

Tribal Court Jurisdiction after VAWA 2013: A Tribal Perspective

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Chapter 4.25

DOMESTIC VIOLENCE

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Article I. General Provisions

4.25.010 Purpose.

The purpose of this chapter 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 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 Tulalip 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. [Res. 2013-379; Ord. 117 § 1.1, 11-5-2001 (Res. 2001-365)].

4.25.020 Legislative findings.

It is the intent of the Tulalip Board of Directors and the Tribal community that the official response to domestic violence and family violence shall be that the Tribes will not tolerate or excuse violent behavior under any circumstances. All people, whether they are elders, male, female, or children of our Tribes, or of the entire community residing on the Tulalip Reservation, are to be cherished and treated with respect.

Domestic violence and family violence are not acceptable and are contrary to traditional Tulalip Tribal culture and values of honoring the family, and are contrary to the interest of our community and sense of well-being and growth. Domestic violence and family violence will not be tolerated.

The Tribes finds that domestic violence and family violence imperil the very subsistence of the Tribal community and the residents of the Reservation. The Tribes recognizes the Department of Justice findings that one in three Native women is sexually assaulted in her lifetime and that 70 percent of reported assaults are committed by non-Native men against Native women. A community response to domestic and family violence is necessary because domestic and family violence crimes and incidents impact the community as a whole. These crimes redirect Tribal resources – whether personnel, financial, public safety or other resources – elsewhere and require an immediate response. As a result of this impact on Tribal resources, the Tribes deems it necessary to address domestic violence and family violence to the fullest extent permitted by laws existing now or as may be adopted or amended in the future.

The Tribes further recognizes that there is a distinction between intimate partner domestic violence and family member violence. Domestic violence involves an intimate partner relationship and dynamics of power and control are overwhelmingly present in the action. Family violence is committed against all

other family or household members. Both are reprehensible actions that require specialized recognition and enhanced provisions than what might be otherwise available to victims of crimes, or remedies available in civil actions. [Res. 2013-379].

4.25.030 General jurisdiction.

Jurisdiction over domestic and family violence matters shall be in accordance with TTC Title [2](#). In addition, the Tulalip Tribal Court shall retain jurisdiction over members of Federally recognized Indian tribes and any violations of orders of protection entered pursuant to this chapter which are alleged to have occurred outside of the boundaries of the Tulalip Indian Reservation where such orders are entitled to recognition outside Reservation boundaries as a matter of full faith and credit. [Res. 2013-379; Ord. 117 § 1.2, 11-5-2001 (Res. 2001-365). Formerly 4.25.020].

4.25.040 Special domestic violence criminal jurisdiction.

(1) The Tulalip Tribes hereby exercises “special domestic violence criminal jurisdiction” as a “participating tribe,” as defined within [25](#) U.S.C. [1304](#) (2013), subject to applicable exceptions defined therein, in the Tulalip Tribes Domestic Violence Court.

(2) In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Chapter [2.25](#) TTC shall apply and those enumerated in the Indian Civil Rights Act, [25](#) U.S.C. [1302](#) to all defendants. Should there be any inconsistency between Chapter [2.25](#) TTC and [25](#) U.S.C. [1302](#), those of [25](#) U.S.C. [1302](#) shall apply.

(3) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Tulalip Tribes and may petition the Court to stay further detention pending the habeas proceeding.

(a) A court shall grant a stay if the court:

(i) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(ii) After giving each alleged victim in the matter 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.

(4) The Tulalip Tribes hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

(a) Resides within the jurisdiction of the Tulalip Tribes; or

(b) Is employed within the jurisdiction area of the Tulalip Tribes; or

(c) Is a spouse, intimate partner, or dating partner of:

(i) A member of the Tulalip Tribes; or

(ii) A member of another Indian tribe who resides within the jurisdiction of the Tulalip Tribes. [Res. 2013-379].

4.25.050 Special jurisdiction – Criminal conduct applicable.

The Tulalip Tribes exercises the special domestic violence criminal jurisdiction of a defendant for criminal conduct that falls into one or more of the following categories:

(1) Domestic Violence and Dating Violence. An act of domestic violence or dating violence that occurs within the jurisdiction of the Tulalip Tribes.

(2) Violations of Protection Orders. An act that occurs within the jurisdiction of the Tulalip Tribes, and:

(a) Violates the portion of a protection order that:

(i) Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;

(ii) Was issued against the defendant;

(iii) Is enforceable by the Tulalip Tribes; and

(iv) Is consistent with [18 U.S.C. 2265\(b\)](#). [Res. 2013-379].

