

QUESTIONNAIRE: STATUTORY REQUIREMENTS FOR EXERCISING SPECIAL TRIBAL CRIMINAL JURISDICTION (STCJ) 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) Tribes interested in expanding capacity or seeking Attorney General designation; (2) by the Federal Project Liaison to work with Preliminary Pilot Program Tribes on their Readiness Plans and (3) by the Federal Review Team 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 or 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 from the United States Census Bureau

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 VAWA 2022 website to serve as a resource for other Tribes. Materials included in Tribal submissions may be subject to release under the Freedom of Information Act. If that causes concern, the Tribe should work with a Federal Program Liaison to determine the extent to which submitted materials may be subject to release.

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.
 - 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(f)?
- 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 United States Census Bureau. 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 United States Census Bureau 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.

Tribal Law Enforcement Presence

16. Assessing the Tribe's law enforcement needs will be an important aspect of a Readiness Plan or a designation.

- a. Please describe the Tribal law enforcement physical presence, including the number of officers (if any), types of officers (e.g., tribal or Village police officers, Village Public Safety Officers), and funding source(s) for the positions.
- b. Please provide relevant materials, including statutory citations, names and duty stations of law enforcement officers, press items, or any other illustrative items, regarding Tribal or Federal law enforcement physical presence.

Other Considerations

17. 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.