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NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

Testimony of the
National Congress of American Indians
Senate Judiciary Committee
Hearing on the need to reauthorize the Violence Against Women Act
March 20, 2018

On behalf of the National Congress of American Indians, we are pleased to present testimony to the Senate Judiciary Committee on the need to reauthorize the Violence Against Women Act. NCAI is the oldest and largest national organization representing American Indian and Alaska Native tribal governments in the United States. We are steadfastly dedicated to protecting the rights of tribal governments to achieve self-determination and self-sufficiency, and to the safety and security of all persons who reside within or visit Indian Country. In 2000, NCAI's member tribes adopted resolution STP-00-081, establishing the NCAI Task Force on Violence Against Native Women. Since that time, the Task Force has worked to identify needed policy reforms at the tribal and federal levels.

NCAI has been actively involved in the development of the tribal provisions of VAWA in the past reauthorizations of the bill. Each time VAWA has been reauthorized, it has included important provisions aimed at improving safety and justice for Native women. We welcome the opportunity to work with the Committee to enact legislation that continues to build on VAWA's promise. At this time, we would like to share four priorities for the upcoming reauthorization:

1) include amendments to 25 USC 1304 that will address jurisdictional gaps and ensure that the tribal criminal jurisdiction provision included in VAWA 2013 fully achieves its purpose;

2) create a permanent authorization for DOJ's Tribal Access to National Crime Information Program;

3) improve the response to cases of missing and murdered women in tribal communities;

4) address the unique barriers to safety for Alaska Native women; and

5) reauthorize VAWA's tribal grant programs.

Jurisdictional Gaps

Five years ago, when Congress passed VAWA 2013, it included a provision, known as Special Domestic Violence Criminal Jurisdiction (SDVCJ), that reaffirmed the inherent sovereign authority of Indian tribal governments to exercise criminal jurisdiction over certain non-Indians who violate qualifying protection orders or commit domestic or

dating violence against Indian victims on tribal lands.[1] Since passage of VAWA 2013, NCAI has been providing technical assistance to the tribes who are implementing the law. We have included as an a attachment to this testimony a detailed report that analyzes the impacts of VAWA 2013's landmark tribal jurisdiction provision in the five

years since it was enacted. This examination of the tribes' early exercise of SDVCJ suggests that it is working as Congress intended—the law has enhanced the ability of tribal governments to combat domestic violence against Native women, while at the same time protecting non-Indians' rights in impartial, tribal forums.[2] By exercising SDVCJ, many tribal communities have increased safety and justice for victims who had previously seen little of either. As the Department of Justice (DOJ) testified before the Senate Committee on Indian Affairs in 2016, SDVCJ has allowed tribes to "respond to long-time abusers who previously had evaded justice"[3] and has given hope to victims and communities that safety can be restored.

Implementation of SDVCJ has had other positive outcomes as well. For many tribes, it has led to much-needed community conversations about domestic violence. For others it has provided an impetus to more comprehensively update tribal criminal codes. Implementation of SDVCJ has also resulted in increased collaboration among tribes and between the local, state, federal, and tribal governments. It has also revealed, however, places where federal administrative policies and practices needed to be strengthened to enhance justice, and it has shown where the jurisdictional framework continues to leave victims—including victims of sexual violence, children, and law enforcement—vulnerable.

The tribes implementing SDVCJ report that children have been involved as victims or witnesses in SDVCJ cases nearly 60% of the time. These children have been assaulted or have faced physical intimidation and threats, are living in fear, and are at risk for developing school-related problems, medical illnesses, post-traumatic stress disorder, and other impairments.[4] However, federal law currently limits SDVCJ to crimes committed only against intimate partners or persons covered by a qualifying protection order. The common scenario reported by tribes is that they are only able to charge a non-Indian batterer for violence against the mother, and can do nothing about violence against the children. Instead, tribes are only able to refer these cases to state or federal authorities, who may not pursue them.

This frustration is further compounded by the prevalence and severity of this problem. According to DOJ, American Indian and Alaska Native children suffer exposure to violence at rates higher than any other race in the United States.[5] This violence has immediate and long term effects,

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[1] 25 U.S.C. §1304.

[2] *See* Angela R. Riley, *Crime and Governance in Indian Country*, 63 UCLA L. REV. 1564, 1572 (2016) ("[I]mplementation has been a success in several respects. Tribes have provided defendants with the requisite procedural protections, and the preliminary data reveal that the laws are improving the safety and security of reservation residents.").

[3] Tracy Toulou, "Director Tracy Toulou of the Office of Tribal Justice Testifies Before the Senate Committee on Indian Affairs Oversight Hearing on Draft Legislation to Protect Native Children and Promote Public Safety in Indian Country," (May 18. 2016), https://www.justice.gov/opa/speech/director-tracy-toulou-office-tribal-justice-testifies-senate-committee-indian-affairs-0.

[4] *See* U.S. Department of Justice, ATTORNEY GENERAL'S ADVISORY COMMITTEE ON AMERICAN INDIAN AND ALASKA NATIVE CHILDREN EXPOSED TO VIOLENCE, REPORT OF THE ADVISORY COMMITTEE ON AMERICAN INDIAN AND ALASKA NATIVE CHILDREN EXPOSED TO VIOLENCE: ENDING VIOLENCE SO CHILDREN CAN THRIVE (Nov. 2014).

[5] *Id*.

including: increased rates of altered neurological development, poor physical and mental health, poor school performance, substance abuse, and overrepresentation in the juvenile justice system. Children who experience abuse and neglect are at higher risk for depression, suicidal thoughts, and suicide attempts. Indian youth have the highest rate of suicide among all ethnic groups in the U.S., and suicide is the second-leading cause of death (after accidental injury) for Native youth aged 15-24.[6] Due to exposure to violence, Native children experience post-traumatic stress disorder at a rate of 22% - the same levels as Iraq and Afghanistan war veterans and triple the rate of the rest of the population.[7]

A bill introduced by Senators Udall and Murkowski, S. 2233, the Native Youth and Tribal Officer Protection Act, would amend 25 USC 1304 to reaffirm tribal jurisdiction over certain non-Indians who commit crimes against Native children in Indian Country. NCAI supports this bill.

S. 2233 would also address another significant gap in VAWA 2013. Since SDVCJ is limited to domestic violence, dating violence, and protection order violations, tribes also lack jurisdiction to charge a non-Indian offender for crimes that may occur within the context of the criminal justice process. These crimes might include resisting arrest, assaulting an officer, witness tampering, juror intimidation, or obstruction of justice. Several of the tribes have reported assaults on their officers or bailiffs committed by non-Indian SDVCJ defendants that they are unable to prosecute. Domestic violence cases are both the most common and the most dangerous calls that law enforcement responds to, and this creates an obvious public safety concern. Tribes are also not able to prosecute attendant crimes. In the course of investigation tribal law enforcement often discovers evidence of drug crimes or property crimes, but these cannot be included in the prosecution.

Tribal governments are also unable to prosecute crimes of sexual assault, trafficking, and stalking. A 2016 study from the National Institute for Justice (NIJ), found that approximately 56% of Native women experience sexual violence within their lifetime, with 1 in 7 experiencing it in the past year.[8] Nearly 1 in 2 report being stalked.[9] Contrary to the general population where rape, sexual assault, and intimate partner violence are usually *intra*-racial, Native women are more likely to be raped or assaulted by someone of a different race. 96% of Native women and 89% of male victims in the NIJ study reported being victimized by a non-Indian.[10] Native victims of sexual violence are three times as likely to have experienced sexual violence by an interracial perpetrator as non-Hispanic White victims.[11] Similarly, Native stalking victims are nearly 4 times as likely to be stalked by someone of a different race, with 89% of female stalking victims and 90% of male stalking victims reporting inter-racial victimization.[12] The higher rate of inter-racial violence would not necessarily be significant if it were not for the jurisdictional complexities unique to Indian Country and the limitations imposed by federal law on tribal authority to hold non-Indians accountable for crimes they commit on tribal lands.

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[6] SAMHSA, National Survey on Drug Use and Health, 2003.
[7] AG Advisory Committee, *supra*, note 12, at 38.
[8] Andre B. Rosay, Nat'l Inst. of Justice, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, U.S. Dep't of Justice 11 (2016), available at https://www.ncjrs.gov/pdffiles1/nij/249736.pdf.
[9] *Id.,* at
[10] *Id.*, at 18.
[11] *Id.*, at 29.
[12] *Id.,* at 32.

A recent example from the Sault Sainte Marie Tribe of Chippewa Indians, located in Michigan, illustrates how this gap in the law has real consequences for Native victims. A non-Indian man in an intimate relationship with a tribal member moved in with her and her 16 year-old daughter. After the man began making unwanted sexual advances on the girl, sending inappropriate text messages, and on one occasion groping the daughter, the tribe charged the defendant with domestic abuse and attempted to tie the sexual assault against the daughter to a pattern of abuse against the mother. The tribal court dismissed the charges for lack of jurisdiction and the defendant left the victim's home. Four months later, he was arrested by city police for kidnapping and repeatedly raping a 14-year old tribal member. This kidnapping and rape of a minor could have been prevented if the tribe had been able to exercise jurisdiction in the first case.

Senator Murkowski has introduced a bill, S. 1986, Justice for Native Survivors of Sexual Violence, that would amend 25 USC 1304 to include sexual assault, stalking, and trafficking crimes committed in Indian Country. This bill, which NCAI supports, is co-sponsored by Senator Udall.

NCAI adopted a resolution in 2016, SPO-16-037, calling for full reaffirmation of tribal authority to address crime on tribal lands (attached). We are grateful for the leadership of Senators Udall and Murkowski for their efforts to address some of the most egregious gaps in the existing law. As this Committee moves forward with reauthorization of VAWA, we urge you to include amendments that would help ensure that the life-saving provisions of VAWA 2013 are more broadly available to protect victims of violence in tribal communities.

DOJ's TAP Program

VAWA 2005 and the Tribal Law & Order Act of 2010 both included provisions directing the Attorney General to permit Indian tribes to enter information into and obtain information from federal criminal information databases. This has been a long-standing issue that Indian tribes have raised for years. In response to these concerns, in 2015 DOJ announced the Tribal Access Program for National Crime Information (TAP), which provides eligible tribes with access to the Criminal Justice Information Services systems. There are now 30 tribes participating in TAP, which will greatly facilitate their ability to enter protection orders and criminal history into the federal databases.

Because DOJ is using existing funding for the TAP program, eligibility is currently limited to tribes with a sex offender registry or with a full-time tribal law enforcement agency. There are many tribes, particularly in PL-280 jurisdictions like California and Alaska, however, who do not meet these criteria but who do have tribal courts that issue protection orders. For these protection orders to be effective and protect victims, the issuing tribe needs to be able to enter them into the protection order file of NCIC. A dedicated funding stream should be created for expanding the TAP program and making it available to all interested tribes who meet the requirement. All tribes should have the ability to access federal databases not only for the purpose of obtaining criminal history information for criminal or civil law purposes, but also for entering protection orders and other relevant information, including NICS disqualifying events, into the databases.

Missing and Murdered Native Women

As required by a provision included in VAWA 2005, DOJ holds an annual consultation with tribal governments on violence against women. For several years tribal leaders have raised concerns at the

annual consultation about the inadequate response to cases of missing or murdered Native women. DOJ summarized tribal leader testimony on this issue in 2016:

> "At the 2016 consultation, many tribal leaders testified that the disappearance and deaths of American Indian and Alaska Native (AI/AN) women are not taken seriously enough, and that increased awareness and a stronger law enforcement response are critical to saving Native women's lives. They noted that missing AI/AN women may have been trafficked, and they also provided examples of abusers who murdered their partners after engaging in a pattern of escalating violence for which they were not held accountable. Tribal leaders also raised concerns that cases involving Native victims are often mislabeled as runaways or suicides, and that cold cases are not given sufficient priority. Recommendations included the creation of a national working group to address these issues and an alert system to help locate victims soon after they disappear, as well as the development of an Indian country-wide protocol for missing Native women, children, and men."[13]

Senator Heitkamp, along with a bi-partisan group of co-sponsors, has introduced "Savanna's Act," S. 1942, which includes several provisions aimed at improving the response to cases of missing and murdered women in tribal communities. We encourage the Committee to include provisions like these in any reauthorization of VAWA.

Safety for Alaska Native Women

While there is tremendous diversity among all tribes, it is worth noting that many of the 229 tribes in Alaska experience extreme conditions that differ significantly from tribes outside Alaska. Most of the Alaska Native villages are located in remote areas that are often inaccessible by road and have *no* local law enforcement presence. The Tribal Law and Order Commission found that "Alaska Department of Public Safety (ADPS) officers have primary responsibility for law enforcement in rural Alaska, but ADPS provides for only 1.0-1.4 field officers per million acres." [14] Without a strong law enforcement presence, crime regularly occurs with impunity. Victims live in small, close-knit communities where access to basic criminal justice services is non-existent and health care is often provided remotely through telemedicine technology. Providing comprehensive services and justice to victims in these circumstances presents unique challenges. In many of these communities, tribal members receive services in informal ways. Domestic violence victims, for example, may be offered shelter in a home that is a known "safe house" in the village. As this Committee moves forward with VAWA reauthorization, we encourage you to work closely with the Alaska delegation and the Alaska Native Women's Resource Center to include provisions that will address the needs of Alaska Native victims.

VAWA's Tribal Grant Programs

In addition to the challenges created by jurisdictional complexities and limits on tribal authority, the safety of Native women continues to be undermined by a lack of resources for victim services and

[13] U.S. Department of Justice, Office on Violence Against Women, "2017 Update on the Status of Tribal Consultation Recommendations," (2017).
[14] *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013), *available at* http://www.aisc.ucla.edu/iloc/report/.

tribal criminal justice systems. In previous reauthorizations of VAWA, Congress has created several new grant programs for Indian tribes including the Grants to Tribal Governments Program, the Tribal Sexual Assault Services Program, the Tribal Coalitions Program, and the Tribal Jurisdiction Program. These programs have made a significant difference in some tribal communities and should be reauthorized. They are simply not sufficient, however, to meet the need. While we understand that it is likely outside the scope of what will be addressed in a VAWA reauthorization bill, Congress must address the exclusion of tribal governments from the Crime Victims Fund, which would provide much-needed funding to provide services and compensation to victims of violence in tribal communities. This is discussed in greater detail in testimony that NCAI submitted in conjunction with an oversight hearing held by the Senate Committee on Indian Affairs in 2015 on "Addressing the Need for Victim Services in Indian Country" (attached).

Conclusion

Public safety has been the leading concern of tribal leaders throughout the country for many years. NCAI strongly encourages Congress to take action on all of the fronts that we have identified above. Taken together – removing the gaps in tribal jurisdiction, expanding access to federal criminal databases, responding to the need for thorough criminal investigation of every case for the murdered and missing, addressing the unique challenges in Alaska, and ensuring there are resources available for victim services– we can dramatically change the environment for criminal activity on Indian reservations. Our goal and our mission is sending the message that domestic violence, sexual assault, stalking, and trafficking will not be tolerated on tribal lands. This effort will bring great benefits to Indian communities and our neighbors in public safety, but also in health, productivity, economic development, and the well-being of our people. We thank you in advance, and look forward to starting our joint efforts immediately.

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

The National Congress of American Indians
Resolution #SPO-16-037

TITLE: Combatting Non-Indian Domestic Violence and Sexual Assault: A Call for a Full Oliphant Fix

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, domestic violence in Indian country is at epidemic levels, including criminal acts by non-Indians against tribal members; and

WHEREAS, the 2013 Re-authorization of the Violence Against Women Act permitted tribes to exercise limited inherent criminal jurisdiction over non-Indian domestic violence perpetrators in narrow circumstances; and

WHEREAS, the experience of those tribes that have implemented non-Indian domestic violence jurisdiction has highlighted its limitations, particularly in light of certain United States Supreme Court cases including *Oliphant v. Suquamish,* which held that tribal governments have no criminal jurisdiction over non-Indians on tribal lands; and

WHEREAS, domestic violence is not a singular crime but can encompass any criminal activity including property crimes (e.g. malicious mischief, burglary, trespass, etc.), financial crimes (e.g., theft, intentional destruction of credit, etc.), drug crimes (e.g. involuntary drugging etc.), traffic crimes (e.g., drunk or drugged driving, reckless driving, particularly where the victim is an involuntary passenger), and personal crimes (e.g. assault, rape, reckless endangerment, kidnapping, unlawful imprisonment, etc.), and can be directed at third parties such as children, family members, boyfriends/girlfriends, or other persons the primary victims have relationships with; and

WHEREAS, it is impossible to craft a fix to the 2013 Violence Against Women Act non-Indian domestic violence provisions in a way that can encapsulate all potential domestic violence criminal acts and attendant crimes because domestic violence can take the form of virtually any direct or indirect crime against a spouse or intimate partner and is frequently accompanied by a pattern of criminal behavior such as drug crimes, theft, and violence that are damaging to the entire tribal community; and

WHEREAS, the 2013 Re-authorization of the Violence Against Women Act does not provide protections for stranger, acquaintance, or first date sexual assault or domestic violence related crimes; and

WHEREAS, the tribes that have implemented the non-Indian provisions of the 2013 Re-authorization of the Violence Against Women Act have proven that tribes can and do afford non-Indians the equivalent of all of their rights under the United States Constitution, complete with a right of review in federal court on a habeas corpus petition; and

WHEREAS, communities in which crimes occur are the best jurisdictions to investigate and prosecute those crimes regardless of who it involves; and

WHEREAS, tribal nations have a moral obligation to ensure the protection of their entire community regardless of race, citizenship, or relations to tribal citizens, which in turn mandates that tribes have the ability to hold all criminals accountable for crimes committed in their communities; and

WHEREAS, the United States government has the ability to restore tribal jurisdiction in a manner that ensures due process protections and allows for full local criminal justice protections by enhancing inherent tribal criminal jurisdiction over all crimes within a tribe's Indian country regardless of race, citizenship, or relationship of those committing crimes.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians does hereby call on the United States government to expand inherent tribal criminal jurisdiction over all persons committing any crime in their Indian country in a manner that ensures the defendants have the same due process protections as required under the Tribal Law and Order Act of 2010 and the 2013 Re-authorization of the Violence Against Women Act; and

BE IT FURTHER RESOLVED, that, like the Tribal Law and Order Act of 2010 and the 2013 Re-authorization of the Violence Against Women Act, exercising such authority should be optional at a tribe's sole discretion; and

BE IT FURTHER RESOLVED, that NCAI does hereby call on all presidential campaigns to make the expansion of inherent tribal criminal jurisdiction over all persons and crimes within a tribe's Indian country a central part of their Native American policy; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2016 Midyear Session of the National Congress of American Indians, held at the Spokane Convention Center, June 27 to June 30, 2016, with a quorum present.

Brian Cladoosby, President

ATTEST:

Aaron Payment, Recording Secretary

National Congress of American Indians

VAWA 2013's Special Domestic Violence Criminal Jurisdiction (SDVCJ) Five-Year Report

March 20, 2018

"We have always known that non-Indians can come onto our lands and they can beat, rape and murder us and there is nothing we can do about it….Now, our tribal officers have jurisdiction for the first time to do something about certain crimes. But it is just the first sliver of the full moon that we need to protect us."

—Lisa Brunner
White Earth Ojibwe Nation
Intergenerational Domestic Violence Survivor

This project was supported by Grant # 2013-TA-AX-K011 awarded by the Office on Violence Against Women. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the Department of Justice.

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For 35 years, the law failed to protect women like Taryn Minthorn.

Like many Indian women, Minthorn dated a non-Indian man. Eventually the relationship ended and her former boyfriend became dangerous. He spent months verbally abusing her before things became physically violent in September 2016. Her former boyfriend assaulted her in front of her children. When tribal police arrived, they promptly arrested him.

Her case was referred to the federal government for prosecution; however, they declined to prosecute her abuser. As Ms. Minthorn describes it, "I felt like I was seriously let down….I felt like he could do all the crime in the world, and it was just a slap on the hand. I just wanted to give up."

Until recently, Minthorn's case would have ended there, with her abuser walking free because only federal courts had jurisdiction to prosecute her non-Indian abuser.

However, because Minthorn's tribal Nation, the Confederated Tribes of the Umatilla Indian Reservation, was one of the first tribes to exercise Special Domestic Violence Criminal Jurisdiction over non-Indians under the Violence Against Women Act of 2013, Minthorn was able to receive justice. Umatilla prosecutors were ready and willing to do something about her abuse.

In March 2017, her former boyfriend pled guilty in Umatilla Tribal Court. His sentence included two years of incarceration, three years of probation, abstaining from drugs and alcohol, anger management and batterer intervention treatment, and obeying a no contact order.

In Minthorn's words, "[t]o hear him saying that he was pleading to these charges, I literally felt the load come off of me, off my shoulders, off my mind, off my heart." Without her tribe being able to step in and prosecute, Minthorn and her children would not have seen justice.

Tribal court jurisdiction over non-Indian abusers makes all the difference for women like Minthorn who previously had nowhere else to turn. As she says, "It's important for future generations to know that eventually there is justice."[1]

EXECUTIVE SUMMARY

Five years ago, Congress passed the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).[2] In response to the high rates of domestic violence being perpetrated against American Indian and Alaska Native women by non-Indian men,[i] and harrowing stories from victims whose abusers seemed out of justice's reach, the law contained a new provision. VAWA 2013 recognized and affirmed the inherent sovereign authority of Indian tribal governments to exercise criminal jurisdiction over certain non-Indians who violate qualifying protection orders or commit domestic or dating violence against Indian victims on tribal lands.[3] This provision in VAWA 2013 created a framework for tribal courts to prosecute non-Indians again—something that had not happened in 35 years, since the U.S. Supreme Court decision in *Oliphant v. Suquamish Tribe,* which removed tribal authority to prosecute non-Indians.[4]

VAWA 2013's limited reaffirmation of inherent tribal criminal jurisdiction over non-Indians, known as Special Domestic Violence Criminal Jurisdiction (SDVCJ), has fundamentally changed the landscape of tribal criminal jurisdiction in the modern era. By exercising SDVCJ, many communities have increased safety and justice for victims who had previously seen little of either. SDVCJ has allowed tribes to "respond to long-time abusers who previously had evaded justice"[5] and has given a ray of hope to victims and communities that safety can be restored.

To date, 18 tribes are known to be exercising SDVCJ (throughout this report these tribes are referred to collectively as "implementing tribes").[ii] Tribes are implementing SDVCJ with careful attention to the requirements of federal law and in a manner that upholds the rights of defendants. In order to exercise SDVCJ, tribes must comply with a series of federal statutory requirements that include, among other things, providing certain due process protections to non-Indian defendants.[6] Most of these implementing tribes have worked closely with a group of over 50 other tribes as part of an Inter-tribal Technical-Assistance Working Group (ITWG) on SDVCJ that has been an important forum for tribal governments to work collaboratively to develop best practices.

To date, the implementing tribes report 143 arrests of 128 non-Indian abusers. These arrests ultimately led to 74 convictions, 5 acquittals, and 24 cases currently pending. There has not been a single petition for habeas corpus review brought in federal court in an SDVCJ case. Although preliminary, the absence of habeas petitions suggests the fairness of tribal courts and the care with which tribes are implementing SDVCJ.

Implementation of SDVCJ has had other positive outcomes as well. For many tribes, it has led to much-needed community conversations about domestic violence. For others it has provided an impetus to more comprehensively update tribal criminal codes. Implementation of SDVCJ has also resulted in increased collaboration among tribes and between the local, state, federal, and tribal governments. It has revealed places where federal administrative policies and practices needed to be strengthened to enhance justice, and it has shown where the jurisdictional framework continues to leave victims—including children and law enforcement—vulnerable. Implementation thus far has also revealed that additional resources are necessary in order for the benefits of the law to expand to more reservations.

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[i] *See infra* Section I.

[ii] Since the end of the pilot period, tribes are not required to notify the U.S. Department of Justice if they begin exercising SDVCJ. This report covers the 18 implementing tribes that have reported implementation to the National Congress of American Indians and its partner technical assistance providers, although it remains a possibility that there are other tribes implementing SDVCJ.

This report summarizes how VAWA 2013's landmark provision has been implemented and analyzes its impacts in the 5 years since it was enacted.[iii] This examination of the tribes' early exercise of SDVCJ suggests that VAWA 2013 has been a success. As Congress intended, the law has equipped tribes with the much-needed authority to combat the high rates of domestic violence against Native women, while at the same time protecting non-Indians' rights in impartial, tribal forums.[7]

The report begins in Section I with a brief overview of the need for the tribal provisions in VAWA 2013 and the context for their passage. It then provides in Section II, an overview of nationwide SDVCJ prosecution statistics and analyzes tribal experiences exercising SDVCJ over the past four years. It identifies four key findings, which are as follows:

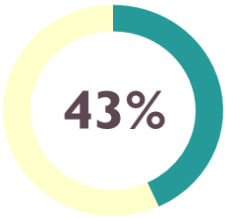
1. Tribes use SDVCJ to combat domestic violence by prosecuting offenders harming their communities
    - 1-1. Non-Indian perpetrated domestic violence is a real problem
    - 1-2. Many defendants have numerous prior contacts with tribal police, demonstrating SDVCJ can end impunity
    - 1-3. Many SDVCJ defendants have criminal records or outstanding warrants
    - 1-4. A diverse array of tribes have successfully implemented SDVCJ
2. Tribal courts uphold the rights of defendants and are committed to their rehabilitation
    - 2-1. SDVCJ case outcomes demonstrate fairness
    - 2-2. Tribes are invested in helping defendants get the help they need
3. Implementation revealed serious limitations in the law
    - 3-1. The statute prevents tribes from prosecuting crimes against children
    - 3-2. The statute prevents tribes from prosecuting alcohol and drug crimes
    - 3-3. The statute prevents tribes from prosecuting crimes that occur within the criminal justice system, thereby endangering law enforcement and undermining the integrity of the system
    - 3-4. There was initial confusion concerning the scope of the federal statutory definition of "domestic violence"
    - 3-5. SDVCJ is prohibitively expensive for some tribes
    - 3-6. Detention issues and costs create implementation challenges
    - 3-7. SDVCJ is jurisdictionally complex
4. SDVCJ implementation promotes positive changes
    - 4-1. SDVCJ promotes positive tribal reforms
    - 4-2. Inter-tribal collaboration creates successes beyond SDVCJ
    - 4-3. SDVCJ promotes better relationships with other jurisdictions

Following the findings in Section II, Section III provides an overview of the requirements of those provisions and how they are structured. After supplying this context on the law, Section IV includes brief profiles of the 18 implementing tribes, including individual prosecution statistics. Finally, Section V examines the diversity in how tribes have chosen to meet the statutory requirements of VAWA 2013 and illustrates how the statute has allowed tribes to implement SDVCJ differently depending on the needs and values of their communities. The appendices to this report include resources on implementation of SDVCJ and other materials that may be of interest.

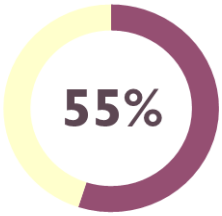
[iii] Although VAWA 2013 was enacted 5 years ago, the SDVCJ provision took effect as a Pilot Project 1 year later and became effective nationwide in March of 2015.

I. THE NEED FOR AND ENACTMENT OF SDVCJ

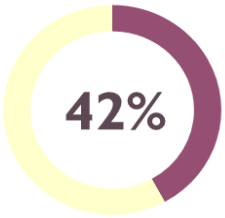
A series of studies from the past several decades found staggering rates of violence against Native women on reservations—rates that far exceeded those of any other group in the United States. Contrary to most other populations where rape, sexual assault, and other forms of violence are usually *intra*-racial, evidence suggested that American Indian and Alaska Native women are more likely to be raped or assaulted by someone of non-Indian descent.[8] In 2013, when Congress enacted SDVCJ, it was motivated by this well-documented crisis of inter-racial violence against women in Indian Country.[9]



Percent of American Indian & Alaska Native Men who experience Physical Violence from an Intimate Partner in their lifetime



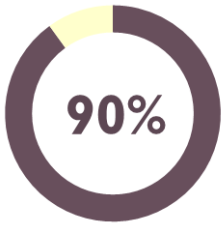
Percent of American Indian & Alaska Native Women who experience Physical Violence from an Intimate Partner in their lifetime



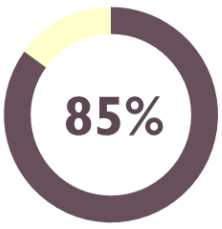
Percent of American Indian & Alaska Native Women who experience Severe Physical Violence from an Intimate Partner in their lifetime

Recently, the Department of Justice's (DOJ) National Institute of Justice (NIJ) examined this issue and commissioned an in-depth study on violence against Native people. That study confirmed not only the presence of this crisis, but found that the scope is even greater than previously thought. According to the study, not only are there incredibly high rates of domestic violence in Indian Country, but non-Indian intimate partner violence accounts for the overwhelming majority of it.

NIJ found that more than half (55 percent) of American Indian and Alaska Native women have experienced physical violence by an intimate partner in their lifetimes—and 90 percent of these victims report being victimized by a non-Indian perpetrator, while only 18 percent report being victimized by an Indian. Overall, American Indian and Alaska Native women are five times as likely as non-Hispanic white women to have experienced physical violence by an inter-racial intimate partner.[10]



Percent of American Indian & Alaska Native Female Victims of Intimate Partner Physical Violence Report an Inter-Racial Perpetrator



Percent of American Indian & Alaska Native Male Victims of Intimate Partner Physical Violence Report an Inter-Racial Perpetrator

The higher rate of inter-racial violence would not necessarily be as significant if it were not for jurisdictional complexities in Indian Country. Criminal jurisdiction in Indian Country is divided among federal, tribal, and state governments, depending on the location of the crime, the type of crime, the race of the perpetrator, and the race of the victim. The rules of jurisdiction were created over 200 years of Congressional legislation and Supreme Court decisions – and are often referred to as a "jurisdictional maze."[11]

The complexity of the jurisdictional rules creates significant impediments to effective law enforcement in Indian Country. Each criminal investigation involves a cumbersome procedure to establish who has jurisdiction over the case according to the nature of the offense committed, the identity of the offender, the identity of the victim and the exact legal status of the land where the crime took place. The first law enforcement officials called to the scene are often tribal police or BIA officers, and these officers may initiate investigations and/or detain a suspect. Then a decision has to be made—based on the race of the individuals involved in the crime, the type of crime committed, and the legal status of the land where the crime occurred—whether the crime is of the type warranting involvement by the FBI or state law enforcement.

Oftentimes answering these questions can be very difficult. Each of the three sovereigns has less than full jurisdiction, and the consequent need for multiple rounds of investigation often leads to a failure to act. Overall, law enforcement in Indian Country requires a degree of cooperation and mutual reliance between federal, tribal and state law enforcement that—while theoretically possible—has proven difficult to sustain.

> "The combination of the silence that comes from victims who live in fear and a lack of accountability by outside jurisdictions to prosecute that crime, you've created if you will, the perfect storm for domestic violence and sexual assault, which is exactly what all of the statistics would bear out."
>
> —The Honorable Theresa Pouley
> Former Chief Judge, Tulalip Tribes of Washington[12]

For over three decades before VAWA 2013, tribes did not have jurisdiction over any crimes committed by non-Indians on their reservations.[13] In 1978, the Supreme Court ruled in *Oliphant v. Suquamish* that, absent specific direction from Congress, tribal nations do not have jurisdiction over crimes committed by non-Indians in Indian Country.[14] Congress recognized the impacts of this ruling.

> "Criminals tend to see Indian reservations and Alaska Native villages as places they have free reign, where they can hide behind the current ineffectiveness of the judicial system. Without the authority to prosecute crimes of violence against women, a cycle of violence is perpetuated that allows, and even encourages, criminals to act with impunity in Tribal communities and denies Native women equality under the law by treating them differently than other women in the United States."
>
> — Senate Committee on Indian Affairs[15]

Numerous researchers and policy commissions have concluded that jurisdictional complexities in Indian Country were a part of the problem. As the Ninth Circuit summarized in a 1994 report, "Jurisdictional complexities, geographic isolation, and institutional resistance impede effective protection of women subjected to violence within Indian Country."[16]

For years, Indian tribal governments have raised concerns about the high rates of domestic violence on Indian reservations and the inadequate criminal justice response to those crimes.[17] On July 21, 2011, following extensive consultation with tribal governments, the DOJ took the unusual step of submitting a legislative proposal to Congress intended to address the "jurisdictional framework [that] has left many serious acts of domestic violence and dating violence unprosecuted and unpunished" in Indian Country.[18] That proposal formed the basis of what would become the tribal provisions of VAWA 2013.

