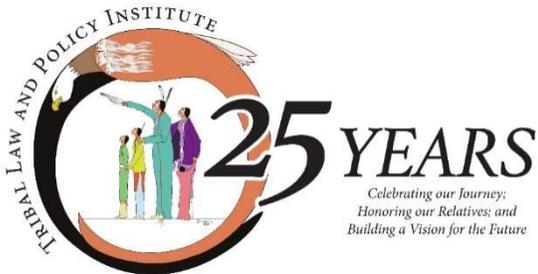


# Violence Against Women Act 2022 Legislative Update and Overview



*Disclaimer: This project was supported by Grant No. 2019-IC-BX-K005 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, The Office of Juvenile Justice and Delinquency Prevention, the Office of Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

# Facilitator



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# Overview

1. Overview of Violence Against Women Act (VAWA) 2022
  - ◆ History of VAWA Reauthorizations
  - ◆ Covered Crimes (*with emphasis on Sexual Assault and Sex Trafficking*)
  - ◆ What Can Be Charged?
  - ◆ Who Can Be Charged?
  - ◆ Due Process Requirements
  - ◆ Additional Provisions
2. Question and Answer
3. Resources

# Empowering Tribal Nations

VAWA 2013 affirmed tribal **inherent authority** to exercise criminal jurisdiction over non-Indians who commit 1) domestic violence, 2) dating violence, or 3) violations of qualifying protection orders in Indian country.



VAWA 2022 built on this framework and added additional categories of criminal conduct that can be prosecuted against non-Indians in tribal court.

- Both VAWA 2013 and 2022 are amendments to the Indian Civil Rights Act that can be found at 25 USC 1304.

# Important Note about Effective Dates

- **VAWA 2013** went into effect nationwide on March 7, 2015. Since that time, any tribe who complies with the statutory requirements can prosecute non-Indians. NO approval from the U.S. DOJ or BIA is necessary.
- **VAWA 2022** was signed into law March 15, 2022, but has an effective date of **Oct. 1, 2022**. No approval from U.S. DOJ or BIA is required.

Crimes that occur **BEFORE Oct. 1, 2022**: should be prosecuted in compliance with VAWA 2013 and the applicable tribal code.

Crimes that occur **AFTER Oct. 1, 2022**: should be prosecuted in compliance with VAWA 2022, so long as the applicable tribal code allows it.

# Tribal Jurisdiction over Non-Indians

## VAWA 2013

Recognized a tribe's inherent criminal jurisdiction over **non-Indians** for the crimes of:

- Domestic Violence
- Dating Violence
- Criminal Violations of a Qualifying Protection Order.

The **crime** must occur **within** the tribe's **Indian country**;

The **victim** must be an Indian; and

The defendant must have **sufficient ties** to the community.

Requires tribes to provide certain **due process** protections for non-Indian defendants.

- Indigent defense counsel
- Non-Indians in jury pools, etc.

## VAWA 2022

Added recognition of a tribe's inherent criminal jurisdiction over **non-Indians** by adding additional categories including:

- Child violence
- Sexual violence
- Stalking
- Sex trafficking
- Assaults of tribal justice personnel
- Obstruction of justice

The **crime** must still occur **within** the tribe's **Indian country**;

The **victim** must be an Indian for most but not all crimes; and

The defendant's **ties** to the community are no longer a condition of tribal jurisdiction.

Adds a requirement that tribes must provide notice **in writing** of certain federal rights.

# Changes to WHAT can be charged in Tribal Court

## Specifically the VAWA 2022 amendments to 25 USC 1304:

- add categories of conduct that can be prosecuted in tribal court:
  - *domestic violence (2013)*
  - *dating violence (2013)*
  - *protection order violations (2013)*
  - **sexual violence (2022)**
  - *stalking (2022)*
  - **sex trafficking (2022)**
  - *child violence (2022)*
  - *obstruction of justice (2022)*
  - *assaults against justice personnel (2022)*

Collectively these are referred to as “covered crimes.”

## Changes to WHAT can be charged in Tribal Court (cont.)

### **The VAWA 2022 amendments to 25 USC 1304 also:**

- amend the definitions of “domestic violence” and “dating violence” to give additional deference to how these terms may be defined in tribal law.