4.25.060 Statute of limitations.

For purposes of this chapter, the statute of limitations shall be consistent and follow TTC [3.05.080](#) or any successor code. [Res. 2013-379].

4.25.070 Nonwaiver of sovereign immunity.

Nothing in this chapter shall be deemed to constitute a waiver by the Tulalip Tribes of its sovereign immunity for any reason whatsoever. [Res. 2013-379; Ord. 117 § 1.3, 11-5-2001 (Res. 2001-365). Formerly 4.25.030].

4.25.080 Severability.

If any part, or parts, or the application of any part of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter. The Tulalip Tribes Board of Directors hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts or application of any part thereof would be declared invalid. [Res. 2013-379; Ord. 117 § 1.4, 11-5-2001 (Res. 2001-365). Formerly 4.25.040].

4.25.090 Savings.

This chapter takes effect on the date approved by the Tulalip Board of Directors and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this chapter and such code shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty therefrom, forfeiture or liability.

4.25.410 Victim rights.

Notwithstanding other provisions of the Tulalip Tribal Code, a victim of a crime under this chapter shall have the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public Court proceeding, or any probation proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public Court proceeding, unless the Court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in Court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the Prosecutor in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (9) The victim has the right to provide a victim impact statement.

A victim impact statement is a written or oral statement given to the sentencing judge by the victim. Such statements may include the impact of the crime on the victim, and how the crime affected the victim psychologically, financially, and physically. The Prosecutor shall assist the victim to provide this statement. The Court shall make all reasonable efforts to accommodate the participation of the victim at the sentencing hearing, being mindful of the unique emotional and psychological barriers victims may experience when facing a perpetrator in Court. [Res. 2013-379; Ord. 117 § 1.15, 11-5-2001 (Res. 2001-365). Formerly 4.25.150].

JURY TRIALS

2.05.110 Juries.

(1) Jury Pool. A list of eligible jurors shall be prepared by the Court. The eligible juror list shall be updated from time to time, but no less than once in each year. The Court shall provide for the selection of names of persons eligible for service as jurors. Jurors shall be 18 years of age or older and, notwithstanding any other law of the Tulalip Tribes or any of its agencies, shall be chosen from the following classes of persons:

- (a) Tribal members living on or near the Tulalip Indian Reservation;
- (b) Residents of the Tulalip Indian Reservation; and
- (c) Employees of the Tulalip Tribes or any of its enterprises, agencies, subdivisions, or instrumentalities who have been employed by the Tribes for at least one continuous year prior to being called as a juror.

Right to Counsel

2.05.030(8) Right to Counsel. Any person appearing as a party in Tribal Court shall have the right to counsel at his or her own expense. "Counsel" includes attorneys and spokespersons. Such counsel shall be of the parties' own choosing and need not be an attorney or admitted to practice before the bar of any state, but must be members of the Tulalip Tribal Bar. Indigent persons charged with a felony crime shall be appointed an attorney at the Tribes' expense at all critical stages of a criminal proceeding, up to and through trial.

2.25.070 Rights of the defendant in a criminal proceeding.

(1) Presence of the Defendant. Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

(2) Rights of the Defendant. In all criminal proceedings, the defendant shall have the following rights:

- (a) To be free from excessive bail and cruel punishment;
- (b) To defend in person or by counsel;
- (c) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;
- (d) To confront and cross-examine all prosecution or hostile witnesses;

(e) To compel by subpoena:

(i) The attendance of any witnesses necessary to defend against the charges; and

(ii) The production of any books, records, documents, or other things necessary to defend against the charges;

(f) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;

(g) To appeal any final decision of the Tribal Court to the Tribal Court of Appeals;

(h) To be tried only once by the Tribal Court for the same offense;

(i) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and

(j) To petition for a writ of habeas corpus.

(3) Right to Counsel. During the initial appearance before the Court, every defendant must be informed of the right to have counsel at his or her own expense or the right to apply for appointment of counsel. If the defendant wishes to obtain counsel, or is found to be ineligible for appointed counsel, the Court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause. If the defendant is being charged with a felony crime, with potential sentencing in excess of one year:

(a) The defendant shall have the right be represented by an attorney who is a member of the Tulalip Tribal Bar and who is 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; and

(b) If the defendant is indigent, the Court shall, at the Tribes' expense, provide the defendant with an attorney meeting the qualifications in subsection (3)(a) of this section at all critical stages of the criminal proceeding.