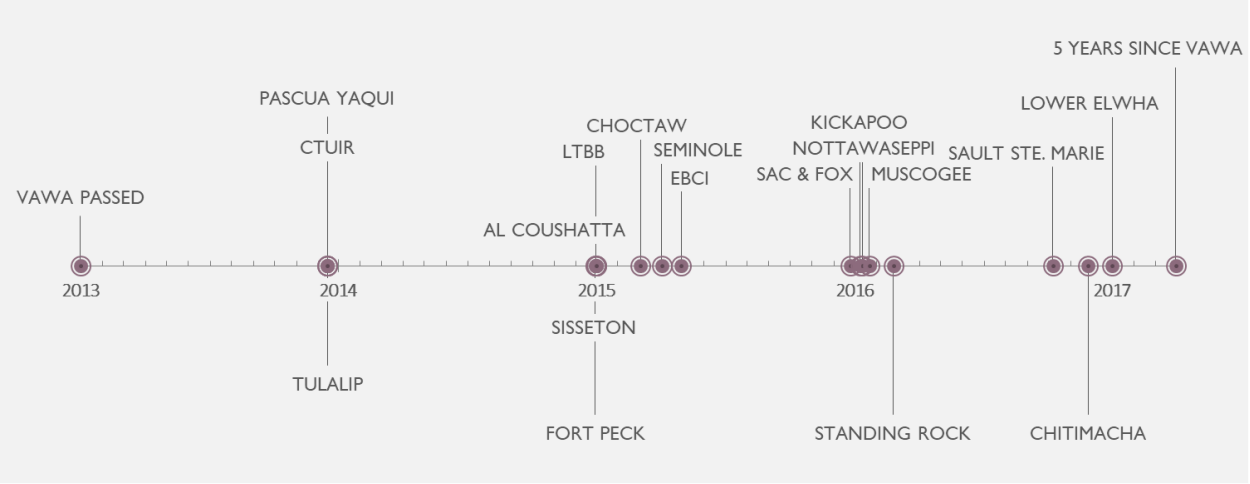
II. OVERVIEW & FINDINGS

NATIONWIDE IMPLEMENTATION

As of the 5-year anniversary of VAWA 2013—and the 3-year anniversary since the SDVCJ statute took general effect—the National Congress of American Indians (NCAI) is aware of a total of 18 tribes who have opted to implement SDVCJ.[iv] Those tribes have lands within the borders of 11 different states across the nation, and represent a great diversity of Native nations.

For some tribes whose judicial systems already complied with the statutory requirements of VAWA 2013, implementing SDVCJ required only small changes to the jurisdiction section of their tribal codes, and they were able to implement very quickly. Other tribes had to rewrite large portions of their tribal code or amend their constitutions to comply with the statute. Several tribes had to build or contract for additional services—such as indigent defense counsel—that either did not exist or the tribe could not easily expand to non-Indian defendants. Some had to renegotiate detention contracts with neighboring jurisdictions or the Bureau of Indian Affairs (BIA) to allow them to house non-Indian offenders. Depending on the changes necessary, the process required significant time and resources on the part of the tribe.

SDVCJ IMPLEMENTATION TIMELINE



[iv] Since the end of the pilot period, tribes are not required to notify the DOJ if they begin exercising SDVCJ. This report covers the 18 implementing tribes that have reported implementation to NCAI and its partner technical assistance providers, although it remains a possibility that there are other tribes implementing SDVCJ.

TRIBES IMPLEMENTING SDVCJ:

The Pascua Yaqui Tribe in Arizona

The Tulalip Tribes in Washington

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) in Oregon

The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation in Montana

The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation in North and South Dakota

The Little Traverse Bay Band of Odawa Indians in Michigan

The Alabama-Coushatta Tribe of Texas

The Choctaw Nation in Oklahoma

The Eastern Band of Cherokee Indians in North Carolina

The Seminole Nation in Oklahoma

The Sac and Fox Nation in Oklahoma

The Kickapoo Tribe of Oklahoma

The Nottawaseppi Huron Band of Potawatomi in Michigan

The Muscogee (Creek) Nation in Oklahoma

The Standing Rock Sioux Tribe in North and South Dakota

The Sault Ste. Marie Tribe of Chippewa in Michigan

The Chitimacha Tribe of Louisiana

The Lower Elwha Klallam Tribe in Washington

5-YEAR PROSECUTION STATISTICS

PROSECUTIONS AND OUTCOMES			
143 ARRESTS	**74** CONVICTIONS	**24** CASES PENDING	**5** ACQUITTALS
14 FEDERAL REFERRALS	**73** GUILTY PLEAS	**21** DISMISSALS	**19** DECLINATIONS
6 TRIALS	**5** JURY TRIALS	**1** BENCH TRIAL	**1** JURY TRIAL CONVICTION

DEMOGRAPHICS			
128 DEFENDANTS		**128** VICTIMS	
90% MALE DEFENDANTS	**10%** FEMALE DEFENDANTS	**90%** FEMALE VICTIMS	**10%** MALE VICTIMS
115 MALE DEFENDANTS	**13** FEMALE DEFENDANTS	**115** FEMALE VICTIMS	**13** MALE VICTIMS
8 NON-U.S. CITIZEN DEFENDANTS		**19** VICTIMS REQUIRED MEDICAL CARE	

Major Takeaways			
0 Petitions for a Federal Writ of Habeas Corpus	**51%** Incidents Involved Drugs or Alcohol[v]	**58%** Incidents Involved Children[vi]	**At least 73** Defendants Had Criminal Records[vii]
125 Domestic or Dating Violence Cases	**34** Protection Order Violations	**At least 33** Defendants Sentenced to Incarceration[viii]	**3 years** Longest Incarceration Sentence
85 Defendants Account for 378 Prior Contacts with Tribal Police Before their Tribe Implemented SDVCJ[ix]			
51% Defendants Sent to Batterer Intervention, or Other Rehabilitation Program[x]			

Note: Unless otherwise cited to another source, the information in this report—including the statistics above—is attributable to the sum of the experiences of the technical assistance providers, NCAI, the Tribal Law and Policy Institute (TLPI), and the National Council of Juvenile and Family Court Judges (NCJFCJ), including numerous meetings, phone calls, trainings, webinars, and emails. The information collected about implementation is documented and corroborated in NCAI's internal notes and reports. They are not cited specifically, unless they are a direct quotation.

[v] Pascua Yaqui, Fort Peck Tribes, and Tulalip provided approximate values.
[vi] Fort Peck Tribes provided an approximate value.
[vii] Fort Peck Tribes provided an approximate value, and Pascua Yaqui could only confirm 18 of their defendants had criminal records. Like many tribes, Pascua Yaqui did not always have access to state conviction records—including through the FBI's National Instant Criminal Background Check System (NCIC) program—prior to their inclusion in the Tribal Access Program (TAP) program as discussed later in this report in Section II, Finding 4-3.
[viii] Pascua Yaqui did not provide this information.
[ix] This number does not include contacts from Fort Peck Tribes, Eastern Band of Cherokee Indians, and Choctaw Nation who reported arrests, but do not track that information.
[x] Tulalip provided an approximate.

FINDINGS

In the five years since VAWA 2013 was enacted, NCAI and its partners on this project, the Tribal Law and Policy Institute (TLPI) and the National Council of Juvenile and Family Court Judges (NCJFCJ), have worked closely with the tribes as they navigate the early years of implementing the statute.[xi] The findings highlighted in this report are a synthesis of those experiences providing technical assistance or otherwise working with the implementing tribes and tribes considering implementation. Through nine in-person meetings of the full ITWG, monthly calls with the tribal prosecutors, defenders, and judges, site visits, check-in calls, webinars, and trainings, NCAI has kept track of the general trends reported by tribes, and collected illustrative case studies that highlight common experiences. These are collected, organized, and reported as findings.

1. TRIBES USE SDVCJ TO COMBAT DOMESTIC VIOLENCE BY PROSECUTING OFFENDERS HARMING THEIR COMMUNITIES

Appropriate criminalization of domestic violence is one of the primary ways a community can send the message that domestic violence is unacceptable and will not be tolerated. Prior to passage of VAWA 2013, non-Indians could largely commit domestic violence crimes with impunity on tribal lands. Many of the implementing tribes expressed a similar sentiment when asked about their reason for implementing SDVCJ.

> "It is incredible for us to be able to say, we can do this, we can protect you. You are our citizen, and it matters to me as a tribal leader—it is my responsibility in fact—to say that this tribe will do everything we can to protect you."
>
> —Terri Henry,
> Former Tribal Council Chairwoman of the Eastern Band of Cherokee Indians[19]

> "We knew we had a problem with non-Indians committing crimes on the reservation, we knew that we had victims and tribal members that were facing dark days and dark nights on the reservation. I don't think it was something that the tribal council was willing to wait."
>
> —Alfred Urbina, Former Attorney General, Pascua Yaqui Tribe[20]

> "SDVCJ has enabled the Sac and Fox Nation to provide for the safety and protection of its people, which is inherently the responsibility of any government. Through the SDVCJ the community has seen how importantly the Nation takes its responsibility of protecting its people. The Nation is proud to be able to provide security to victims that their abusers will not go unpunished."
>
> —Kay Rhoads, Principal Chief of the Sac and Fox Nation[21]

[xi] The technical assistance provided by NCAI and NCJFCJ since 2013 has been funded through Office on Violence Against Women (OVW) grants whereas the technical assistance provided by TLPI since 2013 has been funded through Bureau of Justice Assistance (BJA) grants.

CASE FROM THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
While in custody, DV defendant makes serious threats of further violence

The defendant was a non-Indian with a record of previous arrests for domestic assault. Tribal police arrived to find the defendant holding a knife. The defendant allegedly struck the victim in the face, resulting in a nose bleed, swelling, and marks on her face. According to the victim, this was not the first time the defendant assaulted her.

The victim was pregnant with the defendant's child at the time of the assault, and the assault was witnessed by the victim's two daughters, who were the ones who ran for help.

The defendant was arrested and the Tribal Court immediately issued an automatic Protection Order.

It was noted in the report that during transport to jail, the suspect stated multiple times that if he was going to jail "the next time, there would be more blood."

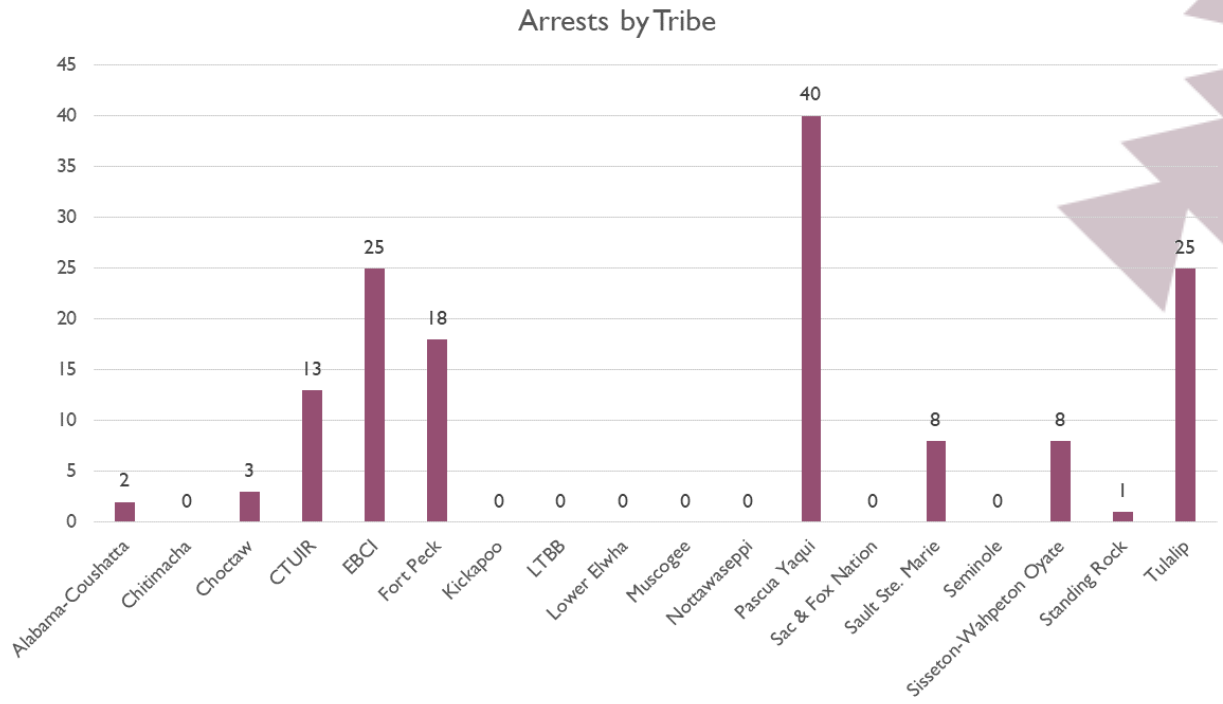
The defendant pled guilty to a one year jail sentence and two years of probation. Though most of his incarceration was initially suspended, due to probation violations he ultimately spent nearly a year behind bars. As part of his probation he was required to take batterer intervention courses, undertake community service, and abide by the terms of the court's Protection Order.

1-1. NON-INDIAN PERPETRATED DOMESTIC VIOLENCE IS A REAL PROBLEM

As discussed in Section II, American Indian and Alaska Natives experience domestic violence at disproportionately high rates. When VAWA 2013 was pending before Congress, some policymakers and commentators questioned whether a significant number of non-Indians were committing domestic violence crimes in Indian Country and whether the tribal jurisdiction provision was needed. Five years after passage of VAWA 2013, the prosecution numbers from the implementing tribes provide an unequivocal answer to that question.

143	74	24
ARRESTS	**CONVICTIONS**	**CASES PENDING**

The 18 implementing tribes have made a total of 143 SDVCJ arrests, resulting in 74 convictions. The tribe with the highest number of SDVCJ arrests, Pascua Yaqui, reports that SDVCJ cases account for 15-25 percent of the tribe's overall domestic violence caseload.



CASE FROM THE CHOCTAW NATION

Defendant severely beat his wife in front of their three children

The defendant is married to a tribal member and is the father of three tribal member children. Defendant was arrested and charged with domestic assault after he severely beat his wife in front of their three children. The victim was hit and then pushed to the ground where the defendant proceeded to kick her repeatedly and then broke a beer bottle over her head. The victim was so severely beaten she had to take medical leave from her job. Defendant pled guilty in tribal court and is serving a sentence which includes a mandatory batterer intervention course.

125 DOMESTIC OR DATING VIOLENCE CASES

34 PROTECTION ORDER VIOLATIONS

The vast majority of SDVCJ cases are domestic or dating violence cases. Among the implementing tribes, 125 of the cases are domestic or dating violence cases, while 34 involved criminal violations of a protection order. Protection order violations make up a comparatively small proportion of the prosecutions thus far. Protection order violations are arguably the broadest recognition of tribal authority under VAWA 2013. The federal framework recognizes the inherent power of tribal courts to prosecute offenders for violating a protection order that protects *anyone*, not just an intimate partner, so long as the other jurisdictional requirements are met.[22] The implementing tribes,

however, have largely not yet used this provision in this broad manner. Of the implementing tribes, only Pascua Yaqui reported a potential SDVCJ case for violation of a protection order where the protected party was not an intimate partner. However, many of the tribes rely heavily on protection orders to protect SDVCJ victims, and NCAI and its partners expect to see an increase in the number of SDVCJ cases involving protection order violations where a child or other family member is the protected party.

CASE FROM THE PASCUA YAQUI TRIBE
Protection Order for Grandmother

An elderly grandmother lived with her minor granddaughter on the Pascua Yaqui Reservation. The granddaughter began dating a non-Indian. After a time, the grandmother came to fear that her granddaughter's boyfriend would physically harm her and filed for a Protection Order from the Pascua Yaqui Tribal Court. Before the boyfriend could be served, he violated the terms sought by the grandmother. Had the Protection Order been in place, the Pascua Yaqui tribe would have prosecuted the boyfriend for violating the Protection Order. He was later arrested by the state for a separate incident involving the daughter.

AT LEAST 33 DEFENDANTS SENTENCED TO INCARCERATION[xii]

3 YEARS LONGEST INCARCERATION SENTENCE

The sentences for individuals convicted of SDVCJ-related crimes have ranged from probation to 3 years. The vast majority of offenders were sentenced to probation or less than a year of incarceration. Several tribes are also using banishment as a punishment in SDVCJ cases, and many SDVCJ offenders are sent to batterer intervention or other programs aimed at offender rehabilitation. Several of the tribes report that they have arrested and charged the same defendant for an SDVCJ-related offense more than once. While the defendants are primarily male, several tribes have arrested and charged women with SDVCJ-related crimes. All races are represented among the defendants, and several of the defendants have been non-U.S. citizens.

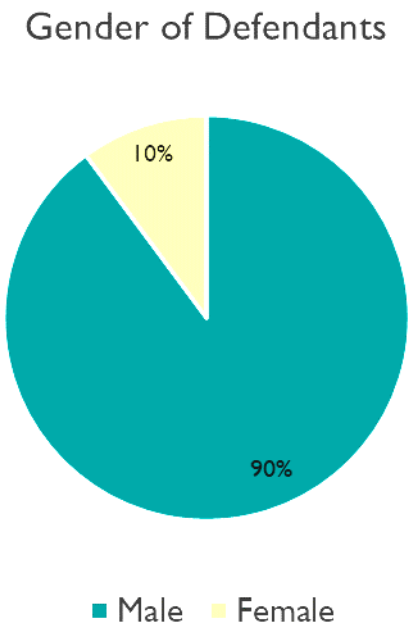
128 DEFENDANTS

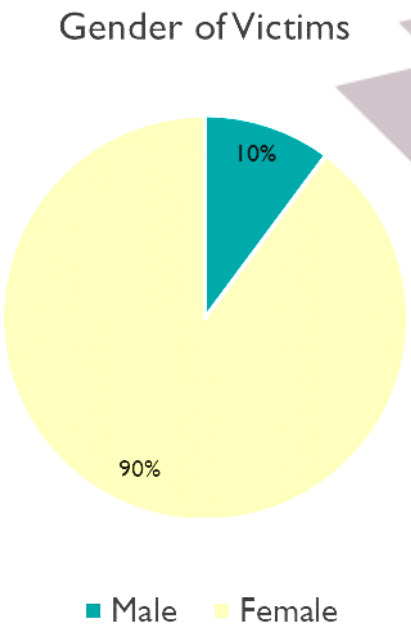
115 MALE DEFENDANTS

13 FEMALE DEFENDANTS

8 NON-U.S. CITIZEN DEFENDANTS

[xii] This number does not include Pascua Yaqui, which did not provide this information.





Prosecution numbers alone do not paint the full picture. In addition to the arrests and prosecutions, multiple tribes have anecdotally reported an increase in victims seeking help, even if they do not chose to report their abuse to law enforcement or file charges.[23] According to victim service providers at these tribes, the choice to implement SDVCJ has increased awareness in their communities about domestic violence, and thereby made many victims (1) more aware of services, and (2) feel safer asking for help given the tribe's public commitment to ending domestic violence.

> "[I]t's going to take time for our women to have trust in the system that has failed them so many times… But the amount of women coming forward and talking about domestic violence, sexual assault and women's rights, it has definitely…I would say doubled [since implementation], and some of those women are now talking that were holding onto this silence for many years. And once they start to talk and start to feel like, 'This wasn't my fault and I don't have to carry the pain. I don't have to carry the hurt.' That's part of the healing process. That's when the awakening of their spirit becomes alive and they can find justice and peace. Will we capture all the perpetrators, will we close that door? Not entirely, but we're definitely taking the right steps and I certainly hope the message is getting out there because our women need this justice desperately."
>
> —Deborah Parker, Former Vice-Chair of the Tulalip Tribes Board of Directors[24]

1-2. Many defendants have numerous prior contacts with tribal police, demonstrating SDVCJ can end impunity

Prior to implementing SDVCJ, tribal justice systems could not hold criminally abusive non-Indians who were continuing to harm their Indian partners accountable. SDVCJ was enacted to end the era of little to no prosecution of non-Indian domestic abusers. Today, in the 18 implementing tribes, many victims have finally seen their long-time abusers prosecuted—and by their own community law enforcement.

Many of the offenders had a significant number of tribal police contacts prior to implementation and had been menacing their victims and straining the tribes' law enforcement resources. The Tulalip Tribes, for example, has reported that their 17 SDVCJ defendants had a total of 171 contacts with tribal police in the years prior to SDVCJ implementation and their ultimate arrests.

85 Defendants Account for 378 Prior Contacts with Tribal Police Before their Tribe Implemented SDVCJ[xiii]

Case from the Tulalip Tribes

Defendant with 19 prior contacts with tribal police

An Indian woman was assaulted and raped by the non-Indian father of her children. The couple's 8-year old son disclosed in his statement to police that he was "punched in the face" by his father. This incident, the latest in a long history of abuse, resulted in charges of Assault in the First Degree Domestic Violence and Rape Domestic Violence, but the defendant was not immediately apprehended. Based on the conduct alleged, the victim petitioned for a protection order, which was granted. Prior to defendant's arraignment on the violent crimes, he was served with, and twice violated, the Protection Order. At the scene of these violations, the defendant was taken into custody. The defendant had nineteen contacts with Tulalip Police prior to these incidents. However, after the implementation of SDVCJ, the defendant was finally held accountable for his crimes. The defendant served a significant jail sentence and is now supervised by Tulalip Probation. He is getting the treatment he needs. The victim and her children were finally able to make a life for themselves away from the violence and abuse.

Case from the Sisseton-Wahpeton Oyate

Before VAWA, tribal police could only give an abuse victim "a head start" to flee the scene

In 2014, a non-Indian man attacked his Indian wife in a public parking lot of a gas station. During the assault in the car, he also bit her. When she ran out of the car and rushed into a women's restroom to seek shelter, he followed her and continued to assault her. The police were called, and tribal and state officers arrived at the scene. In any other case, the man would have been arrested and charged. However, because the assault took place on the Sisseton-Wahpeton Oyate's reservation land and the defendant was a non-Indian, only the federal government had jurisdiction. So, the tribal and state police who responded did

[xiii] This number does not include contacts from Fort Peck Tribes, Eastern Band of Cherokee Indians, and Choctaw Nation who reported arrests, but do not track that information.

the best they could do. They held the man in custody and painfully told the woman all they could do is try to "give her a head start."

While the state has no jurisdiction over a crime in Indian Country involving an Indian victim, it does have jurisdiction over victimless crimes. Fortunately for the victim during this particular incident, the non-Indian perpetrator caused enough of a scene in the presence of the state police that he was arrested for disorderly conduct.

Ultimately, after VAWA's passage, Sisseton-Wahpeton Oyate was able to bring the man who beat his wife in the parking lot to justice. When he beat his wife again, the tribal government was finally able to arrest and charge the man with assault. He eventually pled guilty in tribal court.

1-3. Many SDVCJ defendants have criminal records or outstanding warrants

Many of the defendants who have been arrested and convicted under SDVCJ have prior convictions or outstanding warrants. Because of SDVCJ, tribes are able to arrest, prosecute, and convict non-Indians with a documented history of violent behavior. Additionally, tribal convictions can now lay the groundwork for future federal habitual offender charges.[xiv] State, federal, and tribal law enforcement are now able, through cooperation and information sharing across jurisdictions, to ensure that defendants with a pattern of dangerous behavior are identified and receive appropriate sentences.

At least 73 Defendants Had Criminal Records[xv]

Case from the Pascua Yaqui Tribe

Defendant with three prior felony convictions, including a domestic violence conviction

The defendant, a non-Indian, Hispanic male, was charged with Domestic Violence Assault and Domestic Violence Threatening and Intimidating. On March 4, 2015, the defendant was arrested for threatening to harm his live-in girlfriend and mother of his six children. In this instance, a relative of the victim witnessed the defendant dragging the victim by her hair across the street back towards their house. The defendant pled guilty to Domestic Violence Assault and was sentenced to over two months of detention followed by supervised probation and domestic violence counseling. The defendant had at least seven

[xiv] The crime of Domestic Assault by an Habitual Offender (18 U.S.C. § 117) was created with the passage of VAWA 2005. This statute punishes any person who commits a domestic assault within the special maritime and territorial jurisdiction (SMTJ) of the United States or Indian Country who has two prior federal, state, or tribal court convictions for offenses that would be, if subject to federal jurisdiction, an assault, a sexual abuse offense, an offense under Chapter 110A, or a serious violent felony against a spouse or intimate partner.

[xv] Fort Peck Tribes provided an approximate value, and Pascua Yaqui could only confirm 18 of their defendants had criminal records. Like many tribes, Pascua Yaqui did not always have access to state conviction records—including through the FBI's NCIC databases—prior to their inclusion in the TAP as discussed later in this report in Section I, Finding 4-3.

prior contacts with Pascua Yaqui Law Enforcement and three felony convictions out of Pima County, Arizona. This was the defendant's second domestic violence conviction, and the first on the Pascua Yaqui Reservation. Because of the tribal conviction, if the defendant reoffends, he will now be eligible for federal domestic violence prosecution as a habitual offender.

Offenders crossing jurisdictional boundaries create challenges for all of the jurisdictions involved. However, the implementing tribes all work closely with not only federal law enforcement but state law enforcement to ensure that defendants with outstanding warrants are extradited to the appropriate jurisdiction if they are picked up.

CASE FROM THE FORT PECK TRIBES

Defendant has outstanding warrant for drug possession and is able to use same counsel in both cases

The defendant, a male in his 50s, moved to the area for a job during a recent oil boom. He met and began dating a tribal member, and then moved into her reservation residence after his job ended. He lived there for three to four years.

Tribal police responded to a call about a domestic disturbance. They found that the defendant had been beating his girlfriend with a wooden stick and threatened to kill her. He was arrested by tribal police. The victim was treated for severe bruising across her legs and head—one of her eyes was completely swollen shut. This became Fort Peck's first SDVCJ case.

While the defendant was in jail awaiting trial, tribal police were informed that he had an outstanding state warrant for drug trafficking. His state appointed public defender, who was already licensed to practice in tribal court, was able to serve as defense counsel in both cases. The defendant remained in jail awaiting trial until he was released on bond several months later. However, the victim passed away several months after the defendant was released on bond, and the case was dismissed. The prosecution stated that it was impossible to prove the case without the victim's testimony. The defendant currently has additional state warrants for drug trafficking.

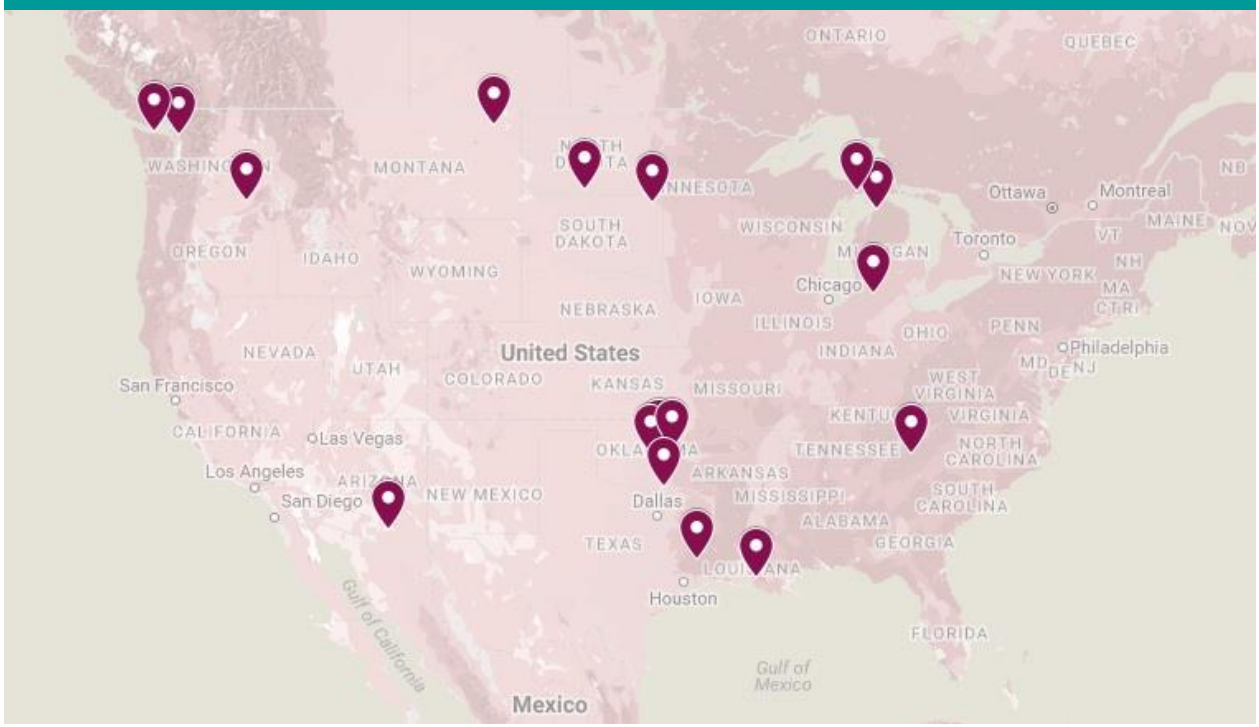
1-4. A DIVERSE ARRAY OF TRIBES HAVE SUCCESSFULLY IMPLEMENTED SDVCJ

The 18 tribes who have implemented SDVCJ represent a great diversity of Native nations. Located across the country in 11 different states, each one of these tribes implements SDVCJ in a way designed to suit their communities. The differences and similarities between the tribes are highlighted in depth in Section IV, which includes an individual profile of each tribe and a section contrasting the similarities and differences in their tribal codes.

The implementing tribes have varying sized land bases and populations, and—as detailed in the below chart—the tribes have very different demographics on their tribal lands. The four tribes that have seen the most SDVCJ cases, Pascua Yaqui Tribe, Eastern Band of Cherokee Indians, Tulalip Tribes, and Fort Peck Tribes, represent a diverse range of regions and populations. Each is located in

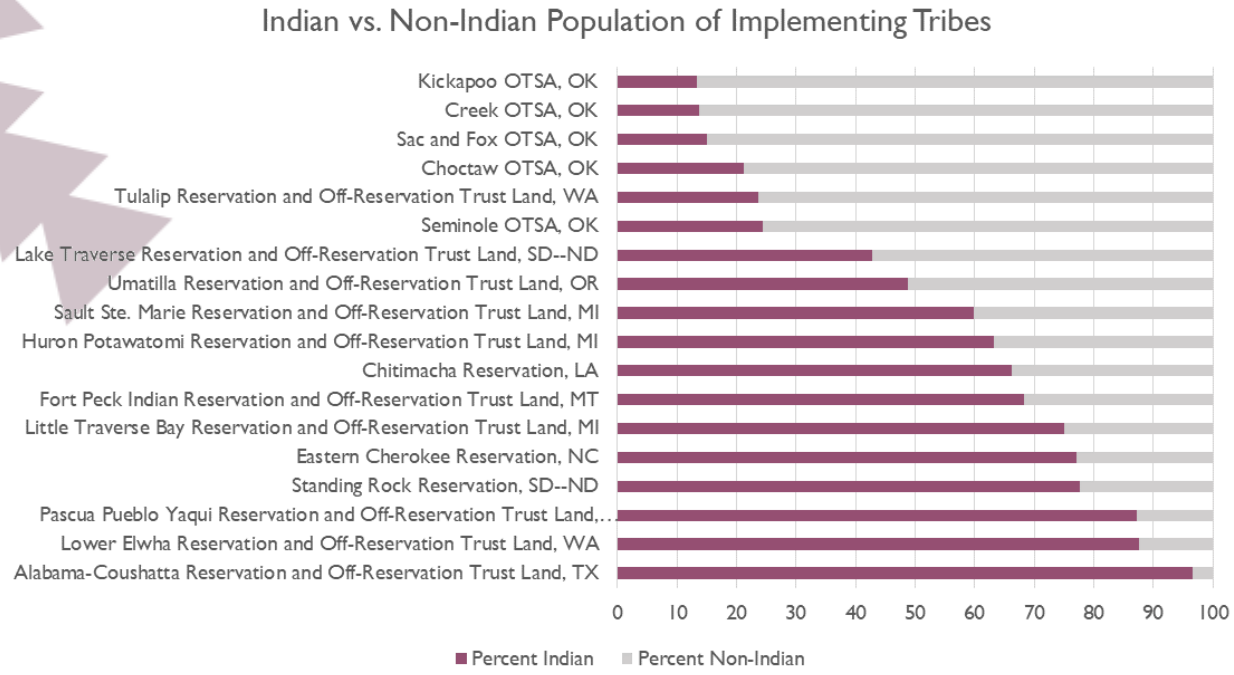
a different geographic region of the United States: the Southeast, the Northwest Coast, the Plains, and the Southwest. Pascua Yaqui's land base is 2,200 acres, while Fort Peck's reservation is over four hundred times that size, totaling just short of one million acres.[25] Pascua Yaqui is a relatively urban community, located within the greater metropolitan area of Tucson, Arizona, while Eastern Band of Cherokee is in the mountains, surrounded by forests, and over an hour away from the nearest small city. The population of Pascua Yaqui is only 12 percent non-Native, while Tulalip is just over 75 percent non-Native.