These changes remove the “violence committed” language that had left tribes unable to prosecute domestic violence crimes that were not sufficiently “violent.”



## Changes to WHAT can be charged in Tribal Court (cont.)

(7) *Domestic Violence*.—The term ‘domestic violence’ means any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that is violence committed by—

(A) a current or former spouse or intimate partner of the victim; by

(B) a person with whom the victim shares a child in common; by

(C) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or by

(D) 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 violationence occurs.

# VAWA 2022: Sexual Violence

SEXUAL VIOLENCE.—The term ‘sexual violence’ means any nonconsensual sexual act or contact proscribed by the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs, including in any case in which the victim lacks the capacity to consent to the act.

# VAWA 2022: Stalking

- ▶ **STALKING.**— The term “stalking” means engaging in a course of conduct directed at a specific person proscribed by the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that would cause a reasonable person—
  - (A)** to fear for the person’s safety or the safety of others; or
  - (B)** to suffer substantial emotional distress.

# VAWA 2022: Sex Trafficking

- ▶ The term 'sex trafficking' means conduct within the meaning of section 1591(a) of title 18, which is the federal sex trafficking law.
- ▶ Whoever knowingly:
  - ▶ Recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person, or
  - ▶ Receives something of value (someone in the trafficking venture)(money, food, a beer, a phone, a hotel/motel room, anything of value), and
  - ▶ Causes the person to engage in a commercial sex act (any sex act, on account of which anything of value is given to or received by any person, including the victim).
- ▶ Generally, requires fraud, force, or coercion for adult victims.
- ▶ **No requirement for fraud, force or coercion for minors.**

# VAWA 2022: Child Violence

The term 'child violence' "means the use, threatened use, or attempted use of violence against a child proscribed by the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs."

"Child" means someone who has not reached the age of either:

- 1) 18 or
- 2) an age lower than 18 if that is what is specified by the Tribe (except in the case of sexual abuse, when it must be 18).

# VAWA 2022: Assault of Tribal Justice Personnel

ASSAULT OF TRIBAL JUSTICE PERSONNEL. The term ‘assault’ of Tribal justice personnel means any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, that Indian tribe or serving that Indian tribe during, or because of, the performance of duties of that individual in

(A) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;

(B) adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;

(C) detaining, providing supervision for, or providing services for persons charged with a covered crime; or

(D) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.

# VAWA 2022: Obstruction of Justice

- ▶ The term “obstruction of justice” means any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that involves interfering with the administration or due process of the laws of the Indian tribe, including any Tribal criminal proceeding or investigation of a crime.

# Changes to WHO can be charged in Tribal Court

## The VAWA 2022 amendments to 25 USC 1304:

- clarify that for cases involving obstruction of justice or assaults against tribal justice personnel by a non-Indian, the tribe has jurisdiction even if the victim is also non-Indian;
- remove the existing requirement under VAWA 2013 that limits tribal jurisdiction to those non-Indians who live or work in the Indian country of the tribe or are in a qualifying relationship with a member of the tribe or non-member Indian resident (often referred to as the “sufficient ties” provision);
- clarify that tribes in Maine are able to implement the law if they choose to do so.

# What 25 USC 1304 Does NOT Cover

- cases where the Victim and Defendant are **both non-Indian** except in cases of “assault of tribal justice personnel” and “obstruction of justice”.
- crime that **took place outside the Indian country** of the participating tribe.

**25 USC 1304 is voluntary for the tribe. It also does NOT alter existing state or federal jurisdiction.**

# VAWA Special Tribal Criminal Jurisdiction Due Process Requirements

- Tribal court ensures “all applicable rights” under the Indian Civil Rights Act – 25 U.S.C. 1302 (a).
- If any term of imprisonment may be imposed, all rights described in Tribal Law & Order Act (TLOA) for enhanced sentencing – 25 U.S.C. 1302(c).
- Additional rights required by VAWA 2013 and VAWA 2022.

