

APPENDIX

APPLICATION QUESTIONNAIRE FOR THE VAWA PILOT PROJECT ON TRIBAL CRIMINAL JURISDICTION

Instructions

Completing this Application Questionnaire is a necessary step for any Indian tribe that wishes to commence exercising special domestic violence criminal jurisdiction (SDVCJ) on an accelerated basis (i.e., prior to March 7, 2015) under the voluntary Pilot Project described in section 908(b)(2) of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Please review this Application Questionnaire in its entirety before beginning to fill it out.

It is the Tribe's responsibility to ensure that the application is complete and accurate. To the extent that future changes in the Tribe's laws, rules, policies, or personnel render the answers incomplete or inaccurate during the Pilot Project (i.e., prior to March 7, 2015), the Tribe's authorized point of contact (POC) will have the responsibility of providing the Department of Justice with updated information.

Most questions can be answered with a "Yes" or a "No." If the Tribe wishes to provide a longer answer to a particular question, the Tribe should please feel free to attach additional pages, but on each additional page please identify by number the question(s) being answered.

Most questions expressly call for "relevant legal materials." When answering these questions, any of the following types of legal materials might be relevant:

- Tribal constitutional provisions
- Tribal code or statutory provisions
- Tribal court rules, such as tribal rules of criminal procedure, tribal rules of evidence, or tribal rules of appellate procedure
- Tribal judicial opinions
- Tribal court administrator's or clerk's manuals
- Tribal regulations
- Tribal administrative orders
- Tribal written policies

- Tribal written procedures
- A concise written description of an otherwise unwritten tribal practice (whether or not the practice is based in the Tribe's customs or traditions)

These “relevant legal materials” will form the core of the Tribe’s application, so please be sure (1) to include all legal materials that are actually relevant to the question whether the Tribe’s criminal justice system has adequate safeguards in place to protect defendants’ rights, consistent with 25 U.S.C. 1304, and (2) not to include irrelevant materials, as doing so may slow down the review process that the Departments of Justice and the Interior are statutorily required to undertake. In determining which legal materials are relevant, the Department recommends that the Tribe review the materials created or gathered by the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG) and the list of substantive questions appended to the Department’s June 2013 *Federal Register* notice, see 78 FR 35961, 35969-74 (June 14, 2013).

These “relevant legal materials,” collected from the tribes that successfully apply to participate in Phase Two of the Pilot Project, eventually will be made publicly available on the Department of Justice’s website. The posted materials will serve as a resource for other tribes, including those that may elect to commence exercising SDVCJ after the Pilot Project has concluded.

The Tribe may submit “relevant legal materials” in either of two ways. First, if the particular document (e.g., a tribal code provision or court rule) is freely and publicly available on the Internet, the Tribe may provide a full legal citation to the precise material that the Tribe deems relevant to answering the question, such as a specific subsection of a tribal code provision, along with the exact URL (i.e., Web address) where the material can be found on the Internet. Second, the precise material that the Tribe deems relevant to answering the question

may be attached to the Tribe's completed Application Questionnaire as an electronic copy (if the Tribe is submitting the application by e-mail) or as a paper copy (if the Tribe is submitting the application by mail).

Please send the completed Application Questionnaire, along with all attachments, by e-mail (or, if necessary, by mail) to:

Office of Tribal Justice
Department of Justice
950 Pennsylvania Avenue, NW, Room 2310
Washington, DC 20530
E-Mail: OTJ@usdoj.gov

If you have questions or need assistance, please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, at (202) 514-8812 (not a toll-free number).

A tribe may apply at any time before March 7, 2015. All applications received at any time within 30 days after the publication of the Department of Justice's final notice in the *Federal Register* (i.e., the final notice to which this Application Questionnaire is appended) will be given the same priority consideration. There is no advantage to be gained by submitting an Application Questionnaire immediately after publication of the final notice. The Tribe should ensure that it completely and accurately answers all questions and attaches all relevant legal materials.

The Department of Justice will not consider an application that is incomplete, but will attempt to notify the Tribe's POC regarding any deficiencies. The Tribe may submit a revised application at any time prior to March 7, 2015. Final decisions regarding whether or when a tribe may commence exercising SDVCJ on an accelerated basis are not appealable.