MAP OF SDVCJ IMPLEMENTING TRIBES



The political structure of the tribes also varies based on their unique histories, cultures, and worldviews. Economic development and employment opportunities also vary considerably. The implementing tribes have generally entered into 638 contract agreements with the BIA to assume control of law enforcement on the reservation.[xvi] Many have similarly assumed responsibility for detention, although for several of the tribes, detention remains a direct service provided by the BIA. All of the implementing tribes have their own courts. Only one of the implementing tribes, Alabama Coushatta, is in a jurisdiction where Public Law 280 (PL 280) or a similar statute gives the state jurisdiction over a broader group of crimes. Several of the other implementing tribes, including both CTUIR and Tulalip, have undergone either partial or full retrocession, a process by which state jurisdiction under PL 280 is returned to the federal government.

[xvi] Since the passage of the Indian Self-Determination and Education Assistance Act in 1975, tribal governments have been able to negotiate what are commonly known as '638 contracts' to directly manage a range of services provided by the federal government, including law enforcement and detention.



Source: *2012-2016 American Community Survey 5-Year Estimates--DP05 Demographic and Housing Estimates*, U.S. CENSUS BUREAU

2. TRIBAL COURTS UPHOLD THE RIGHTS OF DEFENDANTS AND ARE COMMITTED TO THEIR REHABILITATION

The tribes implementing SDVCJ have made something very clear about the new non-Indian defendants in their courtrooms: they will receive fair treatment. Many of the implementing tribes have long provided all of the due process protections required by the federal statute and describe the exercise of jurisdiction over non-Indians as largely unremarkable.[26]

2-1. SDVCJ CASE OUTCOMES DEMONSTRATE FAIRNESS

The case statistics from the implementing tribes thus far reveal justice systems not unlike the other criminal justice systems in the United States. Of the 143 arrests for SDVCJ-related crimes, 52 percent have resulted in convictions, while 18 percent have resulted in acquittals or dismissals. Of the cases that were ultimately filed, 21 percent were dismissed or resulted in acquittals. Tribes report that the cases are dismissed, or they are unable to prosecute for a range of reasons including: uncooperative witnesses, insufficient evidence, determination that the tribe lacks jurisdiction, filing errors, plea deals on other cases, or detention by another jurisdiction.

Prosecutions and Outcomes			
143 Arrests	**74** Convictions	**24** Cases Pending	**5** Acquittals
14 Federal Referrals	**73** Guilty Pleas	**21** Dismissals	**19** Declinations
6 Trials	**5** Jury Trials	**1** Bench Trial	**1** Jury Trial Conviction

The number of dismissals suggest that tribes are committed to getting it right—both making sure that they have jurisdiction and that they have sufficient evidence. Just like across the rest of the U.S. judicial system, most convictions happen through plea bargains. Of the six SDVCJ trials that have occurred—five jury trials and one bench trial—five ended in acquittal. One jury trial at the Pascua Yaqui Tribe resulted in a conviction. While it is not possible to draw definitive conclusions from a small number of trials, this does disprove the notion that a non-Indian could never get a fair trial in front of a tribal jury or tribal judge in tribal courts.

> "Although we would have preferred a guilty verdict, this first full jury trial fleshed out many pre-trial arguments, and proved our system works. A non-Indian was arrested and held by Pascua Yaqui law enforcement, he was represented by two attorneys, and a majority Yaqui jury, after hearing evidence presented by a tribal prosecutor, in front of an Indian judge, determined that the Tribe did not have jurisdiction in a fairly serious DV Assault case."
>
> —Alfred Urbina, Former Attorney General, Pascua Yaqui Tribe[27]

Offering further support for the fairness of tribal courts, there have also been no petitions for habeas corpus review filed in an SDVCJ case. The VAWA statute requires that defendants are affirmatively notified of their right to petition for habeas review in federal court, and of their right to request that tribal detention be stayed during that review. An attorney for the Confederated Tribes of the Umatilla Indian Reservation has reported that the Tribe actively encouraged their first SDVCJ defendant to file a habeas petition to test the statute, but he was not interested.[28] According to Professor Angela Riley, who has written about VAWA implementation, "during the course of the early VAWA prosecutions, tribes and tribal advocacy groups encouraged defendants to file writs of habeas corpus to appeal their convictions to federal court, but the defendants declined. Numerous parties asserted that they preferred tribal court to federal court, stating that the tribal process was less formal, less intimidating, offered more focus on treatment and showed more respect to defendants."[29]

0 Petitions for a Federal Writ of Habeas Corpus

CASE FROM THE PASCUA YAQUI TRIBE

First SDVCJ trial ended in acquittal for jurisdictional reasons

The first jury trial for a SDVCJ case was a domestic violence assault involving two men allegedly in a same-sex relationship. The defendant was acquitted by the jury. Interviews with the jurors suggest that the jury was not convinced that the two individuals had a relationship that would meet the requirements for tribal jurisdiction under VAWA 2013. There was no question that the assault occurred. In fact, if the defendant had been an Indian, the prosecutor would not have had to prove any particular relationship between the offender and the victim. But SDVCJ is limited to the specific crimes of domestic or dating violence, both of which require a particular relationship. After his acquittal, the non-Indian defendant was subsequently extradited to the State of Oklahoma on an outstanding felony warrant—a warrant that was only uncovered during the course of the investigation and would not have been found if the tribe had not implemented SDVCJ.

2-2. TRIBES ARE INVESTED IN HELPING DEFENDANTS GET THE HELP THEY NEED

Many tribes are committed to ensuring that non-Indian defendants—who are usually partners and parents of tribal members—get help in addition to punishment. Most SDVCJ offenders are well-established in the tribal community. Many SDVCJ offenders live on the reservation in tribal subsidized housing, are married to Indians, or have Indian children. At least two of the SDVCJ arrests involved unenrolled Indians from either the U.S. or Canada.

51% DEFENDANTS SENT TO BATTERER INTERVENTION, OR OTHER REHABILITATION PROGRAM[xvii]

Many tribal prosecutors expressed the sentiment that these offenders are part of their communities, and therefore the tribe is committed to ensuring that the defendant also heals. Many tribes offer batterer intervention programs. Several tribes require that every defendant convicted of a domestic violence offense completes a treatment program targeted to their abusive behaviors.[30]

> "[SDVCJ] has allowed us to address issues of family/dating violence with an approach much different than that of the state system. Here, the state system is much more punitive in nature, and at the tribal level we have a much greater ability to address the underlying issues that are the causes of this violence. In turn, our hope is to cut down on recidivism by addressing underlying issues such as drugs and alcohol. For us, the individuals we have prosecuted or currently have charges pending are individuals who have—and will continue to have—contact with the tribe and tribal members because they have children who are tribal members. Due to this fact, we want to try to help make sure that we do everything we can to deter them from reoffending."
>
> —Jennifer Bergman, Tribal prosecutor for the Alabama-Coushatta Tribe of Texas[31]

[xvii] Tulalip provided an approximate value.

Case from the Alabama-Coushatta Tribe

Tribe ensures that a mother gets the help she needs so she can ultimately get her kids back

The defendant, a non-Indian woman, is married to a member of the Alabama-Coushatta Tribe of Texas and, through that marriage, is the mother of five tribally enrolled children. One evening the defendant used methamphetamine and started hitting her husband. Later she tried to hit him again, and he also became violent. Both parents were arrested on separate counts of assault and possession. The defendant spent three days in jail sobering up, and the children were placed with family members.

The tribe charged her with family violence and she was appointed counsel. If the defendant was prosecuted in state court, she likely would have faced an additional drug possession charge, and been given a longer sentence given her criminal record. However, the tribe was determined to keep the case in tribal court so they could focus on holding her accountable while also getting her the help she needed so she would not reoffend. The defendant is the mother of tribal children, and a member of the community. The tribe was able to use additional resources and work closely with her and her family to get her appropriate mental health services and drug rehabilitation services. She ultimately took a plea deal that required her to attend rehab, and then placed her on probation where she was required to follow her doctor's instructions, and to attend mental health, anger management, and batterer intervention counseling. All of her substance abuse and mental health supports work in conjunction with the work services she completes through child protective services with the goal of getting her children back. The defendant is drug tested every month, and has not failed a single one of her drug tests.

Case from the Confederated Tribes of the Umatilla Indian Reservation

Tribe sends Iraq war veteran with PTSD to batterer intervention

On October 21, 2014, during an argument with his girlfriend, a male non-Indian defendant ripped her clothes off, pushed her to the bed, and strangled her while a comforter was over her face, all while repeatedly delivering death threats. All of this occurred in front of their infant child. The police found the victim with scratch marks on her neck and in such fear that she was only partially dressed, hyperventilating, and unable to maintain balance. The defendant is an Iraq war veteran who suffers from PTSD, and he reportedly missed taking his medication immediately preceding the assault. He wished to take responsibility at arraignment; however, the Tribe suggested that they appoint him an attorney. After being appointed an attorney, the defendant ultimately pled guilty to felony DV assault with terms consistent to what he would see if prosecuted by the State. Specific terms include compliance with his VA treatment recommendations and completion of a tribally funded 12-month batterer intervention program.

3. Implementation revealed serious limitations in the law

Though SDVCJ has allowed the implementing tribes some measure of recourse to stop non-Indian violence in their communities and on their lands, the narrowness of SDVCJ is a continual source of frustration for the implementing tribes. SDVCJ was intended to apply only in cases of protection order violations, domestic violence, and dating violence. Other crimes of violence against women, including stalking, sexual assault by a stranger or acquaintance, and sex trafficking, for example, are not included. The omission of other common forms of violence against women is a continuing source of frustration for implementing tribes.

Case from the Pascua Yaqui Tribe

Tribe is unable to charge workplace sexual assault

A female tribal member employed at the tribal casino was working one evening. Part of her duties included fixing slot machines if they jammed or otherwise malfunctioned. A group of non-Indian male patrons were intoxicated and began making harassing and sexual comments to the employee. She ignored the comments and proceeded to fix the slot machines. The male patrons became more disruptive and were about to be removed by casino security. As one of the men was being escorted out of the casino, he grabbed the female employee by her genitals and squeezed. All of this was caught on surveillance video and the employee wanted charges to be filed. According to all accounts, she had never met this man before this instance of sexual assault. Because VAWA is limited to intimate partner violence and there was no prior relationship, the Tribal Court lacks jurisdiction. Pascua Yaqui has a good working relationship with the local U.S. Attorney's Office (USAO) and has referred the case to them. The USAO has a tremendous amount of discretion, however, and should they decide to decline charges, the offender will avoid prosecution.

In addition, the implementing tribes are unable to prosecute non-Indians for many of the crimes that co-occur with domestic violence—thereby limiting how effectively tribes can prosecute non-Indian domestic violence offenders. Tribal prosecutors have described this as being forced to prosecute these crimes with one hand tied behind their backs. Tulalip Tribal Prosecutor Sharon Jones Hayden has explained, "These cases do not happen in isolation. We don't get a slap and then run away. There are attendant, and related, ancillary—whatever word you would like to use—crimes that occur in almost all of these situations. It is extremely rare for me to charge just one count in a domestic violence related offense."[32] Non-SDVCJ crimes committed by defendants that are tied to their SDVCJ crimes, or that they committed while being arrested or in custody for an SDVCJ crime, remain outside tribal jurisdiction. In many cases, the inability to prosecute other crimes interferes with the tribe's ability to prosecute their SDVCJ cases effectively, leaves them unable to hold offenders accountable for criminal conduct not covered by SDVCJ, and results in a criminal history that may not accurately reflect the magnitude of the crimes committed.

CRIMES IN SDVCJ CASES THAT TRIBES COULD NOT CHARGE:	
• ASSAULT ON LAW ENFORCEMENT • ASSAULT ON A JAILER • CRIMINAL CONTEMPT • DAMAGE TO GOVERNMENT PROPERTY • SEXUAL CONTACT • MENACING • MALICIOUS MISCHIEF • DRIVING UNDER THE INFLUENCE • STALKING	• ENDANGERING THE WELFARE OF A MINOR • FALSE IMPRISONMENT • UNLAWFUL USE OF A WEAPON • OBSTRUCTION OF JUSTICE • VIOLENCE AGAINST CHILDREN • VIOLENCE AGAINST VICTIM'S FAMILY • CRIMINAL MISCHIEF • DRUG POSESSION

In the years since SDVCJ took effect nationwide, there has been increased discussion about amending the law to improve its effectiveness. Several bills have been introduced in Congress that would add additional categories of criminal conduct to the existing framework.[33]

> "Although tribal efforts to implement [SDVCJ] have been impressive, actual tribal experience prosecuting cases under [SDVCJ] has revealed … significant gaps in the federal law."
>
> —Tracy Toulou, Director of the Office of Tribal Justice, U.S. Department of Justice
> Testimony before the Senate Committee on Indian Affairs[34]

Additionally, the DOJ supports amendments to address some of the gaps revealed through the experiences of the implementing tribes.[35] NCAI has passed a resolution concluding that, to fully protect Native women, full territorial criminal jurisdiction should be restored.[36]

The implementing tribes have consistently highlighted three kinds of crimes that are currently outside the scope of SDVCJ, but that have caused significant problems for them in exercising SDVCJ: crimes against children, drug and alcohol crimes, and crimes that occur within the criminal justice process. According to the Pascua Yaqui Tribe, which has the highest number of arrests, if they were able to prosecute offenders for these ancillary crimes, they would have an additional one charge per case, at a minimum.

> "In reservation attorneys' offices and tribal court houses throughout the United States when VAWA was passed, there was celebration like you wouldn't believe…what we didn't realize then…was how it's really just a little tiny down payment on a much bigger issue that needs to be addressed."
>
> —Sharon Jones Hayden, Tulalip Prosecutor & Special Assistant U.S. Attorney[37]

3-1. The statute prevents tribes from prosecuting crimes against children

Many of the tribes report that children are usually involved as victims or witnesses in SDVCJ cases. These children have been assaulted or have faced physical intimidation and threats, are living in fear, and are at risk for developing school-related problems, medical illnesses, post-traumatic stress disorder, and other impairments.[38] However, SDVCJ currently only applies to crimes committed against romantic or intimate partners or persons covered by a qualifying protection order. The common scenario reported by implementing tribes is that they are only able to charge a batterer for the times he hit the mother, and can do nothing about the times he hit the kids. Instead, they are only able to refer these cases to state or federal authorities, who may or may not pursue them.

58% Incidents Involved Children[xviii]

The inability to prosecute crimes against children decreases the charging power available to prosecutors, and also decreases the protections available to abused children because they are not considered 'victims' in these cases.

Case from Sault Ste. Marie Tribe

Child sexual predator evades tribal prosecution and is subsequently arrested by the county for raping a young girl

The defendant had criminal convictions before he moved to the Sault Ste. Marie Reservation. The defendant entered into an intimate relationship with a tribal member. Sometime thereafter, the defendant began making unwanted sexual advances on his girlfriend's 16-year-old daughter. The defendant sent inappropriate texts to the daughter, would stand outside the windows of their home, and on one occasion groped the daughter and then told her she could not tell anyone about it.

The tribe charged the defendant with domestic abuse, attempting to characterize his actions toward the daughter as tied to the relationship with the mother and thus within SDVCJ, but the tribal judge dismissed the case as beyond the court's jurisdiction.

Two months after the failed prosecution, the girlfriend filed for a temporary ex parte Protection Order for her and her daughter—a violation of which would protect both under SDVCJ. However, the girlfriend could not meet the burden of proof that she was under a threat of irreparable harm in the time before the court could schedule a hearing. When it came time for a hearing on her petition, the girlfriend failed to appear and so her petition was dismissed. When the court served the defendant with notice of the hearing, he was found to be living in a van parked just next to a tribal neighborhood with a large number of low income families.

Four months later, the defendant was arrested and charged by city police with three counts of criminal sexual conduct, one count of attempted criminal sexual conduct, one count of child sexually abusive activity, one count of using a computer to commit a crime, and one count of using a computer network to commit a crime.

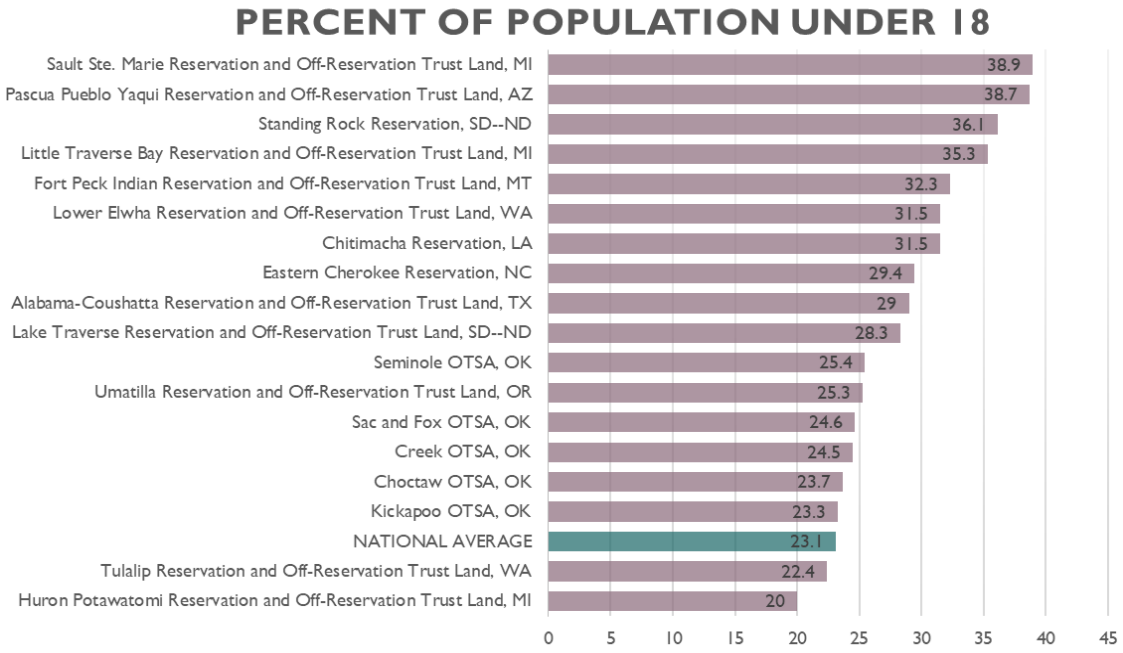
The alleged incident involves a barely 14-year-old girl who was a tribal member and resided

[xviii] Fort Peck Tribes provided an approximate value.

on the Sault Ste. Marie Reservation. Defendant allegedly contacted her online and then kidnapped and held her in an off-reservation motel, repeatedly raping her over the course of 12 hours. Defendant pled not guilty and the case is currently pending in state court.

According to Jami Moran, director of the tribe's Advocacy Resource Center: "Had our tribe had jurisdiction to maintain court authority over the alleged non-Native perpetrator for the first incident, this second act of violence may have been prevented. This child's life will never be the same."

This frustration is further compounded by the prevalence and severity of this problem. According to the DOJ, American Indian and Alaska Native children suffer exposure to violence at rates higher than any other race in the United States.[39] Native youth are 2.5 times as likely to experience trauma compared to their non-Native peers.[40] This violence has immediate and long term effects, including: increased rates of altered neurological development, poor physical and mental health, poor school performance, substance abuse, and overrepresentation in the juvenile justice system. Unfortunately, American Indian and Alaska Native Children experience posttraumatic stress disorder at the same rate as veterans returning from Iraq and Afghanistan and triple the rate of the general population.[41] Nationally, almost 1/3 of the American Indian and Alaska Native population is under 18, compared to approximately 1/4 of the total U.S. population.[42] This trend is reflected by the implementing tribes, where the percent of their residents under 18 is consistently high. Sault Ste. Marie and Pascua Yaqui, two implementing tribes with a high number of SDVCJ cases, have close to 40 percent of their population under the age of 18. Pascua Yaqui alone identified 38 children who have been involved in their cases as either witnesses or victims.



Source: *2012-2016 American Community Survey 5-Year Estimates–DP05 Demographic and Housing Estimates*, U.S. CENSUS BUREAU

3-2. The statute prevents tribes from prosecuting alcohol and drug crimes

Another frequent presence in many of the SDVCJ cases is alcohol or controlled substances. Unfortunately, the tribes are unable to charge the defendants with any co-occurring drug and alcohol crimes. Some tribes reported that this greatly decreases their ability to get appropriate sentences or plea bargains from offenders, because they are unable to include the possession or intoxication charges as a part of negotiations with the defendants and their attorneys. Additionally, the complication of having state or federal jurisdiction crimes intertwined with these cases can interfere with full investigation or prosecution.

51% Incidents Involved Drugs or Alcohol[xix]

Case from the Sisseton-Wahpeton Oyate

Potential State drug case interferes with Tribe's willingness to pursue DV investigation

At 2:00 a.m., the tribal police were called to a domestic violence incident involving a non-Indian man. Methamphetamines were found on the premises, and tribal police requested an oral search warrant from the tribal judge to perform a urine analysis on the non-Indian. While being under the influence could be relevant to a DV investigation, the tribal judge ruled against issuing the search warrant. Some state case law has held that tribal police lack the authority to investigate crimes where they do not have jurisdiction, and the judge did not want to compromise a potential state case for drug possession.

Case from the Confederated Tribes of the Umatilla Indian Reservation

Tribe cannot prosecute DUI case, and prosecutor is unable to use DUI charges to leverage plea bargain

The defendant was arrested for domestic assault, and was a repeat offender. When law enforcement arrived, the defendant was intoxicated. He attempted to then run away from the police. Despite his intoxicated state, the defendant got into his car and tried to drive away, but ran into his neighbor's fence. If Umatilla had jurisdiction to charge him for the DUI and destruction of property tied to his DV arrest, they would have been able to charge and convict him quickly and easily given the evidence. They may have also been able to use the additional charges as leverage to secure a plea on the domestic violence crime. However, the tribe was only able to charge him with the domestic assault, which is the charge that put the most pressure on the victim to testify as a witness.

Over the eight months the tribe spent prosecuting him for the assault, the victim went back and forth multiple times about whether to testify. During the incident, the victim suffered a severe concussion, which caused long term side effects she still experiences to this day.

The defendant was eventually sentenced to 24 months, one month in custody, 23 months suspended sentence, and then three years probation.

[xix] Pascua Yaqui, Fort Peck Tribes, and Tulalip provided approximate values.

3-3. The statute prevents tribes from prosecuting crimes that occur within the criminal justice system, thereby endangering law enforcement and undermining the integrity of the system

The narrow scope of criminal conduct that can be charged under SDVCJ not only prevents the tribe from ensuring that defendants are being charged for all of their crimes, but also has created a real safety concern for some tribal law enforcement. Domestic violence calls are the most common type of call that a law enforcement officer responds to, and also the most dangerous.[43] If a tribal law enforcement officer is assaulted by an SDVCJ suspect, the tribe has no jurisdiction to charge the suspect for this crime. Instead, the case must be treated as a separate case and referred to another jurisdiction, which may or may not swiftly prosecute the SDVCJ offender for that assault. The same is true if the defendant assaults the bailiff in the courtroom, commits perjury, intimidates a witness, or commits a crime in a tribal detention facility. Rather than a swift additional charge being added to the defendant's case, crimes committed in custody are instead put into a slow referral process that is further complicated by the jurisdictional landscape. Several tribes have described this situation as making them feel like they are unable to protect their law enforcement officers and other criminal justice professionals in the line of duty.

Case from the Eastern Band of Cherokee Indians

Serious DV assault leads to threatened mass shooting as well as assault and threats against tribal law enforcement

The defendant assaulted his dating partner, a tribally-enrolled female, by striking and strangling her. When officers arrived he was subdued, but threatened to kill the officers and to come back with a gun and shoot up the reservation. In custody, he struck a jailer (another enrolled tribal member), causing bruising and a split lip. His likely mental health issues, coupled with his assault on enrolled members and his threats against law enforcement officers, which the tribe could not charge, led to the decision to refer the case to federal prosecutors. The defendant pled guilty to assault by strangulation in federal court and received a 37 month sentence. The assault on the jailer and the threats of retaliation against the officer were dismissed.

Case from the Sisseton-Wahpeton Oyate

Defendant assaults tribal police officers and walks out of tribal court

The defendant was a non-Indian male, married to a tribal member. Law enforcement responded to a call of a domestic disturbance. When law enforcement arrived, they found the defendant reaching into a vehicle to take the keys from his wife as she was attempting to leave. He then reached for his belt and proceeded to have a scuffle with the police. He was originally arrested for domestic violence, after law enforcement was able to subdue him. At the defendant's first mandatory court appearance, he tried to walk out of the court room in the middle of court proceedings, constituting direct contempt of court. There was a second incident of domestic violence, and he was again arrested. The tribal court convicted him of two counts of domestic violence.

He was ultimately charged in federal court for both domestic violence crimes as well as for forcibly assaulting, resisting, opposing, intimidating, and interfering with the tribal police officer. He pled guilty to two counts of domestic abuse and one count of failure to appear.

3-4. There was initial confusion concerning the scope of the federal statutory definition of "domestic violence"

Special Domestic Violence Criminal Jurisdiction (SDVCJ) under 25 U.S.C. § 1304 for both "dating violence" and "domestic violence" is limited to "violence committed by a person" who has a qualifying relationship with the victim. The implementing tribes have struggled with determining what constitutes sufficient "violence committed" to support tribal jurisdiction. This confusion stems largely from the Supreme Court decision in *United States v. Castleman*, 134 S. Ct. 1405 (2014), which was issued during the Pilot Project Period for tribal SDVCJ. With this timing, it was widely noted that both the majority opinion and Justice Scalia's concurrence included footnotes referencing the definition of the term "domestic violence" under the new federal law, 25 U.S.C. § 1304.

The *Castleman* decision involved a separate question under 18 U.S.C. § 922(g)(9), a federal law that forbids the possession of firearms by those convicted of "misdemeanor crimes of domestic violence." The question before the Court in *Castleman* was whether the "physical force" prong of the definition of "misdemeanor crime of domestic violence" under 922(g)(9) is satisfied by offensive touching or if a more substantial degree of "force" is required. The majority held that Congress intended to incorporate common law misdemeanor domestic violence offenses, which include offensive touching.[44] In a concurrence, Justice Scalia argued that the literal meaning of "violence" should apply, and that a substantial degree of force is needed.[45] The majority, however, distinguished "domestic violence" as a term of art from "violence" standing alone, which they agreed would "connote a substantial degree of force." Scalia cited to the definition of "domestic violence" under 25 U.S.C. § 1304 as an example of a statute that defines "domestic violence" as "violence" and does not include offensive touching and other non-violent forms of abuse.[46] The majority opinion agreed—in *dicta*—that its broader view of "domestic violence" as a term of art likely does not extend to a provision that specifically defines "domestic violence" by reference to generic "violence."[47]

The discussion of the VAWA statute by the Justices in *dicta* raised questions about the scope and severity of "violence committed" required for crimes that can be charged by tribes who have implemented SDVCJ under VAWA.

The technical assistance team, in consultation with the DOJ, has provided guidance to the ITWG about what type of conduct likely constitutes "violence committed" for SDVCJ purposes. In that guidance, technical assistance providers advised that relying on the common understanding of the term "violence" in ordinary language, and the legal definition of "crime of violence" found at 18 U.S.C. § 16(a), it seems clear that, if the defendant's conduct involved the reckless or intentional use, threatened use, or attempted use of force capable of doing injury to the victim or the victim's property, then it constitutes "violence" under § 1304.

However, several of the tribes who have implemented SDVCJ report that the *Castleman* decision had an immediate impact on their charging decisions. There have been several cases where the tribe felt it could not prosecute conduct that clearly fit within the tribe's domestic violence statutes based on the *dicta* in *Castleman* and dismissed the case only to have the offender subsequently reoffend with a more serious crime. Tulalip Tribal Prosecutor Sharon Jones Hayden has described the issue saying, "At Tulalip, it is against the law to prevent somebody from calling for help in relation to a domestic violence crime. So if he grabs her cell phone and throws it out of her reach, she can't get the help she needs. But, we can't prosecute that crime either because it is not a 'violent' crime."[48] Some other tribes have cautiously chosen to prosecute only those crimes that involve clear physical assaults, even though this would not be required to support a domestic violence charge under tribal law. The Pascua Yaqui Tribe's public defender has filed several motions to dismiss on the grounds that the tribal lacked jurisdiction because the conduct alleged was not sufficiently violent.

The tribal prosecutors and victim advocates report that SDVCJ would be more effective if it is amended to further clarify that Indian tribes possess the authority to prosecute a non-Indian for the types of offenses that often occur in the cycle of domestic abuse that may or may not involve physical force, but are nonetheless harmful to victims.

CASE FROM THE PASCUA YAQUI TRIBE
Tribe declines to prosecute attempted assault

A woman called the police to remove her highly intoxicated partner from her home. The defendant returned an hour later. He was so intoxicated that when he swung to punch the victim, he missed and fell to the ground. Although the conduct at issue is undoubtedly violence under federal law, in the wake of the *Castleman* decision, the tribal prosecutor declined to prosecute because there was no actual physical contact, and they were concerned the incident did not meet the definition of domestic violence in the federal law. The defendant subsequently assaulted the victim again and was arrested.

3-5. SDVCJ IS PROHIBITIVELY EXPENSIVE FOR SOME TRIBES

While over 50 tribes have been actively participating in the ITWG, as of the date of this report, only 18 tribes have implemented the law. The primary reason tribes report for why SDVCJ has not been more broadly implemented is a focus on other priorities and a lack of resources. During and beyond the implementation phase, tribes need funding, access to resources, and services to support implementation.

A lack of resources is one of the burdens facing many tribes. According to the U.S. Commission on Civil Rights, "[t]ribal justice systems have been underfunded for decades," and revising tribal codes and then ultimately taking on additional cases comes with a set of both predictable and unforeseen costs for tribes.[49] The Pascua Yaqui Tribe has described the costs this way:

> In addition to the direct costs of complying with the prerequisites (indigent defender systems, jury trials, incarceration, etc.), substantial indirect costs are also likely to be required. For example, who will review and propose changes to your laws and procedures? Who will train law enforcement, prosecutors, judges, court staff and defense counsel on the new laws and procedures and how they work? What funding will be required to make these changes? To pay for any additional prosecutors, judges, defense counsel, and court staff? To pay to publish the laws and regulations? To process the licensing and educational requirements? To implement the jury selection process? To pay for incarceration? Where will these funds come from? Is that source of funding stable and reliable?[50]

Tribes with fewer resources have been able to implement SDVCJ by relying on support from others. Many were able to cut code drafting costs by relying on the codes of the first few implementing tribes as a starting point. Some tribes have also been able to rely on contract attorneys to do the majority of their defense counsel work, thereby minimizing the amount the tribe is required to pay to keep defense counsel on call.

FORSEEABLE COSTS INCLUDE:		
Hiring additional law enforcement officers	Incarceration costs	Training costs
Hiring additional personnel to draft codes	Probation costs	Jury costs
Hiring additional prosecutors	Batterer support treatment costs	Costs associated with recording proceedings
Hiring additional defense counsel	Substance abuse treatment costs	Costs associated with publishing tribal codes
Hiring additional judges	Victim support costs	

Incarceration costs alone can be significant for the implementing tribes, many of whom contract with nearby county facilities to house their offenders.

INCARCERATION COSTS RANGE FROM $32.25-$150+ PER DAY

$86 PER DAY
AVERAGE INCARCERATION COST

VAWA 2013 authorized $5,000,000 for each of fiscal years 2014 through 2018 for SDVCJ implementation.[51] Over the past two years, OVW has awarded $5,684,939 in competitive grant funds to 14 different tribes to support their implementation of SDVCJ.[52] Only four implementing tribes—Tulalip, Little Traverse Bay Band, Eastern Band of Cherokee Indians, and Standing Rock—have received any of these grant funds. However, none of them have used any of these funds to prosecute. A full list of these OVW grant awards is included in Appendix B.

