

Intersections Between TLOA & VAWA Special Domestic Violence Jurisdictions



Tribal Law and Policy Institute

Lauren van Schilfgaarde, J.D.

Tribal Law Specialist

2014 Tribal Court Conference
Tribal Law and Order Act Enhanced Sentencing
Prosecuting DUI Offenders in Tribal Court
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Outline of Presentation

1. Overview of Tribal Law and Order Act (TLOA) – especially *TLOA tribal court enhanced sentencing authority*
2. Overview of the Violence Against Women Act (VAWA) 2013 – especially *special domestic violence jurisdiction authority*
3. Due Process Requirements for TLOA and VAWA
4. Questions



TRIBAL LAW AND ORDER ACT

Signed into law by President Obama on July 29, 2010.

Public Law 111-211.

TLOA Purposes

- Make Federal departments and agencies more accountable
- Provide greater freedom for Indian tribes and nations to design and run their own justice systems.
- Enhance cooperation among, Tribal, Federal, and State officials in key areas, such as law enforcement, interoperability, and access to criminal justice information.

TLOA Means

- Enhanced Funding for Tribal Justice Systems
 - authorization rather than appropriation
- Enhanced Authority for Tribal Justice Systems
 - enhanced Tribal court sentencing authority
- Enhanced Federal Cooperation and Accountability

TLOA Provisions

TLOA Provisions: Expanding Tribal Court Authority

- Federal laws and Supreme Court rulings hamper tribal justice systems and force tribal communities to rely on federal and state justice systems
- Despite reliance, in 2005-09 U.S. Attorneys declined to prosecute 52% of reservation violent crimes, including 67% of crimes of sexual violence
- RESULT: Tribal courts are overseeing more violent cases, but remain subject to ICRA limit on sentencing of only up to 1 year of incarceration and \$3,000 fine

TLOA Provisions: Expanding Tribal Court Sentencing Authority

- Enhanced tribal court sentencing authority
 - 1-3 years imprisonment, \$15,000 fine, or both
 - Tribal courts can stack sentences
 - 9-year cap on stacked sentencing
- Protections for accused where Defendant is subject to 1+ year of detention
 - Licensed counsel for indigent defendants
 - Licensed/law trained judges
 - Trial must be recorded (audio or video)
 - Must publish laws, rules of evidence and procedure
 - Sentencing options: tribal, BOP, state, alternatives

TLOA Provisions: Data Sharing

- Evidence sharing and declination data:
 - Requires federal prosecutors to maintain data on criminal declinations in Indian Country, and to share evidence to support prosecutions in tribal court
- Tribal Police Access to Criminal History Records
 - TLOA provides tribal police greater access to criminal history databases that provide them with essential information when detaining or arresting a suspect

TLOA Provisions: Enhanced Prosecutions

- Federal Testimony
 - Requires Federal Officials who work in Indian country to testify about information gained in the scope of their duties to support a prosecution in tribal court
- Authorizes deputization of Special Assistant U.S. Attorneys (SAUSA) to prosecute reservation crimes in Federal courts

TLOA Provisions: Enhanced Law Enforcement

- Increases Deputization of Tribal and State Police to Enforce Federal Law
- Authorizes the Drug Enforcement Agency to deputize tribal police to assist on reservation drug raids
- Increases recruitment and retention efforts for BIA and Tribal police
- Expands training opportunities for BIA and Tribal police to receive training at state police academies and tribal, state, and local colleges – where Federal law enforcement training standards are met

TLOA Provisions: PL 280

- Amends mandatory “Public Law 280” (18 U.S.C. § 1162 & 25 U.S.C. § 1321(a))
- Prior to TLOA:
 - Retrocession required state concurrence; Secretary of Interior decided
- Now:
 - Allows for re-assumption to concurrent federal jurisdiction; no state concurrence; Attorney General decides
- DOJ issued final rule – effective January 5, 2012
- 1st assumption of federal jurisdiction:
White Earth (MN) – March 15, 2013

