

**Violence Against Women Act 2022 Reauthorization
Alaska Pilot Program**

**Update for Tribal Leaders and Advocates
Annual Violence Against American Indian and Alaska Native Women Tribal Consultation
Tulsa, Oklahoma
August 9, 2023**

This paper outlines a proposed framework for implementing the Alaska Pilot Program authorized by the Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022) under which the Attorney General will designate up to five Alaska Tribes per year to exercise special Tribal criminal jurisdiction (STCJ) over non-Indian offenders who commit certain covered crimes in their Villages. *See* 25 U.S.C. 1305(d). The framework incorporates elements of the processes established for the 2013 special domestic violence criminal jurisdiction (SDVCJ) pilot project and considers feedback the Department received during consultation with Tribal leaders regarding how to implement the Alaska Pilot Program. The proposed framework below also accounts for testimony indicating that Alaska Tribes interested in exercising STCJ will need additional support – both technical assistance and funding – before they are ready to request designation as “participating Tribes” to exercise STCJ pursuant to 25 U.S.C. 1305(d)(1) and 1305 note.

The framework also reflects discussions held by an intradepartmental Alaska Pilot Program Working Group, which was convened in June 2022 under the joint leadership of the Office of the Deputy Attorney General and the Office of the Associate Attorney General. This working group comprises representatives from the Office of Tribal Justice, the Office on Violence Against Women, the Office of Justice Programs, the Office of Community Oriented Policing Services, the Executive Office for U.S. Attorneys, the Access to Justice Office, the Federal Bureau of Investigation, the Office of Legal Policy, the Criminal Division, the Environment and Natural Resources Division, the Office of Public Affairs, and the Office of Legal Counsel.

Consultation

On July 19 and 20 and August 3, 2022, the Department held three virtual Tribal consultation sessions with Tribal leaders and other interested persons regarding how to structure the Alaska Pilot Program on STCJ. Tribal leaders were also offered an opportunity to discuss this subject at the Department’s annual Government-to-Government Violence Against American Indian and Alaska Native Women Tribal Consultation, held September 21-23, 2022, in Anchorage, Alaska and at the annual meeting of the Alaska Federation of Natives, held October 20-22, 2022, in Anchorage, Alaska.

Establishing Processes for Interested Tribes

The statute requires that the Attorney General establish a process to designate Alaska Tribes to participate in the Pilot Program. Based on consultations and discussions with Alaska experts it appears that interested Tribes may need technical assistance and funding to ready their criminal justice systems to exercise STCJ. The Department is therefore considering a three-track process for Alaska Tribes interested in participating in the Pilot Program:

Track One: Alaska ITWG Membership

The Department will provide funding to support an Alaska-specific Inter-tribal Technical-Assistance Working Group (ITWG) on STCJ, modeled on the successful ITWG established for all federally recognized Tribes in 2013. All Alaska Tribes that are interested in exercising STCJ or interested in exploring the possibility, whether they deem themselves ready to immediately exercise STCJ or not, would be invited to submit a *Statement of Preliminary Interest* in joining the ITWG. Tribes may join as part of an intertribal partnership if they so choose. As members of the Alaska ITWG, these Tribes would receive targeted technical assistance to enable them to explore exercising STCJ. There will be no limit on the number of Tribes that can become Alaska ITWG members. Participants in the ITWG may or may not ultimately choose to pursue Attorney General designation.

Track Two: Preliminary Pilot Program Tribes

1. Tribes that wish to engage in additional capacity building activities with the goal of requesting designation as a participating Tribe to exercise STCJ would be asked to complete the questionnaire in the attached Appendix A, answering “No” for areas where the Tribe does not yet have laws, policies, or procedures in place and providing relevant legal materials for areas where it does. The questions in this questionnaire line up with the statutory requirements for exercising STCJ under the Alaska Pilot Program.
2. For each Tribe that submits the questionnaire under this Track, the Department will appoint a Federal Project Liaison (possibly to be called a “Federal Champion”) who, in partnership with the Alaska ITWG Technical Assistance Provider (TA Provider), will reach out to the Tribe to discuss its goals and readiness to exercise STCJ.
 - a. The Federal Project Liaison will work with the TA Provider, using the questionnaire, to identify any unmet requirements¹ and training or technical assistance needs.

