 1971, Public Law 92-203, 85 Stat. 688 (codified, as amended, at 43 U.S.C. 1601-1629h), do not constitute “Indian country.” Therefore, section 1304 will have no effect on the criminal jurisdiction of most Indian tribes in Alaska.

Back to Citation

17. Public Law 102-137, sec. 1, 105 Stat. 646 (1991) (permanent legislation) (codified at 25 U.S.C. 1301(2)); see Public Law 101-511, tit. VIII, sec. 8077(b), 104 Stat. 1892 (1990) (temporary legislation) (same). ICRA defines the “powers of self-government” to include “the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians.” 25 U.S.C. 1301(2).

Back to Citation

18. 541 U.S. 193 (2004).

Back to Citation

19. Section 1304(c)(2) provides that a participating tribe may exercise SDVCJ over a defendant for “[a]n act that—(A) occurs in the Indian country of the participating tribe; and (B) violates the portion of a protection order that . . . 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; . . . was issued against the defendant; . . . is enforceable by the participating tribe; and . . . is consistent with [18 U.S.C. 2265(b)].” 25 U.S.C. 1304(c)(2). Section 1304(a)(5) defines a “protection order” to mean “any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening

acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person,” including “any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent[e] lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.” Id. 1304(a)(5).

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 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). As amended by VAWA 2013's section 905, 18 U.S.C. 2265(e) now provides that a tribal court “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 [18 U.S.C.] 1151) or otherwise within the authority of the Indian tribe.” Id. 2265(e).

[Back to Citation](#)

20. Section 1304(a)(2) defines the term “domestic violence” as “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.” 25 U.S.C. 1304(a)(2). Under section 1304(a)(7), which in turn incorporates 18 U.S.C. 2266(7), the term “spouse or intimate partner” includes “a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or . . . a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and . . . any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.” 18 U.S.C. 2266(7); see 25 U.S.C. 1304(a)(7). Section 1304(a)(1) defines the term “dating violence” as “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.” 25 U.S.C. 1304(a)(1).

[Back to Citation](#)

21. 25 U.S.C. 1302(a)(4).

Back to Citation

22. Id. 1302(a)(6).

Back to Citation

23. Id. 1302(a)(8).

Back to Citation

24. Id. 1304(e). ICRA provides that “[t]he privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.” Id. 1303. A federal court shall grant a stay of further detention if the court “finds that there is a substantial likelihood that the habeas corpus petition will be granted” and, “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.” Id. 1304(e)(2).

Back to Citation

25. Public Law 111-211, tit. II, sec. 234(a)(3), 124 Stat. 2258, 2280.

Back to Citation

26. See Public Law 100-472, sec. 209, 102 Stat. 2285, 2296-98 (1988).

Back to Citation

27. U.S. Department of Justice, Implementation of Sections 904 and 908 of the Violence Against Women Reauthorization Act of 2013 (Apr. 16, 2013).

Back to Citation

* 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 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).

Back to Citation

[FR Doc. 2013-28653 Filed 11-27-13; 8:45 am]

BILLING CODE 4410-A5-P