TLOA Provisions: Improving Tribal Detention Programs

- *Sec. 234. BOP Pilot, alternatives to incarceration*
- *Sec. 211. BIA-OJS Responsibilities*
 - BIA-OJS long-term plan for incarceration in Indian Country
 - Coordinate with DOJ
 - Consult with tribal leaders and tribal justice officials
- *Sec. 241. IASA Reauthorization*
 - DOI (OJS/BIE)-DOJ-HHS (IHS) long-term plan for juvenile centers
 - Consult with tribal and BIA juvenile detention centers
- *Sec. 244. Tribal Jails Program Reauthorization / Expansion*
 - DOJ long-term plan to for incarceration in Indian Country
 - Coordinate with BIA-OJS, IHS, BIE
 - Consult with tribal leaders and tribal justice officials

TLOA Provisions: Tribal Prisoner Pilot Program

- DOJ Bureau of Prisons Tribal Prisoner Pilot Program
- Up to 100 prisoners at BOP expense
- Must be sentenced under new tribal court felony sentencing authority
- Must be for a violent crime
- Sentence must be for at least two years

TLOA Provisions: Prisoner Re-Entry

- Requires notice to Tribes when releasing a person convicted of violent crime, drug trafficking, or sex offense
- Authorizes Federal Pretrial & Probation Services to appoint officers in Indian Country

TLOA Provisions: Law and Order Commission

- Creates new Indian Law & Order Commission to conduct a comprehensive study of Indian Country criminal justice system
- Will submit report to President & Congress



On March 1, 2011, Ted Quasula was administered the Oath of Office by U.S. District Court Judge Lloyd D. George in Las Vegas, NV. Ted was appointed to the Indian Law and Order Commission by President Obama on January 19, 2011.

Indian Law and Order Commission

Independent national advisory commission comprised of nine members.

TLOA directed the Commission to develop a comprehensive study of the criminal justice system relating to Indian country.

TLOA also directed the Commission to develop recommendations on necessary modifications and improvements to the justice system at the Tribal, State, and Federal levels.

Indian Law and Order Commission Report

Indian Law and Order Commission Report Recommendations

- 1.1 Opt out of Federal Indian country criminal jurisdiction and/or State jurisdiction to = Tribes' inherent territorial jurisdiction.
- 1.4 Opting out would include opting out of the sentencing restrictions of ICRA.(including TLOA and VAWA).

Indian Law and Order Commission Report Recommendations Cont.

- 3.1 Direct sufficient funds to Indian country law enforcement to bring into parity with the rest of the U.S.
- 3.2 Amend the FBI Criminal Justice Information Services reporting requirements to include location of crime, and Indian status of victim and offender.
- 3.3-3.5 Strengthen the role of SAUSAs in Indian Country.
- 3.6 Hold more federal judicial proceedings near Indian country.
- 3.8 Consolidate all BIA and DOJ Indian country programs
- 3.9 Exchange all law enforcement and justice competitive funding for base funding.

Indian Law and Order Commission Report Recommendations Cont.

- 3.10 Fully fund TLOA!
- 4.1. Incentivize cross-deputization agreements
- 5.2 Require communication between sovereigns exercising concurrent criminal jurisdiction
- 5.4 Extend the BOP Pilot Program

Overall TLOA Opportunities

TLOA has focused federal government attention on:

- American Indian/Alaska Native Criminal Justice Issues
- Tribal Law Enforcement
- Tribal Justice Systems

