**VAWA 2022 Subtitle B – Alaska Tribal Public Safety Empowerment**

**Section 813(a) - Criminal Jurisdiction Best Practices Questions:**

1. Can a tribal council acting as a tribal court still exercise criminal jurisdiction under the Alaska Tribal Public Safety Empowerment Act, sec. 813(a)?
   1. YES. Section 813(a)- "recognizes and affirms the inherent authority of any ***Indian tribe*** occupying a Village in the State to exercise criminal and civil jurisdiction over all Indians present in the Village” and refers and relates back to PL 90-284 (25 USC 1301 - ICRA).
   2. (1) ''Indian tribe'' means any tribe, band, or other group of Indians subject to the jurisdiction of the US and recognized as possessing powers of self-government.
2. Can Tribes exercise civil and criminal jurisdiction over Indians present in the village ***now***?
   1. YES. Section 813(a) - "recognizes and affirms the inherent authority of any Indian tribe occupying a Village in the State [of Alaska] to exercise criminal and civil jurisdiction over all Indians present in the Village."
3. What kinds of criminal laws can we pass/offenses can we regulate under section 813(a)?
   1. Any type of criminal laws addressing prohibited behaviors of Tribal Citizens/Indians
   2. ICRA/TLOA sentencing restrictions still apply
4. If a tribe doesn't have full time/any law enforcement, can it still exercise criminal jurisdiction?
   1. Law enforcement officers (LEO) are not expressly required under VAWA. However, LEOs are needed to enforce criminal laws.
   2. Part time LEOs are ok – no full-time requirement.
5. Does a tribe need a jail/holding facility to exercise criminal jurisdiction?
   1. No, a Tribe can give a citation, with a court date and release, but best practices would be to have a holding cell.
   2. Talk about intergovernmental and interagency collaboration/MOU for holding/correctional facilities.
6. Is there funding available for tribal being a pilot project?
   1. the DOJ is working on a reimbursement system to help support implementation.
   2. Regular grant funding is also available, in CTAS, BJA, and other programs.
7. Will there be technical assistance available for tribes that want to be a pilot project?
   1. maybe, the tribes in the lower 48 opened the ITWG to all tribes interested regardless of whether they would be available in year one or year 5 or 10.  Alaska tribes should  ask for the same consideration.
8. Can a Defendant be prosecuted criminally under both Tribal law and State law?
   1. YES. Tribes have concurrent criminal jurisdiction with the state. A violation of Tribal law may also be a violation of state law – and can be prosecuted criminally by the Tribe and by the state.
9. Wouldn’t a prosecution of a Defendant by the Tribe and the State for the same type of crime violate double jeopardy?
   1. NO. Double jeopardy prevents a Defendant for being prosecuted twice for the same offense by the ***same sovereign*.** The Tribe and the state are different sovereigns and have the ability to prosecute a defendant for the same offense (where one behavior/act violates both tribal and state law)
   2. **US v. Wheeler**, 435 US 313 (1978): “No double jeopardy concerns if a criminal act is prosecuted by the tribe and state/federal governments”
10. To exercise criminal jurisdiction, are judges required to be lawyers?
    1. NO, but required to be law trained. ICRA/TLOA **for criminal proceedings** in which an Indian Tribe **imposes a total term of imprisonment of more than 1 year**.
    2. legal training + licensed by any jurisdiction
       1. No law school required but must have “sufficient legal training to preside over criminal proceedings” and
       2. Is licensed to practice law ***by any jurisdiction*** in the United States. This *can* be tribal bar association/jurisdiction
11. What happens if Defendants disagree or don’t comply with a tribe’s rulings?
    1. Best practice recommendation – set up an appellate court – even if only on paper. Provide that second level of review for Defendants who disagree with a court’s findings and order
    2. Compliance – create relationships with local law enforcement, state law enforcement, and others that will help with enforcement of tribal court orders
    3. Create time and space to build a trusted tribal court
       1. Involve community members and tribal citizens in the process of creating, discussing, and adopting tribal laws. Helps to build trust in the process and in the final product
       2. Tribal courts are only as strong/effective as the respect that the community gives to it
    4. Conversation with community and council - what type of sanctions will work in your community?