¹ See Appendix A for checklist of statutory requirements.

- b. The Federal Project Liaison in partnership with the Tribe and the TA Provider will use this information to develop a Readiness Plan to assist the Tribe in meeting any unmet requirements and fulfilling training or technical assistance needs.
3. Tribes that engage in Track Two will be known as Preliminary Pilot Program Tribes. There will be no limit on the number of Preliminary Pilot Program Tribes.
4. Alaska ITWG membership is not required to participate in this Track, but it is encouraged as a source of additional peer-to-peer support.

Track Three: Pilot Program Designation

1. Tribes interested in requesting designation as Participating Pilot Program Tribes will be required to submit a *Request for Designation*, with the completed questionnaire shown in Appendix A, certified by Tribal leadership. Tribes submitting jointly for designation as a single participating Tribe (to be referred to as an “intertribal partnership”) would include signed certifications from each Tribe.
 - a. Tribes seeking designation do not need to previously have been Preliminary Pilot Program Tribes.
 - b. The questionnaire reflects the statutory requirements for designation as a pilot Tribe under VAWA 2022.
2. Department staff with expertise regarding STCJ will review the questionnaire and recommend either (a) Attorney General designation as a Participating Pilot Program Tribe, (b) maintaining the Tribe’s status as a Preliminary Pilot Program Tribe (if applicable), or (c) inviting the Tribe to become a Preliminary Pilot Program Tribe. If either (b) or (c) is recommended, the Federal Project Liaison will partner with the TA Provider to identify gaps in questionnaire responses and create either an updated or initial Readiness Plan.
3. If designation is approved, the Federal Project Liaison will develop an external communications plan with the Tribe to notify stakeholders, media, and Congress, and will update the Department’s Tribal Justice and Safety website.
4. No more than five Tribes may be designated as Participating Pilot Program Tribes per calendar year and not to exceed 30 Tribes during the duration of the Pilot Program (absent written notice to Congress and the public of the Attorney General’s intention to designate additional participating Tribes). *See* 25 U.S.C. 1305(d)(1), (5). Two or more Tribes may elect to participate as an intertribal partnership and be considered a single participating Tribe for purposes of these maximums. *See id.* 1305(d)(4).

Funding Opportunity

On February 9, 2023, the Office on Violence Against Women issued a special solicitation inviting Alaska Tribes to apply for funding to prepare to exercise STCJ through the Alaska Pilot Program. **Applications are due August 17, 2023, and the Office on Violence Against Women anticipates making awards under this initiative in Fall 2023.**

APPENDIX A: STATUTORY REQUIREMENTS FOR EXERCISING SPECIAL TRIBAL CRIMINAL JURISDICTION (STJC) OVER NON-INDIANS

The following questionnaire is adapted from the application questionnaire used in the 2013 VAWA Pilot and is intended to be used (1) by the Federal Project Liaison to work with Preliminary Pilot Program Tribes on their Readiness Plans and (2) by Department staff to make a recommendation regarding designation as a Participating Pilot Program Tribe. Tribes will be asked to complete this questionnaire to begin Track Two of the Pilot Program and to request Final Pilot Program Designation under Track Three.