3-6. DETENTION ISSUES AND COSTS CREATE IMPLEMENTATION CHALLENGES

Detention is an area where many tribes have encountered significant challenges. There are generally four different ways that a tribe may handle detention for inmates sentenced in their courts. The inmates be housed in facilities: 1) operated and funded by the BIA; 2) wholly funded and operated by the tribe; 3) operated by tribal governments with BIA funds provided through 638 contracts or self-governance compacts; or 4) in contract beds at county or private facilities pursuant to a contract with the tribe and paid for with either BIA or tribal funds. Which of these systems is in place ultimately creates different challenges for tribes implementing SDVCJ

If a tribe does not rely on a BIA-operated and funded facility for detention, they will likely incur additional costs for the provision of health care and other services to non-Indian inmates. Tribal and BIA detention facilities general rely on the Indian Health Service (IHS) to provide health care to

inmates. This is not usually an option for non-Indian defendants, since they are generally ineligible for care at IHS. Neither the BIA nor the IHS receive appropriated funds for non-Indian correctional health care purposes. Although the federal government provides health care in Bureau of Prisons (BOP) and Immigration and Customs Enforcement (ICE) detention facilities through the use of Public Health Service Commissioned Corps Officers, none of these personnel work in BIA jails. Questions remain about who has the obligation to cover these costs and where health services will be provided. For tribes who have their own corrections facilities, or contract directly with county facilities to arrange for detention, detention-related healthcare costs are a significant challenge.

One of the SDVCJ defendants at Eastern Band of Cherokee Indians, for example, required extensive medical care while in tribal custody, which ended up costing the tribe more than $60,000. These types of costs are simply prohibitive for many tribes, and several ITWG tribes have reported that the uncertainty about health care for non-Indian inmates is why the tribe is not proceeding with implementation of SDVCJ.

OVW allows a limited amount of inmate health care costs to be included in their grant program to support SDVCJ implementation, but few implementing tribes have received these grants.

ONE TRIBE PAID OVER $60,000 FOR ONE OFFENDER'S HEALTHCARE

SDVCJ has brought to light confusion regarding whether tribal law enforcement and BIA officers have the authority to arrest and detain non-Indian suspects who commit crimes on the reservation. In response to this uncertainty, the BIA issued clear guidance affirming that BIA officers have the authority to temporarily detain all non-Indian offenders, and that BIA officers operating within a tribe implementing SDVCJ are required to enforce tribal law, including arresting and incarcerating SDVCJ defendants.[53]

Despite this guidance, several tribes report that their regional BIA officials insist that BIA facilities cannot house non-Indian offenders. For tribes that rely on the BIA for detention, this presents a significant challenge, and the burden often falls on the tribe to explain the law to the local BIA officials. For tribes who operate pursuant to a 638 contract or self-governance compact, there may be contract provisions in place that prohibit them from housing non-Indians that must be renegotiated.

In other places there simply are no detention options available. For a long time the Sisseton-Wahpeton Oyate ran its jail facility pursuant to a 638 contract with BIA. The facility was abruptly shut down in the fall of 2017. As a result, the BIA recommended that the tribe contract with local county facilities for detention bed space. Chairman Dave Flute has testified, however, that the counties "are overrun and have no space." As a result, the tribe has had to release offenders on a no cost bond for the sole reason that they do not have anywhere to house them. Chairman Flute has called this "catch and release" and considers it a serious public safety issue.[54]

These challenges demonstrate the need for increased funding, training, guidance, and to ensure that tribes can protect victims by efficiently detaining and incarcerating SDVCJ offenders.

3-7. SDVCJ IS JURISDICTIONALLY COMPLEX

SDVCJ is a very limited recognition of tribal jurisdiction. Navigating the boundaries of these new limitations has proven challenging and frustrating for many tribes. For tribes exercising SDVCJ, establishing whether the tribe has jurisdiction over the alleged offense involves answering factual questions. Specifically, to exercise SDVCJ, the tribe must demonstrate the Indian status of the victim, the existence of a qualifying relationship between the defendant and the victim, and whether the defendant has sufficient statutorily-enumerated connections to the tribe.

Several tribes stated that many of their decisions not to prosecute, or many of their prosecutor-initiated dismissals, were because the prosecutors were not sure that they could prove jurisdiction. As discussed in greater detail in Section V, for those SDVCJ cases that do go forward, tribes take different approaches to clarifying and asserting their jurisdiction. Many tribes provide a simple statement of jurisdiction early on in the proceedings that clearly includes their expanded authority under SDVCJ, and then resolve any specific challenges to their jurisdiction as they arise. However, other tribes chose to create processes that require dealing with jurisdictional questions as a procedural step for all of their SDVCJ prosecutions. These jurisdictional hearings can be time consuming, require the prosecution to collect and develop a separate set of evidence, and may lead to the odd situation where a judge is making findings of fact relevant to jurisdiction—some of which touch upon the merits—long before reaching the merits of the case.

Alternatively, tribes such as Pascua Yaqui treat the jurisdictional requirements as elements of the crime, and leave those questions for trial. Two of Pascua Yaqui's trials, however, demonstrated that this strategy can result in a significant waste of resources. In both cases, the offender was acquitted by a jury on jurisdictional grounds: in one case, because the jury was not convinced that the two individuals had a relationship that meets the intimate partner requirement of SDVCJ, and, in the second case, because the jury was not convinced that the defendant was a non-Indian. The ITWG has discussed at length the issue of whether the non-Indian status of defendants must be specifically alleged and proved. There is no textual basis in the federal statute to suggest that this is required. In addition, tribal courts are best understood as courts of general jurisdiction whose inherent jurisdiction has been limited in certain ways by federal law. As such, proving non-Indian status is not necessary to establish tribal jurisdiction. The validity of Pascua Yaqui's jury instruction concerning non-Indian status is currently being appealed through the Pascua Yaqui court system.[55]

Ultimately, the narrowness of SDVCJ creates additional questions that implementing tribes have to deal with in addition to proving their merits cases. For domestic violence cases, which are especially difficult to prosecute, these additional statutory requirements are cumbersome and may result in the dismissal of meritorious cases.

4. SDVCJ IMPLEMENTATION PROMOTES POSITIVE CHANGES

In addition to empowering tribes to hold offenders accountable in a manner that fully upholds the rights of the defendants, implementation over the past five years has led to several additional outcomes worth noting. Implementation of SDVCJ has been the catalyst for important discussions and improved relationships at the tribal, inter-tribal, and federal levels

4-1. SDVCJ PROMOTES POSITIVE TRIBAL REFORMS

Experience shows that passing the tribal legislation necessary to implement SDVCJ generates community reflection and commitment to addressing domestic violence for the implementing tribes. Tribes have had to examine their codes closely to ensure that their laws—including their constitutions—comply with the requirements of SDVCJ, and make careful decisions about how best to implement SDVCJ given their community's unique history, needs, and priorities. The variety of different ways tribes have decided to comply with the statute is a testament to the statute's flexibility, the diversity of the Native nations implementing it, and to the creativity and care with which those nations have crafted their codes.

Furthermore, it has led many tribes to consider more broadly the impact of domestic violence on their communities, and take SDVCJ implementation as an opportunity to go beyond the exercise of criminal jurisdiction under VAWA 2013's requirements. The Nottawaseppi Huron Band of

Potawatomi (NHBP), for example, view implementation of SDVCJ as part of a larger commitment to addressing domestic violence:

> The leadership across the branches of the NHBP Tribal Government has, collectively and individually, unequivocally and without question, prioritized a comprehensive and holistic approach to addressing domestic violence that includes implementing: 1. Educational programming; 2. Intervention programs and services; 3. Programs and services that support, protect and empower survivors; 4. Systems to hold offenders accountable and protect victims and the community as a whole; and 5. Programs and services that provide offenders with the tools to end their abusive behavior.[56]

As the tribe began transforming these goals into a reality, it formed a team to discuss the need for victim services. These discussions revealed that community members were seeking services from tribal programs not designed for those purposes:

> The tribe's Health and Human Services Staff and the Probation Officer both advised that domestic violence was a significant issue for many of their clients. NHBP Staff were providing services where possible and/or connecting Tribal Citizens and community members to outside service providers, but on a case-by-case basis. The implementation team determined that a dedicated victim services program was needed. NHBP applied for and received a grant from the OVW to fund a domestic violence victim advocate position in the tribal court, where she would have the support of the tribal court administrator and tribal court judge, both of whom had previously worked as victim advocates.[57]

Like Nottawaseppi, many other implementing tribes have expanded victims' services, or strengthened victims' rights, as a part of their implementation process. The victim supports at each tribe are discussed at length later in this report.[xx] Tribes have tailored their approach to combatting domestic violence to the unique needs and values of their communities. Several of the laws enacted by tribes implementing SDVCJ contain findings sections that highlight their individualized approaches.

> "[T]he Elwha Klallam Tribe will not tolerate or excuse violent behavior under any circumstances. All people, whether they are elders, male, female, or children of our Elwha Klallam Tribe, or other individuals residing on the Elwha Klallam Reservation, are to be cherished and treated with respect. The Elwha Klallam Tribe has traditionally referred to itself as the "the Strong People" (nəxʷsƛ̓'ay'əm) and as such recognizes that strength as a tribal community is directly linked to the health of its families and specifically its children."
>
> —Lower Elwha Klallam Code[58]

The implementing tribes have all found that involvement of the community in implementation is critical.

> "In drafting the Code, NHBP's goal was to include the Community in the development phase as much as possible, to request their input and participation, keep them informed of the code writing process, and to provide domestic violence awareness information throughout this phase."
>
> —Nottawaseppi Huron band of Potawatomi[59]

[xx] *See infra* Section IV, and Section V.

NHBP further described in detail how they obtained community buy-in for implementation. They invited "Tribal member employees from various departments within the Tribe to attend our code drafting, working group, and code review team meetings, among other groups and teams formed during this process."[60] Ultimately members of the Tribal Court, Membership Services, Human Resources, and the Police Department attended code drafting meetings, and members of the Culture Department and Culture Committee provided input. By doing this, Nottawaseppi found "Tribal members were involved and their thoughts and guidance was included in the process."[61] Eventually, "Community Meetings were held with the larger community once a final draft was prepared for presentation.[62]

While much of the work preparing to implement SDVCJ focuses on revising tribal codes, policies, and procedures, the tribes all devoted considerable resources to training for tribal law enforcement officers, prosecutors, judges, and other key stakeholders. Often the need for training became evident as the tribes encountered an unexpected obstacle of one kind or another. For example, the day after SDVCJ was enacted on one reservation, a non-Indian offender was arrested and delivered to the county authorities where he was promptly released. That incident served as a reminder that tribal and BIA officers needed to be fully trained about the scope of the tribe's authority and how SDVCJ jurisdiction works. Similarly, Pascua Yaqui's experience with its first jury trial—which ended in an acquittal for lack of jurisdiction—demonstrated the importance of training law enforcement about how to properly investigate whether there is a qualifying relationship sufficient to trigger SDVCJ in a particular case.

4-2. Inter-tribal collaboration creates successes beyond SDVCJ

In its June 14, 2013 Federal Register Notice, the DOJ asked tribes to indicate interest in joining an Inter-tribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG): a voluntary working group of designated tribal representatives intended to help exchange views, information, and advice about how tribes may best implement SDVCJ, combat domestic violence, recognize victims' rights and safety needs, and safeguard defendants' rights.[63]

This peer-to-peer technical assistance covers a broad set of issues, from drafting stronger domestic violence codes and victim-centered protocols and policies, to improving public defender systems, to analyzing detention and correctional options for non-Indians, to designing more broadly representative jury pools and strategies for increasing juror compliance with a jury summons. The objective of the ITWG is to develop not a single, one-size-fits-all ''best practice'' for each of these issues, but rather multiple successful examples that can be tailored to each tribe's particular needs, preferences, and traditions.

To date, the ITWG has met in-person nine times. Each meeting includes working time as well as speakers and other programming to support the work or discussion. In addition, ITWG tribes have also participated in a series of teleconferences and webinars and produced white papers and other resources on a range of topics. Over 50 tribes currently participate in the ITWG.

The ITWG has proven to be a productive and useful mechanism for tribes to share information and best practices among themselves, to discuss challenges, and to jointly strategize about how to overcome obstacles. With the logistical support and substantive expertise of a group of DOJ-funded technical assistance providers, the tribes participating in the ITWG have tackled many difficult questions and have developed a collection of resources that will make it easier for tribes who wish to implement SDVCJ in the future. The ITWG continues to serve as an important resource for the implementing tribes as they encounter new questions and challenges. Tribes consistently say that the ITWG is the single most helpful thing for them concerning implementing SDVCJ. One tribe that regularly attends the ITWG described their experience as follows:

> One benefit of immeasurable importance was–and is–the in-person ITWG Meetings.

> The in-person ITWG Meetings provided a forum for Tribes to collectively: review and analyze VAWA 2013 to identify requirements for exercising criminal jurisdiction over non-Indians in domestic violence cases; critically analyze these requirements in relation to the resources required; create solutions to challenges; share victories; share challenges; share resources; request guidance; anticipate threats to sovereignty; brainstorm responses; and build a united voice in protection of Tribal sovereignty and Tribal Citizens victimized by domestic and sexual violence. The Native Nations that implemented a VAWA 2013-compliant domestic violence code early on in ITWG graciously guided the remaining Nations by openly sharing their experiences at ITWG Meetings. They provided tremendous guidance to the Nations still in the planning stages. These conversations delved deeper into the practical–and often unexpected–challenges as the conversations were no longer hypothetical. Their openness enabled our tribe to be proactive in the planning process.
>
> It is important to note that the problematic provisions in VAWA 2013, as well as the overall political climate, including that we expect continuing challenges to Tribal sovereignty generally and VAWA 2013 specifically, created a commitment among the participating Native Nations to collectively work together to defend both. The shared understanding of the pain and frustration of those VAWA 2013 provisions that reflect ignorance of Tribal Justice Systems was not only comforting, but empowering. These deeply emotional ties will keep the Tribes that participated in ITWG connected.[64]

The success of the ITWG has been driven by the engagement of dedicated and knowledgeable attorneys and tribal representatives from across Indian Country. This engagement has been possible because of the travel support provided by DOJ, which allowed many of the tribes to participate in productive in-person meetings. The engagement and expertise of the technical assistance team has provided important coordination and leadership to the ITWG, while also helping the ITWG to track issues as they arise and to connect with necessary resources.

The ITWG at the ninth in person meeting in November 2017 hosted by the Tulalip Tribes.

4-3. SDVCJ PROMOTES BETTER RELATIONSHIPS WITH OTHER JURISDICTIONS

Tribes participating in the ITWG have also had opportunities to engage with DOJ and the Department of Interior (DOI), both of which have made key staff available to provide technical advice to the working group as a whole and work with individual tribes to address specific issues or concerns as needed.

The implementing tribes have worked closely with BIA and DOJ officials to address challenges that have come up as a result of the complicated and fragmented criminal justice system at work in Indian Country. It has been important, for example, to clarify that BIA detention facilities are permitted to house non-Indian SDVCJ offenders and that tribes can use their 638 contract funds to pay for costs associated with housing non-Indian SDVCJ offenders.[65] Likewise, the implementing tribes have all worked closely with their local U.S. Attorney's Offices to make decisions about which jurisdiction is most appropriate to prosecute a particular case. Many of the implementing tribes report that their decision to implement SDVCJ has led to improved communication with the local U.S. Attorney's Office that is leading to greater accountability in non-SDVCJ cases.

CASE FROM THE TULALIP TRIBES

Serious offense prosecuted in federal court with the assistance of tribal prosecutor

A non-Indian boyfriend, engaged in a three day methamphetamine bender, refused to let his Indian girlfriend and her children leave the home or use the phone. Over the course of several days, the man repeatedly assaulted and threatened his girlfriend, including strangling her with a pipe, throwing knives at her, and threatening to burn down the house with her children inside. Because of the severity of the violence, and because SDVCJ does not provide accountability for the crimes committed against the children, the case was referred to the U.S. Attorney for prosecution. The Tulalip Tribal Prosecutor, who is also designated as a Special Assistant U.S. Attorney, was able to assist with the prosecution. The judge in the case noted that the victim suffered "an extended period of hell on earth" and sentenced the defendant to nearly 6 years in prison.[66]

Lastly, federal officials have consistently attended and presented at ITWG meetings, offering not only advice and valuable expertise, but also presentations that help tribes take advantage of various federal programs that could support their SDVCJ work or increase their access to other law enforcement data networks and/or resources.

Beginning with the very first ITWG meeting in August 2013, tribes voiced their concerns about their ability to get protection orders and criminal history into the NCIC (National Criminal Information Center). It is a re-occurring issue that has been addressed at nearly every ITWG meeting. Tribal prosecutors need to be able to access the criminal histories of defendants in order to properly charge them. Tribes can use such information for law enforcement purposes to create safer communities for their citizens.

In response to tribes' complaints regarding criminal database access, the DOJ launched the Tribal Access Program (TAP) in August 2015 to provide tribes access to national crime information systems for both criminal and civil purposes. TAP ensures the exchange of critical data across the Criminal Justice Information Services (CJIS) systems and other national crime information systems. As of 2018, 47 tribes are participating in TAP, with additional expansion expected.[67]

Tribes have also begun working with National Instant Criminal Background Check System (NICS) representatives from the Federal Bureau of Investigation to ensure that tribes are also able to enter their domestic violence convictions into the system so that offenders are no longer able to illegally purchase firearms. It is clear that tribes need to be fully integrated into national networks of data, database, and resource sharing.

Ultimately, the four core findings of this report demonstrate that implementing VAWA 2013's SDVCJ has presented a variety of challenges for tribes, but that they have risen to the occasion. Though not a separate finding in its own right, a common thread throughout each of these findings is how committed each tribe has been—at each level of the process and across all personnel—to successfully implementing the statute and ensuring effective justice in their communities.

III. OVERVIEW OF SDVCJ

The tribal provisions of VAWA 2013 were codified into 25 U.S.C. § 1304, "Tribal jurisdiction over crimes of domestic violence." The full text of the statute is included as Appendix A to this report; however, below is a brief overview of the law.

RECOGNIZING SOVEREIGNTY

Section 1304 "recognize[s] and affirm[s]" that a participating Indian tribe's powers of self-government" include the "inherent power" to exercise "special domestic violence criminal jurisdiction over all persons,"[68] including non-Indians, so long as certain statutory requirements are met.[69] SDVCJ recognizes concurrent jurisdiction along with the federal government, a state, or both,[70] and does not change existing federal or state jurisdiction in Indian Country.[71]

Exercising SDVCJ is **entirely voluntary**. While tribes with jurisdiction over Indian Country potentially may prosecute non-Indians under SDVCJ, it is up to each individual tribe to decide whether or not they would like meet the specific statutory requirements discussed below.[xxi]

CRIMINAL CONDUCT COVERED

SDVCJ includes criminal conduct that falls into one of three categories as defined by the federal statute:

1. **Domestic violence**,
2. **Dating violence**, and
3. Violations of certain **protection orders**.[72]

Domestic violence and dating violence are defined as follows:

- **Dating violence**: "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."[73]
- **Domestic violence**: "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."[74]

Protection orders must be **enforceable by the tribe**, issued **against the defendant**,[75] and provide sufficient **notice** and an **opportunity to be heard**.

Otherwise, eligible protection orders include:

- "any injunction, restraining order, or other order issued by a civil or criminal court for the purpose

[xxi] VAWA 2013 contained a "Special Rule for the State of Alaska" in Section 910 which thereby applied sections 904 and 905 of VAWA only to the Metlakatla Indian Community, Annette Island Reserve. That special rule was repealed in 2014 by Public Law 113–275. That repeal, however, does not affect the 1998 Supreme Court decision in *Alaska v. Native Village of Venetie,* which held that most tribal lands in Alaska are not considered "Indian Country" for jurisdictional purposes. As a result, at present, almost all tribes in Alaska cannot exercise SDVCJ. Similarly, some tribes located in states with restrictive settlement acts, like Maine, are also unable to exercise SDVCJ. See https://www.pressherald.com/2015/02/23/maine-tribes-seek-authority-to-try-domestic-violence-cases/.

of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and"[76]

- "any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent 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."[77]

LIMITS ON SDVCJ ELIGIBLE CRIMES

For a tribe to exercise jurisdiction over a non-Indian offender:

- the **victim must be Indian**;[78] and
- the crime must take place in the **Indian Country** of the participating tribe[79]

The tribe cannot exercise jurisdiction over a non-Indian if the offender lacks "**ties to the Indian tribe**," which means the defendant:

- resides in the Indian Country of the participating tribe;
- is employed in the Indian Country of the participating tribe; or
- is a current or former spouse, intimate partner, or dating partner of a member of the participating tribe, or an Indian who resides in the Indian Country of the participating tribe.[80]

DUE PROCESS REQUIREMENTS

VAWA 2013 requires that any tribe exercising SDVCJ must provide due process protections to SDVCJ defendants. First, the tribe must provide all of the protections specified in the Indian Civil Rights Act,[xxii] which mirror almost every civil right that would be available in state court.[xxiii] Second, SDVCJ defendants have the right to a jury trial drawn from a jury pool that does not systematically exclude non-Indians, as well as any other rights necessary under the Constitution. Finally, for any SDVCJ defendant who faces a term of imprisonment, VAWA 2013 requires implementing tribes to provide all those rights required for enhanced sentencing under the Tribal Law and Order Act of 2010.[xxiv]

TLOA and VAWA 2013 require tribes to:

- "provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution";[81]

[xxii] The United States Supreme Court recently upheld the validity and sufficiency of these due process protections in *United States v. Bryant*. 136 S.Ct. 1954 (2016). The Court explained that, "proceedings in compliance with ICRA, Congress determined, and we agree, sufficiently ensure the reliability of tribal-court convictions." *Id.* at 1966.

[xxiii] 25 U.S.C. § 1304(a)'s protections include: freedom of speech and religion; freedom from illegal or warrantless search or seizure; a prohibition on double jeopardy; the right not to be compelled to be a witness against oneself; the right to a speedy trial and to confront witnesses; the right to a jury trial; and the right not to be subjected to cruel or unusual punishment, excessive fines, or excessive bail.

[xxiv] In 2010, Congress passed the Tribal Law and Order Act (TLOA) which—among other things—allowed tribal governments to sentence offenders in tribal court for up to three years per charge and nine years total if the tribe provided a certain set of due process protections to defendants.

- "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 United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys";[82]
- "require that the **judge** presiding over the criminal proceeding **has sufficient legal training** to preside over the criminal proceedings and is licensed to practice law in any jurisdiction in the United States";[83]
- 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 in appropriate circumstances)";[84] and
- "**maintain a record of the criminal proceeding**, including an audio or other recording of the trial proceeding."[85]

VAWA 2013 also guarantees a defendant in a SDVCJ case:

- "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";[86] 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 SDVCJ over the defendant."[87]

PILOT PROJECT

Although the tribal criminal jurisdiction provision of VAWA 2013 was generally not effective until March 7, 2015,[88] tribes could implement SDVCJ on an accelerated basis before that date with approval from the Attorney General during a "Pilot Project" period.[89] The DOJ developed a Pilot Project Application Questionnaire, which interested tribes used to request that the Attorney General designate them as "participating tribes" and approve their accelerated implementation of SDVCJ.[xxv] This Application Questionnaire was DOJ's final notice and solicitation of applications for the pilot project, which was published in the Federal Register on November 29, 2013.[90]

Three tribes received approval to implement SDVCJ on an accelerated basis in February 2014—the Confederated Tribes of the Umatilla Indian Reservation, the Pascua Yaqui Tribe, and the Tulalip Tribes. These tribes exercised SDVCJ for a little more than a year during the Pilot Project period before the law took general effect on March 7, 2015, and, as DOJ has testified, "the three original Pilot Project tribes achieved notable success implementing SDVCJ during the Pilot Project period."[91] Two additional tribes' applications were approved on March 6, 2015 during the Pilot Project period—the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation and the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

Pascua Yaqui Judge Melvin Stoof conferring with attorneys at the first SDVCJ trial during the Pilot Project Period.

The five pilot project tribes remain some of the leaders in both the number of prosecutions and in assisting other tribes with implementation. Representatives from the pilot project tribes consistently attend meetings on SDVCJ implementation and

[xxv] Although completing the Application Questionnaire is no longer required for a tribe who wants to implement SDVCJ, it is a useful guide for a tribe to conduct a self-assessment prior to implementing SDVCJ. In addition, the completed Application Questionnaires from the Pilot Project tribes provide helpful information about options for meeting the requirements of the statute. The completed questionnaires can be found at www.ncai.org/tribal-vawa.

are willing to work closely with their peers at other tribes who are considering implementation and need guidance. The codes developed by the pilot project tribes and reviewed by the DOJ are often used as models for tribes who have subsequently implemented SDVCJ.

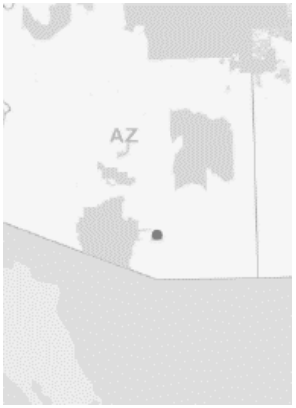
At the end of the pilot project period, NCAI released a Pilot Project Report summarizing the first years of implementation. That report similarly provided detail on prosecution statistics, and a profile of each of the implementing tribes at the time. The Pilot Project Report also highlighted a series of "lessons learned," many of which are now further affirmed and expanded within the findings of this report. Those nine lessons were: (1) non-Indian domestic violence is a significant problem in tribal communities, (2) most SDVCJ defendants have significant ties to the tribal communities, (3) children are impacted by non-Indian domestic violence at high rates, (4) training is critical for success, (5) federal partners have an important role, (6) peer-to-peer learning is important, (7) SDVCJ is too narrow, (8) there is confusion about the statutory definition of "domestic violence", and (9) tribes need resources for SDVCJ implementation.[92]

IV. PROFILES OF THE 18 TRIBES EXERCISING SDVCJ

PASCUA YAQUI TRIBE

Located in Arizona
Pilot Project Tribe
Exercising SDVCJ since February 20, 2014
Tribal Code available at:
http://www.pascuayaqui-nsn.gov/_static_pages/tribalcodes/

The Pascua Yaqui Tribe is located on a 2,200-acre reservation in southwest Arizona near Tucson, approximately 60 miles north of the U.S.-Mexico border. The Tribe has approximately 19,000 members, with 4-5,000 members living on the reservation. The most common household demographic on the reservation is single-mother households, which account for nearly 43 percent of all Pascua Yaqui households.[93] According to the U.S. Census,[xxvii] the population of the Tribe's reservation and off-reservation trust land is approximately 12.7 percent non-Indian.[94] The Pascua Yaqui Tribe submitted its final Pilot Project Application Questionnaire to DOJ on December 30, 2013. The Tribe received approval to begin exercising SDVCJ on February 6, 2014, and jurisdiction went into effect on February 20, 2014. The Tribe immediately issued a press release and formal notice to the community regarding implementation of the new law. After the Pilot Project concluded, the Tribe released an Implementation Timeline[95] and comprehensive Pilot Project Summary of SDVCJ implementation at Pascua Yaqui.[96]



Pascua Pueblo Yaqui Reservation and Off-Reservation Trust Land, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=2680

PROSECUTION DATA	
Arrests	40
Convictions	18
Cases Pending	7
Acquittals	2
Arrests Not Prosecuted	13
Trials	3
Dismissals	13
Federal Referrals	3
Guilty Pleas	17
DV Arrests	38
PO Arrests	2
Incidents Involving Drugs or Alcohol	18
Incidents Involving Children	32
Defendants	40
Male Defendants	35
Female Defendants	5
Non-Citizen Defendants	2
Defendants with a Criminal Record	18+[xxvi]
Defendant Prior Police Contacts	192
Defendants Sentenced to Incarceration	
Defendants in Support Programs	~30
Victims	40
Victims whose Injuries Required Medical Care	1
Female Victims	34
Male Victims	6

The vast majority of criminal cases filed in the Pascua Yaqui Tribal Court are domestic-violence related offenses. Several of the Pascua Yaqui prosecutors are designated as Special Assistant

[xxvi] Pascua Yaqui does not have access to information about criminal convictions from other jurisdictions for all of their defendants.

[xxvii] Where the tribe provided a population estimate directly, we provided those numbers instead of the U.S. Census's population estimates, since tribal numbers are often more accurate. *See Census*, http://www.ncai.org/policy-issues/economic-development-commerce/censusNCAI, (last visited March 9, 2016). However, the racial demographic number here and elsewhere throughout the report relies on those Census numbers, which are provided to give the reader a rough approximation of the demographic breakdown of these communities.

United States Attorneys (SAUSAs), which allows them to also serve as prosecutors in federal court. The Tribe funds a full-fledged Public Defenders Office (originally opened in 1995) with four licensed defense attorneys who represent those accused of crimes. The Tribe also funds four private contracted defense attorneys for those cases where a conflict of interest exists. The Tribe has employed law-trained judges and recorded its court proceedings since long before VAWA 2013. Pascua Yaqui has the highest number of SDVCJ cases, and was the first tribe to have a jury trial.

The Pascua Yaqui Tribe has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

TULALIP TRIBES

Located in Washington State
Pilot Project Tribe
Exercising SDVCJ since February 20, 2014
Tribal Code available at:
http://www.codepublishing.com/WA/Tulalip/

The Tulalip Tribes are located on a 22,000-acre reservation in western Washington State, approximately 30 miles north of Seattle. The Tribes have over 4,600 members, about 2,600 of whom live on the reservation.[97] According to the U.S. Census, the population of the tribe's reservation and off-reservation trust land is approximately 76 percent non-Indian. [98]

The Tulalip Tribal Court operates a separate Domestic Violence Court docket and SDVCJ cases are handled there. The Tribe also employs a specialized domestic violence and sexual assault prosecutor, who was approved as a Special Assistant United States Attorney (SAUSA) at the beginning of the Pilot Project. Washington State partially retroceded PL 280 jurisdiction to the federal governments in 2001 and the tribe established a police department and criminal court shortly thereafter.

The Tulalip Tribes submitted their final Pilot Project Application Questionnaire to the DOJ on December 19, 2013. The Tribes received approval to implement SDVCJ on February 6, 2014, and jurisdiction took effect on February 20, 2014.

Tulalip Reservation and Off-Reservation Trust Land, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=4290

The Tribes implemented TLOA enhanced sentencing provisions prior to the passage of VAWA 2013 and have provided indigent defense, included non-Indians in the jury pool, recorded court proceedings, and employed law-trained judges in the criminal court since 2002. All of the SDVCJ convicted offenders are ordered to undergo tribally-certified batterer intervention programs.

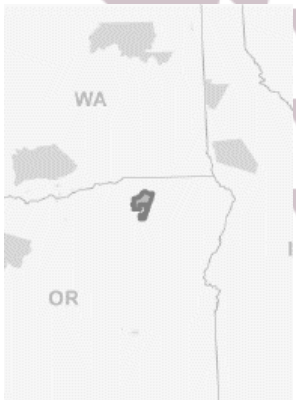
The Tulalip Tribes received a $419,792 grant from OVW in 2016 to support the exercise of SDVCJ.

PROSECUTION DATA	
Arrests	25
Convictions	16
Cases Pending	4
Acquittals	1
Arrests Not Prosecuted	0
Trials	1
Dismissals	0
Federal Referrals	1
Guilty Pleas	16
DV Arrests	20
PO Arrests	16
Incidents Involving Drugs or Alcohol	~20
Incidents Involving Children	18
Defendants	18
Male Defendants	17
Female Defendants	1
Non-Citizen Defendants	1
Defendants with a Criminal Record	17
Defendant Prior Police Contacts	171
Defendants Sentenced to Incarceration	12
Defendants in Support Programs	16
Victims	19
Victims whose Injuries Required Medical Care	9
Female Victims	18
Male Victims	1

CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Located in Oregon
Pilot Project Tribe
Exercising SDVCJ since February 20, 2014
Tribal Code available at: http://ctuir.org/criminal-code

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) are located on a land base of 173,470 acres in southeast Oregon. CTUIR has 2,956 tribal members, 30 percent of whom are under the age of 18.[99] According to the U.S. Census, the tribe's reservation and off-reservation trust land have a total population of approximately 2,800, 51.2 percent of whom are non-Indians.[100]



Umatilla Reservation and Off-Reservation Trust Land, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=4405

The Confederated Tribes have exercised expansive criminal jurisdiction since the State of Oregon retroceded Public Law 280 criminal jurisdiction in 1981. CTUIR implemented felony sentencing under TLOA in 2011, and the tribal prosecutor serves as a SAUSA. CTUIR has provided indigent counsel, recorded tribal judicial proceedings, employed law-trained judges, and included non-Indians on tribal juries since long before VAWA 2013 was enacted. The Tribes report that in 2011, over 60 percent of the cases seen by the Umatilla Family Violence Program involved non-Indians.