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**Section 813(c) and (d) Special Tribal Criminal Jurisdiction (over Non-Indians) and Pilot Project Questions:**

1. Why was Special Tribal Criminal Jurisdiction needed?
   1. Alaska Native women are overrepresented in the DV population by 250%
   2. In Alaska, Alaska Native women comprise 19% of the population but 47% of reported rape victims in the State.
   3. The Alaska DPS provides only 1 to 1.4 field officers per 1,000,000 acres and ILOC recommendation that “devolving authority to Alaska Native communities is essential for addressing local crime. Their governments are best positioned to effectively arrest, prosecute, and punish, and they should have the authority to do so…”
2. What is the pilot project?
   1. Since 2013, tribes in the lower-48 have had the ability to exercise SDVCJ over certain non-Indians who violate qualifying protection orders or commit domestic or dating violence against Indian victims on tribal lands.
   2. The pilot project found in Subtitle “B” enables Alaska Tribes to exercise Special Tribal Criminal Jurisdiction (previously called SDVCJ) in the same manner as lower-48 tribes
   3. Expanded list of covered crimes is also new
3. Which Alaska Tribes are eligible?
   1. Any federally-recognized Alaska Tribe in a ***Village*** is eligible. (813(d)(2-3)).
   2. AG must develop process. Preference for Alaska Tribes in Village that is:
      1. Predominately Alaska Native; and
      2. Lack a ***permanent*** state law enforcement physical presence (813(d)(3)(i))
4. How many Tribes may participate?
   1. No more than 5 Alaska Tribes per year, and no more than 30 Alaska Tribes *unless AG provides notice* that additional Alaska Tribes can participate.
   2. Tribes can work together (intertribal participation). Tribal orgs are included.
5. **What is needed to exercise special tribal criminal jurisdiction?** 
   1. Public defenders
   2. Training for judges – bar license
   3. Facilities for incarceration
   4. Jury system (cross-section of community d/n systematically exclude non-I)
   5. make publicly available tribal criminal laws, rules of evidence, and rules of criminal procedure; and
   6. Funding …
   7. Written notice of right to file federal habeas corpus petition
   8. make publicly available tribal criminal laws, rules of evidence, and rules of criminal procedure;
   9. record criminal proceedings.
6. What crimes are covered? **Crimes defined by Tribal Law**(*but see* DV definition)
   1. Assault of Tribal justice personnel;
   2. Child violence;
   3. Dating violence;
   4. Domestic violence;(*committed by spouse/intimate partner; child in common; cohabitation as spouse/intimate partner; similarly situated to spouse under tribe’s law*)
   5. Obstruction of justice;
   6. Sexual violence;
   7. Stalking; and
   8. A violation of a protection order.
   9. Crimes defined by **Federal Law** (Section 1591(a) of title 18, U.S.C.)
   10. Sex trafficking.
7. What additional jurisdiction is recognized?
   1. Criminal jurisdiction over non-Native people that commit certain violent crimes in the Village.
   2. No Indian country is created – **territorial jurisdiction** is based on ANVSAs.
8. When does this take effect? How long do we have?
   1. VAWA 2022 was signed on March 15, 2022.
   2. Section 813(a)(c) and (d) take effect beginning October 1, 2022.
   3. Criminal jurisdiction over Non-Indians, becomes effective beginning October 1, 2022 AND additional process of AG approval to participate
   4. Does not expire – authorization of appropriations FY2023 – FY2027.
   5. Report to Congress of results and any modifications to law necessary by March 15, 2027.
9. What about funding?
   1. Appropriations of up to $25 million (is this still right?) are authorized. Alaska Tribes can apply. Reimbursement.
   2. Existing competitive grant funding (CTAS, etc); BIA tribal court funding