# ICRA Due Process Requirements (All defendants)

- No unreasonable searches and seizures
- No double jeopardy
- No self-incrimination
- Right of confrontation
- No excessive bail or fines or cruel and unusual punishments
- Due process and equal protection
- Right to a jury trial
- Right to a speedy and public trial

# TLOA Due Process Requirements

## (All VAWA defendants facing incarceration)

- Effective assistance of counsel equal to what would be available in federal or state court;
- Free, appointed, licensed attorneys for indigent defendants;
- Tribal judges with sufficient legal training who are licensed to practice law in any jurisdiction in the United States;
- Publicly available tribal criminal laws and rules of evidence and criminal procedure; and
- Maintain a record of criminal proceeding, including audio or video recording of trial proceedings

# VAWA Due Process Requirements

## (All VAWA defendants)

- Tribal court must provide the right to a **trial by an impartial jury**.
  - Drawn from sources that reflect a **fair cross-section** of the community, and
  - Does not systematically exclude any distinctive group, including non-Indians.
- Tribal court must ensure defendants are **timely notified in writing** of federal habeas rights.

# Changes to DUE PROCESS protections that must be provided in Tribal Court

**The VAWA 2022 amendments to 25 USC 1304 add new language about habeas corpus relief in federal court:**

**(f) Petitions for Writs of Habeas Corpus.—**

1. In General.— After a defendant has been sentenced by a participating tribe, the defendant may file a petition for a writ of habeas corpus in a court of the United States under section 203.

2. Requirement.— An application for a writ of habeas corpus on behalf of a person in custody pursuant to an order of a Tribal court shall not be granted unless --

(A) the applicant has exhausted the remedies available in the Tribal court system;

(B) there is an absence of an available Tribal corrective process; or

(C) circumstances exist that render the Tribal corrective process ineffective to protect the rights of the applicant.



# Changes to Notice Requirement

## **VAWA 2013**

### **25 USC 1304(e)(3)**

NOTICE.—An Indian tribe that has ordered the detention of any person has a duty to timely notify such person of his rights and privileges under this **subsection** and under Section 203.

## **VAWA 2022**

### **25 USC 1304 (g)**

Notice; Habeas Corpus Petitions.--  
A participating tribe that has ordered the detention of any person has a duty to timely notify **in writing** such person of their rights and privileges under this **section** and under section 203.

# Bureau of Prisons (BOP) Tribal Prisoner Program

VAWA 2022 also permanently establishes the BOP program where defendants sentenced in tribal court for certain violent crimes can be sent to BOP facilities.

- Lowered the sentence requirement from **2 years to 1 year**.
- Prisoner cap stays at **100 people**.
- BOP held government to government consultation earlier this month.

# Alaska Pilot

## VAWA 2022: Sec. 811 - 813. Alaska Tribal Public Safety Empowerment

- Recognizes the inherent authority of the villages over all Indians present in the village.
  - Includes tribal civil jurisdiction to enforce protective orders against any person, including through exclusion.
  - Special tribal criminal jurisdiction over a defendant for a “covered crime.”
  - AG can designate not more than **5 participating villages per year**:
    - AG will establish a process to designate villages
    - Allows for intertribal participation (2 or more villages) that only count for 1 spot
    - 30 tribes is the max number, but AG can add more pilot tribes with notice to congress and the public.
    - Addresses housing for village inmates: tribal correctional facility, federal facility under BOP state or local gov facility.
  - Establishes the Alaska Public Safety Advisory Committee.
  - Participating tribes in Alaska can access the same funding sources.
- 

# VAWA Special Tribal Criminal Jurisdiction Resources



## Tribal Provisions of Violence Against Women Act (VAWA) 2022



On March 15, 2022, President Biden signed the Violence Against Women Act Reauthorization bill (VAWA 2022) as a part of the Omnibus funding bill (H.R. 2471), the Senate Committee on Indian Affairs has provided an overview of the [VAWA 2022](#). The [tribal provisions of VAWA 2022](#) are included in Title VIII of Division W of the overall bill. VAWA 2022 does the following:

- Builds on VAWA 2013's tribal jurisdiction provision (covering domestic violence, dating violence, and protection order violations) by additional categories of criminal conduct that can be prosecuted by tribes against non-Indians (Special Tribal Criminal Jurisdiction) - sexual violence, stalking, sex trafficking, child violence, obstruction of justice, and assaults against justice personnel.
- Replaces the term "special domestic violence criminal jurisdiction (SDVCJ)" with "special tribal criminal jurisdiction (STCJ)" throughout the law.
- Removes the "sufficient ties" restriction that currently limits exercise of SDVCJ to only those non-Indian individuals who reside or are employed in Indian country or is the spouse, intimate partner, or dating partner of a member of an Indian Tribe or resident of Indian country.
- Establishes a pilot program for Indian Tribes in Alaska to exercise Special Tribal Criminal Jurisdiction within Alaska Native villages.
- Clarifies that the tribal jurisdiction restored through VAWA 2013/2022 applies to Indian Tribes in Maine.
- Provides formal authorization for the Tribal Access Program (TAP); and
- Reestablishes the U.S. Bureau of Prisons (BOP) Tribal Prisoner Program first authorized as a pilot in the 2010 Tribal Law and Order Act.

Please note - the enhanced "special tribal criminal jurisdiction" provisions will not take effect until **October 01, 2022**. The current "special domestic violence criminal jurisdiction" will apply until then.

### Additional Tribal VAWA 2022 Resources:

1. [Indian Civil Rights Act, 25 U.S.C. §§ 1304, as amended by VAWA 2022 Redline Version](#)
2. [Indian Civil Rights Act, 25 U.S.C. §§ 1304, as amended by VAWA 2022](#)
3. [Inter-Tribal Working Group Summary of VAWA 2022 Tribal Provisions](#)
4. [VAWA 2022 Title VIII - Safety for Indian Women](#)
5. [Section by Section Summary of VAWA 2022 Tribal Provisions](#) by the Senate Committee on Indian Affairs
6. [Celebrating VAWA 2022](#) (National Indigenous Women's Resource Center)

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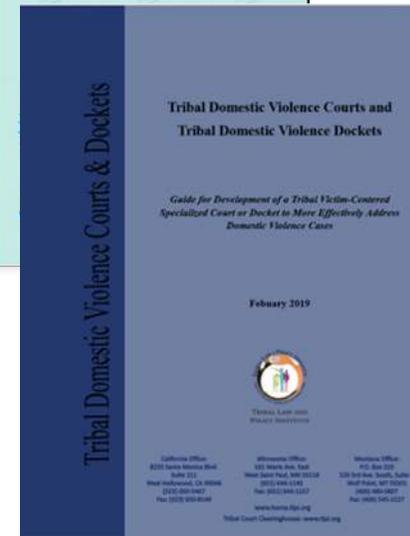
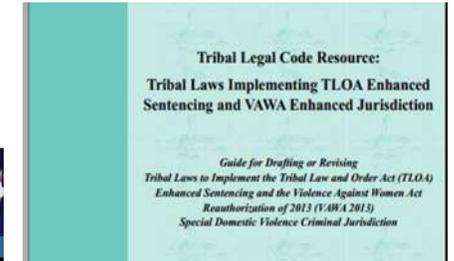


### QUICK LINKS

- [Tribal Law and Policy Institute](#)
- [Institute Publications](#)
- [Institute Webinars](#)
- [Contact the Institute](#)
- [Institute Philosophies/Approach to Training](#)
- [About the Clearinghouse](#)
- [Tribal Court Mentors Circle](#)

### Federal Agencies

- [Administration for Children and Families \(ACF\)](#)
- [Administration for Native Americans \(ANA\)](#)
- [American Indian Environmental Office](#)
- [BIA Office of Justice Services](#)
- [Bureau of Indian Affairs \(BIA\)](#)
- [Bureau of Indian Education](#)
- [Bureau of Justice Assistance \(BJA\)](#)
- [HUD's Office of Native American Programs \(ONAP\)](#)
- [Indian Law and Order Commission \(ILOC\)](#)
- [Office for Victims of Crime](#)
- [Office of Community Oriented Policing Services \(COPS\)](#)
- [Office of Juvenile Justice and Delinquency Prevention \(OJJDP\)](#)
- [Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking \(SMART Office\)](#)
- [Office of Tribal Justice \(OTJ\)](#)
- [Office on Violence Against Women](#)
- [Substance Abuse and Mental Health Services Administration \(SAMHSA\)](#)
- [Tribal Justice and Safety in Indian Country](#)