Some Overall TLOA Challenges

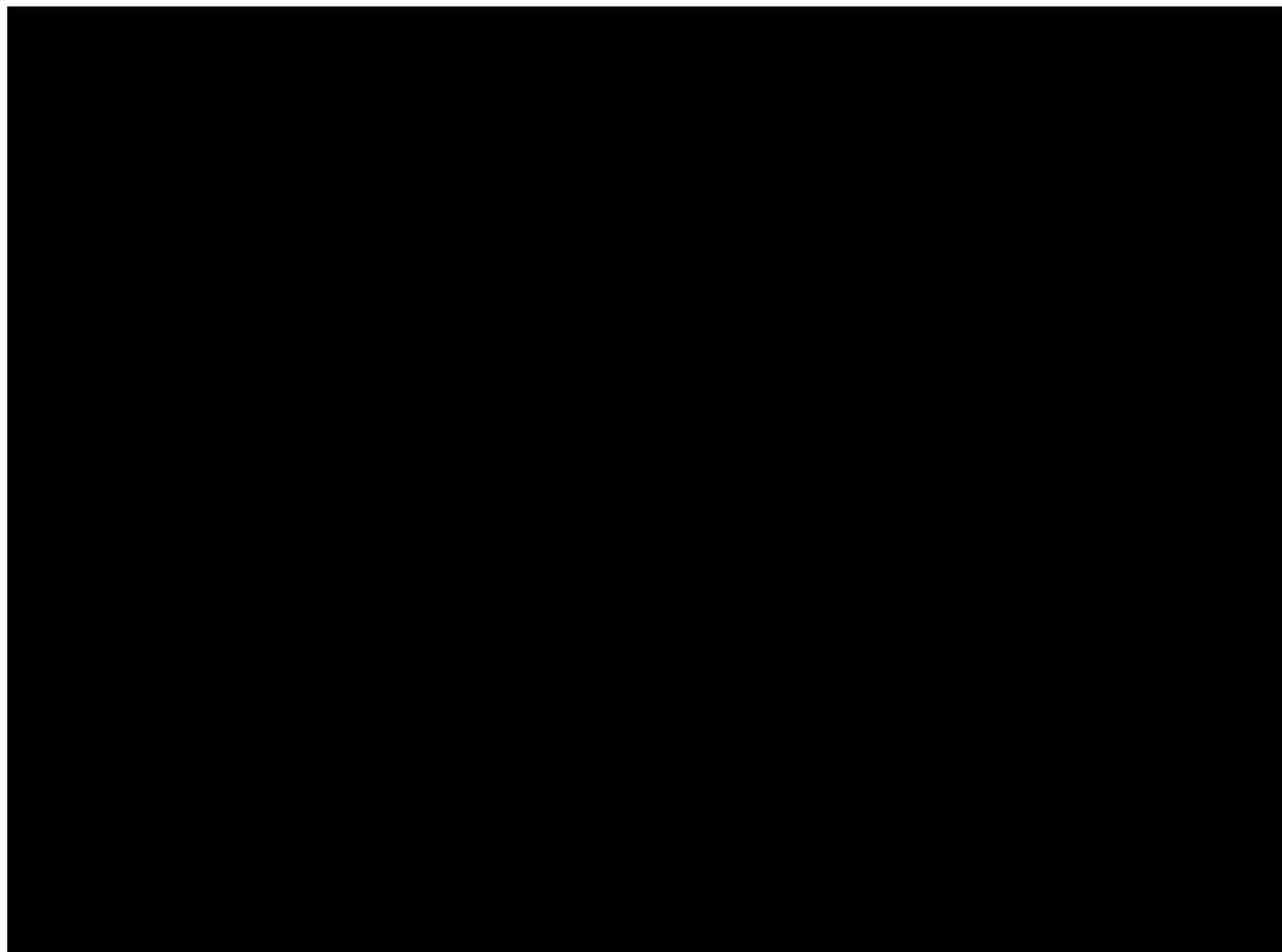
- TLOA was not able to effectively address some of the most important issues due to political limitations
- TLOA was only able to provide funding *authorization* rather than *appropriation*
- Limited consultation with tribes
- So many moving parts – TLOA provisions, reports consultations, webinars, trainings, etc.



VIOLENCE AGAINST WOMEN ACT

Signed into law March 7, 2013.

