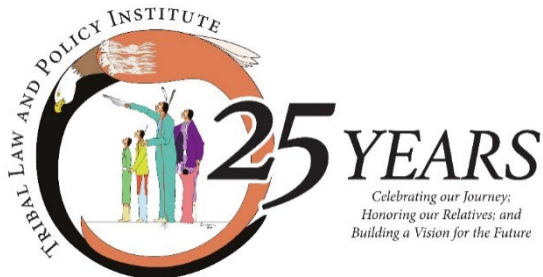


# Violence Against Women Act 2022 Legislative Update and Overview

21<sup>st</sup> Century  
July 14, 2022



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# Presenter



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# Why this topic is important. How bar associations can help.

- Why the topic is important to bar associations?:
  - Promotes a basic understanding of how VAWA 2022 tribal provisions enhances tribal criminal jurisdiction over non-Indians committing 9 covered crimes in Indian country.
  - Promotes a general level of knowledge regarding the dangers American Indian/Alaska Native women face regarding non-Indians committing crimes in Indian country.
- How can bar associations help keep American Indian/Alaska Native Women safe?
  - Promoting an understanding of American Indian Law by recommending these topics to be included in law school curriculums and tested on state bar exams.
  - Underscore victim safety in Indian country by promoting collaborations between tribes and states to address safety and service needs.
  - Implement additional educational programs on this topic.

# VAWA 2022: Findings at H.R. 2471 at 847-848

- Indian Tribes exercising special domestic violence criminal jurisdiction over non-Indians ...have reported significant success holding violent offenders accountable for crimes of domestic violence, dating violence, and civil protection order violations
- more than 4 in 5 American Indian and Alaska Native women have experienced violence in their lifetime
- the vast majority of American Indian and Alaska Native victims of violence—96 percent of women victims and 89 percent of male victims—have experienced sexual violence by a non-Indian perpetrator at least once in their lifetime

# VAWA 2022: Findings at H.R. 2471 at 848-849

The complicated jurisdictional scheme that exists in Indian country:

- has a significant impact on public safety in Indian communities;
- according to Tribal justice officials, has been increasingly exploited by criminals; and
- requires a high degree of commitment and cooperation among Tribal, Federal, and State law enforcement officials;

# Overview

1. Overview of Violence Against Women Act (VAWA) 2022
  - ◆ History of VAWA Reauthorizations
  - ◆ Covered Crimes
  - ◆ Additional Provisions
2. Resources

# VAWA Reauthorization

- ▶ First enacted in 1994.
- ▶ Reauthorized in 2000, 2005, 2013, and **2022**.
- ▶ Each reauthorization has strengthened the bill and included provisions aimed at enhancing safety for Native victims of domestic violence, dating violence, sexual assault, stalking, and trafficking.
- ▶ 2022 Reauthorization was signed into law on March 15, 2022. **Many changes do not go into effect until October 1, 2022.**

# Empowering Tribal Nations

VAWA 2013 affirmed tribal **inherent authority** to exercise criminal jurisdiction over non-Indians who commit 1) domestic violence, 2) dating violence, or 3) violations of qualifying protection orders in Indian country.



VAWA 2022 built on this framework and added additional categories of criminal conduct that can be prosecuted against non-Indians in tribal court.

- ▶ Both VAWA 2013 and 2022 are amendments to the Indian Civil Rights Act that can be found at 25 USC §1304.
- ▶ **VAWA 2022 takes effect October 1, 2022.**

# Changes to WHAT can be charged in Tribal Court

Categories of conduct that can be prosecuted against non-Indians in tribal court:

- ✦ domestic violence (2013) *amended (2022)*
- ✦ dating violence (2013) *amended (2022)*
- ✦ protection order violations (2013) (2022)
- ✦ **sexual violence (2022)**
- ✦ **stalking (2022)**
- ✦ **sex trafficking (2022)**
- ✦ **child violence (2022)**
- ✦ **obstruction of justice (2022)**
- ✦ **assaults against tribal justice personnel (2022)**

Collectively these are referred to as “covered crimes.” All are defined in 25 USC 1304.

# Changes WHO can be charged in Tribal Court in some instances

- ▶ VAWA 2013 does **not** cover non-Indian crime committed against a non-Indian. This is generally still true in VAWA 2022 with two exceptions: In cases of obstruction of justice or assault of tribal justice personnel, the victim does not need to be Indian.
- ▶ **ANY** non-Indian could be charged in tribal court for covered crimes. There is **no longer a requirement** that the non-Indian must have "sufficient ties" to the Indian community (previously defined in VAWA 2013 as living or working in the tribe's Indian country or being in a relationship with a qualifying Indian).

# Changes to DUE PROCESS protections that must be provided in Tribal Court

- ▶ adds a requirement that notice to defendants of their habeas corpus rights must be made in writing;
- ▶ codifies the requirement that a defendant must exhaust their tribal court remedies before seeking habeas relief in federal court unless certain exceptions are met. This section borrows language from 18 USC 2254 that currently applies to habeas petitions arising out of state court proceedings.

# Changes to FUNDING for Tribal Implementation

## Specifically the amendments will:

- ▶ create a reimbursement program for tribes to recoup certain costs associated with exercising jurisdiction over non-Indians. DOJ is directed to consult with Indian tribes and promulgate rules for this program before March 15, 2023.
  - **Consultation will be held virtually on July 27-28. Information is available at: <https://www.justice.gov/ovw/tribal-consultation>**
- ▶ increase the authorization of funding to support tribal implementation of the law, including through the reimbursement program mentioned above, from \$5 million to \$25 million.

