

VAWA 2022 AND ALASKA INDIAN TRIBES: NOW THAT VAWA IS REAUTHORIZED, WHAT NEXT?



The Violence Against Women Reauthorization Act of 2022, includes a Tribal title with a specific section on Alaska Indian tribes titled “Subtitle B: Alaska Tribal Public Safety Empowerment.” These provisions, Sections 811-813, empower tribal governments to work, in partnership with state and federal authorities, to address public safety in Alaska Native Villages by clarifying tribal authority, creating a pilot project extending certain jurisdiction over non-Indians made available under VAWA 2013, and providing new resources and recognized authority.

VAWA 2022 is complementary to existing state, tribal and federal jurisdiction by creating more resources and tools to address domestic violence and other qualifying crimes in communities that may lack local law enforcement. In this law, Congress 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 Alaska Natives and American Indians present in the Village. It reaffirms and strengthens tribal authority, while the state jurisdiction continues in the same manner it does under current law. The proposed change is about collaboration and partnership.

WHAT VAWA 2022 AND THE ALASKA TRIBAL PUBLIC SAFETY SECTION DOES AND WHY IT IS NEEDED

What does VAWA 2022 do?

- THE LAW CLARIFIES ALASKA TRIBAL AUTHORITY TO ADDRESS CIVIL AND CRIMINAL MATTERS, INCLUDING PROTECTION ORDERS, INVOLVING ALASKA NATIVES IN THE VILLAGE OR WITHIN THEIR AUTHORITY.
- THE LAW ALSO CREATES A LIMITED CRIMINAL JURISDICTION PILOT PROJECT MODELED AFTER THE SUCCESSFUL PILOT PROJECT IMPLEMENTED BY TRIBES OUTSIDE ALASKA THAT WAS INCLUDED IN VAWA 2013.
- THE LAW DEFINES THE TERRITORIAL JURISDICTION OF AN ALASKA TRIBE. INSTEAD OF THE USUAL REFERENCE OF “INDIAN COUNTRY” AN ALASKA TRIBE’S JURISDICTION IS THE “VILLAGE,” WHICH MEANS THE ALASKA NATIVE VILLAGE STATISTICAL AREA COVERING ALL OR ANY PORTION OF A NATIVE VILLAGE ...AS DEPICTED ON THE “TRIBAL STATISTICAL AREA PROGRAM VERIFICATION MAP OF THE BUREAU OF THE CENSUS.”

Why are these changes needed?

- ALASKA NATIVE COMMUNITIES, PARTICULARLY WOMEN AND CHILDREN, ARE EXPERIENCING EXCEPTIONALLY HIGH RATES OF VIOLENCE.
 - DESPITE MAKING UP 19% OF THE STATE POPULATION, ALASKA NATIVES ARE 47% OF REPORTED RAPE VICTIMS IN THE STATE.
 - ALASKA NATIVES ARE OVERREPRESENTED IN THE DOMESTIC VIOLENCE POPULATION BY 250%.

- THE REMOTENESS AND ISOLATION OF NATIVE VILLAGES MAKES IT VERY DIFFICULT TO ADDRESS CRIME.
 - OVER 40% OF VILLAGES HAVE NO FULL TIME LAW ENFORCEMENT PRESENCE.
 - ON AVERAGE, THERE IS 1 LAW ENFORCEMENT OFFICER PER 1 MILLION ACRES IN RURAL ALASKA.

Why is the focus on Alaska tribal governments?