(4) Right to a Jury Trial. A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six fair and impartial jurors. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(5) Subsequent Prosecutions. A subsequent prosecution is allowed when the previous prosecution was properly terminated under any of the following circumstances:

- (a) The defendant consents to the termination or waives, by motion, an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;
- (b) The Tribal Court finds that a termination, other than by acquittal, is necessary because:
 - (i) It is impossible to proceed with the trial in conformity with the law;
 - (ii) There is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;
 - (iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;
 - (iv) The jury cannot agree upon a verdict; or
 - (v) A false statement of a juror on voir dire prevents a fair trial;
- (c) The subsequent prosecution was for an offense which was not completed when the former prosecution began; or
- (d) There was a transfer of jurisdiction to another authority.

The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without prejudice upon a pretrial motion; or discharge for want of prosecution without a judgment of acquittal.

(6) Writ of Habeas Corpus.

(a) Availability of Writ.

- (i) Except as provided in subsection (6)(a)(ii) of this section, every person within the jurisdiction of the Tulalip Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.
- (ii) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

(iii) When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

(b) Issuance of Writ.

(i) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Clerk of the Court. It must specify:

(A) That the petitioner is unlawfully imprisoned or restrained of liberty;

(B) Why the imprisonment or restraint is unlawful; and

(C) Where or by whom the petitioner is confined or restrained.

(ii) The parties to a writ, namely the Tulalip Prosecutor, Chief Judge of the Tribal Court, and the Tulalip Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.

(iii) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.

(c) Granting of the Writ. Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.

(d) Time of Issuance and Requirements for Service.

(i) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Tribal Prosecutor and Chief Judge of the Tribal Court.

(ii) The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal Prosecutor.

(iii) The writ must be served by a Tribal Police Officer, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice, the Court, or the employee of any correctional facility in which the petitioner is held.

(e) Return of the Writ. The Prosecutor or his or her designee shall make a return and state in that return:

(i) Whether the person is in custody or under that person's power of restraint; and

(ii) If the person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(iii) If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

The return must be signed and verified by affirmation.

(f) Hearing. The Chief Judge commanded by the writ shall cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

(g) Refusal to Obey Writ Is Contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

(h) Disposition of Petitioner. If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

(7) Right to a Speedy and Public Trial. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail, whether or not subjected to conditions of release pending trial, shall be brought to trial not later than 90 days after the date of arraignment. The following extensions of time limits apply, notwithstanding the preceding time limits:

(a) Revocation of Release. A defendant whose release has been revoked by the Court shall be brought to trial no later than 60 days following the revocation or previously scheduled trial date, whichever is sooner.

(b) Failure to Appear. When a defendant fails to appear for any hearing, all future hearings shall be stricken from the Court calendar and a bench warrant will issue. Such failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the Judge, the speedy trial clock begins at zero.

(c) Trial Preparation Time. The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.

(d) Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the Court, even if the time for trial has expired, may extend the time within which trial must be held in increments of no more than five judicial days unless the defendant will be substantially prejudiced in his or her defense. The Court must state on the record or in writing the reasons for the extension.

(i) Disqualification of Judge. In the event that the trial Judge is disqualified by affidavit or by recusal under TTC [2.05.060](#), the speedy trial date shall be extended beyond its current expiration by 15 days.

(e) Continuances. The Court may continue a trial beyond the speedy trial period as follows:

(i) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the Court on the record or in writing.

(ii) On motion of the Tribal Prosecutor, the Court, or a party, the Court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The Court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(f) Computation of Time. The following periods shall be excluded in computing the time for arraignment and the time for trial:

(i) All proceedings relating to the competency of a defendant to stand trial, terminating when the Court enters a written order finding the defendant to be competent;

(ii) Preliminary proceedings and trial on another charge;

(iii) The time during which a defendant is detained in jail or prison by authorities other than the Tulalip Tribes and the time during which a defendant is subjected to conditions of release not imposed by a Court of the Tulalip Tribes; and

(iv) All proceedings in Juvenile Court.

(g) Waiver. A defendant may waive the right to a speedy trial. Such waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain. [Res. 2013-102; Res. 2012-445 § 9; Ord. 49 § 5.7, 1-8-2010 (Res. 2010-10)].

**Tribal Code Development Checklist for Implementation
of Special Domestic Violence Criminal Jurisdiction**

Prepared by NCAI For the Intertribal Work Group by Natasha Anderson, Staff Attorney

Last updated: July 2014

This checklist is designed as a tool to assist tribal governments seeking to develop tribal codes that implement Special Domestic Violence Criminal Jurisdiction (SDVCJ) over all persons with their jurisdiction, pursuant to Section 904 of the Violence Against Women Reauthorization Act of 2013, Public Law 113-4, codified in the Indian Civil Rights Act at 25 U.S.C. 1304.

