Violence Against Women Reauthorization Act of 2013 (SDVCJ)

"Tribal governments have an inherent right to protect their people, and all women deserve the right to live free from fear." -President Barack Obama

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"Up to this line and as far as the eye can see in these three directions, is Yaqui land. No invaders will be allowed to enter."

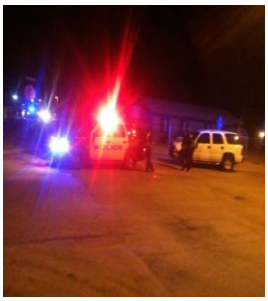
Timeline of Yaqui History

- **1964:** US deeds 202.76 acres to the "Pascua Yaqui Association."
- **1967:** First family moves into "New Pascua" and Tucson Water delivered into homes.
- **1975:** Pascua Yaqui Association seeks recognition from Congress.
- **1978:** US Recognition of PYT by Congress, 9/18/1978.
- **1982:** PYT adopts a criminal code (Law & Order Code).
- **1983:** Bingo hall opens/ PY Head Start Opens
- **1985:** BIA patrols reservation exclusively until 1991.
- **1985:** State retrocession of criminal & civil jx. PYT originally subjection to state jx under 25 USC §1300(f)(c). Retrocession accepted (50 Fed. Reg. 34, 555).
- **1985-88:** Interior operates the court system through a "Court of Indian Offenses," a CFR Court operated by the BIA.
- **1988:** PYT Constitution enacted.

Timeline of Yaqui History

- **1988:** PYT takes over the judicial system from the BIA.
- **1991:** PYT hires three tribal police officers who served with the BIA officers.
- **1994:** Congressional amendment (open enrollment) PYT Recognition at 25 USC 1300(f)(2).
- **1994:** PYT gains "historic status" under federal legislation, signed by President Clinton.
- **1994:** Gaming compact with Arizona; Casino of the Sun opens.
- **1996:** Centered Spirit Behavioral Health opens.
- **1998:** PYT signs agreement with the BIA to direct our own Law Enforcement Services.
- **1999:** PYT Boys & Girls Club opens.

TIMELINE OF YAQUI HISTORY



- Mr. Richardson. What other sovereign rights are you being denied, Mr. Chairman? What are some of the other advantages you don t have now because of this designation?
- Mr. Garcia. "The power to regulate ourselves—we are trying to amend our constitution. It has too many restrictions. Basically we have to go back to the Secretary of Interior to get approval to do anything on the Reservation. We have everything established on the Reservation giving us sovereign authority, but the Bureau is a hindrance to all this. " -Chairman Garcia 1994
- "We built what we have now upon the groundwork that was laid by our elders and what they left us," he says. "We are trying to do the right thing for the future generations to make sure they have the tools to live a good life for their children and grandchildren." Vice-Chairman Robert Valencia -2011

Timeline of Yaqui History

- **2008:** PYT Wellness Center opens.
- **2009:** First Things First starts operating on the Reservation.
- **2010:** President Obama signs the Tribal Law & Order Act; White House ceremony attended by PYT Chairman.
- **2010:** Construction of multi-purpose justice complex, $21M from American Recovery and Reinvestment Act.
- 2012: President Obama signs PL 112-214 (HR 3319) eliminates membership criteria established under Recognition Act.
- 2013: Tribe applies to become Pilot-Tribe to obtain authority to prosecute non-Indians for crimes of domestic violence through the Violence Against Women Act Reauthorization.
- 2014: Tribe authorized to become Pilot-Tribe to prosecute non-Indians for crimes of domestic violence & dating violence

"Historically, the Yoeme (Yaqui people) have always had some form of law enforcement and dispute resolution, most notably through our ceremonial and cultural societies. The first responsibility of any government, tribal or otherwise, is the safety and protection of its people."

Statement of the Problem

- Reported rates of domestic violence against Native women in Indian country are among the highest in the United States.
- Federal law enforcement may be hours away from reservation crime scenes and resources are stretched thin.
- Tribal police, prosecutors, and courts have had significant success in combating crimes of domestic violence committed by ***Indians*** in Indian country. But without Congressional action, tribes lacked the authority to prosecute a ***non-Indian***, even if he lives on the reservation and is married to a tribal member. This was because of the decision in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).
- With many non-Indians living on reservations and other Indian lands, interracial dating and marriage are common. Too often, non-Indian men who batter their Indian wives or girlfriends go unpunished. Predictably, the violence escalates.