- THE COMBINED IMPACT OF PUBLIC LAW 280, THE SUPREME COURT'S VENETIE DECISION AND THE TIMING OF HISTORICAL LEGAL EVENTS IN ALASKA, HAVE CREATED A JURISDICTIONAL QUAGMIRE THAT HAS PLACED THOSE MOST VULNERABLE AT RISK AND DEPENDENT ON THE STATE FOR PUBLIC SAFETY AND JUSTICE: ALASKA NATIVE WOMEN.
- LOCAL ALASKA NATIVE GOVERNMENTS HAVE AN IMPORTANT ROLE TO PLAY IN ENSURING SAFETY IN THEIR COMMUNITIES, BUT THEIR AUTHORITY TO DO SO HAS NOT ALWAYS BEEN SUPPORTED. IN ADDITION, FUNDING AND RESOURCES HAVE NOT BEEN AVAILABLE IN PARITY WITH LOWER 48 TRIBES LOCATED IN NON-PL 280 STATES. MANY EXPERTS, INCLUDING THE ALASKA PUBLIC SAFETY COMMISSION, THE INDIAN LAW & ORDER COMMISSION, AND THE U.S. DEPARTMENT OF JUSTICE, HAVE SUGGESTED THAT CLARIFYING TRIBAL AUTHORITY COULD HELP IMPROVE SAFETY IN ALASKA NATIVE VILLAGES. VAWA 2022 IS A SIGNIFICANT STEP.

HOW THE PILOT PROJECT WILL BE IMPLEMENTED

Section 813(c) authorizes a limited number of pilot programs to be identified which would then begin to address violence against women crimes committed by non-Natives. Designated pilot project tribes and those working towards becoming a pilot project tribe, will be eligible for programs that will build infrastructure– courts, police, prosecutors and public defenders– to both address crimes by non-Indians and their citizens. The Pilot Project will take time to implement. Tribes may request to be a pilot. Tribes who participate will be able to arrest and prosecute non-Natives for certain crimes (see below) and will have more resources available to address crimes by their citizens.

What crimes can be prosecuted as part of the Pilot Project?

COVERED CRIMES ARE DOMESTIC VIOLENCE, DATING VIOLENCE, CHILD VIOLENCE, SEXUAL ASSAULT, STALKING, SEX TRAFFICKING, OBSTRUCTION OF JUSTICE, AND ASSAULTS AGAINST TRIBAL JUSTICE PERSONNEL. ALL CRIMES, EXCEPT ASSAULTS AGAINST TRIBAL JUSTICE PERSONNEL, MUST BE COMMITTED AGAINST A NATIVE VICTIM.

Which tribes will be participating in the Pilot Project?

THE U.S. ATTORNEY GENERAL WILL SELECT UP TO FIVE ALASKA TRIBES PER YEAR TO PARTICIPATE IN THE PILOT PROGRAM. PREFERENCE IN THE SELECTION WILL BE GIVEN TO TRIBES OCCUPYING VILLAGES WHERE THE POPULATION IS PREDOMINANTLY INDIAN AND WHERE THERE IS NO PERMANENT STATE LAW ENFORCEMENT PRESENCE. THE ATTORNEY GENERAL MUST ALSO DETERMINE THAT THE PARTICIPATING TRIBE WILL BE ABLE TO PROTECT THE DEFENDANT'S RIGHTS UNDER THE INDIAN CIVIL RIGHTS ACT.

Will tribal justice systems provide due process and protect constitutional rights?

ALL TRIBES ACCEPTED INTO THE PILOT PROJECT WILL NEED TO DEMONSTRATE THAT THEY CAN PROTECT DUE PROCESS RIGHTS REQUIRED IN THE INDIAN CIVIL RIGHTS ACT (ICRA).

What is a tribe's territorial jurisdiction?

THE TERM VILLAGE MEANS THE ALASKA NATIVE VILLAGE STATISTICAL AREA COVERING ALL OR ANY PORTION OF A NATIVE VILLAGE AS DEFINED BY SECTION 3 OF ANCSA.

What will a tribe need to develop a plan to implement the Pilot Project to prosecute non-Indians?