This is not a definitive guide to SDVCJ full implementation requirements, but is intended as aid to drafting tribal codes that comply with federal law. Tribes are advised to consult with the text of the law to ensure that tribal laws, policies, procedures, and practices conform with the entirety of VAWA Section 904 requirements. Tribal governments will likely be amending existing criminal codes, and every tribe faces different circumstances, so tribes will need to develop codes that are tailored to those unique needs. There are likely a variety of ways to draft tribal codes that comply with federal law.

This checklist includes VAWA Section 904's statutory requirements, along with a separate list of other matters that may be important for each tribe to consider. Some "mandatory" items aren't statutorily required but are practically necessary. (For example, it may be possible to draft a tribal code without a definitions section, but definitions are likely needed because of the technical definitions in the federal statute).

This version includes citations to existing tribal codes implementing the new law ([Umatilla Criminal Code](#); and [Tulalip Tribes](#) Chapter 4.25 Domestic Violence). While the [Eastern Band Cherokee](#) are still in the process of amending their code to include provisions of VAWA 2013, they have implemented TLOA's enhanced sentencing and relevant citations are included. We will add new citations as

additional tribal codes are available. In the future, the checklist could be adapted to include space for users to fill in their jurisdictions' statutes, policies, and procedures.

VAWA Section 904 becomes fully effective on March 7, 2015. Until then tribes wishing to implement the law must receive approval from the Attorney General pursuant to the Pilot Project identified in VAWA Section 908. On November 29, 2013, the DOJ published the [Final Notice](#) for the Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence. Appended to the Final Notice is the [Application Questionnaire](#) by which tribes can request approval to implement SDVCJ on an accelerated basis (i.e., before March 7, 2015).

Required or Necessary Elements of a Tribal Code and Procedures

1) Constitution

Review the tribal constitution to ensure that there are no barriers to the assertion of SDVCJ.

See, Fort Peck Tribes, Article VII amended language.

2) Definitions

See, 25 USC 1304(a).

See, Umatilla Criminal Code, Section 1.01(W), (X) and (Y).

See, Tulalip Tribes Criminal Code, Section 4.25.100.

3) Statement of Tribal Jurisdiction

See, 25 USC 1304(b).

See, Umatilla Criminal Code, Section 1.02(B) and (C).

See, Tulalip Tribes Criminal Code, Sections 4.25.040(4) and 4.25.050.

See, Eastern Band of Cherokee Criminal Code, Section 14-1.5.

4) Offenses: Domestic and Dating Violence, Violations of Protective Orders

See, 25 USC 1304(c).

See, Umatilla Criminal Code, Part X, Crimes of Domestic or Family Abuse.

See, Tulalip Tribes Criminal Code, Section 4.25.050.

See, Eastern Band of Cherokee Criminal Code, Section 14-40.1.

5) Rights of Defendants

a. General Application of Indian Civil Rights Act

See, 25 USC 1304(d)(1).

See, Umatilla Criminal Code Section 3.28(A).

See, Tulalip Tribes Criminal Code, Section 4.25.040(2).

See, Eastern Band of Cherokee Criminal Code, Section 15-7.

b. Jury Drawn from Fair Cross Section

See, 25 USC 1304(d).

See, Umatilla Criminal Code Section 3.19 and 3.28.

See, Tulalip Tribes Criminal Code, Section 2.05.110.

c. Notice of Right to Habeas Corpus and Petition for Stay of Detention

See, 25 USC 1304(e)(3).

See, Umatilla Criminal Code Section 3.11(D) and 3.28 (and related notice for defendants).

See, Tulalip Tribes Criminal Code, Section 4.25.040(3).

d. Right to Counsel

See, 25 USC 1302(c).

See, Umatilla Criminal Code Section 3.11(D) and 3.28.

See, Tulalip Tribes Criminal Code, Sections 2.05.30(8), (10); 2.25.070(3).

See, Eastern Band of Cherokee Criminal Code, Section 15 Appendix A, Rule 26.

e. Qualifications of Judges – procedures could be outside of tribal code.

See, 25 USC 1302(c).

See, Umatilla Court Code Section 2.02.

See, Tulalip Tribes Criminal Code, Section 2.05.040.

See, Eastern Band of Cherokee Criminal Code, Section 7-8.

- f. Recording of Proceedings – procedures could be outside of tribal code.
See, 25 USC 1302(c).
- g. Publication of Laws – procedures could be outside of tribal code.
See, 25 USC 1302(c) – including laws, regulations, interpretive documents, rules of evidence and rules of criminal procedure.