President Obama on the Tribal Provisions in VAWA 2013



http://youtu.be/kMX3j6VX_rY

VAWA – Title IX: Safety for Indian Women

- Section 901: Grants to Indian Tribal Governments
- Section 902: Grants to Indian Tribal Coalitions
- Section 903: Consultation
- ***Section 904: Tribal Jurisdiction over Crimes of Domestic Violence***
- ***Section 905: Tribal Protection Orders***
- Section 906: Amendments to the Federal Assault Statute
- Section 907: Analysis and Research on Violence Against Indian Women
- Section 908: Effective Dates; Pilot Project
- Section 909: Indian Law and Order Commission; Report on the Alaska Rural Justice and Law Enforcement Commission
- Section 910: Special Rule for the State of Alaska

Purposes of Section 904

- Decrease the incidence of crimes of domestic violence in Indian country
- Strengthen the capacity of Indian tribes to exercise their sovereign power to administer justice and control crime
- Ensure that perpetrators of domestic violence are held accountable for their criminal behavior.

VAWA Section 904: Tribal Jurisdiction over Crimes of Domestic Violence

- Section 904 of the re-authorization of the Violence Against Women Act (VAWA) of 2013 makes several amendments to the Indian Civil Rights Act (ICRA) of 1968.
- Most notably, it authorizes tribes to exercise “special domestic violence criminal jurisdiction” over non-Indians.
 - A “participating” tribe is a tribe that has opted to exercise this special domestic violence criminal jurisdiction.

What VAWA Section 904 Covers



- A participating tribe may exercise “special domestic violence criminal jurisdiction” over a non-Indian defendant for
 - Acts of domestic violence or dating violence that occur in the Indian country of the participating tribe; and
 - Violations of Protection Orders that are violated in the Indian country of the participating tribe.

VAWA Section 904 Definitions: *Dating and Domestic Violence*

- 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.”
 - Note: This definition would *NOT* likely be interpreted to cover a single “hook-up”.
- 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.”

VAWA Section 904 Definitions:

Protection Order

- “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
- includes any temporary or final order issued by a civil or criminal court, 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.”

Requirements in order to criminally prosecute for Violation of Protection Orders under VAWA § 904

- Special Domestic Violence Criminal Jurisdiction over violation of protection orders applies *only* if the violation is of the portion of the protection that
 - Protects against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
 - Was issued against the defendant;
 - Is enforceable by the participating tribe; and
 - Is consistent with 18 U.S.C. § 2265(b), governing Full Faith and Credit given to Civil Protection Orders
 - Includes jurisdictional and notice requirements

What VAWA 2013 Section 904 Does NOT Cover

- Victim and Defendant are both non-Indian - A tribe may not exercise special domestic violence criminal jurisdiction if neither the defendant nor the alleged victim is an Indian.
- Non-Indian Defendant Lacks Sufficient Ties to the Indian Tribe – Defendant must either
 - Reside in the Indian country of the participating tribe;
 - Be employed in the Indian country of the participating tribe; or
 - Be a spouse, intimate partner, or dating partner of a tribal member, or an Indian who resides in the Indian country of the participating tribe.
- The crime did not take place in the Indian Country of a participating tribe
- Tribe chooses not to exercise this VAWA 2013 section 904 jurisdiction

What VAWA Section 904 Does Not Cover— External and Practical Limitations

- While Congress has authorized this special domestic violence criminal jurisdiction over non-Indians, tribes may nevertheless be otherwise restricted or at least currently unable to assert this expanded jurisdiction.

Possible restrictions include:

- Congressional Recognition/Settlement Acts that specifically limit jurisdiction over non-Indians
- Limitations within Tribal Constitutions or Tribal Code
- Tribes not currently exercising criminal jurisdiction

Clarifying Full Tribal Civil Jurisdiction to Issue and Enforce Tribal Protection Orders against *All Persons*

- Section 905 of VAWA Title IX fulfills the intent of VAWA 2005 regarding tribal civil jurisdiction to issue protection orders.
- VAWA 2005 intended for tribes to have full civil authority to issue and enforce protection orders against Indians and non-Indians alike. Unfortunately, at least one federal court suggested that tribes lack civil jurisdiction to issue and enforce protection orders against non-Indians who reside on tribal lands.
- Section 905 of VAWA Title IX carries out the congressional intent of VAWA 2005 by clarifying that every tribe has full civil jurisdiction to **issue** and enforce protection orders **against all persons** regarding matters arising on tribal lands, and that such orders are entitled to full faith and credit by non-tribal jurisdictions.