Questions

The Right to Trial by an Impartial Jury

1. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe provide to the defendant 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? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

The Right to Effective Assistance of Counsel

2. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

The Right to Indigent Defense Counsel

3. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to each indigent defendant, at no cost to the defendant, the right to the assistance of a defense attorney 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? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

4. For each licensed defense attorney that the Tribe anticipates will be appointed to represent an indigent defendant in a criminal proceeding in which the Tribe will exercise SDVCJ during the Pilot Project (i.e., prior to March 7, 2015) and in which a term of imprisonment of any length may be imposed, please provide a list of all jurisdictions in which the defense attorney is licensed to practice law. Please provide a separate list of jurisdictions for each attorney (who can be identified either by name or anonymously as “Attorney 1,” “Attorney 2,” etc.).

The Right to a Law-Trained, Licensed Judge

5. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the defendant the right to a criminal proceeding presided over by a judge who has sufficient legal training to preside over criminal proceedings and is licensed to practice law by any jurisdiction in the United States? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.
6. For each judge that the Tribe anticipates will preside over a criminal proceeding in which the Tribe will exercise SDVCJ during the Pilot Project (i.e., prior to March 7, 2015) and in which a term of imprisonment of any length may be imposed, please provide (a) a brief description of the judge’s legal training to preside over criminal proceedings and (b) a list of all jurisdictions in which that judge is licensed to practice law. Please provide a separate answer for each judge (who can be identified either by name or anonymously as “Judge 1,” “Judge 2,” etc.).

The Right to Publicly Available Laws and Rules

7. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe, prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

The Right to Records of the Criminal Proceeding

8. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

The Right to Timely Notice of Federal Habeas Corpus Rights and Privileges

9. Will the Tribe provide to each person detained by order of the Tribe timely notice of the person’s rights and privileges to file in a court of the United States a petition for a writ of habeas corpus under 25 U.S.C. 1303 and a petition to stay further detention under 25 U.S.C. 1304(e)? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right to timely notice.

Other Rights Protected by the Indian Civil Rights Act of 1968

10. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe provide to the defendant all applicable rights under the Indian Civil Rights Act of 1968, as amended, including but not limited to (a) the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, and not to be subjected to a warrant unless it was issued upon probable cause, was supported by oath or affirmation, and particularly described the place to be searched and the person or thing to be seized; (b) the right not to be twice put in jeopardy for the same offense; (c) the right not to be compelled to be a witness against himself; (d) the right to a speedy and public trial; (e) the right to be informed of the nature and cause of the accusation; (f) the right to be confronted with the witnesses against him; (g) the right to have compulsory process for obtaining witnesses in his favor; (h) the right to be free from excessive bail; (i) the right to be free from excessive fines; (j) the right against cruel and unusual punishments; (k) the right to the equal protection of the Tribe's laws; (l) the right not to be deprived of liberty or property without due process of law; (m) the right not to be subjected to an ex post facto law; and (n) the right to a trial by jury of not less than six persons? Please answer "Yes" or "No." Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect these rights.

Tribal Criminal Jurisdiction

11. Will the Tribe exercise SDVCJ over a defendant only for criminal conduct constituting, within the meaning of 25 U.S.C. 1304, either (a) an act of domestic violence or dating violence that occurs in the Indian country of the Tribe, or (b) an act that occurs in the Indian country of the Tribe and violates the portion of a protection order that (1) 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; (2) was issued against the defendant; (3) is enforceable by the Tribe; and (4) is consistent with 18 U.S.C. 2265(b)?¹ Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

12. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe convict a non-Indian defendant at trial only if the Tribe proves that the alleged victim is an Indian? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

13. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe convict a defendant at trial only if the Tribe proves that the defendant resides in the Indian country of the Tribe; is employed in the Indian country of the Tribe; or is a spouse, intimate partner, or dating partner either of a member of the Tribe or of an Indian who resides in the Indian country of the Tribe? Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

Other Considerations

14. This final question is optional. If the Tribe believes it would be helpful to the Departments of Justice and the Interior in fulfilling their statutory duties related to the Pilot Project, the Tribe may provide any additional information or relevant legal materials addressing the Tribe’s readiness to commence exercising SDVCJ on an accelerated basis

¹ A protection order issued by a state, tribal, or territorial court is consistent with 18 U.S.C. 2265(b) if “such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and . . . reasonable notice and 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 State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.” 18 U.S.C. 2265(b).