- DEVELOP A PLAN FOR LAW ENFORCEMENT, PROSECUTORS, DEFENSE ATTORNEYS, AND A TRIBAL COURT SYSTEM, OR THE ABILITY TO CONTRACT FOR ANY OF THESE SERVICES FOR PROSECUTING NON-INDIANS WHO COMMIT THE DESIGNATED CRIMES.
- BE A COURT OF RECORD (RECORD PROCEEDINGS) AND HAVE A LAW TRAINED JUDGE TO HANDLE THESE CASES.
- HAVE A WRITTEN CRIMINAL CODE THAT IS PUBLICLY AVAILABLE AND COURT RULES, POLICIES, AND PROCEDURES AS REQUIRED IN ICRA.
- EVALUATE THEIR CONSTITUTION AND UPDATE AS NEEDED TO ALLOW THE EXPANDED SERVICES TO HAVE A PLAN FOR INCARCERATING OFFENDERS AS NECESSARY.
- CONSIDER A PLAN TO PROVIDE OR REFER OFFENDERS FOR TREATMENT AND REHABILITATION PROGRAMS AND VICTIMS SERVICES.

Where will non-Native defendants be jailed?

DEPENDING UPON THE CRIME AND THE CIRCUMSTANCES, RESTORATIVE ALTERNATIVES TO INCARCERATION MAY BE PREFERRED INSTEAD OF JAIL. OTHERWISE IF INCARCERATION IS NECESSARY, DEFENDANTS CAN BE HOUSED IN A TRIBAL, STATE OR MUNICIPAL DETENTION AND IN SOME CIRCUMSTANCES FEDERAL DETENTION CENTERS.

How will tribes pay for the costs associated with the Pilot Project?

THE LEGISLATION AUTHORIZES UP TO \$25 MILLION TO SUPPORT TRIBAL IMPLEMENTATION OF VAWA'S JURISDICTION PROVISION UNDER A REIMBURSEMENT PROGRAM, AND TRIBES IN THE ALASKA PILOT PROJECT WILL BE ELIGIBLE TO APPLY FOR THESE FUNDS. IN ADDITION, TRIBES CAN CONTINUE TO APPLY FOR OTHER DOJ GRANT FUNDS THROUGH THE CONSOLIDATED TRIBAL ASSISTANCE SOLICITATION (CTAS), AND OTHER GRANTS THAT SUPPORT VARIOUS ASPECTS OF THE NEW PROGRAMS FROM THE TRIBAL GOVERNMENTS, OVW AND OVC AND BJA GRANTS AND YEARLY FUNDING FROM THE BIA, WHICH CAN BE USED FOR MANY OF THE COSTS ASSOCIATED WITH THE PILOT PROJECT. THE ATTORNEY GENERAL HAS UP TO ONE YEAR TO COME UP WITH A REIMBURSEMENT PROGRAM FOR ELIGIBLE COSTS. IT WILL BE VITAL THAT ALASKA TRIBES MAKE THE CASE FOR PROGRAMS THAT WILL HELP BUILD THE NECESSARY INFRASTRUCTURE NEEDED TO SUCCESSFULLY IMPLEMENT THE PILOT PROJECT AND MAINTAIN THEIR JUSTICE SYSTEM.

Can tribes work together to participate in the Pilot Project?

YES. THE LEGISLATION MAKES CLEAR THAT TRIBES CAN PARTNER AND PARTICIPATE JOINTLY- 2 OR MORE TRIBES CAN WORK TOGETHER. TRIBES ARE ALSO ABLE TO DESIGNATE A TRIBAL ORGANIZATION TO PARTICIPATE ON THE TRIBE'S BEHALF.

Is there technical assistance available?

- THE DOJ IS STILL LOOKING AT WAYS TO IMPLEMENT THE PILOT PROGRAM, BUT HAS REFERENCED AN INTERTRIBAL WORKING GROUP SIMILAR TO THE VAWA 2013 INTERTRIBAL WORKING GROUP. THIS GROUP, COMPOSED OF TRIBES, TRIBAL TECHNICAL ASSISTANCE PROVIDERS AND MAINSTREAM AGENCIES, MEET A FEW TIMES A YEAR IN PERSON AND MONTHLY TELEPHONICALLY TO SHARE IDEAS AND RESOURCES.

