

VAWA 2013 REQUIREMENT CHECKLIST AND SUMMARY SHEET

1. Jury Pools

In order to exercise special domestic violence criminal jurisdiction, a tribe must ensure that non-Indian defendants have the: “right to a trial by an impartial jury that is drawn from sources that—

1. reflect a fair cross section of the community; and
2. do not systematically exclude any distinctive group in the community, including non-Indians.”

Current SALOC:

Section 1-6-1 Eligibility for Jury Duty

(1) Any enrolled or non-enrolled member of the Shoshone or Arapaho Tribes over the age of eighteen who has not been convicted of a felony and who resides on the Wind River Indian Reservation shall be eligible to be a juror.

(2) The chief judge may by rule adopt procedures whereby non-Indians may be summoned for jury duty in cases in which one or more non-Indian parties are involved.

Section 1-6-2 Jury List

Each year the Joint Business Council or the chief judge at the request of the Council, shall prepare a list of eligible jurors, which list shall contain not less than fifty (50) names and which shall contain names of persons from each community prorated as nearly as possible to the relative population of the communities.

Determination: Current code suffice. Can write a court rule if DOJ needs reassurance.

2. Indigent and Effective Assistance of Counsel

Under VAWA 2013, tribes must afford non-Indian offenders with effective assistance of counsel and pay for defense counsel of indigent offenders. Such counsel must be “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.”

VAWA 2013 REQUIREMENT CHECKLIST AND SUMMARY SHEET

Current SALOC:

Rule 4-2-2 Rights of Defendant

In all criminal proceedings, the defendant shall have the following rights:

- (1) To appear and defend himself, in person, with or without counsel, except where he chooses to not appear and forfeit posted bond and the offense is one which can be forfeited.
- (2) Right to Retain Counsel
 - (a) To retain counsel and, in any proceeding where the defendant is under eighteen (18) years of age, to inform the minor and his parents, guardian, or custodian of their right to retain counsel by telling them, "According to the Indian Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing, however, you or your family must pay any fees for such representation which may be required."
 - (b) An indigent defendant shall be entitled to have an attorney or a tribal court advocate appointed to represent him or her at the Tribe's expense in any criminal proceeding in which the Tribe is seeking punishment by loss of liberty. At the initial appearance, the Tribe shall inform the Court whether or not the Tribe seeks punishment by loss of liberty. If the Tribe elects to seek punishment by loss of liberty at any time subsequent to the initial appearance, the Tribe shall notify the Court not later than thirty days before trial, and counsel shall be appointed by the Court.
 - (c) If the charges facing an defendant could result in loss of liberty of one year or more or a fine of greater than \$5,000, or the defendant is facing any length of imprisonment and is charged under the Special Domestic Violence Criminal Jurisdiction defined at 25 U.S.C. §1304, then the defendant shall have the right to an attorney licensed to practice law in both the Wind River Tribal Court and in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.
 - (d) If a defendant facing charges under section (C) above is determined to be indigent, then the Court will appoint an attorney licensed to practice law in both the Wind River Tribal Court and in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys at the Tribe's expense.

VAWA 2013 REQUIREMENT CHECKLIST AND SUMMARY SHEET

- (e) A defendant may waive his or her rights to counsel in writing, after the court has determined that he or she knowingly, intelligently and voluntarily desires to forego them. A defendant may withdraw a waiver of the right to counsel at any time, but will not be allowed to repeat any proceeding already held solely on the grounds of the waiver and consequent lack of counsel
- (3) To be informed of the nature of the charges against him and to have a copy thereof.
- (4) To testify in his own behalf, or to refuse to testify, however, if he chooses to Testify he will be deemed to have waived this right.
- (5) To confront and cross examine all witnesses against him.
- (6) To compel by subpoena the attendance of witnesses in his own behalf.
- (7) To have a speedy public trial by an impartial judge and jury as provided in these rules.
- (8) To appeal as provided in this code.
- (9) To not twice be put in jeopardy for the same offense.
- (10) To be allowed reasonable bail or bond.

Determination: Need, highlighted area is the suggested addition to the code to address need.

3. Court Processes & Reforms

VAWA 2013 requires that a tribal judge overseeing a SDVCJ case has:

1. “Sufficient legal training to preside over criminal proceedings; and
2. “Licensed to practice law by any jurisdiction in the United States

Determination: This can be done with tribal resolution and applying it to the court. Presently requirements are used in the 638 judicial services proposal and in advertisements.

4. Victim’s Rights & Safety

Determination: Need, see Domestic and Family Violence code addition.

- The purpose of this code is to recognize domestic violence and family violence as serious crimes against society, the Tribes, and the family, and to provide the victim of domestic violence or family violence the maximum protection from further violence that the law, and those who enforce the law, can provide. Furthermore, the purpose of this chapter is to recognize that the strength of the Tribes is founded on healthy families, and that the safety of victims of domestic

VAWA 2013 REQUIREMENT CHECKLIST AND SUMMARY SHEET

and family violence, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.

- It is the intent of the Tribes that the official response of domestic violence and family violence shall stress the enforcement of the laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Tribes' policy that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated. This in turn will promote healing of families and the Tribes where possible, and promote cultural teachings and traditional Tribal values so as to nurture nonviolence and respect within families. This chapter shall be interpreted and applied to give it the broadest possible scope to carry out these purposes.

5. Definition of offenses

Incorporate the statutory definitions of domestic and dating violence. However, the tribal code expands on other behavior that constitutes domestic violence.

Determination: See 4.

6. Notice

Determination: Need, will address after passage code with news stories and public notices.