

# Obstacles to Federal Policy Adoption: The Case of Special Domestic Violence Criminal Jurisdictions in Native American Tribal Nations

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A core tenet of representation is that individuals should expect government to actively protect their human security. In the issue area of domestic violence in the United States, government largely fails to do this for women, who comprise three-quarters of all victims of domestic violence. Nowhere is this more apparent than for Native American women living on tribal lands. In terms of lifetime physical violence, nearly 52% of Native American women will be physically abused compared to 30.5% of white women, 41.2% of African American women, and 29.7% of Hispanic women (Crepelle 2020; Institute for Women's Policy Research 2023). One of the main obstacles to keeping Native American women safer is that tribal nations have been functionally prohibited from prosecuting non-Native offenders of violence against Native Americans on their lands. Non-Native offenders comprise the bulk of domestic violence abusers in these communities. To address this inequity, the 2013 Violence Against Women Act (VAWA) created Special Domestic Violence Criminal Jurisdictions (SDVCJs). Through an application process, federally recognized tribal nations can create these jurisdictions to provide justice for the many women who are victims of domestic violence at the hands of non-Native persons. In this article we explore which tribal nations created these jurisdictions using an original dataset of the 354 tribal nations that were eligible to adopt an SDVCJ following the 2013 VAWA reauthorization. As of 2022, 31 tribal nations have adopted SDVCJs across 13 states, which have led to 74 domestic violence convictions. In this article, we explain adoption of these courts as a function of population, tribal nation fiscal capacity, federal grant support, and having an existing self-governance compact with the Bureau of Indian Affairs.


Native American women are the most at-risk demographic population facing domestic violence. As the Secretary of Interior, and the first Native American Cabinet Secretary, Deb Haaland stated: "Violence against Indigenous peoples is a crisis that has been underfunded for decades ... far too often, murders and

missing persons cases in Indian Country go unsolved and unaddressed, leaving families and communities devastated" (McDaniel 2021). In addition to the higher likelihood of victimization, they are also less likely to receive justice for the crimes committed against them. This is because of the combined effects that the Major

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\*Data replication sets are available in Harvard Dataverse at: <https://doi.org/10.7910/DVN/DOVEYV>

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Crimes Act of 1885, Public Law 280 of 1953, the Indian Civil Rights Act of 1968, and the Supreme Court case *Oliphant v. Suquamish Indian Tribe* (1978) had in creating a legal environment where tribal nations could not prosecute non-Native persons who committed crimes on their lands. Over 90% of female Native American victims and 85% of male Native American victims of intimate partner violence (IPV) attribute their assault to a non-Native American offender, which is defined as anyone not of Indian descent (NCAI 2018).<sup>1</sup>

To address this barrier to prosecution of domestic violence crimes, the 2013 Violence Against Women Act (VAWA) created Special Domestic Violence Criminal Jurisdictions (SDVCJs). Through an application process a tribal nation can become eligible to create an SDVCJ and prosecute domestic violence-related crimes perpetrated by non-Native Americans on their land. Without this jurisdiction, tribal governments are limited in their prosecuting powers because state governments can only prosecute nonviolent offenses, and that leaves the federal government as the only governing body able to prosecute violent crimes against Native American women.

Because of these “jurisdictional complexities” between federal and tribal sovereign power, many of these cases go unprosecuted, leaving women in these communities vulnerable to repeated abuse (NCAI 2022b). These complexities can include the location of the crime, the Native status of the perpetrator and victims, the exact nature of the crime, and which law enforcement personnel are first responders to the incident. In the words of the National Congress of American Indians (NCAI):

Each of the three sovereigns has less than full jurisdiction, and the consequent need for multiple rounds of investigation often leads to a failure to act. Overall, law enforcement in Indian Country requires a degree of cooperation and mutual reliance between federal, tribal and state law enforcement that—while theoretically possible—has proven difficult to sustain. (NCAI 2022a)

SDVCJs could be a policy innovation to solve this if tribal nations adopted them, but the federal government has made that process difficult.