VAWA Section 908 Effective Date of VAWA Section 904



- Tribes may *not* exercise special domestic violence criminal jurisdiction for **2 years** (March 7, 2015).
- There is a limited exception for tribes that request to operate a *pilot program* from the Attorney General.

Pilot Project

- Sec. 908 (2) –
 - (A) In general—At any times during the 2-year period beginning on the date of enactment of this Act, an Indian tribe may ask the Attorney General to designate the tribe as a participating tribe under section 204(a) of Public Law 90-284 on an accelerated basis.
 - (B) Procedure—The Attorney General may grant a request under subparagraph (A) after coordinating with the Secretary of the Interior, consulting with affected Indian tribes and concluding that the criminal justice system of the requesting tribe has adequate safeguards in place to protect defendants' rights, consistent with section 204 of Public Law 90-284.

Pilot Project

- On November 29, 2013, the department posted its [final notice](#) [[PDF](#)] regarding the pilot. Tribes planning to apply may fill out the [Application Questionnaire](#).
- Pilot Project focuses on the exercise of Special Domestic Violence Criminal Jurisdiction
- March 2013 – March 2015
- Interested tribes can be part of the “Inter-Tribal Working Group” (ITWG), which will conduct bi-monthly conference calls and several in-person meetings.

Pilot Project

The following Tribes have submitted a request to participate in the Pilot Project:

Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation

Confederated Tribes of the Umatilla Indian Reservation

Pascua Yaqui Tribe

Penobscot Indian Nation

Tulalip Tribes of Washington

Ute Indian Tribe of the Uintah and Ouray Reservation

\$5 million authorized to assist with implementing VAWA Section 904

- VAWA authorizes the Attorney General to award grants to the governments of Indian tribes to
 - strengthen tribal criminal justice systems to assist in exercising special domestic violence criminal jurisdiction
 - to provide indigent criminal defendants with effective assistance of licensed defense counsel
 - to ensure that jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and
 - to assist victims of domestic violence, dating violence, and violations of protections orders.
- However, funds have not yet been actually appropriated.

Jan. 29, 2014 Letter from ILOC to POTUS Barak Obama

- Chapter 2: Alaska

Repeal Sec. 910 of Title IX of VAWA, which excluded all Alaska tribes, except for the Metlakatla Indian Community, from other provisions of the Act which address tribal criminal jurisdiction and tribal protection orders.

Some Overall VAWA Challenges

- Special domestic violence criminal jurisdiction is extremely limited, and does not include sexual assault.
- Lack of capacity to implement VAWA: infrastructure and funding
- Many requirements for Tribes to special domestic violence criminal jurisdiction
- Non-Indians charged with domestic violence and dating violence may not be eligible or appropriate as wellness court participants (their participation in some cases might even violate violent offender prohibition)

TLOA and VAWA Provisions and Due Process Requirements and other Limitations

Limitations on Utilizing TLOA Enhanced Sentencing and/or VAWA Criminal Jurisdiction

| Limitations | TLOA | VAWA |
|---|---|---|
| <p><u>Particular Offenses Only:</u> Defendant must either (1) previously have been convicted of same or comparable offense by any jurisdiction in U.S.; or (2) is being prosecuted for a “felony” (an offense that would be punishable by more than 1 year imprisonment if prosecuted by U.S. or any of the States).</p> |  | |
| <p><u>Particular Offenses Only:</u> Defendant must be prosecuted for either (1) domestic violence, (2) dating violence, or (3) violation of a protection order.</p> | |  |
| <p><u>Particular Defendants Only:</u> Defendant must have sufficient ties to the community, which could be either (1) residence on the reservation, (2) employment on the reservation, or (3) a relationship with a tribal member or Indian resident.</p> | |  |

Due Process Protections Required by TLOA and/or VAWA

| TLOA and VAWA Due Process Requirements | | TLOA | VAWA |
|--|--|---|---|
| 1. | Defendants are provided with effective assistance of counsel equal to at least that guaranteed in the U.S. Constitution.* |  |  |
| 2. | Tribal government provides, at their expense, to an indigent defendant a defense attorney licensed to practice by any jurisdiction in the United States.* |  |  |
| 3. | Defense attorney is licensed by a jurisdiction that applies appropriate licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.* |  |  |
| 4. | Judges presiding over criminal proceedings subject to enhanced sentencing/non-Indian defendants have sufficient legal training to preside over criminal trials.* |  |  |
| 5. | Any judge presiding over criminal proceedings subject to enhanced sentencing/non-Indian defendants are licensed to practice law by any jurisdiction in the United States.* |  |  |

**Note:* These due process protections are required under TLOA. But, they are only required under VAWA *if* a term of imprisonment of any length may be imposed.

| TLOA and VAWA Due Process Requirements | | TLOA | VAWA |
|--|--|---|---|
| 6. | The tribe's criminal law, rules of evidence, and rules of criminal procedure are made available to the public prior to charging the defendant.* |  |  |
| 7. | Tribal court maintains a record of the criminal proceeding, including an audio or other recording.* |  |  |
| 8. | Any defendant sentenced to greater than 1-year imprisonment to be served in a tribal facility, that facility must pass the BIA jail standards for long-term incarceration. |  | |
| 9. | Tribal court provides the defendant the right to a trial by an impartial jury. | |  |
| 10. | Tribal court ensures that the jury pool reflects a fair cross section of the community. | |  |
| 11. | Tribal court ensures that juries are drawn from sources that do not systematically exclude any distinctive group in the community, including non-Indians. | |  |

**Note:* These due process protections are required under TLOA. But, they are only required under VAWA *if* a term of imprisonment of any length may be imposed.

| TLOA and VAWA Due Process Requirements | | TLOA | VAWA |
|--|---|------|---|
| 12. | Tribal court ensures that anyone detained under the special domestic violence criminal jurisdiction is “timely notified” of his/her rights and responsibilities. | |  |
| 13. | Tribal court ensures that a defendant is notified of their right to file “a petition for a writ of <i>habeas corpus</i> in a court of the United States.” | |  |
| 14. | Tribal court ensures that “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” are provided. | |  |
| 15. | Tribal court ensures that “all applicable rights under the special domestic violence criminal jurisdiction provisions” are provided. | |  |

Due Process Requirement Considerations:

- All tribal court judges or defense counsel are *not* required to meet TLOA requirements
- *Judicial* requirements are much less stringent than *defense* counsel
- “Licensed to practice law by any jurisdiction in the United States” includes tribal bar association
 - However, defense counsel requires that the bar association “applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys”
 - The provision concerning tribal court judges does not contain any similar requirement

Jan. 29, 2014 Letter from ILOC to POTUS Barak Obama

- Chapter 3. #9

Enact a statute ending all grant-based, competitive Indian country criminal justice funding in DOJ, and pool the funds to establish a permanent, recurring base funding system for tribal law enforcement and justice services. This base funding would be available on an equal basis to all tribes choosing to provide law enforcement and justice services.

- #10

Enact the funding requests for Indian country public safety in the NCAI Indian Country Budget Request for FY 2014.

CONCLUSION

- Tribal participation is critical to effective implementation
- TLOA and VAWA are clearly imperfect = does not mandate funding or overturn *Oliphant*; requires even more assumption of Westernized notions of due process.
- But it does provide tribal courts with added tools to combat crime, and lays building blocks for greater local tribal control through stronger tribal courts

Learn more about VAWA at the Tribal Court Clearinghouse



The Violence Against Women Act – Title IX: Safety for Indian Women

The Violence Against Women Act (VAWA) was reauthorized for the third time on March 7, 2013. (*Violence Against Women Reauthorization Act of 2013, S. 47, 113th Congress, 2013-2015.*) VAWA of 2013 includes [Title IX—Safety for Indian Women](#).

Among its provisions, Title IX of VAWA of 2013 authorized "special domestic violence criminal jurisdiction." This jurisdiction authorizes tribes to criminally prosecute non-Indians for the crimes of domestic violence, dating violence, and the violation of protection orders. However, in order for tribes to utilize this criminal jurisdiction, tribes must provide certain enumerated due process protections, including most of the protections required in the Tribal Law and Order Act.

