



PRESS RELEASE

The Fort Peck Tribes Expand Criminal Jurisdiction Over Non-Indians

On August 17th, 2023, the Fort Peck Tribal Executive Board expanded its special jurisdiction over non-Indians under the Violence Against Women Reauthorization Act of 2022 (VAWA).

What is VAWA?

Originally passed in 1994, VAWA is the first Federal Legislation acknowledging domestic violence as crime and provides resources to encourage Community Coordinated Responses to prevent violence against Women. Subject for renewal every five years, VAWA has been reauthorized in 2000, 2005, 2013, and in 2022. Each reauthorization builds upon existing protections for victims of domestic violence and will be subject to another reauthorization in 2027. *

What is SPECIAL JURISDICTION?

In 1978, the United States Supreme Court ruled in *Oliphant v. Suquamish* that Indian tribes had no jurisdiction over non-Indians. A non-Indian could commit a sexual or violent offense against an Indian on tribal land and the tribes could legally do nothing. *Oliphant* created a jurisdictional maze where State and Federal authorities had the responsibility to investigate and prosecute non-Indian vs. Indian crimes of violence that often went unaddressed unless the crime resulted in death or serious injury to the victim.

According to a 2016 report by the National Institute of Justice:

- **84.3%** of Indian women (more than 4 in 5) have experienced intimate partner violence, sexual violence, or stalking in their lifetimes.
- **56.1%** of Indian women have experienced sexual violence in their lifetimes.
- **96%** of female Indian sexual violence victims experience violence at the hands of a non-Indian perpetrator.
- **48.8%** of Indian women will be stalked in their lifetimes.
- **89%** of Indian stalking victims experience stalking at the hands of a non-Indian perpetrator.

To effectively address these problems in Indian Country, Congress enacted VAWA 2013 which included a provision that recognized and affirmed the inherent sovereign authority of tribes to exercise criminal jurisdiction over non-Indians who violated qualifying protection orders or commit domestic/dating violence against Indian victims. This provision was known as Special Domestic Violence Criminal Jurisdiction (SDVCJ) and amended the Indian Civil Rights Act. VAWA 2013 created a framework for Tribal Courts to prosecute non-Indians again, something that had not happened in 35 years.

FORT PECK TRIBES' SDVCJ PILOT PROGRAM

In 2013, the Fort Peck Tribes were one of five pilot tribes to fully implement and exercise SDVCJ. With the help of various grants awarded to the Fort Peck Tribes, some of the successes of the pilot program

included hiring additional law trained court staff required by VAWA 2013 to prosecute VAWA cases, providing special counsel to non-Indian defendants, and establishing a culturally specific curriculum to help keep families together. Since 2015, there has been over 50+ cases in the Fort Peck Tribal Court concerning violence against Indian women by non-Indian men. However, there were many lessons learned concerning the exercise of SDVCJ, such as the “sufficient ties” requirement which stated a non-Indian had to meet certain ties to the community in order to be prosecuted under the tribes’ special criminal jurisdiction.

VAWA 2022 SPECIAL TRIBAL CRIMINAL JURISDICTION (STCJ) REAUTHORIZATION

VAWA 2022 was signed into Federal law March 15th, 2022 and went into effect October 1st, 2022. Amendments included changing Special Domestic Violence Criminal Jurisdiction to Special Tribal Criminal Jurisdiction (STCJ), eliminating the “sufficient ties” requirement, and expands tribes’ jurisdiction over the following covered crimes involving:

- Domestic violence (VAWA 2013 Current Covered Crime)
- Dating violence (VAWA 2013 Current Covered Crime)
- Protection order violations (VAWA 2013 Current Covered Crime)
- ✓ **Sexual violence (VAWA 2022 STCJ Covered Crime)**
- ✓ **Stalking (VAWA 2022 STCJ Covered Crime)**
- ✓ **Sex trafficking (VAWA 2022 STCJ Covered Crime)**
- ✓ **Child violence (VAWA 2022 STCJ Covered Crime)**
- ✓ **Obstruction of justice (VAWA 2022 STCJ Covered Crime)**
- ✓ **Assaults against justice personnel (VAWA 2022 STCJ Covered Crime)**

RIGHTS OF DEFENDENTS UNDER VAWA 2022

VAWA 2022 also requires tribes to:

- Protect the rights of defendants under the Indian Civil Rights Act of 1968, including the right to due process.
- Protect the rights of defendants described in the Tribal Law and Order Act of 2010, by providing:
 - (1) Effective assistance of counsel for defendants;
 - (2) Free, appointed, licensed attorneys for indigent defendants;
 - (3) Law-trained Tribal judges who are also licensed to practice law;
- Publicly available Tribal criminal laws and rules;
- Recorded criminal proceedings.
- Include a fair cross-section of the community in jury pools and not systematically exclude non-Indians.
- Inform (in writing) defendants ordered detained by a Tribal court of their right to file federal habeas corpus petitions.