CTUIR submitted their final Pilot Project Application Questionnaire to the DOJ on December 19, 2013. The Tribes received approval to implement SDVCJ on February 6, 2014, and jurisdiction went into effect on February 20, 2014. In conjunction with the U.S. Attorney's Office for the District of Oregon, the Tribes issued a press release regarding implementation of the new jurisdiction on February 6, 2014.

PROSECUTION DATA	
Arrests	13
Convictions	8
Cases Pending	2
Acquittals	0
Arrests Not Prosecuted	-
Trials	0
Dismissals	1
Federal Referrals	4
Guilty Pleas	8
DV Arrests	9
PO Arrests	4
Incidents Involving Drugs or Alcohol	5
Incidents Involving Children	6
Defendants	10
Male Defendants	9
Female Defendants	1
Non-Citizen Defendants	0
Defendants with a Criminal Record	7
Defendant Prior Police Contacts	6
Defendants Sentenced to Incarceration	8
Defendants in Support Programs	6
Victims	9
Victims whose Injuries Required Medical Care	2
Female Victims	8
Male Victims	1

CTUIR's courts provide additional mandatory supports for both batterers and victims. As part of CTUIR probation, they require defendants to undergo batterer intervention treatment, which the CTUIR provide free of charge. Additionally, to protect victim safety the CTUIR Court issues an automatic protection order in every pending domestic violence criminal case. The Umatilla Family Violence Program provides community-based advocacy to domestic violence victims. This program offers a court advocate, housing, counseling, and other support services for any victim.[101]

Implementing SDVCJ has dramatically increased accountability for non-Indian DV offenders. The Tribes report that prior to implementation, the U.S. Attorney's Office had only prosecuted two cases of domestic violence committed by non-Indians.

CTUIR has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

SISSETON-WAHPETON OYATE OF THE LAKE TRAVERSE RESERVATION

Located in North and South Dakota
Pilot Project Tribe
Exercising SDVCJ since March 6, 2015
Tribal Code available at: http://www.swo-nsn.gov/?page_id=851

The Sisseton-Wahpeton Oyate is comprised of two subdivisions of Dakotah Indians that reside on the Lake Traverse Reservation, established by treaty in 1867. This reservation extends into five counties in northeast South Dakota and two counties in southeast North Dakota. The Tribe has 13,873 enrolled members[102] with approximately 9,894 members living on the Reservation.[103] According to the U.S. Census, the tribe's reservation and off-reservation trust land population is approximately 57.1 percent non-Indian.[104]

Lake Traverse Reservation and Off-Reservation Trust Land, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=1860

The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation submitted its final Pilot Project Application Questionnaire to DOJ on March 4, 2015. The Tribe received approval to implement SDVCJ on March 6, 2015.

The Sisseton-Wahpeton Oyate court was created by the Oyate's Constitution to resolve disputes involving Tribal members and non-members and to provide a forum for the prosecution of those persons who commit crimes on the Lake Traverse Indian reservation. The Court describes its goal as to "provide due process to all persons that come before it and to resolve disputes as efficiently as possible using Tribal laws, customs and traditions."[105]

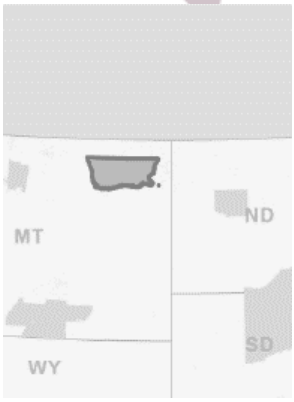
PROSECUTION DATA	
Arrests	8
Convictions	7
Cases Pending	0
Acquittals	0
Arrests Not Prosecuted	0
Trials	0
Dismissals	0
Federal Referrals	2
Guilty Pleas	7
DV Arrests	8
PO Arrests	0
Incidents Involving Drugs or Alcohol	2
Incidents Involving Children	3
Defendants	8
Male Defendants	7
Female Defendants	1
Non-Citizen Defendants	1
Defendants with a Criminal Record	5
Defendant Prior Police Contacts	1
Defendants Sentenced to Incarceration	7
Defendants in Support Programs	2
Victims	7
Victims whose Injuries Required Medical Care	1
Female Victims	6
Male Victims	1

The Sisseton-Wahpeton Oyate has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

Fort Peck Assiniboine and Sioux Tribes

Located in Montana
Pilot Project Tribe
Exercising SDVCJ since March 6, 2015
Tribal Code available at: https://fptc.org/comprehensive-code-of-justice-ccoj/

The Fort Peck Indian Reservation is home to the Assiniboine and Sioux Tribes, which are two separate Nations comprised of numerous bands and divisions. Located in northeast Montana, the Reservation extends over four counties and is the 9th largest Indian reservation in the United States. The Assiniboine and Sioux Tribes of Fort Peck have an estimated 10,000 enrolled members with approximately 6,000 members living on the Reservation. According to the U.S. Census, the tribe's reservation and off-reservation trust land have a population of approximately 10,400, 31.6 percent of whom are non-Indians.[106]



Fort Peck Indian Reservation and Off-Reservation Trust Land, U.S. Census Bureau, https://www.census.gov/tribal/?aianihh=1250

The Fort Peck Tribal Court operates a domestic violence docket. The Tribes implemented felony sentencing under TLOA in 2012.

The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation submitted their initial Pilot Project Application Questionnaire to the DOJ on December 26, 2013. After amending their application, the Fort Peck Tribes received approval to implement SDVCJ on March 6, 2015. The Fort Peck Tribes also have a well-established Family Violence Resource Center that provides comprehensive services to domestic violence and sexual assault victims. The Fort Peck Tribal Court issues a "Hope Card" in conjunction with any orders of protection it grants. This card is wallet-sized and allows the person who has been granted an order of protection to easily prove this in other jurisdictions.[107]

The Fort Peck Tribes has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

PROSECUTION DATA	
Arrests	18
Convictions	6
Cases Pending	5
Acquittals	1
Arrests Not Prosecuted	-
Trials	1
Dismissals	6
Federal Referrals	0
Guilty Pleas	6
DV Arrests	21
PO Arrests	1
Incidents Involving Drugs or Alcohol	~15
Incidents Involving Children	~15
Defendants	18
Male Defendants	18
Female Defendants	0
Non-Citizen Defendants	1
Defendants with a Criminal Record	~9
Defendant Prior Police Contacts	-
Defendants Sentenced to Incarceration	1
Defendants in Support Programs	1
Victims	19
Victims whose Injuries Required Medical Care	2
Female Victims	19
Male Victims	0

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

Located in Michigan
Exercising SDVCJ since March 7, 2015
Tribal Code available at: http://www.ltbbodawa-nsn.gov/TribalCode.pdf

The Little Traverse Bay Bands of Odawa Indians is located across 336 square miles[xxviii] of land on the northwestern shores of Michigan's Lower Peninsula.[108] The tribe has over 4,500 enrolled members with just under 1,200 living within neighboring Charlevoix, Emmet, and Cheboygan Counties. The tribe's reservation and off-reservation trust land have a population of approximately 712. The population is 95 percent Indian and 5 percent non-Indian.

Little Traverse Bay Reservation and Off-Reservation Trust Land, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=1963

Little Traverse has developed and maintained a specialized domestic violence court docket since 2013 that ensures they are providing best practices and policies to maintain victim safety along with offender accountability. Previous to VAWA implementation, LTBB has provided defendants many of the due process requirements in their Trial Court such as the right to effective assistance of counsel, the right to a law trained judge, and trials by judge or jury. The tribe has a Survivor Outreach Services Program within the Tribe's Department of Human Services, which provides a variety of services to both Native and non-Native intimate partners such as safety planning, cultural advocacy, non-emergency transportation, emergency food vouchers, assistance with personal protection orders, and court accompaniment. [109]

The Little Traverse Bay Band received a $450,000 grant from OVW in 2016 to support the exercise of SDVCJ.

PROSECUTION DATA
No Arrests

[xxviii] Currently pending in federal court, LTBB has challenged whether Congress properly diminished their Reservation. If the tribe wins the case, its reservation boundaries would potentially be as large as 337 square miles, which would increase the number of members and non-member-Indians who may be protected by SDVCJ. *See* Little Traverse Bay Bands of Odawa Indians v. Rick Snyder, et al., No. 1:15-cv-850 (W.D. Mich).

Alabama-Coushatta Tribe of Texas

Located in Texas

Exercising SDVCJ since March 7, 2015

The Alabama-Coushatta Tribe of Texas is located on 4,593 square acres of land in southeast Texas, approximately 90 miles north of Houston. The tribe has over 1,000 enrolled members, about 500 of whom live on the reservation.[110] According to the U.S. Census, the tribe's reservation and off-reservation trust land population is 96 percent Indian and 4 percent non-Indian. [111]

The Alabama-Coushatta Tribal Court is established pursuant to Article XIII of the Constitution of the Alabama-Coushatta Tribe of Texas.[112] The Court consists of a Trial Division, which is presided over by a Chief Judge, and as many additional Associate Judges as the Tribal Council appoints.[113] The Alabama-Coushatta Court of Appeals hears appeals as needed.[114]

The Alabama-Coushatta Tribe has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

Alabama-Coushatta Reservation and Off-Reservation Trust Land, U.S. Census Bureau, https://www.census.gov/tribal/?aianihh=0050

PROSECUTION DATA	
Arrests	2
Convictions	1
Cases Pending	1
Acquittals	0
Arrests Not Prosecuted	0
Trials	0
Dismissals	0
Federal Referrals	0
Guilty Pleas	1
DV Arrests	2
PO Arrests	0
Incidents Involving Drugs or Alcohol	2
Incidents Involving Children	0
Defendants	2
Male Defendants	0
Female Defendants	2
Non-Citizen Defendants	0
Defendants with a Criminal Record	2
Defendant Prior Police Contacts	2
Defendants Sentenced to Incarceration	0
Defendants in Support Programs	1
Victims	3
Victims whose Injuries Required Medical Care	1
Female Victims	1
Male Victims	2

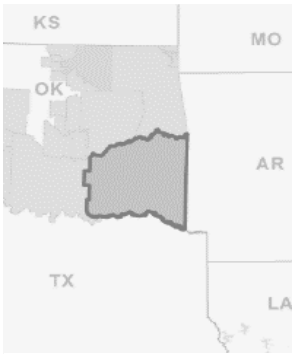
Choctaw Nation

Located in Oklahoma
Exercising SDVCJ since May 9, 2015
Tribal Code available at:
https://www.choctawnation.com/government/tribal-court/tribal-codes

The Choctaw Nation spans 11 counties in Oklahoma.[xxix] The Choctaw Nation has a total of 223,279 registered members, 84,670 of whom live in Oklahoma.[115] The Tribal area tracked by the U.S. Census has a population of approximately 231,000. The population of that area is 21 percent Indian and 79 percent non-Indian. [116]

Choctaw Nation maintains both a Constitutional Court, and a Court of General Jurisdiction, which includes both an Appellate and District Court. Domestic Violence cases are heard in the District Courts which incorporate traditional values into the system to provide more tailored solutions to their cases.[117] The Tribe's Children and Family Services Department provides Domestic Violence Support.[118]

The Choctaw Nation has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.



Choctaw Oklahoma Tribal Statistical Area, U.S. Census Bureau, https://www.census.gov/tribal/?aianihh=5590

PROSECUTION DATA	
Arrests	3
Convictions	3
Cases Pending	0
Acquittals	0
Arrests Not Prosecuted	0
Trials	0
Dismissals	0
Federal Referrals	0
Guilty Pleas	3
DV Arrests	3
PO Arrests	0
Incidents Involving Drugs or Alcohol	1
Incidents Involving Children	2
Defendants	3
Male Defendants	2
Female Defendants	1
Non-Citizen Defendants	0
Defendants with a Criminal Record	2
Defendant Prior Police Contacts	-
Defendants Sentenced to Incarceration	0
Defendants in Support Programs	3
Victims	3
Victims whose Injuries Required Medical Care	1
Female Victims	3
Male Victims	0

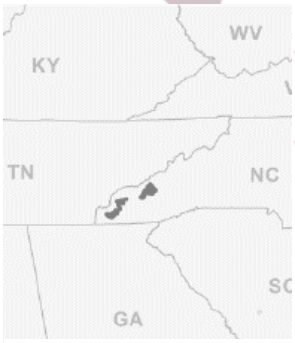
[xxix] *See infra* n.xxxi for a discussion of *Murphy v. Royal*'s potential impact on the tribe's land base.

Eastern Band of Cherokee Indians

Located in North Carolina
Exercising SDVCJ since June 8, 2015
Tribal Code available at:
https://library.municode.com/nc/cherokee_indians_eastern_band/codes/code_of_ordinances

The Eastern Band of Cherokee Indians is located in western North Carolina, adjacent to the Great Smoky Mountains. The Reservation is composed of 57,000 acres known as the Qualla Boundary. The Eastern Band of Cherokee Indians has a total of 14,000 tribal members.[119] According to the U.S. Census, the population of the reservation is approximately 9,600 people, and is 77 percent Indian and 23 percent non-Indian.[120]

The Eastern Band of Cherokee Indians maintains a court system comprised of trial courts and a Supreme Court.[121] The tribe has a Domestic Violence Program, including the Ernestine Walkingstick Domestic Violence Shelter, which provides the following services: victim advocacy, legal assistance, court accompaniment, transportation assistance, emergency shelter services 24/7, relocation services, crisis counseling, prevention education, and outreach activities.[122]



Eastern Cherokee Reservation, U.S. Census Bureau, https://www.census.gov/tribal/?aianihh=0990

PROSECUTION DATA	
Arrests	25
Convictions	12
Cases Pending	3
Acquittals	0
Arrests Not Prosecuted	6
Trials	0
Dismissals	0
Federal Referrals	3
Guilty Pleas	12
DV Arrests	18
PO Arrests	7
Incidents Involving Drugs or Alcohol	6
Incidents Involving Children	2
Defendants	21
Male Defendants	19
Female Defendants	2
Non-Citizen Defendants	3
Defendants with a Criminal Record	7
Defendant Prior Police Contacts	
Defendants Sentenced to Incarceration	3
Defendants in Support Programs	3
Victims	20
Victims whose Injuries Required Medical Care	0
Female Victims	18
Male Victims	2

The Eastern Band of Cherokee Indians has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

SEMINOLE NATION OF OKLAHOMA

Located in Oklahoma
Exercising SDVCJ since July 6, 2015
Tribal Code available at: http://www.sno-nsn.gov/government/codeoflaws

The Seminole Nation is located in south-central Oklahoma, approximately 45 miles east of Oklahoma City, and it includes most of Seminole County. The tribe owns 372 acres of federal trust land and approximately 53 acres of fee simple land.[xxx] An additional 35,443 allotted acres supplement the tribal land base which is checker-boarded throughout Seminole County. The Seminole Nation has a total of 17,000 tribal citizens, 5,315 of whom live in Seminole County.[123] The Tribal area tracked by the U.S. Census has a population of approximately 23,500. The population of that area is 25 percent Indian and 75 percent non-Indian.[124]

Seminole Nation Oklahoma Tribal Statistical Area, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=5830

The Seminole Nation reinstated judicial powers in October 2011, and is composed of a District Court and a Supreme Court.[125] Seminole tribal government includes a Domestic Violence Department, which provides services to both Native and non-Indian victims of domestic violence, sexual assault, stalking, and/or dating violence. These services include victim advocacy, housing assistance, crisis intervention, transitional living assistance, court advocacy assistance, referral assistance, and shelter placement assistance.[126]

The Seminole Nation has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

PROSECUTION DATA
No Arrests

[xxx] *See infra* n.xxxi for a discussion of *Murphy v. Royal*'s potential impact on the tribe's land base.

Sac and Fox Nation

Located in Oklahoma

Exercising SDVCJ since March 1, 2016

Tribal Code available at: http://sacandfoxnation-nsn.gov/government/judicial/code-of-laws/

The Sac and Fox Nation is located in central Oklahoma, between Tulsa and Oklahoma City. The Nation has a total of 3,794 tribal members, 2,557 of whom live in Oklahoma.[127] The Tribal area tracked by the U.S. Census has a population of approximately 59,000. The population of that area is 15 percent Indian and 85 percent non-Indian. [128]

The Sac and Fox Nation's court system was reestablished in 1985 and is composed of a District Court and a Supreme Court. [129] The tribe maintains a Family Violence Prevention Program, which provides legal advocates as well as emergency shelter, necessities, utility, and clothing. The program also has referral services for counseling, substance abuse, nutrition, disease prevention, exercise, parenting skills, educational services, and employment training.[130]

The Sac and Fox Nation has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

Sac and Fox Oklahoma Tribal Statistical Area, U.S. Census Bureau, https://www.census.gov/tribal/?aianihh=5820

PROSECUTION DATA
No Arrests

KICKAPOO TRIBE OF OKLAHOMA

Located in Oklahoma
Exercising SDVCJ since March 15, 2016
Tribal Code available at:
http://kickapootribeofoklahoma.com/forms.html

The Kickapoo Tribe of Oklahoma is located in central Oklahoma, 3 miles east of Oklahoma City. The Nation has a total of 2,630 tribal members, 1,856 of whom live in Oklahoma.[131] The Tribal area tracked by the U.S. Census has a population of approximately 20,000. The population of that area is 13 percent Indian and 87 percent non-Indian.[132]

The Kickapoo court system was reestablished in 1991 and is composed of a District Court and a Supreme Court.[133] The tribe maintains a Family Violence Program, which provides services for domestic violence, including court advocacy, emergency shelter assistance, utility assistance, transportation assistance, crisis intervention, transportation assistance, as well as referrals for additional services.[134]

The Kickapoo Tribe has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

Kickapoo Oklahoma Tribal Statistical Area, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=5700

PROSECUTION DATA
No Arrests

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

Located in Michigan

Exercising SDVCJ since March 18, 2016

Tribal Code available at: http://nhbpi.com/sovereignty/constitution/

The Nottawaseppi Huron Band of the Potawatomi is headquartered in the southwestern region of Michigan's Lower Peninsula. They also maintain satellite offices in Grand Rapids. Their service area includes reservation boundaries and surrounding counties including Kalamazoo, Calhoun, Ottawa, Kent Barry, Branch and Allegan Counties.[135] The Tribe has 1,445 members, 795 of whom live in the service area.[136] The reservation and off reservation rental housing units located on tribally owned land has a population of approximately 92. The population is 82 percent Indian and 18 percent non-Indian.

The Nottawaseppi Tribal Court system includes a Tribal Court, and a Supreme Court,[137] and employs a Domestic Violence Victim Advocate.[138] The tribe's Social Services department provides support specific to domestic violence victims.[139]

The Nottawaseppi Huron Band of the Potawatomi has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

Huron Potawatomi Reservation and Off-Reservation Trust Land, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=1550

PROSECUTION DATA
No Arrests

MUSCOGEE (CREEK) NATION

Located in Oklahoma

Exercising SDVCJ since March 28, 2016

Tribal Code available at: http://www.creeksupremecourt.com/mcn-code/

The Muscogee (Creek) Nation is located in central east Oklahoma. The Nation has a total of 69,162 tribal members, 55,991 of whom live in Oklahoma.[140] The Tribal area tracked by the U.S. Census has a population of approximately 782,000.[xxxi] The population of that area is 14 percent Indian and 86 percent non-Indian.[141]

The Muscogee court system was reestablished in 1991 and is composed of a District Court and a Supreme Court.[142] The tribe maintains a Family Violence Prevention Program, which provides services for domestic violence, provides advocacy and supportive services to victims of domestic violence, sexual assault, dating violence, and stalking. Specific services include: assistance in locating emergency shelter, assistance with filing protective orders, court advocacy, crisis intervention, assistance in locating medical services, accompaniment to sexual assault nurse exam, legal advocacy, safety planning, emergency transportation, child sexual assault advocacy and family support, sexual assault exams, counseling referrals, limited financial assistance, and referrals for additional services depending on an individual's needs.[143]

The Muscogee (Creek) Nation has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

Creek Oklahoma Tribal Statistical Area, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=5620

PROSECUTION DATA
No Arrests

[xxxi] A recent 10th Circuit case, *Murphy v. Royal,* 866 F.3d 1164 (10th Cir. 2017) held that that Congress did not properly disestablish the boundaries of the Muscogee (Creek) Reservation. Although the decision is stayed while the case is appealed to the U.S. Supreme Court, if the 10th Circuit's decision stands the jurisdiction of the Muscogee (Creek) Nation—and likely several other tribes in Oklahoma, including the Choctaw Nation and Seminole Nation, who have similar diminishment language—will significantly increase.

STANDING ROCK SIOUX TRIBE

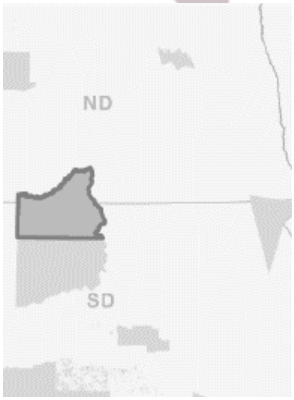
Located in North and South Dakota
Exercising SDVCJ since May 1, 2016
Tribal Code available at: https://www.standingrock.org/content/titles

The Standing Rock Sioux Tribe straddles the North Dakota and South Dakota border on the western portion of both states. Currently the reservation is about 1,000,000 total acres.[144] According to the U.S. Census, the reservation has a population of approximately 8,600, and the population is 78 percent Indian and 22 percent non-Indian.[145]

The Standing Rock court system is composed of a Tribal Court and a Supreme Court.[146] The Tribal Court is presided over by a Chief Judge and an Associate Chief Judge.[147] The Supreme Court meets up to four times a year, and is presided over by a Chief Justice and two Associate Justices, none of whom can also serve as Judges in Standing Rock Sioux Tribal Court.[148]

The tribe's Human Resource Department has created the position of a Victim Assistant/Advocate to work specifically with SDVCJ victims and serve as a liaison between tribal court prosecution and victims.[149]

The Standing Rock Sioux Tribe received a $495,000 grant from OVW in 2017 to support the exercise of SDVCJ.



Standing Rock Reservation, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=3970

PROSECUTION DATA	
Arrests	1
Convictions	1
Cases Pending	0
Acquittals	0
Arrests Not Prosecuted	0
Trials	0
Dismissals	0
Federal Referrals	0
Guilty Pleas	1
DV Arrests	1
PO Arrests	1
Incidents Involving Drugs or Alcohol	0
Incidents Involving Children	0
Defendants	1
Male Defendants	1
Female Defendants	0
Non-Citizen Defendants	0
Defendants with a Criminal Record	0
Defendant Prior Police Contacts	0
Defendants Sentenced to Incarceration	1
Defendants in Support Programs	1
Victims	1
Victims whose Injuries Required Medical Care	0
Female Victims	1
Male Victims	0

Sault Sainte Marie Tribe of Chippewa Indians

Located in Michigan
Exercising SDVCJ since December 13, 2016
Tribal Code available at:
http://www.saulttribe.com/government/tribal-code

The Sault Ste. Marie Tribe has a federally designated service area of 8,572 square miles across the 7 eastern counties of Michigan's Upper Peninsula. It is a rural area with an average population of 20.6 persons (Native and non-Native) per square mile. The Tribe has 9 reservations/trust land sites in the service area.[150] Currently there are 44,000 tribal members.[151] According to the U.S. Census, the reservation has a population of approximately 2,400, and is 60 percent Indian and 40 percent non-Indian.[152]

Sault Ste. Marie Reservation and Off-Reservation Trust Land, U.S. Census Bureau, https://www.census.gov/tribal/?aianihh=3635

The tribe's court system has a two-tiered framework, with a trial-level court and an appellate court.[153] The tribe's Advocacy Resource Center (ARC) is a direct service program that provides voluntary assistance and support to victims/survivors, family members, and friends. The Center maintains a 16-bed shelter called Aakdehewin Gaamig-Lodge of Bravery. Additionally, the ARC provides core services which include: crisis intervention, safety plan development, transportation assistance, domestic violence education, and referral services to community services for financial assistance, housing assistance, behavioral health, medical services, traditional medicine services, substance abuse, child care assistance, and legal aid assistance. The ARC provides emergency legal advocacy by helping victims apply for Personal Protection Orders (PPO) and attending PPO hearings. ARC also provides criminal justice advocacy, which includes working with victims to provide support around victims' rights, notification when an offender is released from jail, working with law enforcement and/or prosecutors, crime victim impact statements, court criminal processes, hearing dates and times, court hearing safety plans, transportation assistance, accompanying victims to hearings, and informing victims about victim compensation programs.[154]

PROSECUTION DATA	
Arrests	8
Convictions	2
Cases Pending	2
Acquittals	1
Arrests Not Prosecuted	-
Trials	1
Dismissals	1
Federal Referrals	1
Guilty Pleas	2
DV Arrests	5
PO Arrests	2
Incidents Involving Drugs or Alcohol	3
Incidents Involving Children	4
Defendants	7
Male Defendants	7
Female Defendants	0
Non-Citizen Defendants	0
Defendants with a Criminal Record	6
Defendant Prior Police Contacts	6
Defendants Sentenced to Incarceration	0
Defendants in Support Programs	2
Victims	7
Victims whose Injuries Required Medical Care	2
Female Victims	7
Male Victims	0

The Sault Ste. Marie Tribe has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

CHITIMACHA TRIBE OF LOUISIANA

Located in Louisiana
Exercising SDVCJ since February 1, 2017
Tribal Code available at: http://www.chitimacha.gov/tribal-government/constitution-and-comprehensive-codes-justice

The Chitimacha Tribe of Louisiana is located near the town of Charenton, Louisiana, off of Highway 90 between Lafayette and New Orleans. The current enrollment of Chitimacha is approximately 1,300.[155] According to the U.S. Census, the reservation has a population of approximately 660, and is 66 percent Indian and 34 percent non-Indian.[156]

The Judicial Branch of the tribal government has both a Trial and Appellate Court.[157] The tribe's Human Services department provides support to domestic violence victims.[158]

The Chitimacha Tribe has not received grant funding from the program authorized in VAWA 2013 to support the exercise of SDVCJ.

PROSECUTION DATA
No Arrests

Chitimacha Reservation, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=0635

LOWER ELWHA KLALLAM TRIBE

Located in Washington

Exercising SDVCJ since June 5, 2017

The Lower Elwha Klallam Tribe is located on the Elwha River, along the north and northeast portion of the Olympic Peninsula in Washington. The reservation includes 1,014 acres, and there are currently 882 enrolled tribal members.[159] According to the U.S. Census, the reservation and off-reservation trust land has a population of approximately 758, and is 88 percent Indian and 12 percent non-Indian. [160]

Lower Elwha has both a trial and appellate court. The Court seeks to integrate Western approaches to justice with cultural and customary paths. The Court maintains a successful adult and family Healing and Wellness Court that addresses substance abuse issues.[161] The tribe's Family Advocacy Department promotes victim safety and autonomy through advocacy and community awareness, providing both direct and referral services 24 hours a day, 7 days a week.[162]

The Lower Elwha Klallam Tribe has not received grant funding from the VAWA 2013 to support the exercise of SDVCJ.

Lower Elwha Reservation and Off-Reservation Trust Land, U.S. CENSUS BUREAU, https://www.census.gov/tribal/?aianihh=2040

PROSECUTION DATA
No Arrests

V. LABORATORIES OF JUSTICE: CONTRASTING TRIBAL CODES AND IMPLEMENTATION CHOICES

The statutory requirements of VAWA 2013 discussed earlier in this report ensure that all tribes implementing SDVCJ provide a uniform set of protections to SDVCJ defendants. However, VAWA 2013 was drafted to ensure that implementing tribes would also have some flexibility and freedom to determine how best to implement the statute.[163] The 18 implementing tribes have made use of VAWA 2013's flexibility and chosen to comply with the requirements of SDVCJ in ways that best fit each of their communities. This portion of the report highlights the diversity in the 18 implementing tribes' methods of satisfying VAWA 2013's statutory requirements.

Each of the five Pilot Project tribes—Pascua Yaqui, Tulalip, CTUIR, Sisseton-Wahpeton Oyate, and the Fort Peck Tribes—submitted an application to the DOJ demonstrating how they met the statutory requirements of VAWA 2013 and subsequently received approval from the Attorney General to implement SDVCJ. Because the tribal codes, policies, and procedures from the Pilot Project tribes had the benefit of review by DOJ, they provide particularly instructive examples of how other Indian tribes can implement the statutory requirements in VAWA 2013 and have been replicated by other tribes.

Of the 13 tribes who began exercising SDVCJ after the Pilot Project period and thus did not undergo DOJ review—Little Traverse Bay Band, Alabama-Coushatta, Choctaw, Seminole, Eastern Band of Cherokee Indians, Sac and Fox, Kickapoo, Nottawaseppi, Muscogee (Creek) Nation, Standing Rock, Sault Ste. Marie, Chitimacha, and Lower Elwha Klallam—none has faced serious criticism or a legal challenge concerning whether or not they satisfy VAWA 2013's statutory requirements. While some tribes had the benefit of participating in the ITWG and advisory review from technical assistance providers such as NCAI, TLPI, and NCJFCJ, others revised their codes and updated their courts independently.

The ability of tribes to decide for themselves how to implement VAWA 2013 in a manner that is best for their community has resulted in a great deal of creativity, increased community buy-in, and more sustainable court systems that are a better match for the priorities, history, culture, and values of their communities. The implementing tribes have served as laboratories of justice, testing different solutions and then reflecting on their success or failure. Good practices, once discovered, are adopted by other tribes that believe a practice would also be a good match for their community. The ITWG is a vital hub for exchanging this information, and representatives from the implementing tribes are eager to speak with and learn from each other.

RIGHT TO COUNSEL

VAVA 2013 requires that tribes exercising SDVCJ ensure that SDVCJ defendants facing any term of imprisonment receive effective assistance of counsel at least equal to that guaranteed to them by the United States Constitution.[164] The tribe is required to pay for licensed defense counsel for indigent offenders.[165] Such counsel must be "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."[166] Pascua Yaqui, Tulalip, Eastern Band of Cherokee Indians, and Sault Ste. Marie also require that their defense counsel are members of the tribal court's bar.[167]

Some tribes were providing indigent counsel before they implemented VAWA 2013, particularly as indigent defense is also required by the TLOA for any defendant who is facing more than one year of imprisonment.[168] Other tribes did not previously provide indigent defendants with counsel, or else used a team of lay advocates rather than licensed attorneys and therefore had to establish a new

system or modify their existing system to meet this requirement of VAWA 2013.[xxxii] Some tribes hired a licensed attorney full time to serve as tribal public defender, while others contracted with outside attorneys to represent their defendants as needed. The volume of cases is not always an indicator of whether a tribe will hire a full time defense counsel or not. Fort Peck,[169] Pascua Yaqui,[xxxiii] Sisseton,[170] EBCI,[171] and Chitimacha[172] have hired full-time tribal public defenders, while CTUIR,[173] Tulalip,[174] Muscogee,[175] and Sac and Fox[176] rely on contract arrangements with licensed attorneys.

Many tribes have gone above the minimum requirement of VAWA 2013 and provide counsel to more than just SDVCJ and TLOA enhanced sentencing defendants. Some tribes choose to provide counsel to all indigent defendants, while others provide all domestic violence offenders, or another subset of defendants, with counsel. The tribes also employ different standards to determine indigency, with some tribes providing counsel to anyone who asks for it.

Provide Indigent Defense Counsel[xxxiv]			
All Defendants	All Domestic Violence Defendants plus Tribal Member Defendants	All Domestic Violence Defendants	Only SDVCJ Defendants
Pascua Yaqui[177][xxxv]	Standing Rock[xxxvi]	Fort Peck[178]	Chitimacha[179]
CTUIR[180]		LTBB[181]	
Tulalip[182]		Lower Elwha[183]	
Sisseton[184][xxxvii]			
EBCI[185]			
Nottawaseppi[186]			
Seminole[187]			
Muscogee[188]			
Sac and Fox[189]			
Kickapoo[190]			
AL-Coushatta[191]			
Choctaw[192]			
Sault Ste. Marie[193]			

[xxxii] For example, at Fort Peck Tribes, the tribal public defender office was staffed by experienced lay advocates and a licensed attorney was hired to comply with VAWA 2013's requirements.