Statement of the Problem

- **Domestic violence is the most pressing criminal justice challenge facing the Pascua Yaqui Tribe.**
- **According to the tribal court, there were a total of 503 criminal charges (non-traffic) filed in 2011, Domestic violence charges (267) account for a significant majority of all criminal filings—these cases include assault, disorderly conduct, and trespass cases in which domestic violence is a factor.**
- **Pascua Yaqui stakeholders are unusually consistent in identifying a core set of issues and challenges that they agreed should be addressed. There is complete unanimity across the agencies interviewed that the community's most serious public safety concern is domestic violence.**
- **The next most serious public safety problem identified was drug- and alcohol-related crime, including use, possession, and trafficking. Stakeholders agreed that alcohol was a major factor in many reservation crimes, including many domestic violence incidents.**
- **Approximately 15%-20% percentage of residents and employees on the Pascua Yaqui reservation are non-Indian**

"Can you imagine responding to call where there is clear evidence of a crime committed by an individual and you cannot arrest them? I think the community felt cheated," he said. "It made police officers and victim advocates feel powerless." –Chief Michael Valenzuela PYPD

DEMOGRAPHICS

- **Population + 5.1%**
- **Population = 4,000-5,000 (Census 2010-participants)**
- **Median Age- 24**
- **Traditional Married Couples=32% (State 48%)**
- **Female Head of Household=42.9% (single mothers) (County 12.4%)**
- **Approx. 40% of all families live in poverty.**

YAQUI ELECTED OFFICIALS ADVOCATING ON BEHALF OF TRIBAL WOMEN

Pascua Yaqui Tribe seeking support for VAWA

"For every woman and girl violently attacked, we reduce our humanity"
~Nelson Mandela (on gender violence)

VAWA 2013 was signed into law by President Obama on March 7, 2013.

VAWA 2013

- Is not one single brand new law
- In many places, it amends existing Federal law. For intimate-partner violence in Indian Country, most notably the following statutes are amended:
  - The Indian Civil Rights Act (25 U.S.C. § 1301 et seq.)
  - The Full Faith and Credit Statute (18 U.S.C. § 2265)
  - The Federal Assault Statute (18 U.S.C. § 113)

VAWA IMPLEMENTATION

On February 6th 2014, the Pascua Yaqui Tribe announced implementation of a new tribal government law that enables tribal police and justice officials to investigate and prosecute certain domestic violence crimes committed by non-Indians in Indian country. Non-Indians who live or work on the reservation or have a marriage or dating relationship with a Native person may now be subject to tribal jurisdiction for domestic and dating violence crimes and criminal violations of certain protection orders. Individuals who commit these crimes in Indian country can be arrested by tribal police, prosecuted in tribal court, and sentenced to prison.

PASCUA YAQUI TRIBE TO IMPLEMENT VAWA

The Violence Against Women Reauthorization Act of 2013 (VAWA) was signed into law on March 7, 2013. VAWA marks a victory for Native women, tribal leaders, women's rights advocates, and survivors of domestic abuse everywhere. For the first time in nearly 40 years, VAWA restores tribal inherent authority to investigate, prosecute, convict, and sentence non-Indians who assault their Indian spouses or dating partners in Indian country.

For most tribes, the option to exercise special domestic violence criminal jurisdiction (SDVCJ) under the law, will not be available until 2015. However, the law also created a pilot project for tribes who request to start prosecuting non-Indian offenders sooner, The Pascua Yaqui Tribe is one of the pilot tribes and will begin exercising SDVCJ as of February 20, 2014.

NOTICE

The Pascua Yaqui Tribe is one of the first three tribes in the nation to be authorized to prosecute non-Indian offenders for certain domestic violence and protection order crimes. This jurisdiction goes into effect on **February 20, 2014**. After that date, a non-Indian who has substantial ties to the Tribe (such as living on the reservation, working for the Tribe or the Tribe's casino, or having a dating partner or spouse who is Pascua Yaqui or a member of another Indian tribe) can be prosecuted by the Pascua Yaqui Tribe in the Tribe's own criminal justice system.

The Tribe will provide non-Indian defendants with constitutional rights equal to those in the outside states. These rights include the right to an attorney if they cannot afford their own, the right to effective assistance of counsel, the right to a law trained judge, and the right to file a habeas corpus petition in federal court to name a few. The Pascua Yaqui Tribe already provides these rights to Indian defendants in its justice system.