We argue that the lack of SDVCJ adoption has serious implications for the success of a program designed to reduce domestic violence against Native American woman. To date, 31 out of 574—less than 6%—of federally recognized tribal nations have adopted the SDVCJ program across 13 states.<sup>2</sup> Tribal nations that have adopted an SDVCJ range in population size from 663 to 390,000, with a mean of 30,691 and a standard deviation of 78,953. In table 1, we list the name, size, state, and year of implementation for each of these tribal nations. We should note that 232 tribal nations were ineligible to adopt an SDVCJ from the program’s inception in 2014 until March of 2022 due to certain restrictions within the law. *This means out of all*

*the tribal nations that were eligible to adopt an SDVCJ from 2014 to 2022, fewer than 10% have done so over nine years.* This relatively small rate of policy adoption is especially surprising because for the tribes that have adopted SDVCJs, there have been 74 convictions of domestic violence abuse. Why have so many tribal nations been reluctant to adopt an SDVCJ to address domestic violence?

We argue that these low levels of SDVCJ adoption are worth investigating because they highlight failed federal policy implementation in the area of domestic violence affecting Native nations. In her book *Power from Powerlessness* (2011b) Laura Evans brings together the study of federalism and tribal sovereignty, and we enhance that work by studying the dynamics of tribal adoption of federal domestic violence policy. We also build on the findings of Haider and Teodoro (2021) on environmental policy and federalism, as well as Witmer and Boehmke’s extensive work on Native Americans and the Indian Gaming Regulatory Act and other policies (Witmer and Boehmke 2007; Witmer, Johnson, and Boehmke 2014).

The article proceeds as follows. First, we discuss the specific elements of the SDVCJ program, including the requirements necessary to adopt such a jurisdiction. The second section identifies the variables we believe predict whether a tribal nation adopts an SDVCJ, including monetary barriers, concerns about cultural assimilation, levels of domestic violence, institutional capacity, and federal and state support. Our dataset includes variables on the size, financial capacities, domestic violence crime levels, and politics of the tribal nation and state where SDVCJs are located and whether the tribal nation has received a grant to establish an SDVCJ from the Office on Violence Against Women (OVW), which is part of the US Justice Department. We then present our analysis of the tribal nations that have adopted an SDVCJ as compared to those that have not done so. Finally, we elaborate on what many scholars have already noted about Native Americans in America.

As Foxworth et al. (2022, 2) eloquently state in their work on COVID-19 and Native nations, “[N]on-Native governments have pursued policies that have imperiled Native health and well-being for centuries.” Although the federal creation of SDVCJs could be viewed as a step forward in addressing domestic violence on tribal lands, this policy solution will fall short of comprehensively reducing domestic violence in Native American communities if it is not used widely enough. Political science rarely considers issues that directly affect Native Americans as “being of central political importance” (Ferguson 2016a, 1030; 2016b; see also Carpenter 2015; Frymer 2016; MacLean 2016; Proudfit 2016; Wilkins 2016; Wilmer 2016). We take this criticism seriously in our efforts to shine more light on policy

**Table 1**  
**Federally Recognized Tribal Nations with SDVCJs**

Tribal nation	Number of enrolled members	Number of reservation residents	State	Year implemented
Gila River Indian Community	14,260	11,608	AZ	2018
Salt River Pima Maricopa Indian Community	9,000	8,266	AZ	2022
The Pascua Yaqui Tribe	19,000	4,075	AZ	2014
The Chitimacha Tribe	1,300	794	LA	2017
Penobscot Nation	2,278	634	ME	2022
Grand Traverse Band of Ottawa and Chippewa Indians	663	625	MI	2018
The Little Traverse Bay Band of Odawa Indians	4,000	54	MI	2015
The Nottawaseppi Huron Band of Potawatomi	1,500	80	MI	2016
The Sault Ste. Marie Tribe of Chippewa in Michigan	44,000	2,461	MI	2016
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation	10,000	10,441	MT	2015
Santa Clara Pueblo	800	12,128	NM	2020
Eastern Band of Cherokee Indians in North Carolina	14,000	8,754	NC	2015
The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation	13,873	11,021	SD	2015
The Standing Rock Sioux Tribe	16,000	8,339	ND & SD	2016
Cherokee Nation	390,000	518,991	OK	2018
Chickasaw Nation	55,578	312,853	OK	2022
Quapaw Nation	3,240	5,102	OK	2022
The Choctaw Nation	223,279	231,301	OK	2015
The Kickapoo Tribe	2,630	20,877	OK	2016
The Muscogee (Creek) Nation	86,100	800,177	OK	2016
The Sac and Fox Nation	3,794	58,446	OK	2016
The Seminole Nation	17,000	22,394	OK	2015
The Confederated Tribes of the Umatilla Indian Reservation	3,000	2,795	OR	2014
The Alabama-Coushatta Tribe of Texas	1,000	759	TX	2015
Confederated Tribes of the Chehalis Reservation	3,625	784	WA	2018
The Lower Elwha Klallam Tribe	882	805	WA	2017
Port Gamble S'Klallam Tribe	1,234	639	WA	2018
Quinalt Nation	2,453	1,059	WA	2018
Suquamish Tribe (Port Madison Reservation)	950	7,919	WA	2019
Swinomish Indian Tribal Community	900	3,022	WA	2021
The Tulalip Tribe	4,900	9,846	WA	2014