In 2023, Fort Peck Tribal Court Staff and the tribes in house attorney began the legislative process of amending several codes in the tribes’ Comprehensive Code of Justice (CCOJ) that were associated with special jurisdiction. Title 7. *Sec 249. Special Tribal Criminal Offense* will go into effect January of 2024. Because VAWA raises many questions, the Fort Peck Tribes are planning to host a conference later in the year to educate the public on the new laws.

VAWA 2022’s Special Tribal Criminal Jurisdiction amends Title 7. Sec. 249 of Fort Peck Tribes Comprehensive Code of Justice.

Title 7: Criminal Offenses
Chapter 2: Crimes against persons
Section 249. Special tribal criminal offense.

Special tribal criminal offense.

(a) *Purpose.* The Fort Peck Tribes elect to exercise Special Tribal Criminal Jurisdiction over the Indian Country of the Fort Peck Tribes, pursuant to their inherent tribal sovereignty and in conformity as a “participating tribe” under the Violence Against Women Act (VAWA) of 2022 as authorized by the United States Congress and codified at 25 U.S.C. § 1304.

(b) *Jurisdiction.* The Fort Peck Tribal Court is vested with “Special Tribal Criminal Jurisdiction” as defined within 25 U.S.C. § 1304, jurisdiction to enforce this section against any person who has committed an act of covered crimes of violence, as provided authorized by federal law and as further defined herein, against an Indian or covered non-Indian victim within the Indian country of the Assiniboine and Sioux Tribes.

(c) *Jurisdiction Limitation.* The Fort Peck Tribal Court shall not exercise special tribal criminal jurisdiction over an alleged offense other than obstruction of justice or violation of the protection of government officials, employees and law enforcement officers if neither the defendant nor the alleged victim is an Indian or the crime takes place outside the jurisdictional boundaries of the Fort Peck Tribes.

(d) *Definitions.*

(1) *Child.* —The term ‘child’ means a person who has not attained the lesser of—

(A) the age of 18; and

(B) except in the case of sexual abuse, the age specified by the

criminal law of the Assiniboine and Sioux Tribes that has jurisdiction over the Indian country where the violation occurs

(2) *Covered Offense.* —The term “covered crime of violence” shall include: —

(A) Any offense of the criminal laws of the Fort Peck Tribes involving assault of government officials, employees, or law enforcement officers, including Obstructing Justice,; Hindering Law Enforcement, 7 CCOJ 424; Criminal Contempt, 7 CCOJ 426, and Resisting Arrest, 7 CCOJ 428;

(B) Any offense of the criminal laws of the Fort Peck Tribes involving child violence under Title 7, Section 240;

(C) Any offense of the criminal laws of the Fort Peck Tribes involving Partner or Family Member Assault, 7 CCOJ 244;

(D) Any offense of the criminal laws of the Fort Peck Tribes involving Sex Offenses under Title 7, Subchapter D;

(E) Any offense of the criminal laws of the Fort Peck Tribes involving Sex Trafficking under Title 7, Subchapter C;

(F) Any offense of the criminal laws of the Fort Peck Tribes involving Stalking, 7 CCOJ 224; or

(G) Any offense of the criminal laws of the Fort Peck Tribes involving Violation of an Order of Protection, 7 CCOJ 427.

(3) *Protection Order* - The term ‘protection order’—

(A) means 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

(B) includes any temporary or final order issued by a civil or criminal court, whether

obtained by filing an independent action or as a Pendente lite order in another

proceeding, 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.

(4) *Spouse or Intimate Partner* – The terms spouse or intimate partner has the meaning given the term in section 2266 of title 18, United States Code.

(5) *Indian Country*- The term “Indian Country” means “all land within the limits or under the authority of the Fort Peck Indian Reservation, including land located within the exterior boundaries of the Fort Peck Indian Reservation.

(6) *Crime of Violence*- The term “*crime of violence*” means—

(A) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(e) *Penalties for Covered Offenses*; Every person who commits a Special Tribal Criminal Jurisdiction covered offense is punishable by imprisonment not exceeding three years or by fine

not exceeding \$15,000, or both, for any 1 offense; or not to exceed a total penalty or punishment greater than a term of 9 years in

any criminal proceeding as defined in 7 CCOJ 501 and 6 CCOJ 511 Domestic and dating violence include the offenses as

stated in 7 CCOJ 244 as well as emotional abuse, controlling or domineering, intimidation, stalking, neglect or economic deprivation. Violation of a Protection Order

includes any act where the protection order was issued against the defendant, the protection order is consistent with 18 U.S.C.

2265(b), and the violation relates to that portion of the protection order that provides protection against violent or threatening acts

or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.

