

Tribal Code Checklist for VAWA 2013 Implementing Tribes Updating Codes to Implement VAWA 2022 - Special Tribal Criminal Jurisdiction (STCJ)

A product of Tribal Law and Policy Institute (TLPI)

This quick reference checklist has been developed to assist Tribes who successfully implemented [VAWA 2013's Special Domestic Violence Criminal Jurisdiction](#) (SDVCJ) provisions and now want to update their codes to implement [VAWA 2022, Special Tribal Criminal Jurisdiction](#) (STCJ). The checklist can be used as you review your existing Tribal code to identify areas that need to be updated or repealed. This quick reference checklist is intended as a starting place and does not incorporate specific considerations that may be relevant to each Tribal community.

Implementing Language		
1. Does your VAWA 2013 Tribal code language limit your jurisdiction to domestic violence, dating violence, and criminal violations of protection orders? If so, this needs to be amended to reflect the broader scope of covered crimes in VAWA 2022.	☐ Yes	☐ No
○ <i>For many Tribes, the answer to this question will be “yes” because Tribal jurisdiction under VAWA 2013 was limited to three categories of criminal conduct instead of nine. Some Tribes, however, may have included very general language stating that the Tribe can exercise jurisdiction to the full extent allowed by federal law.</i> ○ <i>VAWA 2022 specifies nine broad categories of criminal conduct over which Tribes can exercise STCJ: domestic violence, dating violence, criminal protection order violations, child violence, sexual violence, stalking, sex trafficking, obstruction of justice, and assault of tribal justice personnel. It is up to the implementing Tribe to write its code to define these categories of criminal conduct—consistent with federal law—for purposes of establishing Tribal authority in these areas. You may want to include the VAWA 2022 definitions for each of these categories in your Tribal code, or you may want to change or clarify them to reflect your Tribe’s policy goals. Just remember, you cannot go beyond the authority that is recognized in federal law.</i> TLPI’s STCJ Implementation Code Drafting Manual, Chapter 4 has more on this topic.		
2. Is there language in your current Tribal code or constitution that limits jurisdiction over non-Indians to individuals who live or work in the Tribe’s Indian country or are in a qualifying relationship with a tribal member? If so, repeal this.	☐ Yes	☐ No
○ <i>VAWA 2013 required non-Indian defendants to have certain ties to the Tribal community. This requirement was removed in VAWA 2022 and is no longer needed in your Tribal code.</i>		
3. Is the language that implemented VAWA 2013 codified in a generally applicable section of your Tribal code? If not, change where it is codified.	☐ Yes	☐ No
○ <i>Because VAWA 2013 limited Tribal jurisdiction primarily to domestic violence cases, many Tribes codified their implementation language in the Domestic Violence portion of their code. VAWA 2022 is much broader, and your implementing language should be put in a more general section of your code.</i>		

