



U.S. Department of Justice

The Department of Justice held formal consultations on July 20, 21, and August 3, on implementation of the Alaska Pilot Program established in the Violence Against Women Act Reauthorization of 2022 (VAWA 2022). All three discussions were substantive and extremely informative, striking a balance between illuminating unique challenges in Alaska with innovative ideas about how best to move forward. Following are some of the high-level themes that emerged from those discussions:

- Federal agencies will need to coordinate effectively to support Alaska Tribes. Funding, policy, and technical assistance across agencies will be necessary to establish a successful Pilot Program.
- Many Tribes will need to develop infrastructure to meet standards identified in the Act. This will require time, consistent and sustained funding, and training and technical assistance.
- Training and technical assistance will be most effective if offered by Alaska experts.
- In addition to having access to the existing InterTribal Working Group (ITWG), which has been key to successful implementation of special domestic violence criminal jurisdiction in the lower 48, Alaska Tribes would benefit from an additional Alaska-specific ITWG.
- Recognition of Tribal law enforcement by State agencies has been largely unsuccessful. This has made it difficult to establish cross-designation or information sharing agreements and will complicate Alaska Tribes' ability to develop law enforcement infrastructure.

In addition to these high-level themes the Department received valuable feedback on specific aspects of the Pilot Program Requirements in VAWA 2022 and continues to receive feedback and engage in discussions with Alaska Native representatives. The framing paper used for consultations in July and August is attached; the framing paper with the appendix is available on the Department's [Tribal Justice and Safety website](#). The Department continues to welcome feedback on any aspect of the VAWA 2022 Pilot Program; please send written comments or meeting requests to OTJ@usdoj.gov.

**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 [Appendix A of the original framing paper](#).

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?