# Other Provisions: VAWA 2022 (H.R. 2471)

## Tribal Access Program (TAP)

- ▶ Reauthorizes TAP with **\$6 million** in funding
- ▶ Amends 34 USC 41101 to empower Tribes to enact laws authorizing access to Federal Bureau of Investigation (FBI) criminal history record information for Tribally-authorized background check purposes.

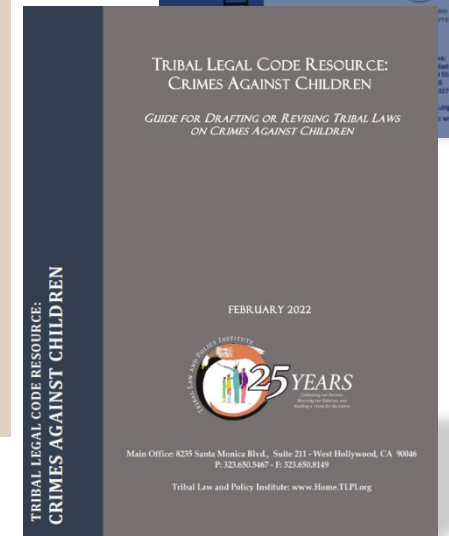
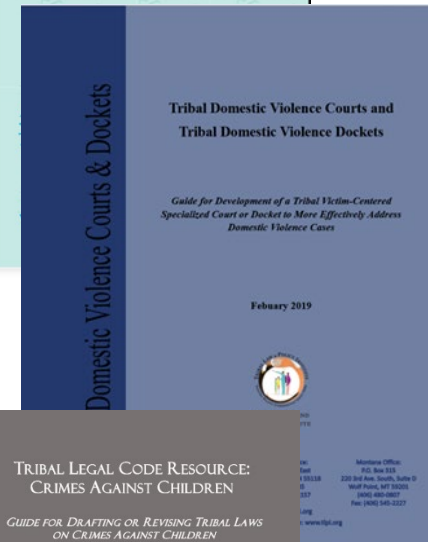
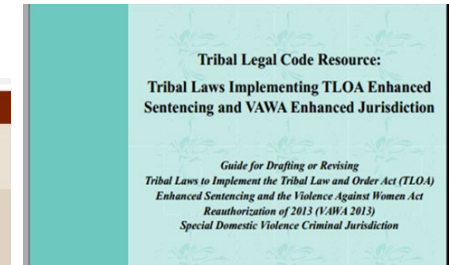
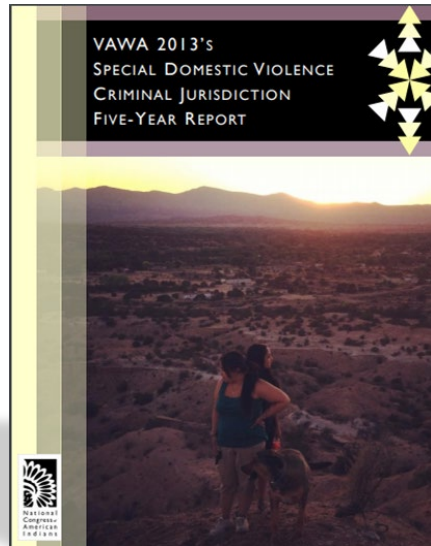
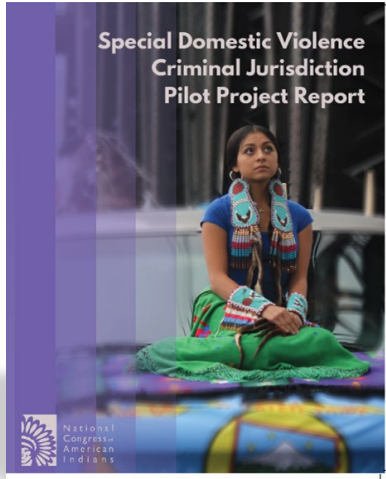
# Other Provisions: VAWA 2022 (H.R. 2471)

## **Bureau of Prisons (BOP) Tribal Prisoner Program**

- ▶ Permanently establishes the BOP program where tribes can send defendants to federal prison for certain crimes.
- ▶ Lowered the sentence requirement from **3 years to 1 year**.
- ▶ Prisoner cap stays at **100 people**.

# RESOURCES

# VAWA Special Tribal Criminal Jurisdiction Resources



NCAI Tribal VAWA Resources: <http://www.ncai.org/tribal-vaawa>  
TLPI Publications: [www.Home.TLPI.org](http://www.Home.TLPI.org)

## Previous Facilitated Discussions:

This Covered Crimes Facilitated Discussion Series is being presented by the Tribal Law and Policy Institute (TLPI) in collaboration with the Alliance of Tribal Coalitions To End Violence (ATCEV) and the National Congress of American Indians (NCAI).

1<sup>st</sup> Facilitated Discussion ([April 22<sup>nd</sup>](#)) recording can be accessed at:  
<https://www.youtube.com/watch?v=EQKX1qAs1gl&t=19s>

2<sup>nd</sup> Facilitated Discussion ([May 20<sup>th</sup>](#)) recording can be accessed at:  
<https://www.youtube.com/watch?v=EQKX1qAs1gl&t=19s>

## Upcoming Facilitated Discussions:

3<sup>rd</sup> Facilitated Discussion ([June 17<sup>th</sup>](#)) will focus on:  
**Sexual Violence *and* Stalking**

4<sup>th</sup> Facilitated Discussion ([July 15<sup>th</sup>](#)) will focus on:  
**Child Violence *and* Sex Trafficking**

5<sup>th</sup> Facilitated Discussion ([August 19<sup>th</sup>](#)) will focus on:  
**Alaska Provisions** along with other issues including **Habeas Corpus** and **Exhaustion of Tribal Court Remedies**