- [Introduction to Violence Against Women Act Reauthorization – Title IX](#)
- [Special Domestic Violence Criminal Jurisdiction](#)
- [Law Takes Effect March 2015](#)
- [Due Process Protection Requirements](#)
- [Special Rule for Alaska](#)
- [Applicability of Other Federal Laws](#)
- [Constitutionality of Title IX](#)
- [Past VAWA Acts](#)

Resources

[Violence Against Women Act 2013 Signing Ceremony – March 7, 2013](#)

[Video of President Obama Addresses Tribal provisions in VAWA signing Ceremony – March 7, 2013](#)



[NCAI – Reflections on Passage of VAWA and Tribal Provisions, March 7, 2013](#)

Special Domestic Violence Criminal Jurisdiction Resources

- [DOJ's One-Page Factsheet: VAWA 2013 and Tribal Jurisdiction over Non-Indian Perpetrators of Domestic Violence](#)
- [DOJ "Framing Paper": Implementation of Sections 904 and 908 of the Violence Against Women Act of 2013, April 16, 2013 \(regarding the Pilot Project\)](#)
- [TLPI PowerPoint presentation regarding the background and provisions of the special domestic violence criminal jurisdiction in the VAWA of 2013](#)
- [NCAI's Hand-Out Indicating How the Indian Civil Rights Act is Amended by the VAWA 2013](#)
- [NCAI and TLPI PowerPoint: Implementing the Expanded Jurisdiction Provisions of VAWA in our Tribal Courts, April 5, 2013](#)
- [NCAI and TLPI Recording of Webinar: Implementing the Expanded Jurisdiction Provisions of VAWA in our Tribal Courts, April 5, 2013](#)

Tribal Bar Association Resources

- ["Judicial and Attorney Qualifications, Licensure, and Ethical Standards," PowerPoint](#) by Christine Folsom-Smith, the National Tribal Judicial Center, presented at the American Indian Justice Conference, May 10, 2013.