4. Does your VAWA 2013 implementing language include a definition of “domestic violence” that reads “The term ‘domestic violence’ means violence committed by...”? If so, consider amending this definition.	☐ Yes	☐ No
○ VAWA 2022 amended the definition of ‘domestic violence’ to be more deferential to your Tribal laws and to recognize the full range of abusive conduct that can take place. ○ The VAWA 2022 definition of domestic violence reads “The term ‘domestic violence’ means any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that is committed by...” [25 USC 1304(a)(7)] TLPI’s STCJ Implementation Code Drafting Manual, Chapter 5.1 has more on this topic.		
5. Does your VAWA 2013 implementing language include a definition of “dating violence” that reads “The term ‘dating violence’ means violence committed by...”? If so, consider amending this definition.	☐ Yes	☐ No
○ VAWA 2022 amended the definition of ‘dating violence’ to be more deferential to your Tribal laws and to recognize the full range of abusive conduct that can take place. ○ The VAWA 2022 definition of dating violence reads “The term ‘dating violence’ means any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that is committed by...” [25 USC 1304(a)(6)] TLPI’s STCJ Implementation Code Drafting Manual, Chapter 5.2 has more on this topic.		
6. Does your current Tribal code have criminal offenses that fall within each of the nine categories of criminal conduct that VAWA 2022 recognizes as subject to tribal jurisdiction? If not, consider adding new criminal offenses that can be charged.	☐ Yes	☐ No
○ VAWA 2022 is a jurisdictional statute and does not create substantive criminal law. This means that the federal statute creates a framework for the Tribal court to exercise its inherent jurisdiction, and when a Tribe exercises STCJ, it is enforcing its own Tribal criminal law. It is up to your Tribe to decide which criminal offenses it wants to include within the nine categories of criminal conduct recognized in VAWA, and how to define each of those individual offenses. TLPI’s STCJ Implementation Code Drafting Manual has more discussion on offenses that could fit within each of the nine categories in Chapters 5.1-5.9.		
7. Does your current Tribal code have language requiring that defendants be given notice of their rights under the Indian Civil Rights Act? VAWA 2022 clarified that this notice must be given in <u>writing</u>.	☐ Yes	☐ No
○ VAWA 2022 requires that defendants are given notice of their rights under the Indian Civil Rights Act, including their federal habeas rights. This notice must be in writing. TLPI’s STCJ Implementation Code Drafting Manual has more on this in Chapter 11.		

Quick-reference Overview of VAWA 2022 Statutory and Due Process Requirements

In order for a Tribe to exercise Special Tribal Criminal Jurisdiction (STCJ), a Tribe must ensure that the following statutory and due process requirements are met:

	Statutory & Due Process Requirement(s)	Legal Source of Requirement	Code Manual Reference
1	A defendant subject to STCJ must be accused of a qualifying offense that falls within one of nine listed categories of conduct. (Updated by VAWA 2022).	25 U.S.C. § 1304 (c)	Chapters 5.1-5.9
2	Defendants must be provided “effective assistance of Counsel” at least equal to that guaranteed by the United States Constitution. (Unchanged by VAWA 2022).	25 U.S.C. §1302 (c)(1)	Chapter 7
3	The Tribe must provide “indigent defense” to qualifying defendants. Indigent defense counsel must be an attorney licensed in any jurisdiction in the United States. (Unchanged by VAWA 2022).	25 U.S.C. §1302 (c)(2)	Chapter 7
4	The jurisdiction licensing the defense attorney must apply “appropriate professional licensing standards” and ensure both competency and professional responsibility. (Unchanged by VAWA 2022).	25 U.S.C. §1302 (c)(2)	Chapter 7
5	Presiding judges must have sufficient training to preside over criminal trials. (Unchanged by VAWA 2022).	25 U.S.C. §1302 (c)(3)(A)	Chapter 8
6	Presiding judges in criminal proceedings must be licensed to practice law by any jurisdiction in the United States. (Unchanged by VAWA 2022).	25 U.S.C. §1302 (c)(3)(B)	Chapter 8
7	Tribal rules of criminal procedure, rules of evidence and criminal laws must be publicly available prior to charging of a defendant. (Unchanged by VAWA 2022).	25 U.S.C. §1302 (c)(4)	Chapter 6
8	Tribal Court must maintain a record of the criminal proceeding including a recording of the trial proceedings. (Unchanged by VAWA 2022).	25 U.S.C. §1302 (c)(5)	Chapter 9
9	The Tribe must provide a 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 exclude any distinctive group, including non-Indians. (Unchanged by VAWA 2022).	25 U.S.C. §1304 (d)(3)	Chapter 10
10	The Tribe must give the defendant notice of their rights, in writing, under the Indian Civil Rights Act, including the right to file a habeas petition in federal court. (Updated by VAWA 2022).	25 U.S.C. §1304 (g)	Chapter 11

This project was supported by Grant No. 15JOVW-24-GK-03002-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.