If you have questions about these changes to the law, please contact: Alfred Urbina, Chief Prosecutor at 520-879-6263, alfred.urbina@pascuayaqui-nsn.gov

Or

Amanda Lomayesva, Attorney General at 520-883-5119, aslomayesva@pascuayaqui-nsn.gov

More info at: www.justice.gov/opa/pr/2014/February/14-ag-126.html

HOW IS THE PILOT PROJECT STRUCTURED?

Phase One is a planning and assessment phase, which took place in the summer and fall of 2013. During Phase One, the Justice Department received "preliminary expressions of interest" from tribes whose elected leaders believed their tribe might be a strong candidate for participation in both phases of the Pilot Project. The Justice Department engaged in ongoing consultation with interested tribes and also launched an Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG). Several ITWG meetings were held via teleconference, webinar, and in-person.

Phase Two is the implementation phase, when tribes formally request to begin exercising SDVCJ. Phase Two started in late 2013 and runs through March 7, 2015, with some tribes prosecuting SDVCJ cases by early 2014.

"We were given this garden to live in and protect. Our garden was of great distance and we roamed freely over its full extent." *~1994 Testimony of Anselmo Valencia to Congressional Committee, Washington D.C.*

"Our judicial system, like all other judicial systems, will now have the opportunity to address offenders for wrongs committed against our most vulnerable community members. We no longer have to simply stand by and watch our native women be victimized with no recourse."

Peter Yucupicio, tribal Chairman, Pascua Yaqui Tribe– L.A. Times, February 6th 2014

Amendments to the
Indian Civil Rights Act
25 U.S.C. § 1304

Sections 904 and 908

With the exception of the Pilot Project, the effective date of these amendments is March 7, 2015.

Tribal Jurisdiction over Crimes of Domestic Violence

- Nature of the Criminal Jurisdiction
- 25 U.S.C. § 1304(b)(1)

  ". . . [T]he powers of self-government of a participating tribe include the **inherent power** of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over **all** persons."

"The VAWA Pilot Project provides the Pascua Yaqui Tribe the latitude to exercise a wider jurisdictional range to prosecute those who commit domestic violence crimes on the Pascua Yaqui Reservation. The Pascua Yaqui now have the legal ability to prosecute such cases in tribal court without recourse to the federal courts thus affording the tribe more local control in its efforts to protect victims of domestic violence on its reservation. The Pascua Yaqui Tribe was one of only three tribes in the country chosen for this national pilot project, and I congratulate the Tribe on its implementation of this historic legislation." **--U.S. Attorney John S. Leonardo.**

Does Congress have the power to restore tribes' inherent authority to exercise criminal jurisdiction over non-Indians?

- Yes. The Federal Constitution empowers Congress to enact this legislation.
- In *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), the Court suggested that Congress has the constitutional authority to decide whether Indian tribes should be authorized to try and to punish non-Indians. *See id.* at 206–12; *id.* at 212 (stating that the increasing sophistication of tribal court systems, the Indian Civil Rights Act's protection of defendants' procedural rights, and the prevalence of non-Indian crime in Indian country are all ''considerations for Congress to weigh in deciding whether Indian tribes should finally be authorized to try non-Indians'').

Does Congress have the power to restore tribes' inherent authority to exercise criminal jurisdiction over non-Indians?

- In *United States v. Lara*, 541 U.S. 193 (2004), which involved tribal criminal jurisdiction over an Indian who was not a member of the tribe that prosecuted him (a ''nonmember Indian''), the Court held that Congress has the constitutional power to relax restrictions that have been imposed on the tribes' inherent prosecutorial authority. *See id.* at 196, 207; *id.* at 210 (holding that ''the Constitution authorizes Congress to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians''); *id.* at 205 (refusing to ''second-guess the political branches' own determinations'' about ''the metes and bounds of tribal autonomy'').

Concurrent Jurisdiction 25 U.S.C. § 1304(b)(2)

- The exercise of special domestic violence criminal jurisdiction (SDVCJ) by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both.
- So, does double jeopardy bar successive tribal/federal prosecutions? No.
  - The Indian Civil Rights Act expressly prohibits Indian tribes from "subject[ing] any person," Indian or non-Indian, "for the same offense to be twice put in jeopardy." 25 U.S.C. § 1302(a)(3). So a tribe could not try a non-Indian twice for the same ***tribal*** offense.
  - However, under the "dual sovereignty" doctrine, the Federal Constitution's Double Jeopardy Clause does not bar successive prosecutions brought by separate sovereigns.

