



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director


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MEMORANDUM – Sent via Electronic Mail

DATE: APR 1 2013

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL CRIMINAL CHIEFS
ALL VIOLENCE AGAINST WOMEN ACT POINTS OF CONTACT
ALL TRIBAL LIAISONS
ALL PROJECT SAFE CHILDHOOD COORDINATORS
ALL VICTIM-WITNESS COORDINATORS

FROM: 
H. Marshall Jarrett
Director

SUBJECT: Violence Against Women Reauthorization Act of 2013

ACTION REQUIRED: None - information only.

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This memorandum supersedes the memorandum distributed on March 20, 2013, which has been withdrawn. The guidance in this memorandum shall be controlling.

On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). A copy of VAWA 2013 is attached for your

convenience, as well as public statements issued by President Obama and Vice President Biden at the White House ceremony on March 7, 2013. This memorandum highlights the statutory changes most relevant to domestic violence and stalking prosecutions in federal and tribal court.

I. VAWA Offenses

The changes to 18 U.S.C. Sections 2261, 2261A, and 2262 become effective on October 1, 2013.

1. Stalking (Section 107(b))

- The stalking statute, 18 U.S.C. § 2261A, has been rewritten. The new statute is both clearer and broader.
- Section 107(b) of VAWA 2013 still requires interstate or foreign travel under § 2261A(1), the interstate stalking statute, unless the stalker is within special maritime or territorial jurisdiction or crosses tribal boundaries. However, the cyber-stalking statute, § 2261A(2), is no longer limited to persons in separate jurisdictions. Instead, the statute applies if a person “uses the mail, any interactive computer service or **electronic communication service or electronic communication system of interstate commerce**, or any other facility of interstate or foreign commerce” to commit stalking offenses. (additions in bold)
- The stalking statute (both the interstate travel and the cyber-stalking subsections) now also prohibits a course of conduct that causes substantial emotional distress as well as conduct that “**attempts to cause, or would be reasonably expected to cause**” substantial emotional distress.

2. Special Maritime and Territorial Jurisdiction (SMTJ) (Section 107(a) and (c))

- The offenses for Interstate Domestic Violence, Stalking, and Interstate Violation of a Protection Order prohibit conduct “within” SMTJ. This amendment clarifies that travel is not required within SMTJ.
- Sections 107(a), (b), and (c) of VAWA 2013 amend these statutes to clarify that commission of the prohibited conduct in 18 U.S.C. §§ 2261, 2261A, or 2262 does not require travel, as merely being “present” within SMTJ suffices. Please remember that SMTJ does not include Indian Country.

II. Safety for Indian Women

As this new legislation pertains to Indian Country, the Violence Against Women Reauthorization Act of 2013 amends, among other statutes, the federal assault provisions under 18 U.S.C. § 113, the Indian Civil Rights Act (25 U.S.C. § 1301 *et seq.*), and the domestic violence and stalking provisions. These amendments are designed to help federal and tribal criminal justice systems combat domestic violence crimes in Indian Country.

1. Amendments to the Federal Assault Statute (Section 906)

While many of the new provisions in the legislation will take time to fully implement, the amendments to the federal assault statute become effective immediately and provide new opportunities for United States Attorneys' offices to prosecute perpetrators of intimate-partner violence and to hold offenders in Indian Country accountable. The federal assault statute, as amended, is also attached to this memorandum. The substantive changes are as follows:

- Assault with Intent to Commit Murder, § 113(a)(1), has been expanded to include Assault with Intent to Commit a Violation of § 2241 (Aggravated Sexual Abuse) or § 2242 (Sexual Abuse). The maximum penalty of 20 years of imprisonment remains the same, but the imposition of a fine is now included.
- Assault with Intent to Commit Any Felony, § 113(a)(2), has been amended to comport with the changes in § 113(a)(1), so the offenses of Assault to Commit Murder, Aggravated Sexual Abuse, and Sexual Abuse are exceptions to the charge of Assault with Intent to Commit Any Felony.
- Assault with a Dangerous Weapon, § 113(a)(3), has been amended by striking the phrase "without just cause or excuse."
- The maximum term of imprisonment for Assault by Striking, Beating, or Wounding, § 113(a)(4), has been increased from six months to one year.
- The class of victims covered by the Assault Resulting in Substantial Bodily Injury, § 113(a)(7), has been expanded to include spouses, intimate partners, and dating partners, as well as protecting individuals who have not attained the age of 16 years. The maximum term of imprisonment is five years.
- A new ten-year felony assault provision has been added, § 113(a)(8), for committing an "[a]ssault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate."
- The definitions of "dating partner" and "spouse or intimate partner" follow the meanings provided in 18 U.S.C. § 2266.
- "Strangling" and "suffocating" are defined in § 113(b)(4) and (5).
- The term "strangling" means "intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim." 18 U.S.C. § 113(b)(4).
- The term "suffocating" means "intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim." 18 U.S.C. § 113(b)(5).
- The Major Crimes Act, 18 U.S.C. § 1153(a), has been amended to capture all felony assaults under § 113. This means that the new ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling or suffocating, as well as the five-year offense for assaulting a spouse,