[xxxiii] The tribe also employs contract defense counsel if the public defender has a conflict of interest. PASCUA YAQUI TRIBAL CODE, tit. 3, §§ 2-2-310.

[xxxiv] This table does not further delineate whether tribes chose to exercise enhanced sentencing under TLOA, and therefore must provide an attorney to indigent defendants facing at least one year imprisonment.

[xxxv] Pascua Yaqui provides an attorney or tribal court advocate to all indigent defendants who face a loss of liberty. For SDVCJ defendants or defendants facing more than one year of imprisonment and over $5,000 fines, the tribe provides an attorney licensed by Pascua Yaqui Court and another jurisdiction in the U.S. that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys. PASCUA YAQUI TRIBAL CODE, tit. 3, §§ 2-2-310.

[xxxvi] Tribal Council is permitted to provide indigent counsel to all tribal members regardless of income "conditional upon the Tribe having sufficient funds" to hire a full-time public defender. However, all indigent domestic violence defendants are given an attorney, even if the tribe does not currently employ one full time. STANDING ROCK SIOUX TRIBAL CODE OF JUSTICE, tit. I, ch. 5, § 1-508(a); tit. III ch. 17, §4-1715.

[xxxvii] Sisseton provides indigent defense counsel to SDVCJ defendants and defendants facing enhanced sentencing. However, the tribe also provides assistance of counsel "if requested" and "if available" for any sentence that includes jail time. SISSETON-WAHPETON OYATE CODES OF LAW, ch. 23, §§ 23-08-02—04.

Indigence Standards

Pascua Yaqui:	Presumed indigent if below 125% of federal poverty guidelines.[194]
CTUIR:	Indigence standard 150% of federal poverty guidelines, but in practice the tribe provides counsel to anyone who requests it, regardless of income.[195]
Fort Peck:	Presumed indigent if below 125% of federal poverty guidelines.[196]
Tulalip:	Presumed indigent if below 200% of federal poverty guidelines.[197]
EBCI:	The Judge determines if a defendant qualifies for court-appointed counsel, although defendants are required to complete an "affidavit of indigency."[198] Convicted defendants are required to pay the costs of their court-appointed counsel as part of their court costs.[199]
LTBB:	The tribal judiciary is empowered to set standards for indigency in appointing counsel for defendants.[200]
Nottawaseppi:	The Court determines whether a defendant is indigent based on a notarized affidavit from the defendant confirming that he or she is indigent.[201] The Tribal Court may require partial or full reimbursement of the costs of providing counsel.[202]
Seminole:	The presiding judge is empowered to appoint counsel upon a finding of indigence.[203]
Muscogee:	The Court determines whether a defendant is indigent pursuant to court rules setting standards for indigence.[204]
Choctaw:	The District Judge makes holistic determination of indigency based on defendant's application—including a "Pauper's Affidavit"—and other relevant information including, but not limited to: availability of personal or real property, debts, financial history, earning capacity and living expenses, credit standing in the community, family member's ability and willingness to assist, and litigation expenses.[205]

Less Common Defense Counsel Arrangements

Fort Peck:	For non-SDVCJ defendants, the tribe also uses experienced lay advocates. All SDVCJ defendants are represented by a licensed attorney. The tribe also uses contract defense counsel if their public defender is not available.[206]
Tulalip:	Defense services are primarily provided by the Tribal Court Public Defense Clinic at the University of Washington (UW) Native American Law Center. The clinic has handled over 3,000 cases in Tulalip Tribal Court since 2002 and now serves as the primary public defender for all criminal cases filed in Tribal Court. All clinic advocates must pass the Tulalip Court Bar Exam and be admitted to practice by the Tribal Court. In addition to the attorneys, selected second and third year UW law students who take the Tribal Clinic class provide assistance to clients by working on cases under direct and close Clinic supervision. The Clinic represents non-Indian defendants being prosecuted under SDVCJ; however, students do not participate in those cases. The Tribes also hire attorneys on contract when the Clinic is not available because of a conflict. Such attorneys must also be barred in the Tulalip Tribal Court. [207]

JURISDICTIONAL AND PROCEDURAL FACTS

In most state and local courts, establishing jurisdiction in a criminal case is a straightforward question of whether the crime occurred within the territory of that government. Federal courts must additionally confirm that the alleged crime is federal and thus sufficient to satisfy the statutory limits on the jurisdiction of federal courts.

By contrast, establishing jurisdiction in a tribal criminal court is more complex, since tribal courts are courts of general jurisdiction that are nonetheless limited by federal statute or federal court precedent. Like many courts, tribal courts generally determine whether the crime occurred in the tribe's territory before confirming that they have jurisdiction. However, tribal courts must then determine whether their inherent jurisdiction has been limited in some way by federal law. In most cases, that requires determining the Indian status of the defendant.

For tribes exercising SDVCJ, it is even more complicated. For SDVCJ implementing tribes, establishing whether the tribe has jurisdiction over an alleged offense, or whether additional SDVCJ requirements—such as providing a defense attorney—apply to the defendant can be tricky and involve answering factual questions.

As discussed above, SDVCJ is narrow—limited to a set of factual circumstances involving only certain defendants, certain relationships, and certain crimes. The tribes must assess: the Indian status of the victim, the existence of a qualifying relationship between the defendant and a qualifying Indian, and the defendant's residence or employment in the Indian Country of the prosecuting tribe.

The complexity of the jurisdictional and statutory scheme in SDVCJ has led to discussion among the ITWG tribes about how and when to make these findings of fact, and how to develop the necessary charging instruments, jury instructions, and court procedures. Relevant to these questions are the nature of the facts themselves—specifically, how to differentiate between which facts are relevant to jurisdiction, which facts merely trigger additional due process requirements, and which facts are elements of the crime.

Many tribes simply provide a statement of jurisdiction—in charging documents, for example, that clearly includes their expanded authority under SDVCJ—and resolve challenges to their jurisdiction as they arise. However, some tribes developed mandatory processes to determine whether or not they have jurisdiction. These processes vary, and different tribes have decided to place them at different stages in their judicial proceedings.

Standing Rock requires that the complaint allege and the prosecution must make a motion concerning the relevant jurisdictional facts of victim Indian status, the location of the offense, and the defendant's ties to the tribe.[208] Similarly, the **Chitimacha** Tribal Court Judge is required at arraignment to make findings of fact and law that clearly state if the Tribal Court has jurisdiction. The Court is required to determine residency, employment, spouse or intimate partner status, and Indian or member status.[209] To make these findings, the "judge may receive any evidence relevant to the issue of whether the Chitimacha Tribal Court has jurisdiction over the defendant from any reliable sources as may be available."[210] If the Tribal Court determines it does have jurisdiction, it is also required to explicitly state whether it is exercising special domestic violence criminal jurisdiction.[211]

Eastern Band of Cherokee Indians has a similar initial hearing procedure to Chitimacha, wherein at the defendant's initial appearance, a Magistrate judge holds a jurisdiction hearing. At the hearing the judge asks the defendant direct questions concerning residency, employment, and intimate partner status, and Indian status. "In addition to the defendant's answers to the above inquiries the Magistrate may also receive evidence relevant to the above inquiries from any other reliable sources as may be available."[212] At the conclusion of the hearing, the judge makes findings concerning those inquiries and thus determines whether the Tribal Court has jurisdiction.[213] Both Chitimacha and Eastern Band also allow the defendant to exercise their right to remain silent without prejudicing

their right to challenge jurisdiction at a later date, and give the judge the right to detain defendants who are too intoxicated or otherwise impaired until they are able to appear.[214]

At **Alabama Coushatta**, lack of jurisdiction may be noticed by the judge at any time prior to the final disposition of the case,[215] however a defendant's motion to dismiss for lack of jurisdiction is treated as a pretrial motion that must be filed at least 15 days prior to trial.[216]

Pascua Yaqui currently has a case pending before their Supreme Court concerning their system for handling jurisdictional facts. The defendant was not a tribal member, and was charged under the provisions of Pascua Yaqui's code that covers SDVCJ. However, the defendant asserted that the tribe had failed to prove beyond a reasonable doubt that he was a non-Indian. The trial court allowed "jury instructions permitting the jury to consider whether Petitioner has proven that Defendant is a non-Indian beyond a reasonable doubt." The defendant was acquitted on the grounds that the court did not, because the jury was unconvinced that the prosecution had met their burden concerning non-Indian status. The validity of the decision to allow the non-Indian question to go to the jury is currently being appealed through the Pascua Yaqui court system.[217]

DEFINITION OF OFFENSES

VAWA 2013 specifies three broad categories of criminal conduct over which tribes can exercise SDCVJ: domestic violence, dating violence, and violations of certain protection orders. However, SDVCJ defendants are not prosecuted under the terms of federal law; they must be prosecuted as a matter of tribal law. Thus, it is up to the implementing tribe to write its code to define these categories of offenses and use them to prosecute non-Indians. It is also up to the tribe to decide which crimes they want to include within these three categories, and how to define each of those individual offenses.[xxxviii]

Tribes took different approaches to their criminal code drafting. First, tribes differed in how they defined these categories of crimes. **EBCI** simply refers to the federal law in their code.[218] Some Tribes, such as **CTUIR**[219] and **Chitimacha**,[220] used the exact same language from VAWA 2013 to define the three broad categories directly in their code. Other tribes, such as **Pascua Yaqui**,[221] **Standing Rock**,[222] and **Sisseton**,[xxxix223] wrote their own definitions for domestic violence, dating violence, and eligible protection orders. Still others chose to use the language from VAWA 2013 as a base, but added additional language to the definitions that spotlighted certain crimes within the broad categories. For example, **Fort Peck** additionally defines domestic and dating violence as "emotional abuse, controlling or domineering, intimidation, stalking, neglect or economic deprivation."[224]

Second, tribes differed in how and which crimes they chose to specify as part of these categories. Some tribes, such as **Nottawaseppi**,[225] defined the categories but didn't specifically indicate which crimes fall clearly within them. Other tribes, such as **Lower Elwha**[226] and **Muscogee**,[227] chose to spotlight certain offenses that are a priority in their communities. **Tulalip**'s code is structured so that any offense in the code can be charged as domestic violence based on the relationship of the victim and defendant. Tulalip's code acknowledges that domestic violence can take "many forms" and provides many examples of what constitutes domestic violence under tribal law.[228] These unique examples include using demeaning language, harming household pets, and preventing someone from accessing services.[229] **Sac and Fox**'s code provides for enhancements to their basic Domestic

[xxxviii] Not all of the definitions of domestic violence or violence under tribal law fall under the federal definition of violence. *See supra* Section II, Finding 3-4.

[xxxix] Sisseton's definitions also explicitly omit acts of self-defense. SISSETON-WAHPETON OYATE CODES OF LAW, ch. 52, § 52-04-01.

Abuse offense when it is committed against a pregnant victim, in the presence of children, by strangulation, or is "aggravated" in that it causes severe injury.[230] Additionally, banishment is specifically authorized as a punishment for many of Sac and Fox's domestic violence offenses.[231]

The diversity in defining SDVCJ eligible offenses demonstrates that tribes write their laws in their own way. They will compose the terms of their statutes in their own voices and they will incorporate the context and values of their communities in how they declare what constitutes a crime against that community.

JURY COMPOSITION

In order to exercise SDVCJ, a tribe must ensure that non-Indian defendants have the right to a trial by an impartial jury that is drawn from sources that—

1. "reflect a fair cross section of the community"; and
2. "do not systematically exclude any distinctive group in the community, including non-Indians."[232]

Some tribes included non-Indians in their jury pools prior to the passage of VAWA 2013. For the other tribes, implementation of VAWA 2013 required them to change their tribal codes and procedures to include non-Indians in their jury pools for SDVCJ trials.

In redesigning jury pools, there are two major points on which tribes differ. First, tribes differ on *when* they choose to include non-Indians in their jury pools. Some tribes chose to include non-Indians in their jury pool for *all cases*, while others created a bifurcated system. The tribes using bifurcated systems include non-Indians, or certain larger populations of non-Indians, *only for SDVCJ cases*. Second, tribes differ in how they determine what constitutes their "community" and which categories of non-Indians they include as eligible jurors.

For some tribes, including non-Indians for the first time presented a logistical challenge, since a list of non-Indian tribal residents may be difficult to obtain. The Fort Peck Tribes were able to obtain a list through the 15th Judicial District of Montana, which luckily comprises 98 percent of the Reservation. However, for some tribes, including non-Indian employees or tribal housing residents was the more efficient course of action given the availability of that information. Including non-Indian employees often required tribes to rewrite provisions of their corporation's employee handbooks or revisit tribal employee leave policies.

Tribes who are thinking about implementing SDVCJ have routinely asked how they can ensure non-Indians comply with a jury summons given their limited authority over non-Indians. A number of best practices have been shared with the tribes by the National Center for State Courts. In practice, this has not been a problem. Tribes who have called a SDVCJ jury have anecdotally reported that non-Indians report for jury duty at higher rates than Indians. In one recent jury trial at Fort Peck, the entire jury was composed of non-Indians.

Single or Bifurcated Jury Pools		
Non-Indians in Jury Pool *only* for SDVCJ cases	Additional Population of Non-Indians in Jury Pool any Non-Indian Cases (including civil)	Same Jury Pool for *all* cases
Sisseton[233]	Nottawaseppi[234] (Tribal Government Employees)	Pascua Yaqui[235]
Fort Peck[236]	Kickapoo[237] (Casino Employees)	Tulalip[238]
Muscogee[239]		CTUIR[240]
Standing Rock[241]		LTBB[242][xl]
Sault Ste. Marie[243]		AL Coushatta[244]
Chitimacha[245]		Choctaw[246]
		EBCI[247]
		Lower Elwha[248]
		Seminole[249]
		Sac and Fox[250]

[xl] This jury pool is used only for Domestic Violence cases, Indians and non-Indians.

	Non-Indians Included in Jury Pool						
	Tribe	Reservation Residents	Tribal Employees	Tribal Member Spouses or Family	Taxpayers	Tribal Land Lessees or Housing Recipients	Voluntary Registrants
Same Jury Pool for *all* cases	Pascua Yaqui[251]	x	x	x			
	Tulalip[252]	x	x[xli]				
	CTUIR[253]	x					
	LTBB[254]		x	x[xlii]			
	AL Coushatta[255]		x				
	Choctaw[256]	x					
	EBCI[257]	x					
	Seminole[258]		x[xliii]		x[xliv]	x	x
	Sac & Fox[259]		x[xlv]		x[xlvi]	x	x
Additional Population of Non-Indians in Jury Pool for SDVCJ or Non-Indian Cases	Kickapoo[260]		x[xlvii]		x[xlviii]	x	x
	Nottawaseppi[261]	x	x			x	
Non-Indians in Jury Pool *only* for SDVCJ cases	Fort Peck[262]	x					
	Sisseton[263]	x	x			x	
	Muscogee[264]		x				
	Standing Rock[265]	x					
	Sault Ste. Marie[266]	x	x			x	
	Chitimacha[267]	x	x				

[xli] Employees must have been employed by the Tribe for at least one continuous year prior to being called as juror.
[xlii] Eligible jurors must also live within the tribe's territorial jurisdiction.
[xliii] Employees must have been employed by the Tribe for at least one continuous year prior to being called as juror.
[xliv] Taxpayers must also be residents of the tribal jurisdiction.
[xlv] The tribe only includes Casino employees for non-tribal member trials. SAC AND FOX NATION CODE OF LAWS, tit. 11, ch. 3, tit. 6, ch. 6.
[xlvi] Taxpayers must also be residents of the tribal jurisdiction.
[xlvii] The tribe only includes Casino employees for non-tribal member trials. SAC AND FOX NATION CODE OF LAWS, tit. 11, ch. 3, tit. 6, ch. 6.
[xlviii] Taxpayers must also be residents of the tribal jurisdiction.

LAW-TRAINED JUDGES

VAWA 2013 requires that a tribal judge overseeing a SDVCJ case has:

1. "sufficient legal training to preside over criminal proceedings"; and be
2. "licensed to practice law by any jurisdiction in the United States."[268]

However, the broad language of these requirements leaves much still undefined. It is clear that a license to practice in *any* jurisdiction in the United States includes tribal jurisdictions,[xlix] and so a tribe could license their own judges as long as they also have sufficient legal training.[1] However, there is no federal guidance as to what constitutes "sufficient legal training." It is not even clear whether license from a state jurisdiction implies sufficient legal training or whether additional training could be required beyond state bar membership.

Without further federal guidance, most tribes have drafted their codes to require their judges have "sufficient legal training" and that their judges are state-court barred. Some tribes have just imposed a state or tribal bar membership requirement, assuming that membership is also sufficient to meet the training requirement. A few tribes have added further requirements to their judicial qualifications, such as age minimums or experience working in criminal justice.

All five of the Pilot Project tribes have at least one state-barred judge.[269] Although the Fort Peck Tribes hired a state-barred judge to meet this requirement, the long-time chief judge of the Fort Peck Tribal Court is not state-barred. Instead, this judge has an undergraduate degree, is licensed in tribal court, and has two certificates from judicial college for "Tribal Judicial Skills" and "Special Court Trial Skills." This judge also completes 40 hours of annual training and presides over criminal trials on a weekly basis.[270] Another of the current judges at the Fort Peck Tribes is not state-barred. However, he completed the same judicial college courses as the other non-state barred judge. This judge just presided over the Fort Peck Tribes' first SDVCJ trial in early 2018.

The tribes that implemented SDVCJ after the law took general effect took a more diverse approach to their judicial qualifications, as summarized below.

Judicial Qualifications

EBCI:	Member of the North Carolina bar.[271]
Kickapoo:	Judges presiding over criminal proceedings involving a non-Indian must be state-barred.[272]
Little Traverse:	Judges presiding over domestic violence criminal proceedings must be admitted to a state or federal bar and have "sufficient legal training to preside over criminal trials."[273]
Nottawaseppi:	Judges must be a member of any bar. [274]
Seminole:	Judges must be a member of any bar, including tribes.[275]
Standing Rock:	Judges must be a member of any bar, including tribes.[276]
Muscogee:	Trial judges must be state-barred, eligible or admitted to practice before federal courts in Oklahoma, have a minimum of four years of active trial

[xlix] In considering the Tribal Law and Order Act of 2010, the Senate Committee on Indian Affairs received comments that tribal court judges should be required to graduate from an accredited law school and be state court barred; however, noting that this requirement was not even a part of all state judicial qualifications, they declined to recommend state bar membership as the requirement. 1 S. REP. NO. 111-93, at 17 n.57 (2009).

[1] For an in-depth discussion of the lack of guidance in this provision, see Jilly Tompkins, *Defining the Indian Civil Rights Act*, 4 AM. INDIAN LAW JOURNAL 53, 65-74 (2015).

	experience, be a member of the Muscogee Bar, and maintain continuing legal education each year.[277]
AL Coushatta:	Judges must have "graduated from an accredited law school" and be a member of any state bar.[278]
Choctaw:	Judges must have at least 5 years of experience as a practicing attorney or judge and be at least 30 years old, licensed by a state or federal court, and a member of the Choctaw Nation Bar.[279]
Sault Ste. Marie:	Judges who preside over criminal cases must have sufficient legal training and be a state licensed attorney.[280]
Chitimacha:	Judges who preside over SDVCJ cases must have sufficient legal training and be licensed to practice law by any jurisdiction in the United States.[281]
Lower Elwha:	Judges presiding over any criminal proceeding must have sufficient legal training and be licensed to practice in any jurisdiction in the United States, including Lower Elwha Klallam Tribe.[282]
Sac and Fox:	Judges presiding over any criminal matter with a potential sentence of more than one year must be barred in Oklahoma.[283] Trial judges are not otherwise required to be a member of any state bar.[284]

VICTIMS' RIGHTS AND SAFETY

Although VAWA 2013 focuses heavily on the rights of defendants in tribal courts, it does not require implementing tribes to do anything specific to support victims. Many tribes have, however, chosen to actively promote victims' rights and safety. As highlighted in the profiles of the implementing tribes, almost all of them have robust programs that support domestic violence victims. In addition to programmatic support, many tribes have comprehensive codes that account for victims' rights and safety. Some tribes who did not previously have victim centered provisions in their codes, took the opportunity when re-writing their codes to enact victims' rights provisions to comply with VAWA 2013. Here is a brief overview of how some of the tribes chose to legislate victims' rights. Since some tribes had extensive victims' rights provisions, the list below includes illustrative examples from each tribe rather than an exhaustive list of the victims' rights defined by each code.

The Pascua Yaqui, **CTUIR**, and **Tulalip** have comprehensive codes that account for victims' rights and promote victims' safety. The CTUIR Court issues automatic protection orders in all pending criminal domestic violence cases. The Tulalip and **Fort Peck Tribes** have instituted a domestic violence docket to handle all cases involving domestic violence, dating violence, or violation of protection orders. This domestic violence docket is separate from the existing criminal docket and allows the court to have an increased focus on victim safety and offender accountability.[285] Tulalip's victims' rights code also is rooted in the unique context of Tulalip culture and includes that law enforcement officers must help victims get back "essential personal effects" which includes "regalia or any cultural or ceremonial items."[286]

EBCI police are specifically mandated to respond to domestic violence calls immediately,[287] make arrests without unnecessary delay,[288] and report the incident to EBCI's Domestic Violence Program within 48 hours.[289] Tribal prosecutors are also encouraged to consult domestic violence victim advocates[290] and to expedite prosecutions with "a minimum of continuances."[291] Victims are given the right to provide the court with a victim-impact statement, to address the court during sentencing, and to ask the court to order restitution for damage to or loss of property through the defendant's actions.[292]

At **Sisseton**, law enforcement arriving on the scene are required to use "all reasonable means to protect the victim and others present from further violence." They are also required to confiscate weapons, help the victim get medical treatment, and provide the victim with a notice of all of her rights and "the remedies and services available to victims of domestic violence"[293] The statement of victim's rights is detailed in the tribal code and not only includes how law enforcement can help, but a detailed list of 10 different protection orders that the victim could file a petition for and where to obtain the necessary forms.[294]

Little Traverse police must assist victims in retrieving belongings, obtaining medical treatment, and moving to a safe location, such as a shelter.[295] They are also responsible for providing information to the victim about his or her rights and any services available to victims.[296] Prosecutors must "maintain contact with the victim throughout the criminal proceedings," update the victim about major decisions in the case, provide the victim an opportunity to present an impact statement to the court, and allow the victim to seek restitution for property damage.[297]

Nottawaseppi guarantees victims the right to reasonable protection from the accused, the right to notice of any judicial proceedings dealing with the domestic violence case, the right to confer with the prosecutor, the right to restitution, and the right to provide the court with a victim's impact statement.[298] NHBP police officers are required to protect victims from abuse, transport victims to a domestic violence shelter, assist victims in obtaining needed medical care, and provide victims with written notice of their rights.[299]

In addition to a dedicated Victim's Rights section of their code,[300] **Chitimacha's** code contains two sections specifying duties to victims. The first section, "Duties of the Tribe to the Victim" requires that prosecutors keep parts of the victim's background from entering into the case, "respectfully" dissuade victims from withdrawing charges, keep continuances to a minimum, track victim's financial costs, and utilize victim advocates during every phase of the proceedings.[301] The second section requires law enforcement to ensure victim safety by, among other things, helping the victim obtain medical treatment, removing personal effects, advising the victim of services, and helping them obtain temporary protection orders.[302] The tribal code also has clear provisions which protect victim safety through privacy. Alleged perpetrators may not obtain any records of police contact alleging incidents of domestic violence without first going through a hearing with notice to the prosecutor. Even if the Chitimacha Tribal Court eventually orders disclosure, information identifying the victim may be redacted to protect the confidentiality of their identity. Victims may also receive status reports on their offender's case.[303]

Seminole Nation guarantees to domestic violence victims the right to judicial orders protecting him or her from further abuse.[304] Seminole Nation law enforcement, the Lighthorse Police, is directed to inform victims of these legal rights.[305] They are also directed to protect the victim from further immediate abuse, transport the victim and any children to a shelter, and assist the victim in obtaining medical care.[306] The Seminole Nation's Attorney General has a policy to cooperate with victims' advocates as well.[307]

Muscogee (Creek) Nation's law enforcement, also known as the Lighthorse Police, are directed by statute to protect domestic violence victims from immediate harm, assist them in obtaining any needed medical care, and transport them to a shelter, if needed.[308] Lighthorse Police are required to give victims written notice of their rights to protective orders and instructions on how to file for such orders.[309] The MCN District Court evaluating the arrest of a domestic violence offender is required to consider the safety of the victim when deciding whether to keep the offender in pretrial detention, and consider imposing protective orders for the victim's safety before releasing the offender.[310]

The first power or duty discussed in the Law Enforcement portion of **Lower Elwha**'s code is law enforcement's duty to use all reasonable means to protect a domestic violence victim or any other household members when they are responding to a domestic violence call.[311] The duty to protect includes, among other things, transporting the victim to safety, collecting their belongings, and confiscating prohibited weapons from the alleged abuser. Lower Elwha police are required to

provide every victim with a paragraph statement of their rights, which is provided for in the code.[312] Lower Elwha's code also contains a victims' rights section, which includes the right to privacy, the right to dignity, the right to be heard, and the right to notice concerning the accused's case.[313]

Sac and Fox law provides a comprehensive scheme to ensure that domestic violence victims have access to protective orders.[314] The tribe is also required to maintain access to shelters and "other such services as are needed" for domestic violence and sexual abuse victims.[315] Sac and Fox police and prosecutors are also required to inform victims of the above described rights and services, as well as others detailed in its Domestic Abuse Act.[316]

Kickapoo has an extensive and comprehensive Domestic Violence Protection Ordinance that protects victims' rights. The first police officer to respond to a domestic violence incident is responsible for informing the victim of his or her rights, including the right to file for protective orders and the right to be informed about social services and financial assistance.[317] The Ordinance designates Kickapoo Mental Health and Substance Abuse Services as the agency to provide services, including shelters, to domestic violence victims.[318] The Ordinance also creates an extensive protection order system.[319]

At **Standing Rock**, victims of domestic violence are guaranteed a number of rights related to criminal proceedings against the offender, including the right to be heard by the court during plea and sentencing proceedings and the right to restitution for "loss or injury" caused by a convicted offender.[320]

The Choctaw Nation has a comprehensive Victim's Rights Act. The Act is codified into twelve separate subsections which provide for a wide range of protections for all crime victims, some of the more uncommon of which include the right to support from your employer and the right to be informed of certain witnesses who may be called to testify. Additionally, the first peace officer who interviews a domestic abuse victim is required to inform them of their rights, including the right to request protection arising out of cooperation with law enforcement, the right to be informed of support services and how to apply, and the right to file for a permanent or temporary protective order.[321]

Finally, **Sault Ste. Marie** dedicated an entire chapter of their code to Victim's Rights. The fifteen pages that outline these rights include: the right to employment protection, the right to a separate waiting area outside the courtroom, the right to confer with the prosecutor concerning jury selection, and an extensive section outlining the many kinds of restitution that the victim may be eligible for.[322]

APPENDICIES

APPENDIX A: 25 U.S.C. §§ 1301-1304

Indian Civil Rights Act, 25 U.S.C. §§ 1301-1304, as amended by VAWA 2013:

§ 1301. ***Definitions: For purposes of this subchapter, the term***

(1) "*Indian tribe*" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government.
(2) "*powers of self-government*" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
(3) "*Indian court*" means any Indian tribal court or court of Indian offense, and
(4) "*Indian*" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 19, United States Code, if that person were to commit an offense listed in that section in Indian Country to which that section applies.

§ 1302. ***Constitutional Rights***

(a) In general No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
(3) subject any person for the same offense to be twice put in jeopardy;
(4) compel any person in any criminal case to be a witness against himself;
(5) take any property for a public use without just compensation;
(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
(7)
  (A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;
  (B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of $5,000, or both;
  (C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of $15,000, or both; or
  (D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;
(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
(9) pass any bill of attainder or ex post facto law; or
(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than $5,000 A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than $5,000 but not to exceed $15,000, or both, if the defendant is a person accused of a criminal offense who—

(1) Has been previously convicted of the same or a comparable offense by any jurisdiction in the United

States; or

(2) Is being prosecuted for any offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

(c) Rights of defendants In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

(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 United States 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—

(A) has sufficient legal training to preside over criminal proceedings; and

(B) is licensed to practice law by any jurisdiction in the United States;

(4) 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; and

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

(d) Sentences

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant—

(1) to serve the sentence—

(A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;

(B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c)[1] of the Tribal Law and Order Act of 2010

(C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

(D) in an alternative rehabilitation center of an Indian tribe; or

(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

(e) Definition of offense

In this section, the term "offense" means a violation of a criminal law.

(f) Effect of section

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian Country.

§ 1303. Habeas corpus

The 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.

§ 1304. Tribal Jurisdiction over Crimes of Domestic Violence

(a) Definitions.—In this section:

(1) Dating Violence
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.

(2) Domestic Violence
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.

(3) Indian Country
The term 'Indian Country' has the meaning given the term in section 1151 of title 18, United States Code.

(4) Participating tribe
The term 'participating tribe' means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian Country of that Indian tribe.

(5) Protection order The term 'protection order'—

(A) means 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; and

(B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a Pendente 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 the person seeking protection.

(6) Special domestic violence criminal jurisdiction
The term 'special domestic violence criminal jurisdiction' means the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise.

(7) Spouse or intimate partner
The term 'spouse or intimate partner' has the meaning given the term in section 226 of title 18, United States Code.

(b) Nature of Criminal Jurisdiction.—

(1) In general
Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 201 and 203 [25 U.S.C. §§ 1301 and 1303, respectively], the 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.

(2) Concurrent jurisdiction
The exercise of special domestic violence criminal jurisdiction by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both.

(3) Applicability Nothing in this section—

(A) creates or eliminates any Federal or State criminal jurisdiction over Indian Country; or

(B) 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.

(4) Exceptions.

(A) Victim and defendant are both non-Indians

(i) In general
A participating tribe may not exercise special domestic violence criminal jurisdiction over an alleged offense if neither the defendant nor the alleged victim is an Indian.

(ii) Definition of victim
In this subparagraph and with respect to a criminal proceeding in which a

participating tribe exercises special domestic violence criminal jurisdiction based on a violation of a protection order, the term 'victim' means a person specifically protected by a protection order that the defendant allegedly violated.

(B) Defendant lacks ties to the Indian tribe A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant—

(i) resides in the Indian Country of the participating tribe;
(ii) is employed in the Indian Country of the participating tribe; or
(iii) is 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.

(c) Criminal Conduct A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

(1) Domestic violence and dating violence.—An act of domestic violence or dating violence that occurs in the Indian Country of the participating tribe.
(2) Violations of protection orders.—An act that—
(A) occurs in the Indian Country of the participating tribe; and
(B) violates 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;
(iii) is enforceable by the participating tribe; and
(iv) is consistent with section 2265(b) of title 18, United States Code.

(d) Rights of Defendants In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant—

(1) all applicable rights under this Act;
(2) if a term of imprisonment of any length may be imposed, all rights described in section 202(c) [25 U.S.C. § 1302(c)];
(3) 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
(4) 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.

(e) Petitions to Stay Detention.—

(1) In general
A person who has filed a petition for a writ of habeas corpus in a court of the United States under section 203 [25U.S.C.§ 1303] may petition that court to stay further detention of that person by the participating tribe.
(2) Grant of stay A court shall grant a stay described in paragraph (1) 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.
(3) Notice.—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 [25 U.S.C. § 1303].

