



BACKGROUND

The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) recognized the authority of participating Tribes to exercise “special domestic violence criminal jurisdiction” (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit crimes of domestic violence or dating violence or violate certain protection orders in Indian country.¹ The Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022) amended this statute, effective October 1, 2022, to cover additional crimes, among other changes to the jurisdiction, and renamed it “special Tribal criminal jurisdiction (STCJ).”² The list of “covered crimes” is: assault of Tribal justice personnel, child violence, dating violence, domestic violence, obstruction of justice, sexual violence, sex trafficking, stalking, and violation of a protection order.

VAWA 2022 also authorized a new program to reimburse Tribal governments (or authorized designees of Tribal governments) for expenses incurred in exercising special Tribal criminal jurisdiction. Under the statute, eligible expenses for reimbursement include the following:

- (i) investigating, making arrests relating to, making apprehensions for, or prosecuting covered crimes (including costs involving the purchasing, collecting, and processing of sexual assault forensic materials);
- (ii) detaining, providing supervision of, or providing services for persons charged with covered crimes (including costs associated with providing health care);
- (iii) providing indigent defense services for 1 or more persons charged with 1 or more covered crimes; and
- (iv) incarcerating, supervising, or providing treatment, rehabilitation, or reentry services for 1 or more persons charged with 1 or more covered crimes.

Along with the new reimbursement program, OVW will continue to administer the grant program originally authorized by VAWA 2013 and reauthorized and expanded by VAWA 2022, formerly known as the Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction Program (Tribal Jurisdiction Program). Through this program, Indian tribes currently receive funding to prepare for and exercise SDVCJ (which will be expanded to cover STCJ effective October 1, 2022) and technical assistance (TA) for planning and implementing changes in their criminal justice systems necessary to exercise the jurisdiction. Of the total annual appropriation for these two programs, VAWA 2022 allows no more than 40 percent to be used for the reimbursement program.

VAWA 2022 requires that the Attorney General issue regulations by March 15, 2023, establishing rules for reimbursements of Tribal governments (or authorized designees) for expenses incurred in exercising STCJ. The statute also directs that these rules set a maximum annual reimbursement amount for any Tribe and allow for a process and criteria for waivers of the maximum amount. This maximum and waiver process are critically important because OVW’s ability to reimburse tribes for all expenses associated with exercising STCJ will necessarily be limited each year by the overall Congressional appropriation for the two programs. To the maximum extent practicable,

¹ Pub. L. No. 113-4, § 904, 127 Stat. 54, 120-123 (codified at 25 U.S.C. § 1304).

² Pub. L. No. 117-103, div. W, § 804, 136 Stat. 49, 898-904 (amending 25 U.S.C. § 1304).



reimbursement or notification of the reason for not reimbursing is to be made within 90 days after the Attorney General receives a qualifying request. Not later than 30 days after a Tribe (or designee) reaches the annual maximum amount, the Attorney General is directed to provide notice of this fact to the Tribe (or designee).

OVW has begun the process to draft regulations for the new Tribal jurisdiction reimbursement program that address these statutory requirements, as well as other components of the program. We have scheduled this consultation as early as possible in the drafting process to ensure that we can fully consider and integrate Tribal recommendations while meeting the statutory deadline to issue regulations. We welcome Tribal input on any aspect of the new program, and particularly request that Tribal leaders consider the following questions.

QUESTIONS

1. Is your Tribe currently exercising SDVCJ? If so, what are your current expenses for exercising jurisdiction?
 2. Are there particular types of expenses for which you foresee requesting reimbursement?
 3. If you do exercise jurisdiction, do you have specific, fixed costs, such as payment to defense attorneys per case or cost to house a prisoner per day? If so, it would be helpful to provide examples and amounts.
 4. What is your recommendation, if any, for the annual maximum amount of reimbursement per Tribe? Should it be a fixed amount for each Tribe or should it vary according to the size of Tribal membership, the total population of the Tribal community, the non-Indian population of the community, the annual number of qualifying prosecutions in Tribal court, or some other factor(s)? Should the annual maximum amount vary based on OVW's annual Congressional appropriations for the reimbursement program?
 5. Do you have any recommendations for conditions/criteria under which the annual maximum amount should be waived?
 6. If the allocated funds are not sufficient to meet all annual reimbursement requests, how should OVW prioritize requests? For example, should it be those who first submit reimbursement requests or some other method? Would it make sense to prioritize certain costs to receive first reimbursement if funds are limited (for example, all applicants would receive costs for prosecutor salaries, but not other costs unless funds remain at the end of the fiscal year)? If so, which costs should be prioritized? Are there some costs we should cap or exclude?
 7. Should OVW permit authorized designees to apply for reimbursement, given the inherently governmental nature of exercising criminal jurisdiction and the difficulty of tracking and documenting expenses through a third party?
 8. What should Tribes provide with their reimbursement requests to document the expenses, and how should they handle documentation for expenses that are only partially attributable to the exercise of special Tribal criminal jurisdiction? Are there certain costs that lend themselves better to estimates rather than actual costs (for example a percentage of law enforcement salary rather than the specific hours on the case)?
 9. What should Tribes include with their reimbursement request to document the eligibility of the case (e.g., a charging document, case sheet, case name and number, etc.)?
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10. Are there other sources of federal funding that support Tribes in some of the costs of exercising STCJ? If so, which programs and which federal agencies?
11. Do Tribal leaders have examples of other federal reimbursement processes that have worked well or have not worked well, and what were the elements or mechanisms that helped facilitate the process or created barriers? Please share any specific lessons learned from these experiences.