intimate partner, or dating partner resulting in substantial bodily injury, can be charged against Indian defendants as well as non-Indian defendants.

2. Tribal Jurisdiction over Crimes of Domestic Violence (Section 904)

This section authorizes “participating tribes” to exercise “special domestic violence criminal jurisdiction” over non-Indian perpetrators of domestic and dating violence in Indian Country in certain circumstances. Without this authorization, tribes generally cannot prosecute non-Indians. A summary of this section is as follows:

- Congress recognizes participating tribes’ inherent power to exercise “special domestic violence criminal jurisdiction” (SDVCJ).
- A participating tribe’s exercise of SDVCJ is concurrent with the jurisdiction of the United States, of a State, or both. The United States’ authority to prosecute criminal violations in Indian Country is unchanged.
- SDVCJ cannot be exercised over an alleged offense involving only non-Indians.
- A participating tribe can exercise SDVCJ only if the defendant has sufficient ties to the tribe – that is, only if he lives or works in the tribe’s Indian Country or is a spouse, intimate partner, or dating partner of an Indian who lives in the tribe’s Indian Country or of a member of the tribe.
- Only three types of criminal conduct are covered: crimes of domestic violence, crimes of dating violence, and criminal violations of protection orders. Offenses and their elements will be defined by tribal law.
- Crimes that occur outside of the participating tribe’s Indian Country are not covered.
- In exercising SDVCJ, the participating tribe must provide to the defendant all rights under the Indian Civil Rights Act of 1968, all rights under the felony-sentencing provisions of the Tribal Law and Order Act of 2010 (regardless of the length of the potential term of imprisonment), and the right to an impartial jury drawn from a jury pool that does not systematically exclude non-Indians. Rights under the TLOA include the right to appointed counsel for indigent defendants.
- In the District of Alaska, § 904 applies only to the Indian Country of the Metlakatla Indian Community, Annette Island Reserve.
- Generally, the effective date of the provisions authorizing participating tribes to exercise SDVCJ will be two years after the enactment date of VAWA 2013 – that is, March 7, 2015.
- Tribes that wish to exercise SDVCJ sooner may apply to the Attorney General for participation in a Pilot Project, which could allow for accelerated designation as a participating tribe.

3. Tribal Protection Orders (Section 905)

- The jurisdiction of tribal courts over the issuance and enforcement of protection orders has been clarified in 18 U.S.C. § 2265(e). 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.
- In the District of Alaska, § 905 applies only to the Indian Country of the Metlakatla Indian Community, Annette Island Reserve.
- A tribal protection order must be accorded full faith and credit by other tribal and state courts and must be enforced by other tribes' and states' court and law enforcement personnel.

4. Repeat Offenders (Section 906(c))

- VAWA 2013 amends 18 U.S.C. § 2265A, which doubles the maximum term of imprisonment for a violation of Chapter 110A (Interstate Domestic Violence, Stalking, or Interstate Violation of a Protection Order) after a prior domestic violence or stalking offense. The amendment expands the definition of "prior domestic violence or stalking offense" to include tribal, as well as state and federal, convictions.

III. Anonymous Online Harassment (Section 1102)

Section 1102 of VAWA 2013 amends the Online Harassment statute, 47 U.S.C. § 223 to:

- Delete the word "annoy" from the prohibited acts defined in subsection (a)(1)(A) and (C);
- Broaden the scope of the prohibited acts to cover telephone harassment of "any specific person" and not just a "person at the called number or who receives the communication."

Attachments