APPENDIX B: OVW SDVCJ GRANTS

DOJ Office on Violence Against Women

Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction

FY 2017 Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction	Award Amount
Gila River Indian Community	$495,000
Los Coyotes Band of Cahuilla and Cupeno Indians	$495,000
Sac and Fox Tribe of the Mississippi in Iowa	$495,000
Eastern Band of Cherokee Indians	$495,000
Standing Rock Sioux Tribe	$495,000
Comanche Nation	$495,000
Swinomish Indian Tribal Community	$495,000
Total Award Amount	**$3,465,000**
Total Number of Awards	**7**

FY 2016 Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction	Award Amount
Yurok Tribe of the Yurok Reservation, California	$184,371
Grand Traverse Band of Ottawa and Chippewa Indians	$448,511
Little Traverse Bay Bands of Odawa Indians	$450,000
Santa Clara Pueblo	$239,074
Confederated Tribes of the Chehalis Reservation	$293,820
Port Gamble S'Klallam Tribe	$184,371
Tulalip Tribes of Washington	$419,792
Total Award Amount	**$2,219,939**
Total Number of Awards	**7**

APPENDIX C: ADDITIONAL RESOURCES

SDVCJ Specific Resources

NCAI's Resource Center for Implementing Tribal Provisions of VAWA 2013. NCAI developed and maintains a website that provides information, news, resources, webinars, memoranda, notices of events, and funding opportunities on the implementation of tribal provisions of VAWA 2013. It also contains information on the Inter-tribal Technical-Assistance Working Group (ITWG), .
See: www.ncai.org/tribal-vawa

Specific Resources Pages on NCAI's Website:

- Webinars. See: http://www.ncai.org/tribal-vawa/resources/webinars
- Code Development. See: http://www.ncai.org/tribal-vawa/resources/code-development
- Jury Pool Selection. See: http://www.ncai.org/tribal-vawa/resources/jury-pool-selection
- Defendants' Rights & Criminal Defense. See: http://www.ncai.org/tribal-vawa/resources/defendants-rights-criminal-defense
- Notice. See: http://www.ncai.org/tribal-vawa/resources/notice
- Victims' Rights & Safety. See: http://www.ncai.org/tribal-vawa/resources/victims-rights-safety
- Court/Judicial Requirements. See: http://www.ncai.org/tribal-vawa/resources/courtjudicial-requirements
- Law Enforcement. See: http://www.ncai.org/tribal-vawa/resources/law-enforcement
- Tribal Law & Order Act. See: http://www.ncai.org/tribal-vawa/resources/tribal-law-order-act

ITWG Code Development Checklist for implementing VAWA 2013. This checklist is designed as a tool to assist tribal governments seeking to develop tribal codes that comply with VAWA 2013's statutory requirements. It includes citations to existing tribal codes implementing the new law.
See:http://www.ncai.org/tribal-vawa/getting-started/tribal-code-development-checklist-for-implementation-aug-20142.pdf

Simple checklist for Law Enforcement Officers. Implementation of VAWA 2013 may require changes in law enforcement policies and procedures. Training for law enforcement officers will be an important part of implementation.
See:http://www.ncai.org/tribal-vawa/resources/Law_Enforcement_investigation_-_simple_list.pdf

The ITWG has also facilitated ongoing webinar series on key areas of SDVCJ implementation, including defendants' rights issues; VAWA 2013's fair cross-section requirement and jury pool selection; and victims' rights. The full webinar series can be found on the NCAI website.
See: http://www.ncai.org/tribal-vawa/resources/webinars

Tribal Legal Code Resource: Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction. TLPI, one of the technical assistance providers supporting the work of the

ITWG, has also developed this comprehensive resource which includes a model code that the ITWG tribes developed.
See: http://www.tribal-institute.org/download/codes/TLOA_VAWA_3-9-15.pdf

Tribal VAWA Resource Page is housed on the Tribal Court Clearinghouse website. This page contains the language of VAWA, videos from the VAWA signing ceremony, publications, reports, articles and other important resources on VAWA's SDVCJ, as well as relevant upcoming and past events focusing on SDVCJ.
See: http://www.tribal-institute.org/lists/vawa_2013.htm

The five Pilot Project Tribes' codes.
See: http://www.ncai.org/tribal-vawa/pilot-project-itwg/pilot-project

The five tribes' applications to participate in the Pilot Project permitting early use of jurisdiction over non-Indians may also be helpful, as the applications look for compliance with the VAWA 2013 requirements and provide the tribes examples of their compliance. The applications are publically available: Confederated Tribes of the Umatilla Indian Reservation application, Pascua Yaqui Tribe application, Tulalip Tribes application, Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation application and Sisseton-Wahpeton Oyate of the Lake Traverse Reservation application.
See: www.justice.gov/tribal/vawa-2013-pilot-project

"Considerations in Implementing VAWA's Special Domestic Violence Criminal Jurisdiction and TLOA's Enhanced Sentencing Authority - A Look at the Experience of the Pascua Yaqui Tribe," compiled by Alfred Urbina, Attorney General, Pascua Yaqui Tribe and Melissa Tatum, Research Professor of Law, The University of Arizona James E. Rogers College of Law.
See: indianlaw.org/safewomen/resources

Two articles by M. Brent Leonhard, Attorney in the Office of Legal Counsel for the Confederated Tribes of the Umatilla Indian Reservation, on implementing VAWA 2013. The Federal Lawyer, October/November 2015 and ABA Human Rights Magazine Volume 40 Number 4.

Article by Professor Angela Riley, *Crime and Governance in Indian Country,* which provides an analysis of how TLOA and VAWA have worked on the ground and relate to tribal sovereignty.

Other Relevant Resources

Tribal Protection Order website was developed and is maintained by TLPI. It is a clearinghouse of information and resources on tribal protection orders and tribal enforcement.
See: www.TribalProtectionOrder.org

Tribal Law and Order Act Resource Center is a website specifically developed by NCAI to share information and resources relative to TLOA. It contains many of the resources described in this resource sections and many more, as well as news, events, webinars, and other helpful information.
See: tloa.ncai.org

The final report of the Attorney General's Task Force on American Indian and Alaska Native Children Exposed to Violence - "Ending Violence So Children Can Thrive," US Senator Byron Dorgan et al. The task force is part of Attorney General's Defending Childhood Initiative, a project that addresses the epidemic levels of exposure to violence faced by our nation's children. The task force was created in response to a recommendation in the Attorney General's National Task Force on Children Exposed to Violence December 2012 final report. The report noted that American Indian and Alaska Native children have an exceptional degree of unmet needs for services and support to prevent and respond to the extreme levels of violence they experience.
See: www.justice.gov/defendingchildhood

Federal Laws, Decisions, and Administrative Notices

Public Law 113-4, 127 Stat. 54 (2013) The Violence Against Women Reauthorization Act of 2013 (VAWA 2013), recognized and reaffirmed the inherent sovereign authority of Indian tribes to exercise criminal jurisdiction over certain non-Indians who violate protection orders or commit dating violence or domestic violence against Indian victims on tribal lands.

The Tribal Law and Order Act (Public Law 111-211) is legislation passed by Congress as part of another bill regarding Indian Arts and Crafts. (See Title II.) It enhanced tribal authority to prosecute and punish criminals. However, tribes are required to provide certain due process requirements.

The requirements are listed in the amended Indian Civil Rights Act (25 U.S.C. §§ 1301-1304).

28 U.S.C. § 543(a) Special Assistant United States Attorneys (SAUSAs), appointed by the Attorney General, who assist in prosecuting Federal offenses committed in Indian Country.

Federal Register, vol. 78, no. 115, p. 35961, June 14, 2013. This notice proposes procedures for an Indian tribe to request designation as a participating tribe under section 204 of the Indian Civil Rights Act of 1968, as amended, on an accelerated basis, pursuant to the voluntary Pilot Project described in section 908(b)(2) of the Violence Against Women Reauthorization Act of 2013 (''the Pilot Project''), and also proposes procedures for the Attorney General to act on such a request. This notice also invites public comment on the proposed procedures and solicits preliminary expressions of interest from tribes that may wish to participate in the Pilot Project.

Federal Register, vol. 78, no. 230, p. 71645, Nov. 29, 2013. This final notice establishes procedures for Indian tribes to request designation as participating tribes under section 204 of the Indian Civil Rights Act of 1968, as amended, on an accelerated basis, under the voluntary pilot project described in the Violence Against Women Reauthorization Act; establishes procedures for the Attorney General to act on such requests; and solicits such requests from Indian tribes.

The U.S. Supreme Court in Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), held that tribal sovereignty does not extend to the exercise of criminal jurisdiction over a non-Indian for crimes committed in Indian Country.

NOTES

[1] Brittney Bennett, *Law was meant to let American Indians prosecute violence; is it working?* USA TODAY, (March 25, 2017, 8:01am) https://www.usatoday.com/story/news/2017/03/25/american-indian-women-violence/99538182/.

[2] Pub. L. No. 113-4, 127 Stat. 54 (2013).

[3] 25 U.S.C. §1304.

[4] 435 U.S. 191 (1978).

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[7] *See* Angela R. Riley, *Crime and Governance in Indian Country*, 63 UCLA L. REV. 1564, 1572 (2016) ("[I]mplementation has been a success in several respects. Tribes have provided defendants with the requisite procedural protections, and the preliminary data reveal that the laws are improving the safety and security of reservation residents."); *see also* Tracy Toulou, Director Tracy Toulou of the Office of Tribal Justice Testifies Before the Senate Committee on Indian Affairs Oversight Hearing on Draft Legislation to Protect Native Children and Promote Public Safety in Indian Country, (May 18. 2016), https://www.justice.gov/opa/speech/director-tracy-toulou-office-tribal-justice-testifies-senate-committee-indian-affairs-0 ("The three original Pilot Project tribes achieved notable success implementing SDVCJ during the Pilot Project period from February 2014 through March 2015.").

[8] S. Rep. No. 112-265, at 5 (2012); S. Rep. No. 112-153, at 3-11 (2011); U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, AMERICAN INDIANS AND CRIME: A BJS STATISTICAL PROFILE, 1992-2002 iii (Dec. 2004), https://www.bjs.gov/content/pub/pdf/aic02.pdf.

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[19] National Congress of American Indians, *VAWA: A Call to Action*, YOUTUBE (Mar. 10, 2015), https://www.youtube.com/watch?v=urPZyc-qACY.

[20] *Id.*

[21] Interview with Kay Rhoads (Winter 2017) (on file with NCAI).

[22] Pilot Project for Tribal Jurisdiction Over Crimes of Domestic Violence78 Fed. Reg. 35963 (June 14, 2013).

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[24] NCAI Video Recording: Interview with Deborah Parker (on file with author).

[25] TILLER'S GUIDE TO INDIAN COUNTRY 483 (Veronica E. Velarde Tiller ed., 3rd ed. 2015).

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[189] SAC AND FOX NATION CODE OF LAWS, tit. 11, §102(1)(2).
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[212] Eastern Band of Cherokee Indians, Ordinance No. 526 (2015), § 14-40.1(n).
[213] *Id.; id* at § 15-8. Rule 6.
[214] *Id.* CHITIMACHA COMPREHENSIVE CODES OF JUSTICE, tit. III, § 623(e).
[215] ALABAMA-COUSHATTA TRIBE OF TEXAS COMPREHENSIVE CODES OF JUSTICE, tit. IV, ch. 1, §120(E).
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[217] In Re Pascua Yaqui Tribe, No. CA-17-003, Pascua Yaqui Court of Appeals (May 8, 2017).
[218] The Cherokee Code of the Eastern Band of Cherokee, ch. 14, § 14-40.1(c). § 14-40.1, which deals with domestic violence, has been heavily amended by Ordinance 526.
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[222] STANDING ROCK SIOUX TRIBAL CODE OF JUSTICE, tit. IV, ch. 17, §§ 4-1703(c), 4-1703(i)(1).;
[223] SISSETON-WAHPETON OYATE CODES OF LAW, ch. 52, § 52-04-01.
[224] FORT PECK TRIBAL CODE, tit.7, Sec. 249(c).
[225] NOTTAWASEPPI HURON BAND OF POTAWATOMI TRIBAL CODE, tit. VII-04 § 7.4-35(A)
[226] LOWER ELWHA KLALLAM CODE, ch. 16, art 1, §16.01.13.
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[229] *Id.* at 4.25.100(11).
[230] *Id.* at tit. 10, § 207.1-207.5.

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[232] 25 U.S.C. § 1304(d)(3).
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[235] PASCUA YAQUI TRIBAL CODE, tit. 3, §§ 2-1-160, 2-2-440.
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[237] KICKAPOO TRIBE OF OKLAHOMA CRIMINAL PROCEDURE, ch. 3, § 301; KICKAPOO TRIBE OF OKLAHOMA CIVIL PROCEDURE, ch. 6, § 601.
[238] TULALIP TRIBAL CODES, tit. 2, ch. 2.05, § 2.05.110.
[239] MUSCOGEE CODE, tit. 14, ch. 1, §1-501, tit. 27, ch. 2, § 2-111, tit. 27, app. 1, Rule 13.
[240] CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION CRIM. CODE, ch. 3, pt. V, § 3.19.
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[242] WAGANAKISING ODAWA TRIBAL CODE OF LAW, tit. IX, ch. 1, §9.706.
[243] SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS TRIBAL CODE, ch. 70, § 70.126.
[244] ALABAMA-COUSHATTA TRIBE OF TEXAS COMPREHENSIVE CODES OF JUSTICE, tit. IV, ch. 1, § 125.
[245] CHITIMACHA COMPREHENSIVE CODES OF JUSTICE, tit. II, § 509.
[246] CHOCTAW NATION JUROR CODE, §§ 3, 11.
[247] THE CHEROKEE CODE OF THE EASTERN BAND OF THE CHEROKEE NATION, pt. II, ch. 1, art. IV, § 1-31.
[248] LOWER ELWHA KLALLAM CODE, art. III, § 16.03.08(6).
[249] SEMINOLE NATION CODE OF LAWS, tit. 3, ch. 6, tit. 7, ch. 1, §102, ch. 3, § 302.
[250] SAC AND FOX NATION CODE OF LAWS, tit. 11, ch. 3, tit. 6, ch. 6.
[251] PASCUA YAQUI TRIBAL CODE, tit. 3, § 2-1-160(B).
[252] TULALIP TRIBAL CODES, tit. 2, ch. 2.05, § 2.05.110.
[253] CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION CRIM. CODE, ch. 3, pt. V, § 3.19.
[254] WAGANAKISING ODAWA TRIBAL CODE OF LAW, tit. IX, ch. 1, §9.706(B).
[255] ALABAMA-COUSHATTA TRIBE OF TEXAS COMPREHENSIVE CODES OF JUSTICE, tit. IV, ch. 1, § 125
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[260] KICKAPOO TRIBE OF OKLAHOMA CRIMINAL PROCEDURE, ch. 3, § 301; KICKAPOO TRIBE OF OKLAHOMA CIVIL PROCEDURE, ch. 6, § 601.
[261] 8 NOTTAWASEPPI HURON BAND OF THE POTAWATOMI TRIBAL CODE § 8.20
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[264] MUSCOGEE CODE, tit. 14, ch. 1, §1-501, tit. 27, ch. 2, § 2-111, tit. 27, app. 1, Rule 13.
[265] STANDING ROCK SIOUX TRIBAL CODE OF JUSTICE, tit. III, ch. 5, § 3-507.
[266] SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS TRIBAL CODE, ch. 70, § 70.126.
[267] CHITIMACHA COMPREHENSIVE CODES OF JUSTICE, tit. II, §§ 509-510.
[268] 25 U.S.C. § 1302(c)(3).
[269] NCAI, *supra* note 92 at 19.
[270] *Id.*
[271] THE CHEROKEE CODE OF THE EASTERN BAND OF THE CHEROKEE NATION, pt. II, ch. 7, 7-8(a)-(b).
[272] KICKAPOO TRIBE OF OKLAHOMA JUDICIAL SYSTEM ORDINANCE, ch. 1, § 6(B).
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[274] NOTTAWASEPPI HURON BAND OF POTAWATOMI CONSTITUTION, art. XI, § 5(a)(2).
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[276] STANDING ROCK SIOUX TRIBAL CODE OF JUSTICE, tit. IV, ch. 17, § 4-1715(b)(1).
[277] MUSCOGEE CODE, tit. 26, ch. 2, sub. 2, § 2-201(B).
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[279] AN ACT ESTABLISHING A COURT OF GENERAL JURISDICTION FOR THE CHOCTAW NATION OF OKLAHOMA, art. 1, § 1.103.
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[281] CHITIMACHA COMPREHENSIVE CODES OF JUSTICE, tit. III, ch. 6, § 605(b)(2), ch. 8, § 803(b).
[282] LOWER ELWHA KLALLAM CODE, art. III, § 16.03.08(4).
[283] SAC AND FOX NATION CODE OF LAWS, tit. 9, § 102(h).
[284] *See id.* § 102(a) (allowing Sac and Fox judges to be tribal members without formal legal education).

[285] NCAI, *supra* note 92 at 19.
[286] TULALIP TRIBAL CODE, tit. 4, ch. 4.24 §§ 4.25.100(16), 4.25.130(3).
[287] THE CHEROKEE CODE OF THE EASTERN BAND OF THE CHEROKEE NATION, ch.14, § 14-40.1(l)(1). § 14-40.1, which deals with domestic violence, has been heavily amended by Ordinance 526.
[288] *Id.* at Sections 14-40.1(l)(2)(a)-(b).
[289] *Id.* at Section 14-40.1(l)(5).
[290] *Id.* at Section 14-40.1(m)(1)(c).
[291] *Id.* at Section 14-40.1(m)(1)(e).
[292] *Id.* at Section 14-40.1(m)(2).
[293] SISSETON-WAHPETON OYATE CODES OF LAW, ch. 52, § 52-02-06.
[294] *Id.*
[295] WAGANAKISING ODAWA TRIBAL CODE OF LAW, tit. IX, ch. 7, § 9.709(A).
[296] *Id*.
[297] *Id*. § 9.710.
[298] NOTTAWASEPPI HURON BAND OF THE POTAWATOMI TRIBAL CODE, tit. VII-04, § 7.4-44.
[299] *Id.* § 7.4-17.
[300] CHITIMACHA COMPREHENSIVE CODES OF JUSTICE, tit. III, § 629.
[301] *Id.* § 628.
[302] *Id.* § 613.
[303] *Id.* § 621.
[304] SEMINOLE NATION CODE OF LAWS, tit. 6A, § 406(B).
[305] *Id.* § 406(A).
[306] *Id.* § 403(A).
[307] *Id.* § 602.
[308] MUSCOGEE CODE, tit. 6, § 3-303.
[309] *Id.* § 3-306(A).
[310] *Id.* §§ 3-307(A)-(B).
[311] LOWER ELWHA KLALLAM CODE, art. II, § 16.02.01.
[312] *Id.*
[313] *Id.* art. IV, § 16.04.10.
[314] *See* SAC AND FOX NATION CODE OF LAWS, tit. 13, § 9-204.
[315] *Id.* § 9-101.
[316] *Id*. § 9-05, 9-06.
[317] KICKAPOO TRIBE OF OKLAHOMA DOMESTIC VIOLENCE PROTECTION ORDINANCE, ch. 5, § 501.
[318] *Id.* § 200.
[319] *See id.* ch. 3.
[320] *Id*. at § 4-1712(a).
[321] CHOCTAW NATION CRIMINAL CODE, pt. 1, ch.2, § 142A.
[322] SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS TRIBAL CODE, ch. 75.

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NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

Testimony of the
National Congress of American Indians

Senate Committee on Indian Affairs
Oversight Hearing on
"Addressing the Need for Victim Services in Indian Country"

June 10, 2015

On behalf of the National Congress of American Indians (NCAI), we are pleased to present testimony to the Senate Committee on Indian Affairs on "Addressing the Need for Victim Services in Indian Country." American Indians and Alaska Natives experience the highest crime victimization rates in the country. When crime occurs, victims and survivors have a variety of needs that may include mental health counseling, appropriate medical care, support during criminal justice proceedings, and emergency financial and housing assistance. Complex jurisdictional issues, along with the cultural diversity of tribes and the basic reality of geography, pose a significant challenge for crime victims in need of services in Indian Country. Since the passage of the Victims of Crime Act (VOCA) in 1984, the federal government has provided significant support to crime victim services programs across the country. As is unfortunately too often the case, Indian Country has largely been left out of this effort. Crime victims on tribal lands still struggle to access even the most basic services. As the Committee considers this important issue, we urge you to support amendments to VOCA that would appropriately recognize the important role tribal governments play in providing services to crime victims in their communities.

Crime Victims Fund

Since its creation in 1984 through VOCA, the Crime Victims Fund (CVF) has been the federal government's primary funding source for supporting crime victim compensation and assistance. Each year millions of dollars are deposited into the fund from the penalties assessed against convicted criminals. The CVF was founded on the basic premise that money from federal criminals should be used to help crime victims. The VOCA statute allocates funds made available from the CVF for a host of purposes, including a small discretionary tribal grant program through the Children's Justice Act to improve the investigation and prosecution of child abuse cases in tribal communities. There is generally about $2.7 million available for 566 Indian tribes each year in this program. The bulk of CVF funds are distributed to state and territorial governments as a formula grant, which they then sub-grant to victim assistance programs in their jurisdiction. Tribal governments, however, do not receive a similar formula distribution from the CVF. Other than the tribal CJA program, Indian tribes are able to access CVF funds for victim services only via sub-grants from the states, or by competing for very limited resources that the Department of Justice chooses to make available from its discretionary allocation. Both of these mechanisms have failed to provide adequate funding for tribal victim services programs.

NCAI recently submitted a request to the Office for Victims of Crime (OVC) under the Freedom of Information Act asking for information about sub-grants made by states to programs serving American Indian and Alaska Native victims over the past five years. NCAI received the attached spreadsheets in response, which show that pass-through funding has proven wholly unsuccessful in distributing funds to tribal victim service providers. According to data from OVC, from 2010–2014, the states passed through 0.5% of available funds to programs serving tribal victims, less than $2.5 million annually. New Mexico, where American Indians make up 10.7% of the population, sub-granted less than 1% of total available funds to programs serving Indian victims during that time period. Oklahoma, a state that is frequently held up as a place where the VOCA sub-grant process is working and where the Indian population is 12.9%, has never sub-granted more than 5.5% of its funds to programs serving Indians victims. And in Alaska, where Alaska Natives make up 19.4% of the population, the state of Alaska reports that from 2010–2013 it sub-granted between 0 and 3.9% of funds received through VOCA to programs serving Native victims. The vast majority of existing tribal victim service programs we have spoken to report that they are not able to access these funds at all.

Given that pass-through funding is not reaching tribal victims, tribal governments must largely rely upon the discretionary grant funding made available by OVC. OVC originally established a Victim Assistance in Indian Country (VAIC) discretionary grant program in 1989 in response to revelations about multiple victim molestations perpetrated by Bureau of Indian Affairs teachers in several reservation communities.[1] In attempting to identify services for the child victims, OVC realized that "funding to on reservation victim assistance programs was virtually non-existent."[2] VAIC funding was awarded for a three year period to state applicants who had partnered with tribal programs. OVC hoped that structuring the grant program to require state-tribal collaboration would help integrate tribal programs into the state VOCA programs and that the states would continue to fund the tribal programs after the federal grant ended. The states did not continue funding tribal programs at the conclusion of the three-year grant, however, and in 1998 OVC discontinued the failed pass-through model and began funding tribal programs directly.[3] Today this program is known as the Comprehensive Tribal Victim Assistance Program (TVAP).

While the TVAP is an improvement over the pass-through model used previously, its success is hampered by the low level of funding available and the short-term discretionary nature of the grants. Approximately $3 million has been available annually through this program in recent years. Tribes must compete against one another to access these funds, and fewer than 10 tribes receive these grants each year for a three-year term, with no guarantee that this funding will be renewed.[4] Too often when a grant ends, tribal programs must completely shut down. As the Committee considers this critical issue, our foremost request is that tribal victims services are not set up as another short-term grant program. Tribal governments need sustainable funding to meet the needs of victims into the foreseeable future, not a short-term program at risk of disappearing soon after it is fully established.

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[1] CCAN, "History of Federal Victim Assistance Services and Programs in Indian Country," Upon the Back of a Turtle, (1998), *available at* http://www.icctc.org/B-Ch%204%20victim%20asst%20svcs.pdf

[2] *Id.*

[3] *Id.*

[4] OVC reports that with the significant increase in disbursements from the Crime Victims Fund for FY 2015 they will be funding 24 tribal programs for FY 2015, instead of the usual 8 programs. We anticipate that total funding will be about $10 million.

Last year, NCAI adopted Resolution ANC-14-048 (attached) urging Congress to create an "above-the-cap" reserve in the Victims of Crime Act for tribal governments, or alternatively, to establish a 10% allocation from CVF disbursements for tribal governments. The Attorney General's Task Force on American Indian and Alaska Native Children Exposed to Violence similarly called for a 10% tribal allocation from the CVF in its 2014 report.[5] A 10% tribal allocation from the CVF has also been supported by the National Task Force to End Sexual and Domestic Violence, a coalition of more than a thousand organizations that advocate on behalf of victims of domestic violence, dating violence, sexual assault and stalking.[6] OVC has also recognized the disproportionate need for victim services in tribal communities. Its *Vision 21* report singled out tribal communities and called for increasing resources in order to "ensure that victims in Indian Country are no longer a footnote to this country's response to crime victims."[7]

In recent years, annual disbursements from the CVF have been about $700 million. Collections, however, reached as high as $2.8 billion in 2013, leaving a balance in the fund of more than $13 billion. There has been significant pressure on Congress to make this money available for crime victims, and Congress significantly increased the disbursements from the CVF for FY 2015 to $2.3 billion. Despite this three-fold increase, none of the money was directed to Indian tribes. There is language in the FY 2016 Budget Resolution that will likely result in even higher disbursements this year. Without additional action by Congress, however, Indian tribal governments will continue to have no direct access to critical CVF funds, and victims in Indian Country will once again be left behind.

Need for Victims Services

American Indians and Alaska Natives experience the highest rates of violent victimization in the country. The rate of aggravated assault among American Indians and Alaska Natives is roughly twice that of the country as a whole (600.2 per 100,000 versus 323.6 per 100,000).[8] The Bureau of Justice Statistics has estimated that 1 out of 10 American Indians 12 and older become victims of violent crime annually.[9] At the same time, the historic lack of funding for tribal victims services programs means that the infrastructure for providing victims services in tribal communities is woefully underdeveloped. The services that are available are provided by a complicated and fragmented system that includes federal, state, tribal, and private actors. Programs struggle to find stable sources of funding and often close when grant funds run out. There is no comprehensive compilation of the services that are available in Indian Country, nor a comprehensive analysis of the gaps. The information that is available, however, makes clear that many of the most vulnerable Native victims do not have access to the services they need.

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[5] Office of Justice Programs, United States Department of Justice, *Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence: Ending Violence so Children Can* Thrive, (Washington, D.C.: OJJOP, November 2014) (http://www.washingtonpost.com/r/2010-2019/WashingtonPost/2014/11/17/Nati..., accessed June 8, 2015).

[6] NTF Letter to Appropriators, April 15, 2015, *available at* http://4vawa.org/4vawa/2015/4/21/ntf-urges-for-increase-funding-for-federal-programs-that-address-domestic-violence-sexual-assault-dating-violence-and-stalking.

[7] Office of Justice Programs, U.S. Department of Justice, *Vision 21: Transforming Victim Services Final Report*, (Washington, DC: OVC, 2014).

[8] Rennison, C. (2001). Violent Victimization and Race, 1993-98. U.S. DOJ, Bureau of Justice Statistics, March, (NCJ 176354).

[9] 2004 report, American Indians and Crime, A BJS Statistical Profile, 1992-2002

Child Advocacy Centers

Children's Advocacy Centers (CACs), for example, are a recognized best practice for providing a child-focused, multidisciplinary response to child abuse, especially child sexual abuse. Children who receive services at CACs are twice as likely to receive specialized medical exams and significantly more likely to receive referrals for specialized mental health treatment.[10] American Indian and Alaska Native children are 50% more likely to experience child abuse and sexual abuse than white children.[11] Due to exposure to violence, Native children experience post-traumatic stress disorder at a rate of 22%—the same levels as Iraq and Afghanistan war veterans and triple the rate of the rest of the population.[12]

Despite the increased victimization risk for Native American children, very few CACs exist on tribal lands. While some tribal communities may be served by CACs off the reservation, the average driving distance to a CAC from tribal lands is 62 miles. For more than 100 tribal communities, the driving distance is between 100 and 300 miles.[13] For example, a child abuse victim on the Rosebud Reservation in South Dakota must travel two and a half hours across the state (or more in bad weather) to reach a CAC.[14] Even where tribal CACs exist, tribes struggle to find stable funding to maintain the programs. For example, the Eastern Shoshone Tribe opened a CAC on the Wind River Reservation in 2013 after an existing CAC operated by the Northern Arapaho Tribe ran out of funding and closed.[15] The new CAC is dependent on a three-year federal grant with no guarantee that funding will be renewed after the grant period ends.

Domestic Violence Shelters

Nearly 61% of Native women are assaulted during their lifetime. One local study found that 1 in 12 Native women experience violence perpetrated by their husband every year.[16] On some reservations, the murder rate of Native women is 10 times the national average.[17] Domestic violence shelters provide essential services to victims of domestic violence. In addition to emergency housing for a woman and her children fleeing abuse, they often provide counseling, advocacy, legal services, and referrals to other services. There are currently fewer than 40 tribal domestic violence shelters in operation. Those programs that do exist struggle to find sufficient funding to maintain their operations. The domestic violence shelter on the Pine Ridge reservation, for example, closed 8 years ago. Advocates report that in order to access shelter, they must transfer

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[10] Randall Cooper, "Children's Advocacy Centers and Indian Country," Update: National Center for Prosecution of Child Abuse, vol. 24, no 2 (2014), *available at* http://www.ndaa.org/pdf/Update%20Vol24_No2.pdf.

[11] Children's Bureau, U.S. Department of Health and Human Services, Child Maltreatment 2011, 28 (2012). Rates of child maltreatment in certain states are even more alarming. According to data from the Department of Health & Human Services, Native children in Alaska experience maltreatment at a rate more than six and a half times the rate for white children. In North Dakota, the rate of maltreatment for Native children is more than three times the rate for white children.

[12] Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, *supra* note 3, at 38.

[13] Randall Cooper, "Children's Advocacy Centers and Indian Country," Update: National Center for Prosecution of Child Abuse, vol. 24, no 2 (2014), *available at* http://www.ndaa.org/pdf/Update%20Vol24_No2.pdf

[14] *Id.*

[15] Rebecca Martinez, "Child Advocacy Center Opens on Wind River Reservation," Wyoming Public Media, January 24, 2013, *available at* http://wyomingpublicmedia.org/post/child-advocacy-center-opens-wind-river-reservation.

[16] R. Bachman, et al, "Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known," (2008), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf.

[17] R. Bachman, et al, "Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known," (2008), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf.

victims—and often their children—at least 100 miles one way to a shelter in Rapid City. When shelter space is not available in Rapid City, advocates drive victims 700 miles to Sioux Falls.[18]

The Emmonak Women's Shelter, the only domestic violence shelter located in an Alaska Native village, has faced similar challenges. Like so many victim services programs in Indian Country, the shelter is reliant on short-term, discretionary funding from the federal government in order to remain operational. This two-bedroom shelter serves 500 women a year from 13 surrounding Native communities. Given the geographic isolation of the region, it is generally the only option for local women seeking to escape abuse. In operation since 1978, the shelter was forced to temporarily close in 2005 after the state of Alaska eliminated funding for this and a number of other rural services for Alaska Natives. Even while closed, battered women sought refuge there. Met with locked doors, women climbed surrounding trees and even hid in trash cans to escape their abusers. The shelter was able to reopen months later after securing funding from a tribal non-profit, and months after that, it received its first federal grant.[19] The shelter temporarily closed again in 2012 after running out of its DOJ funding due to high fuel costs during an especially brutal winter. The shelter was able to reopen after obtaining $30,000 in private donations and a $50,000 emergency grant from the Bureau of Indian Affairs. Staff took pay cuts and rationed fuel in order to conserve the little funding they had.[20]

Sexual Assault Forensic Examiners and Sexual Assault Response Teams

Access to services for sexual assault survivors is similarly limited. Approximately 34% of Native women are raped in their lifetime, and nearly half will experience sexual violence other than rape within their lifetime.[21] When Native women are raped, they are more likely to experience other physical violence during the attack, their attacker is more likely to have a weapon, and they are more likely to have injuries requiring medical attention.[22]

Sexual Assault Examiner (SAE) and Sexual Assault Response Team (SART) programs have been shown to improve both the care of survivors of sexual assault and criminal justice outcomes in sexual assault cases.[23] SAEs and SARTs are instrumental in facilitating immediate access to appropriate health care and other services for victims and for minimizing re-victimization by the justice system. A 2014 study used GIS mapping to evaluate proximity of trained forensic examiners to 650 census-identified Native American lands. The study found that more than two-thirds of Native American lands are more than 60 minutes away from the nearest sexual assault forensic examiner.[24]

Conclusion

We expect that disbursements from the CVF this year may well exceed $2.5 billion. Particularly at a time when funding is significantly increasing, it would be unconscionable to continue to ignore

[18] Conversation with advocates from the Pine Ridge reservation on June 2, 2015 at the Women Are Sacred conference.
[19] Timothy Williams, In Remote Alaska, Financing Puts a Rare Refuge at Risk, N.Y. TIMES, May 23, 2012, at A3.
[20] Timothy Williams, With Grant, an Alaska Women's Shelter, N.Y. TIMES, July 6, 2012, at A15.
[21] *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 summary report* . Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (2011).
[22] R. Bachman, et al, "Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known," (2008), p. 36, *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf.
[23] Jennifer Giroux, Ashley Juraska, Eric Wood & Lindsey Wood, *Sexual Assault Services coverage on Native American Land*, 10 Journal of Forensic Nursing, 92, 92 (2014).
[24] *Id.*

the needs of the most victimized population in the United States. Now is the time to make sure that crime victims in tribal communities have access to the crime victim assistance and compensation that they desperately need. Creating a dedicated tribal funding allocation from the CVF would provide a stable source of funding for Indian tribes to develop the victims services infrastructure that is taken for granted in much of the rest of the country. We look forward to continuing to work with the Committee to address this issue.