Publications, Reports, and Articles

- [American Bar Association \(ABA\) Resolution Supporting the Reauthorization of VAWA that includes the Tribal Criminal Jurisdiction Provisions – August 6-7, 2012](#)
This report, co-authored by TLPI Executive Director Jerry Gardner and TLPI Tribal Law Specialist Lauren Frinkman, details the justification for why the ABA supports the tribal provisions of VAWA. This resolution was passed August 6-7, 2012, four months after S.1925 was passed by the Senate on April 26, 2012. Ultimately, the Title IX passed in VAWA 2013 was reintroduced in 2013 in S. 47, passed by the Senate on February 12, 2013, passed by the House on February 28, 2013, and signed into law by President Obama on March 7, 2013.
- [Amnesty International, Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA, Amnesty International USA \(2007\)](#)
This groundbreaking report detailed for the first time the devastating degree of sexual violence faced by Native women in the United States. In addition, the report details the complex, and subsequently inadequate nature of criminal jurisdiction in Indian country and how that failing system compounds the danger. Statistics from this report were cited in the Congressional Findings of the Tribal Law and Order Act of 2010, and used to support the VAWA 2013 legislation.
- [DOJ Statement on Section 904's Constitutionality, 159 Cong. Rec. H705, 737-39 \(daily ed. Feb. 28, 2013\)](#)
Thomas J. Perrelli, Associate Attorney General testified before the Senate Committee on Indian Affairs concerning the constitutionality of Sec. 904 under the U.S. Supreme Court precedent, United States v. Lara. The statement was later inserted into the Congressional Record prior to the House floor vote on VAWA 2013, on February 28, 2013.
- [M. Brent Leonhard, Closing a Gap in Indian Country Justice: Oliphant, Lara, and DOJ's Proposed Fix, 28 Harvard Jnl. On Racial & Ethnic Justice 117 \(2012\)](#)
This law review article analyzes whether DOJ's proposed legislative fix to allow tribes to prosecute limited non-Indian domestic violence crimes is legally permissible by closely analyzing the decisions in Oliphant and Lara. Given the closely circumscribed requirements for the exercise of such power, and past decisions of various justices, this article concludes that it is within Congress' power to recognize the inherent power of tribes to prosecute non-Indians for domestic violence crimes against Indians.
- [National Indigenous Women's Resource Center, Restoration of Native Sovereignty and Safety for Native Women, Volume XX, June 2012](#)
The Restoration of Sovereignty & Safety magazine is a publication dedicated to informing tribal leadership and communities of emerging issues impacting the safety of American Indian and Alaska Native women. The June 2012 issue includes extensive legislative history of VAWA 2013, profiles of key advocates, as well as powerful stories regarding the survival of violence against Indigenous women and the impetus for VAWA 2013.
- [Zachary S. Price, Dividing Sovereignty in Tribal and Territorial Criminal Jurisdiction, 113 Colum. L. Rev., 657 \(2013\)](#)
This law review article proposes a framework for resolving constitutional questions raised by the Court's recent cases in the areas federal Indian law concerning unregulated local governmental authority. Focusing on the criminal context, this Article considers three issues: (1) whether and under what circumstances Congress may confer criminal jurisdiction on tribal and territorial governments without requiring that those decisions be subject to federal executive supervision; (2) whether double jeopardy should bar successive prosecution by both the federal government and a tribal or territorial government; and (3) what, if any, constitutional procedural protections apply when a tribal or territorial government exercises criminal jurisdiction pursuant to such federal authorization.
- [VAWA Letter from Law Professors – Tribal Provisions, April 12, 2012](#)
Then Dean of New Mexico Law School Kevin Washburn (now Assistance Secretary of Indian Affairs), along with Professors Stacy Leeds, Erwin Chemerinsky, Carole E. Goldberg, Robert N. Clinton, Gloria Valencia-Weber, Matthew L.M. Fletcher, along with forty-three other distinguished law professors, signed onto this letter addressed to Senators Patrick Leahy and Charles Grassley and Representatives Lamar Smith and John Conyers, Jr. The letter writes in support of the tribal provisions, as well as details the constitutionality of the those provisions.
- [Written Comments regarding Government-to-Government Consultation with the Department of Justice on Implementation of the Violence Against Women Reauthorization Act of 2013](#)
On August 16, 2013, the U.S. Department of Justice (DOJ) invited tribal leaders to participate in a government-to-government consultation regarding how best to structure and implement the voluntary Pilot Project established under Sections 904 and 908 of VAWA 2013. DOJ hosted conference calls with tribal court judges on May 8, 2013, and with tribal leaders generally on May 14 and May 17, 2013. DOJ also accepted written comments. Below are written comments from the National Congress of American Indians, the National American Indian Court Judges Association, and the Tribal Law and Policy Institute.
 - [National Congress of American Indians' Comments](#) – May 20, 2013
 - [National American Indian Court Judges Association's Comments](#) – May 23, 2013
 - [Tribal Law and Policy Institute's Comments](#) – May 20, 2013

Links

- [American Bar Association \(ABA\) VAWA](#)
- [Department of Justice's \(DOJ\) Office of Violence Against Women \(OVW\) – Tribal Communities](#)
- [Department of Justice's \(DOJ\) Tribal Justice and Safety - Violence Against Women Act \(VAWA\) Reauthorization 2013](#)
- [National Congress of American Indian's \(NCAI\) Violence Against Women Act](#)

For More TLOA Information

- NCAI Tribal Law and Order Act (TLOA) website:
www.tloa.ncai.org
- Tribal Court Clearinghouse: www.tlpi.org
- Walking on Common Ground:
www.WalkingOnCommonGround.org

Tribal Law and Policy Institute

The Tribal Law and Policy Institute (TLPI) is a Native American owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples.

Tribal Court Clearinghouse

www.tlpi.org

Tribal Law and Policy Institute



Lauren van Schilfgaarde

Tribal Law Specialist

8235 Santa Monica Blvd. Ste. 211

West Hollywood, CA 90046

lauren@tlpi.org