For those questions that expressly call for “relevant legal materials” any of the following types of materials might be relevant:

- Tribal constitutional provisions
- Tribal code or statutory provisions
- Tribal court rules, such as Tribal rules of criminal procedure, tribal rules of evidence, or Tribal rules of appellate procedure
- Tribal judicial opinions
- Tribal court administrator’s or clerk’s manuals
- Tribal regulations
- Tribal administrative orders
- Tribal written policies
- Tribal written procedures
- A concise written description of an otherwise unwritten Tribal practice
- Tribal Statistical Area Program Verification map of the Bureau of the Census

These “relevant legal materials” will form the core of a Preliminary Pilot Program Tribe’s Readiness Plan and the basis for designation of a Participating Pilot Program Tribe, so a Tribe should be sure to include all legal materials that demonstrate whether the Tribe’s criminal justice system has adequate safeguards in place to protect defendants’ rights, consistent with 25 U.S.C. 1304. Citations and links to Tribal code provisions and court rules are particularly helpful. Tribes will be asked to provide copies of any materials that are not available on the internet. If the designated Participating Pilot Program Tribe agrees, supporting materials may be posted to the Tribal Justice and Safety website to serve as a resource for other Tribes.

Note: If two or more Tribes are seeking designation jointly as an intertribal partnership, the Tribes should provide all relevant legal materials for each Tribe in the partnership and explain which laws, policies, etc. will govern STCJ cases.

QUESTIONS

The Right to Trial by an Impartial Jury

1. In a criminal proceeding in which the Tribe will exercise STCJ, will the Tribe provide to the defendant 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?
 - a. Please provide relevant legal materials.

The Right to Effective Assistance of Counsel

2. In a criminal proceeding in which the Tribe will exercise STCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution?
 - a. Please provide relevant legal materials.

The Right to Indigent Defense Counsel

3. In a criminal proceeding in which the Tribe will exercise STCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to each indigent defendant, at no cost to the defendant, the right to 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?
 - a. Please provide relevant legal materials.
4. For each licensed defense attorney that the Tribe anticipates will be appointed to represent an indigent defendant in a criminal proceeding in which the Tribe will exercise STCJ and in which a term of imprisonment of any length may be imposed, please provide a list of all jurisdictions in which the defense attorney is licensed to practice law.
 - a. Please provide a separate list of jurisdictions for each attorney (who can be identified either by name or anonymously as “Attorney 1,” “Attorney 2,” etc.).

The Right to a Law-Trained, Licensed Judge

5. In a criminal proceeding in which the Tribe will exercise STCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the defendant the right to a criminal proceeding presided over by a judge who has sufficient legal training to preside over criminal proceedings and is licensed to practice law by any jurisdiction in the United States?
 - a. Please provide relevant legal materials.

6. For each judge that the Tribe anticipates will preside over a criminal proceeding in which the Tribe will exercise STCJ and in which a term of imprisonment of any length may be imposed, please provide:
 - a. a brief description of the judge’s legal training to preside over criminal proceedings; and
 - b. a list of all jurisdictions in which that judge is licensed to practice law. Please provide a separate answer for each judge (who can be identified either by name or anonymously as “Judge 1,” “Judge 2,” etc.).

The Right to Publicly Available Laws and Rules

7. In a criminal proceeding in which the Tribe will exercise STCJ and in which a term of imprisonment of any length may be imposed, will the Tribe, 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?
 - a. Please provide relevant legal materials.

The Right to Records of the Criminal Proceeding

8. In a criminal proceeding in which the Tribe will exercise STCJ and in which a term of imprisonment of any length may be imposed, will the Tribe maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding?
 - a. Please provide relevant legal materials.

The Right to Timely Notice of Federal Habeas Corpus Rights and Privileges

9. Will the Tribe provide to each person detained by order of the Tribe timely notice of the person’s rights and privileges to file in a court of the United States a petition for a writ of habeas corpus under 25 U.S.C. 1303 and a petition to stay further detention under 25 U.S.C. 1304(e)?
 - a. Please provide relevant legal materials.