FISCAL_YEAR	STATE_DESC	ORGANIZATION_NAME1	CITY	STATE	REPORT_AMOUNT	Report Amount Percentag	FINAL_AWARD_AMOUNT	TYPE
2010	Arizona	DNA-People's Legal Services, Inc.	Window Rock	AZ	22,868		8,655,966	On Reservation
2010	Arizona	Tohdenasshai Shelter Home	Kayenta	AZ	57,744		8,655,966	On Reservation
				AZ Total	**80,612**	**0.93%**		
2010	California	American Indian Child Resource Center	Oakland	CA	132,697		46,204,706	Off Reservation
2010	California	Bay Area American Indian Council, Inc.	San Leandro	CA	132,700		46,204,706	Off Reservation
2010	California	Feather River Tribal Health	Oroville	CA	22,504		46,204,706	Off Reservation
2010	California	Feather River Tribal Health, Inc.	Oroville	CA	132,700		46,204,706	On Reservation
2010	California	Indian Child Welfare Consortium	Temecula	CA	19,859		46,204,706	On Reservation
2010	California	Indian Child Welfare Consortium	Temecula	CA	132,696		46,204,706	On Reservation
2010	California	Indian Health Council	Valley Center	CA	120,745		46,204,706	On Reservation
2010	California	Karuk Community Development Corp	Happy Camp	CA	99,644		46,204,706	On Reservation
2010	California	Two Feathers Native American Family Services	McKinleyville	CA	132,700		46,204,706	On Reservation
2010	California	United American Indian Involvement, Inc.	Los Angeles	CA	132,700		46,204,706	Off Reservation
				CA Total	**1,058,945**	**2.29%**		
2010	Michigan	Saginaw Chippewa Indian Tribe of Michigan	Mt Pleasant	MI	107,318		12,828,001	On Reservation
2010	Michigan	Sault Ste Marie Tribe of Chippewa Indians	Sault Ste Marie	MI	81,258		12,828,001	On Reservation
				MI Total	**188,576**	**1.47%**		
2010	Minnesota	American Indian Community Housing Organization	Duluth	MN	150,000		7,011,903	Off Reservation
				MN Total	**150,000**	**2.14%**		
2010	Mississippi	Mississippi Board of Choctaw Indians	Choctaw	MS	36,815		4,150,271	On Reservation
				MS Total	**36,815**	**0.89%**		
2010	North Dakota	FT. BERTHOLD COALITION AGAINST DOMESTIC VIOLENCE	NEW TOWN	ND	21,053		1,299,851	On Reservation
2010	North Dakota	SPIRT LAKE VICTIM ASSISTANCE PROGRAM	FORT TOTTEN	ND	35,615		1,299,851	On Reservation
2010	North Dakota	TURTLE MT. BAND OF CHIPPEWA INDIANS	BELCOURT	ND	24,105		1,299,851	On Reservation
				ND Total	**80,773**	**6.21%**		
2010	New Mexico	Ramah Navajo School Board, Inc.	Pinehill	NM	37,159		2,985,046	On Reservation
				NM Total	**37,159**	**1.24%**		
2010	Nevada	Nevada Urban Indians	RENO	NV	52,819		3,768,290	Off Reservation
2010	Nevada	Pyramid Lake Paiute Tribe	NIXON	NV	19,500		3,768,290	On Reservation
2010	Nevada	Walker River Paiute Tribe	Schurz	NV	40,000		3,768,290	On Reservation
				NV Total	**112,319**	**2.98%**		
2010	Oklahoma	CHOCTAW NATION VICTIM ASSISTANCE	DURANT	OK	22,423		5,059,198	Off Reservation
2010	Oklahoma	COMANCHE NATION HOPE HOUSE	LAWTON	OK	35,344		5,059,198	Off Reservation
				OK Total	**57,767**	**1.14%**		
2010	Oregon	Native American Youth and Family Center	Portland	OR	13,148		5,230,591	Off Reservation
				OR Total	**13,148**	**0.25%**		
2010	South Dakota	NATIVE AMER WOMNS HEALTH ED RES. CNTR	LAKE ANDES	SD	25,114		1,504,547	Off Reservation
2010	South Dakota	SACRED HEART WOMEN'S SHELTER	EAGLE BUTTE	SD	46,475		1,504,547	On Reservation
2010	South Dakota	WACONI WAWOKIYA, INC./PROJECT SAFE	FORT THOMPSON	SD	48,138		1,504,547	On Reservation
2010	South Dakota	WHITE BUFFALO CALF WOMAN SOCIETY	MISSION	SD	56,886		1,504,547	On Reservation
2010	South Dakota	WOMEN'S CIRCLE SUPPORT SERVICES	SISSETON	SD	27,369		1,504,547	On Reservation
				SD Total	**203,982**	**13.56%**		
2010	Washington	Cowlitz Indian Tribe, Pathways to Healing/CVSC	Vancouver	WA	17,883		8,740,567	On Reservation
				WA Total	**17,883**	**0.20%**		
2010	Wisconsin	Bad River Band of Lake Superior Tribe of Chippewa Indians	Odanah	WI	36,935		7,492,374	On Reservation
2010	Wisconsin	Menominee IndianTribe of Wisconsin	Keshena	WI	28,479		7,492,374	On Reservation
				WI Total	**65,414**	**0.87%**		
				Grand Total	**2103393**			

FISCAL_YEAR	STATE_DESC	ORGANIZATION_NAME1	CITY	STATE	REPORT_AMOUNT	Report Amt Percentage by State	FINAL_AWARD_AMOUNT	TYPE
2011	Alaska	Maniilaq Family Crisis Center	Kotzebue	AK	44,948		1,410,228	Off Reservation
2011	Alaska	Maniilaq Family Crisis Center	Kotzebue	AK	10,320		1,410,228	Off Reservation
				AK Total	**55,268**	**3.92%**		
2011	Arizona	DNA-People's Legal Services, Inc.	Window Rock	AZ	22,868		8,691,971	On Reservation
2011	Arizona	Tohdenasshai Shelter Home	Kayenta	AZ	61,722		8,691,971	On Reservation
				AZ Total	**84,590**	**0.97%**		
2011	California	American Indian Child Resource Center	Oakland	CA	139,361		48,244,446	Off Reservation
2011	California	Bay Area American Indian Council, Inc.	San Leandro	CA	139,361		48,244,446	Off Reservation
2011	California	Feather River Tribal Health, Inc.	Oroville	CA	139,361		48,244,446	Off Reservation
2011	California	Indian Child Welfare Consortium	Temecula	CA	139,361		48,244,446	On Reservation
2011	California	Indian Health Council	Pauma Valley	CA	26,770		48,244,446	On Reservation
2011	California	Indian Health Council	Pauma Valley	CA	139,361		48,244,446	On Reservation
2011	California	Karuk Community Development Corporation	Happy Camp	CA	112,591		48,244,446	On Reservation
2011	California	Two Feathers Native American Family Services	McKinleyville	CA	139,361		48,244,446	On Reservation
2011	California	United American Indian Involvement, Inc.	Los Angeles	CA	139,361		48,244,446	Off Reservation
				CA Total	**1,114,888**	**2.31%**		
2011	Michigan	Hannahville Indian Community	Wilson	MI	63,050		13,166,814	On Reservation
2011	Michigan	Keweenaw Bay Indian Community	Baraga	MI	76,465		13,166,814	On Reservation
				MI Total	**139,515**	**1.06%**		
2011	Minnesota	American Indian Community Housing Organization	Duluth	MN	150,000		7,297,478	Off Reservation
				MN Total	**150,000**	**2.06%**		
2011	Mississippi	Mississippi Band of Choctaw Indians	Choctaw	MS	42,941		4,302,870	On Reservation
				MS Total	**42,941**	**1.00%**		
2011	Nevada	Nevada Urban Indians	RENO	NV	42,000		3,961,010	Off Reservation
2011	Nevada	Pyramid Lake Paiute Tribe	NIXON	NV	19,500		3,961,010	On Reservation
2011	Nevada	Walker River Paiute Tribe	Schurz	NV	45,000		3,961,010	On Reservation
				NV Total	**106,500**	**2.69%**		
2011	New Mexico	Ramah Navajo School Board, Inc.	Pinehill	NM	37,051		3,139,031	On Reservation
				NM Total	**37,051**	**1.18%**		
2011	North Dakota	FT. BERTHOLD COALITION AGAINST DOMESTIC VIOLENCE	NEW TOWN	ND	18,354		1,361,989	On Reservation
2011	North Dakota	TURTLE MT. BAND OF CHIPPEWA INDIANS	BELCOURT	ND	22,495		1,361,989	On Reservation
				ND Total	**40,849**	**3.00%**		
2011	Oklahoma	CHOCTAW NATION VICTIM ASSISTANCE	DURANT	OK	22,423		5,307,709	Off Reservation
2011	Oklahoma	COMANCHE NATION HOPE HOUSE	LAWTON	OK	46,638		5,307,709	Off Reservation
2011	Oklahoma	Pawnee/Osage CASA	Pawnee	OK	30,000		5,307,709	On Reservation
2011	Oklahoma	Ponca Tribe of Indians	Ponca City	OK	14,564		5,307,709	Off Reservation
				OK Total	**113,625**	**2.14%**		
2011	South Dakota	NATIVE AMER WOMNS HEALTH ED RES. CNTR	LAKE ANDES	SD	48,480		1,543,448	Off Reservation
2011	South Dakota	SACRED HEART WOMEN'S SHELTER	EAGLE BUTTE	SD	45,726		1,543,448	On Reservation
2011	South Dakota	WACONI WAWOKIYA, INC./PROJECT SAFE	FORT THOMPSON	SD	47,362		1,543,448	On Reservation
2011	South Dakota	WHITE BUFFALO CALF WOMAN SOCIETY	MISSION	SD	55,972		1,543,448	On Reservation
2011	South Dakota	WOMEN'S CIRCLE SUPPORT SERVICES	SISSETON	SD	46,780		1,543,448	On Reservation
				SD Total	**244,320**	**15.83%**		
2011	Washington	Cowlitz Indian Tribe, Pathways to Healing/CVSC	Vancouver	WA	13,602		9,118,130	On Reservation
2011	Washington	Cowlitz Indian Tribe, Pathways to Healing/SA	Vancouver	WA	9,000		9,118,130	On Reservation
2011	Washington	Jamestown S'Klallam Tribe/SA	Sequim	WA	9,050		9,118,130	On Reservation
2011	Washington	Lower Elwha Tribe/SA	Port Angeles	WA	10,000		9,118,130	On Reservation
2011	Washington	Lummi Indian Business Council/SA	Bellingham	WA	30,000		9,118,130	On Reservation
2011	Washington	Port Gamble S'Klallam Tribe/SA	Kingston	WA	4,425		9,118,130	On Reservation
2011	Washington	Sauk-Suiattle Indian Tribe/SA	Darrington	WA	9,000		9,118,130	On Reservation
2011	Washington	Suquamish Tribe/SA	Suquamish	WA	4,500		9,118,130	On Reservation
2011	Washington	Swinomish Indian Tribal Community/SA	La Conner	WA	6,000		9,118,130	On Reservation
				WA Total	**95,577**	**1.05%**		
2011	Wisconsin	Bad River Band of Lake Superior Tribe of Chippewa Indians	Odanah	WI	36,935		7,788,407	On Reservation
2011	Wisconsin	Lac Courte Oreilles Band of Lake Superior Chippewa Indians	Hayward	WI	90,569		7,788,407	On Reservation
2011	Wisconsin	Lac Courte Oreilles Band of Lake Superior Chippewa Indians	Hayward	WI	116,880		7,788,407	On Reservation
2011	Wisconsin	Menominee IndianTribe of Wisconsin	Keshena	WI	33,959		7,788,407	On Reservation
				WI Total	**278,343**	**3.57%**		
				Grand Total	**2,503,467**			

FISCAL_YEAR	STATE_DESC	ORGANIZATION_NAME1	CITY	STATE	ZIP_CODE	REPORT_AMOUNT	Report Amt Percentage by State	FINAL_AWARD_AMOUNT	TYPE
2012	Alaska	Maniilaq Family Crisis Center	Kotzebue	AK	99752	14,589		1,307,108	Off Reservation
				AK Total		**14,589**	**1.12%**		
2012	Arizona	DNA-People's Legal Services, Inc.	Window Rock	AZ	86515	30,723		7,739,453	On Reservation
2012	Arizona	Tohdenasshai Shelter Home	Kayenta	AZ	86033	56,609		7,739,453	On Reservation
2012	Arizona	Tohdenasshai Shelter Home	Kayenta	AZ	86033	25,568		7,739,453	On Reservation
				AZ Total		**112,900**	**1.46%**		
2012	California	Bay Area American Indian Council, Inc.	San Leandro	CA	94577	128,656		42,593,117	Off Reservation
2012	California	Feather River Tribal Health, Inc.	Oroville	CA	95965	106,416		42,593,117	Off Reservation
2012	California	Indian Health Council	Pauma Valley	CA	92061	111,034		42,593,117	On Reservation
2012	California	Karuk Community Development Corporation	Happy Camp	CA	90639	127,161		42,593,117	On Reservation
2012	California	United American Indian Involvement, Inc.	Los Angeles	CA	90017	160,819		42,593,117	Off Reservation
				CA Total		**634,086**	**1.49%**		
2012	Michigan	Hannahville Indian Community	Wilson	MI	49896	64,080		11,529,408	On Reservation
2012	Michigan	Keweenaw Bay Indian Community	Baraga	MI	49908	76,201		11,529,408	On Reservation
2012	Michigan	Saginaw Chippewa Indian Tribe of Michigan	Mt Pleasant	MI	48858	108,160		11,529,408	On Reservation
2012	Michigan	Sault Ste Marie Tribe of Chippewa Indians	Sault Ste Marie	MI	49783	94,258		11,529,408	On Reservation
				MI Total		**342,699**	**2.97%**		
2012	Minnesota	Mille Lacs Band of Chippewa Indians	Onamia	MN	56359	100,000		6,468,969	On Reservation
2012	Minnesota	Red Lake Band of Chippewa Indians	Red Lake	MN	56671	100,000		6,468,969	On Reservation
2012	Minnesota	White Earth Reservation Tribal Council	White Earth	MN	56591	84,038		6,468,969	On Reservation
2012	Minnesota	Women of Nations	St. Paul	MN	55102	309,389		6,468,969	Off Reservation
				MN Total		**593,427**	**9.17%**		
2012	Mississippi	Mississippi Band of Choctaw Indians	Choctaw	MS	39350	51,476		3,826,307	On Reservation
				MS Total		**51,476**	**1.35%**		
2012	North Dakota	FT. BERTHOLD COALITION AGAINST DOMESTIC VIOLENCE	NEW TOWN	ND	58763	17,011		1,263,793	On Reservation
2012	North Dakota	TURTLE MT. BAND OF CHIPPEWA INDIANS	BELCOURT	ND	58316	22,051		1,263,793	On Reservation
				ND Total		**39,062**	**3.09%**		
2012	New Mexico	Ramah Navajo School Board, Inc.	Pinehill	NM	87357	4,500		2,825,361	On Reservation
				NM Total		**4,500**	**0.16%**		
2012	Nevada	Pyramid Lake Paiute Tribe	NIXON	NV	89424	21,825		3,541,319	On Reservation
2012	Nevada	Walker River Paiute Tribe	Schurz	NV	89427	10,777		3,541,319	On Reservation
				NV Total		**32,602**	**0.92%**		
2012	Oklahoma	CHEROKEE NATION	TAHLEQUAH	OK	74465	23,744		4,734,234	Off Reservation
2012	Oklahoma	CHOCTAW NATION VICTIM ASSISTANCE	DURANT	OK	74702	20,234		4,734,234	Off Reservation
2012	Oklahoma	COMANCHE NATION HOPE HOUSE	LAWTON	OK	73502	43,737		4,734,234	Off Reservation
2012	Oklahoma	Pawnee/Osage CASA	Pawnee	OK	74058	21,625		4,734,234	Off Reservation
2012	Oklahoma	Ponca Tribe of Indians	Ponca City	OK	74601	9,092		4,734,234	Off Reservation
				OK Total		**118,432**	**2.50%**		
2012	South Dakota	NATIVE AMER WOMNS HEALTH ED RES. CNTR	LAKE ANDES	SD	57356	32,674		1,420,308	Off Reservation
2012	South Dakota	SACRED HEART WOMEN'S SHELTER	EAGLE BUTTE	SD	57625	53,940		1,420,308	On Reservation
2012	South Dakota	Wacanga'	SISSETON	SD	57262	27,361		1,420,308	On Reservation
2012	South Dakota	WHITE BUFFALO CALF WOMAN SOCIETY	MISSION	SD	57555	34,734		1,420,308	On Reservation
2012	South Dakota	WICONI WAWOKIYA, INC./PROJECT SAFE	FORT THOMPSON	SD	57339	58,578		1,420,308	On Reservation
				SD Total		**207,287**	**14.59%**		
2012	Texas	Alabama-Coushatta Tribe of Texas	Livingston	TX	77351	57,424		29,172,659	On Reservation
				TX Total		**57,424**	**0.20%**		
2012	Washington	Cowlitz Indian Tribe, Pathways to Healing/SA	Vancouver	WA	98632	9,500		8,127,567	On Reservation
2012	Washington	Jamestown S'Klallam Tribe/SA	Sequim	WA	98382	3,500		8,127,567	On Reservation
2012	Washington	Kalispel Tribe of Indians/CVSC	Usk	WA	99180	29,348		8,127,567	On Reservation
2012	Washington	Lower Elwha Tribe/SA	Port Angeles	WA	98363	9,500		8,127,567	On Reservation
2012	Washington	Lummi Indian Business Council/SA	Bellingham	WA	98226	23,500		8,127,567	On Reservation
2012	Washington	Port Gamble S'Klallam Tribe/SA	Kingston	WA	98346	9,500		8,127,567	On Reservation
2012	Washington	Sauk-Suiattle Indian Tribe/SA	Darrington	WA	98241	9,500		8,127,567	On Reservation
2012	Washington	Suquamish Tribe/SA	Suquamish	WA	98392	2,380		8,127,567	On Reservation
2012	Washington	Swinomish Indian Tribal Community/SA	La Conner	WA	98257	9,500		8,127,567	On Reservation
				WA Total		**106,228**	**1.31%**		
2012	Wisconsin	Bad River Band of Lake Superior Tribe of Chippewa Indians	Odanah	WI	54861	35,855		6,878,718	On Reservation
2012	Wisconsin	Lac Courte Oreilles Band of Lake Superior Chippewa Indians	Hayward	WI	54843	113,928		6,878,718	On Reservation
2012	Wisconsin	Menominee IndianTribe of Wisconsin	Keshena	WI	54135	16,471		6,878,718	On Reservation
				WI Total		**166,254**	**2.42%**		
				Grand Total		**2,480,966**			

FISCAL_YEAR	STATE_DESC	ORGANIZATION_NAME1	CITY	STATE	REPORT_AMOUNT	Report Amt Percentage by State	FINAL_AWARD_AMOUNT	TYPE
2013	Arizona	DNA-People's Legal Services, Inc.	Window Rock	AZ	38,404		8,704,554	On Reservation
				AZ Total	**38,404**	**0.44%**		
2013	California	American Indian Child Resource Center	Oakland	CA	141,521		48,127,169	Off Reservation
2013	California	Bay Area American Indian Council, Inc.	San Leandro	CA	141,521		48,127,169	Off Reservation
2013	California	Feather River Tribal Health, Inc.	Oroville	CA	123,802		48,127,169	Off Reservation
2013	California	Indian Health Council	Pauma Valley	CA	114,750		48,127,169	On Reservation
2013	California	Karuk Community Development Corporation	Happy Camp	CA	141,250		48,127,169	On Reservation
2013	California	Two Feathers Native American Family Services	McKinleyville	CA	53,080		48,127,169	On Reservation
2013	California	Two Feathers Native American Family Services	McKinleyville	CA	141,520		48,127,169	On Reservation
2013	California	United American Indian Involvement, Inc	Los Angeles	CA	141,520		48,127,169	Off Reservation
				CA Total	**998,964**	**2.08%**		
2013	Kentucky	Sanctuary	Hopkinsville	KY	55,069		5,984,199	On Reservation
				KY Total	**55,069**	**0.92%**		
2013	Maine	Indian Township Tribal Government	Princeton	ME	40,560		2,164,124	On Reservation
				ME Total	**40,560**	**1.87%**		
2013	Michigan	Hannahville Indian Community	Wilson	MI	69,471		12,873,784	On Reservation
2013	Michigan	Hannahville Indian Community	Wilson	MI	64,853		12,873,784	On Reservation
2013	Michigan	Keweenaw Bay Indian Community	Baraga	MI	66,402		12,873,784	On Reservation
2013	Michigan	Saginaw Chippewa Indian Tribe of Michigan	Mt Pleasant	MI	84,255		12,873,784	On Reservation
2013	Michigan	Saginaw Chippewa Indian Tribe of Michigan	Mt Pleasant	MI	102,007		12,873,784	On Reservation
2013	Michigan	Sault Ste Marie Tribe of Chippewa Indians	Sault Ste Marie	MI	102,941		12,873,784	On Reservation
2013	Michigan	Sault Ste Marie Tribe of Chippewa Indians	Sault Ste Marie	MI	98,361		12,873,784	On Reservation
				MI Total	**588,290**	**4.57%**		
2013	Minnesota	Mille Lacs Band of Chippewa Indians	Onamia	MN	100,000		7,234,583	On Reservation
2013	Minnesota	Red Lake Band of Chippewa Indians	Red Lake	MN	100,000		7,234,583	On Reservation
2013	Minnesota	White Earth Reservation Tribal Council	White Earth	MN	80,000		7,234,583	On Reservation
				MN Total	**280,000**	**3.87%**		
2013	Mississippi	Mississippi Band of Choctaw Indians	Choctaw	MS	54,730		4,237,072	On Reservation
				MS Total	**54,730**	**1.29%**		
2013	Montana	SAFE Harbour Inc	Ronan	MT	18,000		1,758,418	On Reservation
				MT Total	**18,000**	**1.02%**		
2013	North Dakota	SPIRIT LAKE VICTIM ASSISTANCE	FORT TOTTEN	ND	20,000		1,375,921	On Reservation
2013	North Dakota	TURTLE MT. BAND OF CHIPPEWA INDIANS	BELCOURT	ND	22,050		1,375,921	On Reservation
				ND Total	**42,050**	**3.06%**		
2013	New Mexico	Ramah Navajo School Board, Inc.	Pinehill	NM	28,757		3,111,055	On Reservation
				NM Total	**28,757**	**0.92%**		
2013	Nevada	Pyramid Lake Paiute Tribe	NIXON	NV	31,825		3,954,131	On Reservation
2013	Nevada	Walker River Paiute Tribe	Schurz	NV	10,777		3,954,131	On Reservation
				NV Total	**42,602**	**1.08%**		
2013	Oklahoma	CHEROKEE NATION	TAHLEQUAH	OK	35,037		5,276,084	Off Reservation
2013	Oklahoma	CHOCTAW NATION VICTIM ASSISTANCE	DURANT	OK	20,233		5,276,084	Off Reservation
2013	Oklahoma	COMANCHE NATION HOPE HOUSE	LAWTON	OK	59,697		5,276,084	Off Reservation
2013	Oklahoma	KAW NATION	KAW CITY	OK	44,464		5,276,084	Off Reservation
2013	Oklahoma	Pawnee/Osage CASA	Pawnee	OK	30,000		5,276,084	Off Reservation
				OK Total	**189,431**	**3.59%**		
2013	South Dakota	NATIVE AMER WOMNS HEALTH ED RES. CNTR	LAKE ANDES	SD	36,182		1,543,344	Off Reservation
2013	South Dakota	SACRED HEART WOMEN'S SHELTER	EAGLE BUTTE	SD	45,760		1,543,344	On Reservation
2013	South Dakota	Wacanga'	SISSETON	SD	21,534		1,543,344	On Reservation
2013	South Dakota	WHITE BUFFALO CALF WOMAN SOCIETY	MISSION	SD	55,810		1,543,344	On Reservation
2013	South Dakota	WICONI WAWOKIYA, INC./PROJECT SAFE	FORT THOMPSON	SD	45,728		1,543,344	On Reservation
				SD Total	**205,014**	**13.28%**		
2013	Washington	Cowlitz Indian Tribe, Pathways to Healing/SA	Vancouver	WA	12,159		9,134,932	On Reservation
2013	Washington	Jamestown S'Klallam Tribe/SA	Sequim	WA	2,121		9,134,932	On Reservation
2013	Washington	Kalispel Tribe of Indians/CVSC	Usk	WA	36,287		9,134,932	On Reservation
2013	Washington	Lummi Indian Business Council/SA	Bellingham	WA	12,766		9,134,932	On Reservation
2013	Washington	Port Gamble S'Klallam Tribe/SA	Kingston	WA	3,671		9,134,932	On Reservation
2013	Washington	Sauk-Suiattle Indian Tribe/SA	Darrington	WA	9,164		9,134,932	On Reservation
2013	Washington	Swinomish Indian Tribal Community/SA	La Conner	WA	8,077		9,134,932	On Reservation
				WA Total	**84,245**	**0.92%**		
2013	Wisconsin	Bad River Band of Lake Superior Tribe of Chippewa Indians	Odanah	WI	36,935		7,669,345	On Reservation
2013	Wisconsin	Lac Courte Oreilles Band of Lake Superior Chippewa Indians	Hayward	WI	116,880		7,669,345	On Reservation
2013	Wisconsin	Menominee Indian Tribe of Wisconsin	Keshena	WI	33,015		7,669,345	On Reservation
				WI Total	**186,830**	**2.44%**		
				Grand Total	**2,852,946**			

FISCAL_YEAR	STATE_DESC	ORGANIZATION_NAME1	CITY	STATE	REPORT_AMOUNT	Report Amt Percentage by State	FINAL_AWARD_AMOUNT	TYPE
2014	California	Bay Area American Indian Council, Inc.	San Leandro	CA	88,356.00		51,829,052.00	Off Reservation
2014	California	Indian Health Council	Pauma Valley	CA	88,355.00		51,829,052.00	On Reservation
2014	California	Two Feathers Native American Family Services	McKinleyville	CA	88,440.00		51,829,052.00	On Reservation
				CA Total	**265,151.00**	**0.51%**		
2014	Maine	Indian Township Tribal Government	Princeton	ME	40,560.00		2,278,659.00	On Reservation
				ME Total	**40,560.00**	**1.78%**		
2014	Michigan	Keweenaw Bay Indian Community	Baraga	MI	69,058.00		13,750,704.00	On Reservation
				MI Total	**69,058.00**	**0.50%**		
2014	North Dakota	FORT BERTHOLD COALITION AGAINST VIOLENCE	New Town	ND	17,011.00		1,468,657.00	On Reservation
2014	North Dakota	SPIRIT LAKE VICTIM ASSISTANCE	FORT TOTTEN	ND	18,944.00		1,468,657.00	On Reservation
2014	North Dakota	TURTLE MT. BAND OF CHIPPEWA INDIANS	BELCOURT	ND	32,329.00		1,468,657.00	On Reservation
				ND Total	**68,284.00**	**4.65%**		
2014	Nebraska	Santee Sioux Nation of Nebraska	Niobrara	NE	54,973.00		3,002,031.00	On Reservation
				NE Total	**54,973.00**	**1.83%**		
2014	New Mexico	Ramah Navajo School Board, Inc.	Pinehill	NM	27,000.00		3,292,298.00	On Reservation
				NM Total	**27,000.00**	**0.82%**		
2014	New York	THREE SISTERS PROGRAM	AKWESASNE	NY	34,785.00		26,813,785.00	On Reservation
				NY Total	**34,785.00**	**0.13%**		
2014	Oklahoma	BELIEVING IN NATIVE GENERATIONS	ANADARKO	OK	26,465.00		5,656,092.00	Off Reservation
2014	Oklahoma	CHEROKEE NATION	TAHLEQUAH	OK	35,037.00		5,656,092.00	Off Reservation
2014	Oklahoma	CHOCTAW NATION VICTIM ASSISTANCE	DURANT	OK	20,233.00		5,656,092.00	Off Reservation
2014	Oklahoma	COMANCHE NATION HOPE HOUSE	LAWTON	OK	59,697.00		5,656,092.00	Off Reservation
2014	Oklahoma	IOWA TRIBE OF OKLAHOMA	PERKINS	OK	20,000.00		5,656,092.00	Off Reservation
2014	Oklahoma	KAW NATION	KAW CITY	OK	44,464.00		5,656,092.00	Off Reservation
2014	Oklahoma	MUSCOGEE (CREEK) NATION	OKMULGEE	OK	35,000.00		5,656,092.00	Off Reservation
2014	Oklahoma	Pawnee/Osage CASA	Pawnee	OK	35,000.00		5,656,092.00	Off Reservation
2014	Oklahoma	WICHITA AND AFFILIATED TRIBES	ANADARKO	OK	36,490.00		5,656,092.00	Off Reservation
				OK Total	**312,386.00**	**5.52%**		
				Grand Total	**872,197.00**			

The National Congress of American Indians
Resolution #ANC-14-048

TITLE: Support for a dedicated Tribal Set-Aside in the Victims of Crime Act (VOCA) Fund

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Crime Victims Fund, administered by the Office for Victims of Crime (OVC) within DOJ's Office of Justice Programs (OJP), was initially established to address the need for victim services programs, and to assist tribal, state, and local governments in providing appropriate services to their communities; and

WHEREAS, Congress passed the Victims of Crimes Act thirty years ago and did not include Indian tribes in the original distribution of funds; and

WHEREAS, the Fund is financed by collections of fines, penalty assessments, and bond forfeitures from defendants convicted of Federal crimes, but until now, tribes have only been eligible to receive a very small portion of the discretionary funding from the Fund; and

WHEREAS, in FY 2000, Congress began limiting the amount of Fund deposits that could be obligated each year. This was to provide a stable level of funding available for these programs in future years despite annual fluctuations in Fund deposits; and

WHEREAS, in $2.8 billion and as a result the Fund now holds balances in excess of $10 billion enough under the current spending cap to last 12 years; and

WHEREAS, OVC and OJP officials have recognized the great need to strengthen victims services on tribal lands and, thus, are proposing this new set-aside to help meet that need; and

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, the new tribal funding is requested as part of OVC's Vision 21 Initiative, a strategic planning initiative based on an 18-month national assessment by OJP that systematically engaged the crime victim advocacy field and other stakeholder groups in assessing current and emerging challenges and opportunities facing the field; and

WHEREAS, Indian nations and tribal service providers require essential resources to respond to violence perpetrated against American Indian and Alaska Native women, as well as to provide services to women victims seeking assistance.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support the increase in the amount of money released from the Crime Victim's Fund to include a dedicated funding stream for Indian tribes to meet the dire needs of tribal victims; and

BE IT FURTHER RESOLVED, that the NCAI does hereby support the creation of an "above the cap" reserve in the Victims of Crime Act (VOCA), or alternatively, a 10% VOCA tribal set-aside, that would fund tribes and tribal government programs and non-profit, non-governmental tribal organizations, located within the jurisdictional boundaries of an Indian reservation, Alaska Native Villages, and Indian areas that provide services to Native women victimized by domestic and/or sexual violence; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Mid-Year Session of the National Congress of American Indians, held at the Dena'ina Civic & Convention Center, June 8-11, 2014 in Anchorage, Alaska, with a quorum present.

President

ATTEST:

Recording Secretary