See, <http://www.codepublishing.com/wa/Tulalip/>; <http://ctuir.org/laws.html>.

Additional Matters for Consideration Related to Tribal Code Development

- 1) Legislative Findings.
See, Tulalip Tribes Criminal Code, Section 4.25.020.
See, Umatilla Criminal Code, Appendix A: Legislative History.
- 2) Savings Clause: See, Tulalip Tribes Criminal Code, Section 4.25.090: “This Chapter takes effect on the date approved by the Tulalip Board of Directors and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this Chapter and such code shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty there from, forfeiture or liability.”
- 3) Victims’ Rights, Safety and Accountability: Tribes are strongly encouraged to provide victim services and secure victim rights in order to enhance victim safety, support victim participation in prosecutions, and prevent future violence. While many of the requirements necessary to exercise SDVCJ protect the rights of defendants, tribes should also implement laws, policies, and practices that keep victims and their children safe and hold offenders accountable. Training and collaboration among law enforcement, prosecutors, court personnel, victim advocates and others are key to promoting best practices in this area.

See, Tulalip Tribes Criminal Code, Section 4.25.410, and sections 4.25.130; 4.25.350; and 4.25.400.

See, Federal Victims’ Rights Act, 18 U.S.C. 3771.

4) Mandatory Arrest provision.

See, Umatilla Criminal Code Section 4.85(C).

See, Tulalip Tribes Criminal Code, Sections 4.25.150 and 4.25.200.

5) Domestic Violence Offender Gun Bans

A number of jurisdictions are restricting the gun rights of convicted domestic violence offenders and persons subject to protective orders.

See, Tulalip Tribes Criminal Code, Section 4.25.190.

6) Notice and Community Engagement

- Notice will advance goal of creating deterrent.
- Key opportunity to educate about domestic violence.
- Develop community support for changes in tribal codes.
- Non-Indians within tribal community will be on the juries and subject to tribal laws.
- If tribal employees included, consider notice in human resource materials.
- Notice an element of consent argument regarding jurisdiction.

7) Guidance for Law Enforcement on Detaining Non-Indian Offenders and DV Generally:

Tribal police should receive guidance and training on promoting victim safety while exercising the authority to arrest and detain offenders and affording the right to due process. Training may also be needed for other tribal employees, social services, etc.

8) Detention

Review and determine status of tribe's detention facilities, including any limitations on detention of non-Indians. Review health care and treatment policies for inmates. Consider needs for medical parole.

9) Jury Selection Plan.

Tribes may wish to develop a jury selection plan that explains how the tribal court will choose a jury pool that represents a fair cross section of the community. The plan may address the "community" that will be subject to jury summons.

10) Separate Domestic Violence Court or Docket

Some tribes are considering the development of a separate Domestic Violence Court or docket, to ensure that all DV offenders are treated equally, and to ensure appropriate services and protections are provided to victims and offenders.

See, Tulalip Tribes Criminal Code, Title 4.25, Article III.

11) Probation

Tribal code provisions on probation may need review to ensure that tribal courts are able to impose conditions on the probation of non-Indian defendants.

12) Juvenile Codes

Tribal code provisions on juveniles may need review to address situations where a non-Indian juvenile could be treated as an adult for domestic or dating violence offenses.

See, Tulalip Tribes Criminal Code, Section 4.25.460.

13) Complaint – Elements of a charging document

See, Umatilla Criminal Code, Section 3.03.

14) Federal Criminal Databases

Tribal code could address the provision of information on tribal convictions and protective orders to the National Criminal Information Center (NCIC) and other criminal information databases in order to facilitate sentencing for repeat offenders and assist in the enforcement of protective orders.

15) Relationship to Customary and Traditional Laws

Many tribes have customary and traditional laws that are important to protect. A full system of defendant's rights is not required if there is no sentence of incarceration. Temporary or permanent exclusion from reservation could be conditioned on sentencing to treatment or rehabilitation. Some questions were raised, however, regarding the need for strict oversight of DV offenders.

16) Retaining existing tribal justice systems

Some tribes may need to retain their existing justice systems and implement SDVCJ as a stand-alone offense that would be applied only as needed.

17) Neutral Language

Use of term “person” vs. “Indian” or “non-Indian”

See, Tulalip Tribes Criminal Code, Title 4.25 (uses “person” throughout).

18) Individual Tribal Consultation

The Department of Justice has indicated that it is willing to consult with any tribe on particular issues that arise during the development of their tribal code.