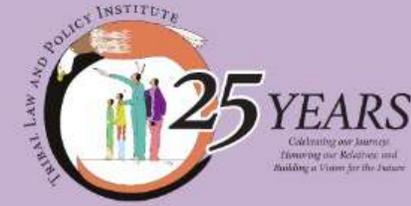
TLPI Resources: <http://www.tribal-institute.org/lists/VAWA2022.htm>  
 NCAI Tribal VAWA Resources: <http://www.ncai.org/tribal-vawa>

## Tribal Legal Code Resource: Victim's Rights, Condensed Guide For Drafting Tribal Victim's Rights Codes

[Tribal Legal Code Resource: Victim's Rights, Condensed Guide for Drafting Tribal Victim's Rights Codes](#) is designed to assist tribal governments with the development of victim right's codes. This resource was written with the belief that tribal governments have the ability to draft victim right's laws centered on their tribal beliefs that convey compassion for those harmed by crime and the importance of protecting the rights of victims, and to prevent revictimization.

### Tribal Legal Code Resource: Victim's Rights

## CONDENSED GUIDE FOR DRAFTING TRIBAL VICTIM'S RIGHTS CODES



November 2022

Main Office: 8229 Santa Monica Blvd, Suite 201 West Hollywood, CA 90046  
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Tribal Law and Policy Institute: [www.Home.TLPI.org](http://www.Home.TLPI.org)

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## Pocket Guide: Tribal Victim Advocacy in Criminal Cases

[Pocket Guide: Tribal Victim Advocacy in Criminal Cases](#) is designed particularly for community-based advocates as a quick reference guide to better assist victims as they navigate the criminal legal process. This Pocket Guide contains things such as a quick review of the general criminal legal process and victim rights with an emphasis on safety planning at every juncture. While this Pocket Guide is designed primarily for community-based advocates, it may be useful for other professionals who work with victims.

### Pocket Guide: Tribal Victim Advocacy in Criminal Cases

## POCKET GUIDE: TRIBAL VICTIM ADVOCACY IN CRIMINAL CASES



November 2022

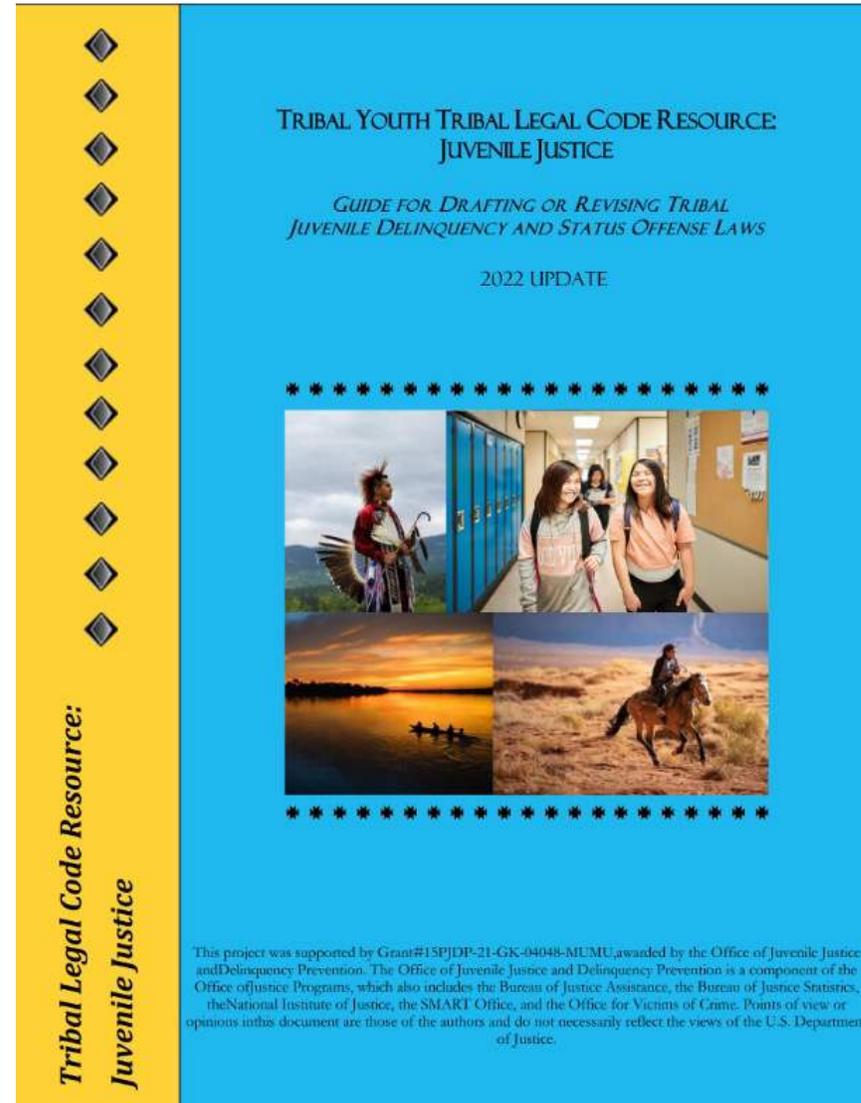
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# Tribal Legal Code Resource: Guide for Drafting or Revising Tribal Juvenile Delinquency and Status Offense Laws (2022 Update)