(f) *Rights of Defendants*. In any criminal proceeding in which Special Tribal Criminal Jurisdiction is exercised, the defendant shall be entitled to:

(1) all applicable rights under the Indian Civil Rights Act, 25 U.S.C.;

(2) if a term of imprisonment of any length may be imposed, the Tribal Court shall:

(A) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

(B) at the expense of the Fort Peck tribal government, provide an indigent defendant 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;
(C) require that the judge presiding over the criminal proceeding has sufficient legal training to preside over criminal proceedings; and is licensed to practice law by any jurisdiction in the United States;
(D) prior to charging the defendant, make publicly available the criminal laws, rules of evidence, and rules of criminal procedure (including rules of governing the recusal of judges in appropriate circumstances) of the Fort Peck Tribes; and
(E) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(3) the right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the Fort Peck Reservation community; and do not systematically exclude any

distinctive group in the community;
(4) timely notification, in writing, of the right to petition for a writ of habeas corpus in a court of the United States under section 25 U.S.C. 1303, and the right to petition that court to stay further detention pursuant to 25 U.S.C. 1304(e) and (f);
(5) 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 Fort Peck Tribes to exercise special tribal criminal jurisdiction over the defendant.

(AS PER RESOLUTION NOS. 27-201-2013-12, DATED 12/23/2013; 26-788-2014-06, DATED 6/09/2014; 28-1581-2017-02, DATED 2/14/2017; AMENDED PER RESOLUTION NO. 31-2228-2023-08, DATED 8/17/2023.)

VICTIM RIGHTS

Title 7 – Criminal Offenses
Chapter 2: Crimes against persons
Subchapter F: Crimes against the family

Sec. 247. Victim Rights.

Victim Rights.

(a) A victim of a crime under this section shall have the following rights:
(1) To be treated with fairness, respect, and dignity and to be reasonably protected from intimidation, harassment, or abuse throughout the criminal justice process;
(2) To be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services;

(3) To be informed of the procedures to be followed in order to apply for and receive any restitution to which the victim is entitled;
(4) To be informed of all hearing dates;
(5) To be present at all hearings and at sentencing of the Defendant, unless prohibited by the rules of evidence or other applicable law;
(6) To be heard at any proceeding involving the Defendant's release or sentencing.
(b) The Tribal Prosecutor shall make reasonable efforts to notify a victim of a crime under this section when the Tribal Prosecutor has decided to:
(1) Decline the prosecution of the crime involving the victim;

(2) Release of the accused pending judicial proceedings;

(3) Withdraw the criminal charges filed against the accused; or

(4) Enter into a plea agreement with the accused.

(c) The Tribal Prosecutor shall ensure the victim is notified of their rights herein.

(d) *Law Enforcement Duties to Victim of Partner or Family Member Assault.*

(1) *Notice of Rights.* A law enforcement officer who responds to an incidence of domestic violence, partner or family member assault is expected to provide a written report, regardless if an arrest has been made. The law enforcement officer shall further provide the alleged victim with the following Notice of Rights:

“As a victim of partner or family member assault, you have certain rights. These rights are as follows:

(A) The right to request that charges be pressed against your assailant;

(B) The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available; and

(C) The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services.”

(D) The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services.”

(2) *Emergency Temporary Order of Protection.* When the court is not open for business, the victim of an offense under this section may request a petition for an emergency

temporary order of protection. The law enforcement officer making the preliminary investigation shall:

(A). Provide the victim with a form petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form.

The petition shall be in substantially the same form as a temporary order of protection provided in CCOJ Sec. 401-A.

(B) Immediately notify by telephone or otherwise, a tribal judge of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order.

(C) Immediately inform the victim whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person, with a copy of the petition and a written statement signed by the officer attesting that the Judge has approved the emergency temporary order of protection and notify the victim that the emergency temporary order shall be effective only until the close of business on the next day that the Court is open for business.

(D) Notify the person subject to the emergency temporary order of protection of the issuance and conditions of the order.

Notification pursuant to this Paragraph may be made personally by the officer or in writing. A copy of the petition and the statement of the officer attesting to the order of the Judge shall be made available to such person; and

(E) File a copy of the petition and statement of the officer with the Court immediately upon the opening of the Court on the next day it is open for

business.

**(AMENDED AS PER RESOLUTION NOS.
1251-88-9; DATED 09/12/88; 28-1581-2017-**

**02, DATED 2/14/2017; 29-989-2018-10;
DATED 10/08/2018; 31-2229-2023-08,
DATED 8/17/2023.)**

Approved resolutions and additional amendments are available on the Fort Peck Tribal Court's public website at www.fptc.org and on the Fort Peck Tribal Court's Facebook Page.

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*Source: www.nnedv.org

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