while protecting defendants' rights, consistent with 25 U.S.C. 1304. Additional information or relevant legal materials may focus on any of the following topics: (a) the Tribe's history of compliance with the Indian Civil Rights Act of 1968, as amended; (b) the Tribe's recent history, following the 2010 enactment of 25 U.S.C. 1302(b)-(c), of imposing total terms of imprisonment of more than one year; (c) the Tribe's formal or informal policies for coordinating with federal or state criminal investigators and prosecutors in cases where the Tribe may have concurrent criminal jurisdiction; (d) the Tribe's efforts to combat domestic violence and dating violence, including issuing and enforcing protection orders; (e) the Tribe's efforts to protect the rights and safety of victims of domestic violence and dating violence; (f) the Tribe's methods for summoning, selecting, and instructing jurors; (g) the Tribe's efforts to strengthen law enforcement, prosecution, trial and appellate courts, probation systems, detention and correctional facilities, alternative rehabilitation centers, culturally appropriate services and assistance for victims and their families, criminal codes, rules of criminal procedure, rules of appellate procedure, rules of evidence, and the capacity of law enforcement or court personnel to enter information into and obtain information from national crime information databases; (h) the Tribe's needs for training, technical assistance, data collection, and evaluation of the Tribe's criminal justice system; (i) the date on which the Tribe would like to commence exercising SDVCJ under the Pilot Project; (j) the Tribe's plans to notify the public before commencing to exercise SDVCJ; and (k) any other pertinent topic that the Tribe would like the Departments of Justice and the Interior to consider when reviewing the Tribe's Application Questionnaire.

Certifications

The completeness and accuracy of this Application Questionnaire must be certified by (1) the chief executive officer of the Tribe (e.g., the tribal chairperson, president, governor, principal chief, or other equivalent official); (2) the chief judicial officer of the Tribe (e.g., the tribal chief justice, chief judge, or other equivalent official); (3) the chief legal officer of the Tribe (e.g., the tribal attorney general, attorney, general counsel, or other equivalent official); and (4) the person authorized by the Tribe’s governing body to be the Tribe’s point of contact (POC) for the Department of Justice in this application process. The POC may be either one of the three officers listed above or a fourth individual selected by the Tribe’s governing body. Each of these individuals must sign and certify the Application Questionnaire below.

Certification of the Tribe’s Chief Executive Officer

1. I am the chief executive officer of _____ [enter the name of the requesting tribe] (“the Tribe”).
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect defendants’ rights, consistent with 25 U.S.C. 1304.

Signature:

Date:

Name:

Title or Position:

Address:

City/State/Zip:

Phone:
FAX:
E-mail:

Certification of the Tribe's Chief Judicial Officer

1. I am the chief judicial officer of _____ [enter the name of the requesting tribe] ("the Tribe").
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the "Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence" published by the Department of Justice in the *Federal Register* on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304.

Signature:
Date:
Name:
Title or Position:
Address:
City/State/Zip:
Phone:
FAX:
E-mail:

Certification of the Tribe's Chief Legal Officer

1. I am the chief legal officer of _____ [enter the name of the requesting tribe] (“the Tribe”).
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the “Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence” published by the Department of Justice in the *Federal Register* on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect defendants’ rights, consistent with 25 U.S.C. 1304.

Signature:

Date:

Name:

Title or Position:

Address:

City/State/Zip:

Phone:

FAX:

E-mail:

Certification of the Tribe’s Point of Contact

1. I have been authorized by the governing body of _____ [enter the name of the requesting tribe] (“the Tribe”) to serve as the Tribe’s point of contact (POC) with the Department of Justice for purposes of the VAWA Pilot Project.

2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the “Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence” published by the Department of Justice in the *Federal Register* on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to assist the Department of Justice in fulfilling its statutory duty to determine whether the criminal justice system of the Tribe has adequate safeguards in place to protect defendants’ rights, consistent with 25 U.S.C. 1304, I will make best efforts, for the remainder of the Pilot Project’s duration (i.e., prior to March 7, 2015), to promptly answer written or oral questions from the Departments of Justice and the Interior about the Tribe’s criminal justice system; to promptly update any answers to this Application Questionnaire if they become incomplete, inaccurate, or outdated; to promptly fix any omissions in the Application Questionnaire; and to promptly submit to the Department of Justice any additions, deletions, or corrections to the Application Questionnaire.

Signature:
Date:
Name:
Title or Position:
Address:
City/State/Zip:
Phone:
FAX:
E-mail: