



---

---

---

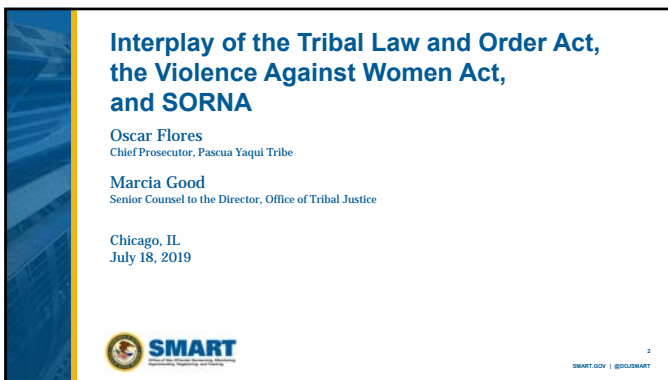
---

---

---

---

---



---

---

---

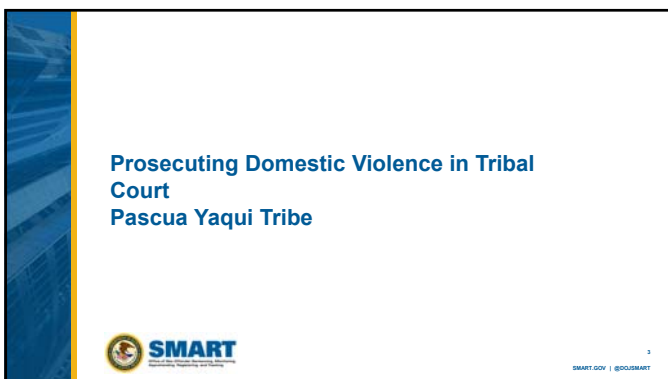
---

---

---

---

---



---

---

---

---

---

---

---

---

**Context**

- Tribal Law and Order Act (TLOA)
- Violence Against Women Act (VAWA)
- Sex Offender Registration and Notification Act (SORNA)
- Washington post  
April 18, 2014



**Arizona tribe set to prosecute first non-Indian under a new law**



SMART.GOV | @GOSMART

---

---

---

---

---

---

---

---

---

---

**Indian Civil Rights Act (ICRA) 1968  
Defendant Rights (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.



SMART.GOV | @GOSMART

---

---

---

---

---

---

---

---

---

---

**ICRA 1968  
Defendant Rights (Pre-TLOA) – cont.**

- 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.



SMART.GOV | @GOSMART

---

---

---

---

---

---

---

---

---

---

### TLOA and VAWA: A Preliminary Note

- Important to understand what each statute does and how they relate to each other.
- TLOA 2010 restores tribal sentencing authority.
- VAWA 2013 restores tribal criminal jurisdiction.
- Tribes can choose to comply with —
  - Either
  - Neither
  - Both



SMART.GOV | @SOLSMART

---

---

---

---

---

---

---

---

### Section 908: Pilot Project

- VAWA 2013 went into force for all tribes on March 7, 2015.
- Statute authorized a pilot project.
- Three tribes selected to take part:
  - Pascua Yaqui
  - Tulalip Tribes
  - Confederated Tribes of the Umatilla Indian Reservation



SMART.GOV | @SOLSMART

---

---

---

---

---

---

---

---

### July 29, 2010: President Obama Signs TLOA



SMART.GOV | @SOLSMART

---

---

---

---

---

---

---

---

### TLOA

- Provide defendant with attorney.
- Presiding judge has sufficient legal training and is licensed.
- Make publicly available —
  - Criminal laws
  - Rules of evidence
  - Rules of criminal procedure
  - Judicial recusal standards and procedures
- Record proceeding.




---

---

---

---

---

---

---

---

---

---

### TLOA (continued)

- “require excessive bail, impose excessive fines, or inflict cruel and unusual punishments, and in no event impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both”
- TLOA: Impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or
- impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years




---

---

---

---

---

---

---

---

---

---

### March 7, 2013: President Obama signs VAWA




---

---

---

---

---

---

---

---

---

---

### VAWA 2013: What It Does & How It Works

If a Tribe complies with statutory requirements, VAWA 2013 **restores to the tribe the ability to prosecute** defendants —

- Who live or work in the tribe's Indian country or who are a spouse/intimate partner of a tribal member or an Indian who lives in the tribe's Indian country; and
- Who commit dating violence or domestic violence or who violate the no contact/no harassment portion of a protection order
- Within the tribe's Indian country




---

---

---

---

---

---

---

---

---

---

### Special Domestic Violence Criminal Jurisdiction (SDVCJ): 25 U.S.C §1304

Tribe must provide defendant with —

- All the rights guaranteed by the Indian Civil Rights Act
- Including (if defendant is sentenced to jail time) all rights listed in Section 1302(c) [TLOA]
- Right to 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 necessary..." catch-all provision




---

---

---

---

---

---

---

---

---

---

### Other Prosecution Case Concerns

- 25 U.S.C. § 1304(d) Rights of defendants
- 25 U.S.C. § 1302(c) Rights of defendants




---

---

---

---

---

---

---

---

---

---

**25 U.S.C. § 1304 (2014)**

A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

- 1. Domestic violence and dating violence**
- 2. Violations of protection orders**




---

---

---

---

---

---

---

---

---

---

**Orders of Protection**

18 U.S.C. § 2265

(b) Protection order.--A protection order issued by a State, tribal, or territorial court is consistent with this subsection if--

- (a) Full Faith and Credit

Term: "Protection Order"




---

---

---

---

---

---

---

---

---

---

**25 U.S.C. § 1304 (2014)**

A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

- 1. Domestic violence and dating violence**
- 2. Violations of protection orders**




---

---

---

---

---

---

---

---

---

---

### Domestic Violence

- By statute, means 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.
  - Spouse or intimate partner has same meaning as in 18 U.S.C. § 2266
  - Is the U.S. v. Castleman standard satisfied? (crime of violence)
- Must occur in tribe's Indian country




---

---

---

---

---

---

---

---

---

---

### Dating Violence & Domestic Violence

#### Dating Violence

#### Domestic Violence




---

---

---

---

---

---

---

---

---

---

### Spouse or Intimate Partner

- (7) Spouse or intimate partner: The term "spouse or intimate partner" has the meaning given the term in section 2266 of Title 18.




---

---

---

---

---

---

---

---

---

---

### Exceptions = Defense to Jurisdiction

#### (b) Nature of criminal jurisdiction

##### (4) Exceptions

(B) Defendant lacks ties to the Indian tribe: A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant--

- (i) resides in the Indian country of the participating tribe;
- (ii) is employed in the Indian country of the participating tribe; or
- (iii) is a spouse, intimate partner, or dating partner of--
  - (I) a member of the participating tribe; or
  - (II) an Indian who resides in the Indian country of the participating tribe.




---

---

---

---

---

---

---

---

---

---

### Case Consideration

- Limited by geographic jurisdiction
- Limited by relationship
  - Dating: social relationship of a romantic or intimate nature with the victim determined by length, type and frequency
  - Domestic
- Limited by "violence" or offense?




---

---

---

---

---

---

---

---

---

---

### U.S. v. Castleman

Argued Jan. 15, 2014  
 Pilot project began February 2014  
 Decided March 26, 2014




---

---

---

---

---

---

---

---

---

---



### Other Prosecution Case Concerns

- Ake v. Oklahoma, 470 U.S. 68 (1985): Requiring the government to make one expert available to indigent defendants was not an excessive financial burden.
- Miranda v. Arizona, 384 U.S. 436 (1966): Statements made in response to interrogation by a defendant in police custody will be admissible at trial only if the prosecution can show that the defendant was informed of his rights and waived them.
- Protections order v. orders in a criminal matter protecting




---

---

---

---

---

---

---

---

### Pascua Yaqui Tribe Special Domestic Violence Criminal Jurisdiction Experience

---

---

---

---

---

---

---

---

### Pascua Yaqui Tribe

- 2 square mile reservation
- 7 miles from city of Tucson
- Approx. 65 miles from Mexico border
- 19,000+ enrolled tribal members (7 off-reservation communities)
- Approx. 500 non-tribal members reside on reservation
- 799 non-Indian government and casino employees (32% of all employees)




---

---

---

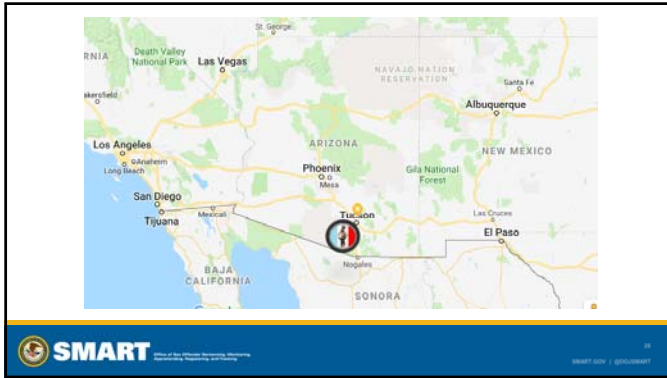
---

---

---

---

---




---

---

---

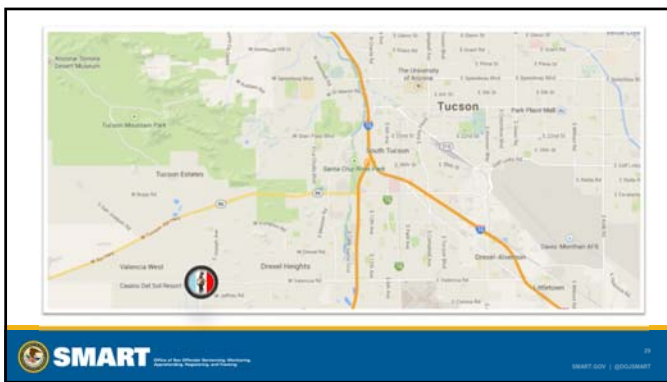
---

---

---

---

---




---

---

---

---

---

---

---

---

**Pascua Yaqui Tribe Demographics**

- Population + 5.1%
- Population: 4,000-5,000 (2010 Census)
- Median age: 24
- Traditional married couples: 32% (state: 48%)
- Female head of household: 42.9% (single mothers) (county: 12.4%)
- Approx. 40-45% of all families live in poverty.
- Unemployment: 24%
- Mortality: Male, 49; Female, 59

SMART logo and text at the bottom.

---

---

---

---

---

---

---

---

**Pascua Yaqui Tribe: VAWA Overview, Year 1**

- 20 during pilot period
- 16 defendants
- 15 male, 1 female
- 86 law enforcement contacts pre- and post-VAWA
- 1 same-sex
- 10 violent injuries
- 3 defendants have re-offended post-VAWA



SMART.GOV | 800.426.8877

---

---

---

---

---

---

---

---

**Pascua Yaqui Tribe: VAWA Overview, Current**

- 68 investigations
- 54 cases charged
- 2 extraditions
- 21 rearrests post-VAWA
- 45 defendants
- 1 same-sex
- Violent offenses
- 32+ children present during acts of domestic violence



SMART.GOV | 800.426.8877

---

---

---

---

---

---

---

---

**PYT v. Garris**

JT Nov. 14, 2014 – Tribe did not sufficiently prove “intimate partner or dating relationship.”  
No verdict as to guilt.



SMART.GOV | 800.426.8877

---

---

---

---

---

---

---

---

### PYT v. Jaimez

May 9, 2017 — the first jury trial conviction of a non-Indian defendant in a Tribal Court since Oliphant decision under the Violence Against Women Act (VAWA) authority.



SMART.GOV | 800.426.8877

---

---

---

---

---

---

---

---

### PYT VAWA Cases Debriefing

- Pretrial Motions / Issue resolution
  - Jury instructions / verdict form
  - Jury pool selection process – objection
  - Court clerk record keeping
  - Motions in limine – tribal court predictability
- Law Enforcement Trial Prep
  - Report writing
  - Evidence collection
- Warrants & Extraditions



SMART.GOV | 800.426.8877

---

---

---

---

---

---

---

---

### PYT Implementation Challenges

- Investigative/defense funds
- Mental health costs (Ake motion)
- Notice issues
- Interpreter issues
- Law enforcement training to establish domestic violence relationship
- Domestic violence trial training
- Access to national criminal databases (NCIC, etc.)
- Cooperation from U.S. Attorney, county attorney and all law enforcement agencies
- Warrant checks to maintain custody



SMART.GOV | 800.426.8877

---

---

---

---

---

---

---

---

**PYT Implementation Challenges (continued)**

- Intergovernmental policies and procedures
- Plea agreements should contain the domestic violence allegation
- Pre-trial services
- Detention facility
- Data collection



SMART.GOV | @DOJSMART

---

---

---

---

---

---

---

---

**Tribal Access Program  
Overview**

---

---

---

---

---

---

---

---

**Tribal Access Program (TAP )**

- U.S. Department of Justice launched TAP in August 2015 at DOJ Criminal Justice Information Services (CJIS) Tribal Day
- Partnership with SMART, Community Oriented Policing Services, Office for Victims of Crime, CJIS, Bureau of Indian Affairs and Tribes
- Managed by the DOJ Chief Information Officer and Office of Tribal Justice



SMART.GOV | @DOJSMART

---

---

---

---

---

---

---

---

### TAP's Three Elements

#### ACCESS

DOJ serves as the CJIS Systems Agency (CSA) for federally recognized Tribes.

DOJ assumes responsibility for granting network access, extending the model used by federal agencies to Tribes.

DOJ ensures security training (i.e., personnel, IT, and physical), on-boarding/vetting (agency and individual users), training and testing, and auditing.

#### TECHNOLOGY

DOJ provides two solutions: TAP-LIGHT and TAP FULL.

TAP-LIGHT provides agencies with the ability to conduct name-based record checks and enter person and property information, while TAP-FULL provides the additional hardware necessary to conduct fingerprint-based criminal and civil record checks and submit arrest booking data.

#### TRAINING

DOJ provides enhanced training and assistance.

TAP provides online and onsite training; assists Tribes in analyzing needs and identifying/providing appropriate solutions to maximize the value of national crime information.



---

---

---

---

---

---

---

---

---

---

### Criminal Justice Agencies

- Law Enforcement / Police Departments
- Criminal Courts
- Prosecutors Office
- Pretrial Services
- Corrections
- Probation and Parole

- Document Tribal arrests and Tribal court dispositions
- Access to enter missing persons information
- Access to investigative records to include DOJ components
- Access unclassified criminal and national security intelligence products



---

---

---

---

---

---

---

---

---

---

### Criminal Justice Agencies (continued)

- Access officer safety-related information, including gang members and known or suspected terrorists
- Enter information to prevent guns from being purchased by prohibited persons
- Enter no contact orders
- Secure, encrypted email to exchange sensitive information
- Search and enter information about persons and property



---

---

---

---

---

---

---

---

---

---

### Civil Agencies

- Sex Offender Registry
- Civil Courts
- Public Housing
- Child Protective Services
- Children's Social Services
- Child Support Enforcement Agencies
- Head Start Program

- Register sex offenders
- Perform fingerprint-based record checks of persons having contact or control over Indian children




---

---

---

---

---

---

---

---

---

---

### Civil Agencies (continued)

- Obtain criminal history record information to respond to or investigate allegations of abuse, neglect and exploitation of children
- Perform fingerprint-based record checks on public housing applicants and tenants
- Enter orders of protection
- Perform record checks to locate absent parents to enforce child support orders




---

---

---

---

---

---

---

---

---

---




---

---

---

---

---

---

---

---

---

---

### Next Steps

Interested in participating in TAP?

- Application period for FY 2020 runs September 1 through October 31, 2019
- Must apply through the Tribe and have Tribal leadership support
- Application available online: <https://www.justice.gov/tribal/tribal-access-program-tap>



SMART.GOV | @DOJSMART

---

---

---

---

---

---

---

---

### Questions?

---

---

---

---

---

---

---

---

### SMART Office

Office of Justice Programs  
U.S. Department of Justice

810 Seventh St. NW      Twitter: @DOJSMART  
 Washington, DC 20531    Facebook: @DOJSMART  
 Phone: 202-514-4689      Facebook: @NSOPW



SMART.GOV | @DOJSMART

---

---

---

---

---

---

---

---



Thank you.



**SMART**  
Supporting Communities | Advancing Justice

Building Solutions | Supporting Communities | Advancing Justice

---

---

---

---

---

---

---