Other Rights Protected by the Indian Civil Rights Act of 1968

10. In a criminal proceeding in which the Tribe will exercise STCJ, will the Tribe provide to the defendant all applicable rights under the Indian Civil Rights Act of 1968, as amended, including but not limited to:
 - a. the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, and not to be subjected to a warrant unless it was issued upon probable cause, was supported by oath or affirmation, and particularly described the place to be searched and the person or thing to be seized;
 - b. the right not to be twice put in jeopardy for the same offense;
 - c. the right not to be compelled to be a witness against himself;

- d. the right to a speedy and public trial;
- e. the right to be informed of the nature and cause of the accusation;
- f. the right to be confronted with the witnesses against him;
- g. the right to have compulsory process for obtaining witnesses in his favor;
- h. the right to be free from excessive bail;
- i. the right to be free from excessive fines;
- j. the right against cruel and unusual punishments;
- k. the right to the equal protection of the Tribe's laws;
- l. the right not to be deprived of liberty or property without due process of law;
- m. the right not to be subjected to an ex post facto law; and
- n. the right to a trial by jury of not less than six persons?
 - i. Please provide relevant legal materials.

Tribal Criminal Jurisdiction

11. Will the Tribe exercise STCJ over a defendant only for criminal conduct constituting “covered crimes,” within the meaning of 25 U.S.C. 1304, which are limited to (a) an act of domestic violence or dating violence that occurs in the Village of the Tribe, (b) an act that occurs in the Village of the Tribe and violates the portion of a protection order that (1) 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; (2) was issued against the defendant; (3) is enforceable by the Tribe; and (4) is consistent with 18 U.S.C. 2265(b), or an act that constitutes (c) assault of Tribal justice personnel, (d) child violence, (e) obstruction of justice, (f) sexual violence, (g) sex trafficking, or (h) stalking and occurs in the Village of the Tribe?
- a. Please provide relevant legal materials.
12. In a criminal proceeding in which the Tribe will exercise STCJ, other than a criminal proceeding limited only to addressing charges of assault of tribal justice personnel and obstruction of justice, will the Tribe convict a non-Indian defendant at trial only if the Tribe proves that the alleged victim is an Indian?
- a. Please provide relevant legal materials.

Village

13. Under the 2022 Reauthorization, the term “Village” means the Alaska Native Village Statistical Area covering all or any portion of a Native village (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C 1602)), as depicted on the applicable Tribal Statistical Area Program Verification map of the Bureau of the Census. An Alaska Tribe designated by the Attorney General as a participating Tribe may exercise STCJ over all persons present in the Village of the Tribe.

- a. Please provide the Tribal Statistical Area Program Verification map(s) of the Bureau of the Census for the Tribe or intertribal partnership of Tribes seeking designation.

Demographics

14. Under the 2022 Reauthorization, preference shall be given to Tribes occupying Villages the populations of which are predominantly Indian.
 - a. Please provide relevant materials to certify population demographics.

State Law Enforcement Presence

15. Under the 2022 Reauthorization, preference shall be given to Tribes occupying Villages that do not have a permanent State law enforcement physical presence.
 - a. Please describe the State law enforcement physical presence in the Tribe's Village.
 - b. Please provide relevant materials, including statutory citations, names and duty stations of law enforcement officers, press items, or any other illustrative items, regarding State law enforcement physical presence.

Other Considerations

16. The Tribe may provide any additional information or relevant legal materials addressing the Tribe's readiness to exercise SDVCJ. Additional information or relevant legal materials may focus on any of the following topics:
 - a. the Tribe's efforts to strengthen law enforcement, prosecution, trial and appellate courts, probation systems, detention and correctional facilities, alternative rehabilitation centers, culturally appropriate services and assistance for victims and their families, criminal codes, rules of criminal procedure, rules of appellate procedure, rules of evidence, and the capacity of law enforcement or court personnel to enter information into and obtain information from national crime information databases;
 - b. the Tribe's needs for training, technical assistance, data collection, and evaluation of the Tribe's criminal justice system; and
 - c. any other pertinent topic that the Tribe would like to include.