Applicability – 25 U.S.C. § 1304(b)(3)

- Nothing in this section:
  - Creates or eliminates any Federal or State criminal jurisdiction over Indian Country; or
  - Affects the authority of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute a criminal violation in Indian Country.

Definitions - 25 U.S.C. § 1304(a)(1)

- **Dating Violence** – "violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship."

Definitions - 25 U.S.C. § 1304(a)(2)

- **Domestic Violence** – "violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs."
- What types of relationships are not covered?

Definitions - 25 U.S.C. § 1304(a)

- **Indian Country** – as defined in 18 U.S.C. § 1151
  - In Alaska, only the Metlakatla Indian Community.
- **Participating Tribe** – an Indian tribe that elects to exercise SDVCJ over the Indian Country of that Indian tribe.
- **SDVCJ** – "the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise."
- **Spouse or intimate partner** – as defined in 18 U.S.C. § 2266

Definition of Spouse or Intimate Partner

- 18 U.S.C. § 2266(7)(A)(i)
  - for purposes of sections other than 18 U.S.C. § 2261A
    - (I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser, or
    - (II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Definition of Spouse or Intimate Partner Cont.

- 18 U.S.C. § 2266(7)(B)
  - "any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides."
- Who might this cover?

Definitions - 25 U.S.C. § 1304(a)(5)

- **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 pendent[e] 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 a person seeking protection."

Exceptions to SDVCJ?

- 25 U.S.C. § 1304(b)(4)
- Neither the defendant nor the victim is Indian
- The defendant lacks sufficient ties to the tribe
- Sufficient ties are the following:
  - Resides in the Indian Country of the participating tribe;
  - Is employed in the Indian Country of the participating tribe; or
  - Is a spouse, intimate partner, or dating partner of a member of the participating tribe or of an Indian who resides in the Indian Country of the participating tribe

When can a tribe exercise SDVCJ?

- 25 U.S.C. § 1304(c) –
- For criminal conduct that falls into one or more of the following categories:
  - Domestic violence and dating violence that occurs in the Indian Country of the participating tribe; and
  - Violations of protection orders that occur in the Indian Country of the participating tribe

What constitutes a violation of a protection order for purposes of SDVCJ?

- 25 U.S.C. § 1304(c)(2)(A)-(B)
- An act that violates the portion of a protection order that –
  - 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;
  - Was issued against the defendant;
  - Is enforceable by the participating tribe; and
  - Is consistent with 18 U.S.C. § 2265(b)

18 U.S.C. § 2265(b)

- A protection order issued by a State, tribal, or territorial court is consistent with this subsection, if
  - The court has jurisdiction over the parties and matter under the law of the State, Indian tribe, or territory; and
  - Reasonable notice and an opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by the law, and within a reasonable time after the order is issued, sufficient to protect the respondent's due-process rights.

What rights must be afforded to the Defendant?

- 25 U.S.C. § 1304(d)
- All applicable rights under the Indian Civil Rights Act
- If ANY term of imprisonment is imposed, then all rights described in the Tribal Law and Order Act of 2010 (25 U.S.C. § 1302(c))
- 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
- All other rights whose protection is necessary under the U.S. Constitution in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise SDVCJ over the defendant

Defendants' Rights under ICRA pre-TLOA

- The right to the equal protection of the tribe's laws.
- The right not to be deprived of liberty or property without due process of law.
- The right against unreasonable search and seizures.
- The right not to be twice put in jeopardy for the same tribal offense.
- The right not to be compelled to testify against oneself in a criminal case.
- The right to a speedy and public trial.
- The right to a trial by jury of not less than six persons.
- The right to be informed of the nature and cause of the accusation in a criminal case.
- The right to be confronted with adverse witnesses.
- The right to compulsory process for obtaining witnesses in one's favor.
- The rights against excessive bail, excessive fines, and cruel and unusual punishments.

Rights of Defendants – 25 U.S.C. § 1302(c)

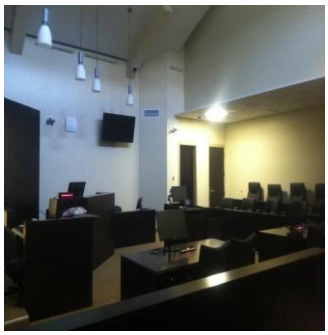
- The Indian tribe shall:
  - (1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the U.S. Constitution;
  - (2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the U.S. that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.