- IN ADDITION, THE LAW CREATES AN ALASKA TRIBAL PUBLIC SAFETY ADVISORY COMMITTEE THAT WILL BE COMPOSED OF TRIBES, LAW ENFORCEMENT, ADVOCATES, ATTORNEYS AND OTHERS TO WORK ON COMMON ISSUES AND SHARE RESOURCES.

When does the law take effect and will the Pilot Project expire?

THE LAW TAKES EFFECT OCTOBER 1, 2022. THE ATTORNEY GENERAL NEXT NEEDS TO DEVELOP A PROCESS FOR CONSIDERING TRIBAL REQUESTS TO PARTICIPATE IN THE PILOT PROJECT, AND THE LEGISLATION MAKES CLEAR THAT A TRIBE CAN REQUEST TO PARTICIPATE IN THE PILOT PROJECT AT ANY TIME AFTER THE LAW IS PASSED. THE PILOT PROJECT DOES NOT EXPIRE. IT IS, HOWEVER, LIMITED TO 30 TRIBES UNLESS THE ATTORNEY GENERAL PROVIDES NOTICE THAT ADDITIONAL TRIBES WILL BE PERMITTED TO PARTICIPATE.

HOW DOES VAWA 2022 IMPACT THE STATE OF ALASKA

Does this legislation change state jurisdiction?

NO. THE BILL IS CLEAR THAT EXISTING STATE AND FEDERAL JURISDICTION ARE UNCHANGED. TRIBAL AUTHORITY WOULD OPERATE CONCURRENTLY TO STATE AND FEDERAL AUTHORITY AND WOULD PROVIDE AN ADDITIONAL LAYER OF PROTECTION FOR VICTIMS, PARTICULARLY IN PLACES WHERE THERE IS NO PERMANENT STATE LAW ENFORCEMENT PRESENCE. THE LAW DOES NOT DIVEST THE STATE OF ITS EXISTING AUTHORITY.

Does the law create “Indian country” in Alaska?

NO. “INDIAN COUNTRY” IS A LEGAL TERM OF ART AND ITS DEFINITION IS NOT CHANGED BY VAWA 2022. THE LEGAL STATUS OF LAND IN ALASKA IS NOT IN ANY WAY CHANGED.

Will the law cost the state money?

NO. THE LAW DOES NOT PLACE ANY FINANCIAL BURDEN ON THE STATE. THE LAW AUTHORIZES FUNDING THAT TRIBES MAY BE ABLE TO ACCESS FOR IMPLEMENTATION OF THE LAW. HOWEVER, IT SHOULD BE NOTED THAT THE STATE HAS FAILED TO PROVIDE NEARLY 40% OF RURAL COMMUNITIES WITH LAW ENFORCEMENT AND THAT THE STATE COURT SYSTEM HAS CONTINUED TO SHRINK. ALASKA NATIVES ARE STATE CITIZENS TOO, AND SHOULD BE ELIGIBLE FOR STATE FUNDED PROGRAMS LIKE ANY OTHER STATE CITIZEN.

Why is Alaska singled out in the legislation?

IN VAWA 2013, CONGRESS REAFFIRMED JURISDICTION OF TRIBES TO PROSECUTE NON-INDIANS FOR CRIMES OF VIOLENCE AGAINST WOMEN FOR OVER 8 YEARS AND HAVE BEEN PROSECUTING INDIANS FOR THESE TYPES OF CRIMES FOR EVEN LONGER. VAWA 2013 WAS WRITTEN TO DEAL WITH AREAS KNOWN AS “INDIAN COUNTRY,” AND ALASKA VILLAGES DO NOT OCCUPY INDIAN COUNTRY. WHERE VAWA 2013 HAS BEEN IMPLEMENTED, MANY REPEAT OFFENDERS HAVE BEEN HELD ACCOUNTABLE AND VICTIMS HAVE SEEN JUSTICE FOR THE FIRST TIME. PARTICIPATING TRIBES ALSO REPORT THAT IMPLEMENTING VAWA HAS IMPROVED THEIR RELATIONSHIPS WITH FEDERAL AND STATE AUTHORITIES.

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