The [Tribal Legal Code Resource: Guide for Drafting or Revising Tribal Juvenile Delinquency and Status Offense Laws \(2022 Update\)](#) is designed to assist tribal governments with creating, re-evaluating, and strengthening their juvenile codes. This resource was written and updated with the belief that tribal governments are increasingly reassuming responsibility for their youth and are determined to ensure Native youth benefit from responsible guidance. Overall, it was developed to provide a starting point for tribal governments to reference when drafting or revising statutory language pertaining to juvenile offenses. (2022)



**Facilitated Discussions available online at:**  
**<http://www.tribal-institute.org/lists/VAWA2022.htm>**

1<sup>st</sup> Facilitated Discussion (**April 22<sup>nd</sup>**) – Domestic Violence, Dating Violence, and Protection Order Violations.

2<sup>nd</sup> Facilitated Discussion (**May 20<sup>th</sup>**) – Obstruction of Justice & Assaults against tribal justice personnel.

3<sup>rd</sup> Facilitated Discussion (**June 17<sup>th</sup>**) – Sexual Violence and Stalking.

4<sup>th</sup> Facilitated Discussion (**July 15<sup>th</sup>**) – Child Violence and Other Issues Including Habeas Corpus and Exhaustion of Tribal Court Remedies

5<sup>th</sup> Facilitated Discussion (**Aug. 19<sup>th</sup>**) – Sex Trafficking & Alaska Pilot Project

**Upcoming Event:**

20<sup>th</sup> In Person ITWG Meeting, Spring 2023

# Save the Date!

**20<sup>th</sup> ITWG Meeting:**

**May 31 – June 1, 2023**

**Salt River Pima Maricopa  
Indian Reservation**

**SAVE THE DATE**  
**20th ITWG Meeting**

**Salt River Pima Maricopa Indian Reservation**  
**May 31 - June 1, 2023 | Scottsdale, AZ**

Intertribal Working Group (ITWG) is a group working collaboratively to address criminal jurisdiction over non-Indians under VAWA 2013 and VAWA 2022. The 20th ITWG meeting is planned for 2 full days: Wednesday May 31, 2023 and Thursday June 1, 2023.

ITWG Meeting is pending OVW approval.

For any questions, please contact Chia Halpern-Beetso at [Chia@TLPI.org](mailto:Chia@TLPI.org)

Hotel reservation information and agenda are forthcoming.



# Contact Information:

**Kelly Gaines Stoner, [Kelly@tlpi.org](mailto:Kelly@tlpi.org)**

**For Technical Assistance requests or to join the ITWG, please email:**

**[tribalvawa@tlpi.org](mailto:tribalvawa@tlpi.org)**