Rights of Defendants – 25 U.S.C. § 1302(c)

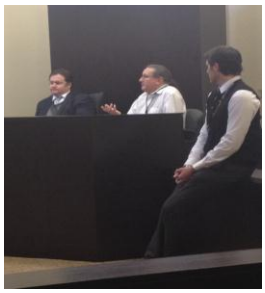
  - (3) require that the judge presiding over the criminal proceeding—
    - (i) has sufficient legal training to preside over criminal proceedings; and
    - (ii) is licensed to practice law in any jurisdiction in the U.S.;
  - (4) prior to charging the defendant, make publicly available the tribe's criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges); and
  - (5) maintain a record of the criminal proceeding, including an audio or other recording of the trial

DUE PROCESS

Due process is also deeply rooted in indigenous tradition and practice. Tribal culture and history support the right of having a person speak on another person's behalf. These concepts, teachings, and traditions pre-date the U.S. Constitution and the Bill of Rights and are rooted in beliefs that are arguably as old as English Common Law.



PASCUA YAQUI TRIBAL COURT JUDGES & COURT ADMINISTRATOR BEN CASEY

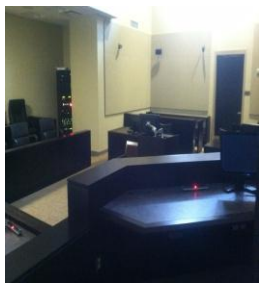


Post Conviction Right of the Defendant

Habeas Corpus - 25 U.S.C. § 1303 –

"The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe."

PASCUA YAQUI TRIBE DEFENDING HABEAS IN 9th CIRCUIT



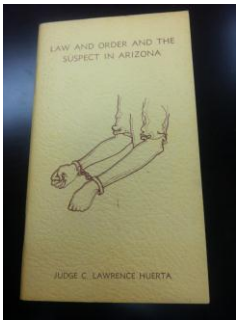
Petitions to Stay Detention - 25 U.S.C. § 1304(e)

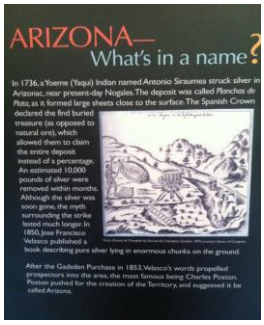
- A person who has filed a petition for a writ of habeas corpus may petition the Federal court to stay further detention of that person by the participating tribe.
  - A stay shall be granted if the court
    - Finds a substantial likelihood that the habeas corpus petition will be granted; and
    - After giving each victim an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released
- A tribe that has ordered the detention of any person has a duty to timely notify such person of his rights and privileges under this subsection and 25 U.S.C. § 1303.

Section 908 – Pilot Project

- Any time prior to March 7, 2015, a tribe may ask the Attorney General of the United States to designate the tribe as a participating tribe for purposes of exercising SDVCJ.
- Prior to making a decision, the Attorney General must coordinate with DOI, consult with affected tribes, and conclude that the requesting tribe's criminal-justice system has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. § 1304.
- DOJ is engaging tribal leaders in consultation about the process and criteria for the Pilot Project.

Yaquis in Arizona History





Sentencing Options for Tribal Courts 25 U.S.C. § 1302

- For SDVCJ cases a tribe may sentence a defendant as follows:
  - imprisonment for a term of up to 1 year or a fine of up to $5,000, or both
- However, if the defendant has been convicted of the same or a comparable offense by any jurisdiction in the U.S. or is being prosecuted for an offense comparable to an offense that would be punishable as a felony in Federal or State court, the tribal court can impose ***
  - For conviction of any one offense, a term of imprisonment not to exceed 3 years or a fine of $15,000, or both
  - A total term of imprisonment not to exceed 9 years

*****PYT requires a Constitutional Amendment to exercise**

Sentencing Options 25 U.S.C. § 1302(d)

- For a Defendant sentenced to a total term of imprisonment of more than one year, a tribal court may require the defendant to serve an alternative form of punishment, as determined by the tribal judge under tribal law, or to serve a sentence in –

A. A tribal correctional center approved by BIA for long-term incarceration
B. The nearest appropriate Federal facility, at the expense of the U.S. pursuant to the Bureau of Prisons tribal prisoner pilot program
C. A State or local government-approved detention or correctional center pursuant to an intergovernmental agreement
D. A tribal alternative rehabilitation center

Amendment to the Full Faith and Credit Statute 18 U.S.C. § 2265(e)

Section 905 of VAWA 2013

Effective date was March 7, 2013

Tribal Protection Orders

"For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe."

- Clarifies that tribes have full civil jurisdiction to issue and enforce protection orders involving any person (Indian or non-Indian) in matters arising anywhere in the tribe's Indian Country or otherwise within the tribe's authority.
- In Alaska, this applies only to the Metlakatla Indian Community

Fairness, Justice, Dignity.

Amendments to the Federal Assault Statute 18 U.S.C. § 113

Section 906 of VAWA 2013

Effective date was March 7, 2013

Assault with Intent to Commit Murder

- 18 U.S.C. § 113(a)(1)
- has been expanded to include Assault with Intent to Commit a Violation of § 2241 (Aggravated Sexual Abuse) or § 2242 (Sexual Abuse)
- The maximum penalty of 20 years of imprisonment remains the same, but the imposition of a fine is now included.

Assault with Intent to Commit Any Felony

- 18 U.S.C. § 113(a)(2)
- The statute has been amended to comport with the changes in § 113(a)(1), so the offenses of Assault to Commit Murder, Aggravated Sexual Abuse, and Sexual Abuse are exceptions to the charge of Assault with Intent to Commit Any Felony
- Punishable by a maximum sentence of 10 years imprisonment, a fine, or both

Assault with a Dangerous Weapon

- 18 U.S.C. § 113(a)(3)
- Has been amended by striking the phrase "without just cause or excuse"
- Statute now reads "Assault with a dangerous weapon, with intent to do bodily harm, by a fine under this title or imprisonment for not more than ten years, or both."

Assault by Striking, Beating or Wounding

- 18 U.S.C. 113(a)(4)
- The maximum term of imprisonment for a conviction of this crime has been increased from six months to one year.
- This offense is not listed in the Major Crimes Act.

Assault Resulting in Substantial Bodily Injury

- 18 U.S.C. § 113(a)(7)
- This offense has been expanded to include as victims spouses, intimate partners, and dating partners of the accused. The statute continues to cover individuals who have not attained the age of 16 years.
- Punishable by a maximum sentence of 5 years imprisonment, a fine, or both.

Detective Jacob Garcia of PYPD Investigating Crime of Assault Resulting in Serious Bodily Injury

Assault by Strangling or Suffocating

- A new felony assault provision has been added for committing an "[a]ssault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate"
- 18 U.S.C. § 113(a)(8)
- Punishable by a maximum sentence of 10 years imprisonment, a fine, or both.

Definition of Strangling

- The term "strangling" means "intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim."
- 18 U.S.C. § 113(b)(4)

Definition of Suffocating

- The term "suffocating" means "intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim."
- 18 U.S.C. § 113(b)(5)

Definition of Dating Partner

- 18 U.S.C. § 2266(10)
- "dating partner" refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. Factors to consider include:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship

Definition of Spouse or Intimate Partner

- 18 U.S.C. § 2266(7)(A)(i)
  - for purposes of sections other than 18 U.S.C. 2261A
    - (I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser, or
    - (II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Definition of Spouse or Intimate Partner Cont.

- 18 U.S.C. § 2266(7)(B)
  - "any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides."

Amendment to the Major Crimes Act

- The Major Crimes Act, 18 U.S.C. § 1153(a), has been amended to capture all felony assaults under 18 U.S.C. § 113.
  - Assault with Intent to Commit Murder, Aggravated Sexual Abuse, or Sexual Abuse
  - Assault with Intent to Commit any Felony except Murder, Aggravated Sexual Abuse, or Sexual Abuse
  - Assault with a Dangerous Weapon
  - Assault Resulting in Serious Bodily Injury
  - Assault Resulting in Substantial Bodily Injury
  - Assault by Strangling or Suffocating

MULTI-PURPOSE JUSTICE COMPLEX

Questions?

"With the important new tools provided by VAWA 2013, these critical pilot projects will facilitate the first tribal prosecutions of non-Indian perpetrators in recent times. This represents a significant victory for public safety and the rule of law, and a momentous step forward for tribal sovereignty and self-determination." – U.S. Attorney General Eric Holder

PASCUA YAQUI TRIBAL CODE:
http://www.pascuayaqui-nsn.gov/_static_pages/tribalcodes/index.php

Today, this is what we fight to protect…

I'm here to put the community on notice, perpetrators will be held accountable in the tribe's own justice system." **~Raymond Buelna, Councilmember and Chair of the Public Safety Committee.**