Note: Population data came from the US Census Bureau (2022) and enrollment numbers came from the websites of each tribe or any of their official social media accounts.

failures in protecting Native American women from domestic violence.

### Policy Innovation: Special Domestic Violence Criminal Jurisdictions

In terms of lifetime physical violence, nearly 52% of Native American women will be physically abused compared to 30.5% of white women, 41.2% of African American women, and 29.7% of Hispanic women (Crepelle 2020; Institute for Women’s Policy Research 2023). A major reason for the high levels of domestic violence among Native American women is that tribal nations have been functionally prohibited from prosecuting

non-Native offenders of violence against Native Americans on their lands. In considering a 2012 bill that would address this jurisdictional limitation, the Senate Committee on Indian Affairs recognized the vulnerability of abused Native American women:

Criminals tend to see Indian reservations and Alaska Native villages as places they have free reign, where they can hide behind the current ineffectiveness of the judicial system. Without the authority to prosecute crimes of violence against women, a cycle of violence is perpetuated that allows, and even encourages, criminals to act with impunity in Tribal communities and denies Native women equality under the law by treating them differently than other women in the United States. (NCAI 2022a)

In their 2018 report, the NCAI illustrated the precarious position of Native American women in the face of domestic violence by non-Native men. It provided an example of an assault of a Native American woman by her non-Native American husband in a public parking lot of a gas station. Tribal and state police officers each arrived at the scene:

However, because the assault took place on the Sisseton-Wahpeton Oyate's reservation land and the defendant was a non-Indian, only the federal government had jurisdiction. So, the tribal and state police who responded did the best they could do. They held the man in custody and painfully told the woman all they could do is try to "give her a head start." While the state has no jurisdiction over a crime in Indian Country involving an Indian victim, it does have jurisdiction over victimless crimes. Fortunately for the victim during this particular incident, the non-Indian perpetrator caused enough of a scene in the presence of the state police that he was arrested for disorderly conduct. (NCAI 2018)

The vulnerability of Native American women to domestic violence at the hands of non-Native offenders without prosecution is a failure of governance to protect women. Other work on domestic violence policy has shown the ineffectiveness of federal and state policies to address domestic violence and finds that significant inequity exists across state lines in women's human security in this domain (Schiller and Sidorsky 2022; Sidorsky and Schiller 2020; Sidorsky and Schiller 2023). We turn our attention here to the security of Native American women, many of whom live under the legal jurisdiction of tribal governments.

## Background on Creation of SDVCJs

Native American women are at increased risk of intimate partner violence, especially at the hands of non-Native men. This type of relational violence has led to extensive jurisdictional problems because prior law and the Supreme Court's decision in *Oliphant* restricted tribal nations' abilities to hold non-Native American individuals accountable for crimes against their people on tribal land. Essentially, non-Native American individuals could avoid punishment for abusing their Native American partners in Indian Country. The creation of SDVCJs can be traced to Section 908 of the 2013 bill, which

[m]akes Indian tribes' criminal jurisdiction over domestic violence, dating violence, and violations of protection orders that occur on their lands effective two years after this Act's enactment. Allows Indian tribes to exercise such jurisdiction prior to the two-year effective date under a pilot program. (Violence Against Women Act of 2013)

To assist tribal nations that were interested in establishing an SDVCJ, the OVW was authorized to spend \$5 million, an amount that was not fully appropriated until 2022 (US Department of Justice 2023).

When VAWA was reauthorized and signed into law on March 15, 2022, Congress expanded SDVCJs beyond

domestic violence to prosecute crimes committed by Native and non-Native individuals by creating Special Tribal Criminal Jurisdictions (STCJs). In addition to including domestic violence crimes, the newly expanded authority covers "assault of Tribal justice personnel, child violence, obstruction of justice, sexual violence, sex trafficking, and stalking" (US Department of Justice 2023). Congress increased authorization levels to fund both the domestic violence courts and the expanded STCJs to \$25 million, largely in response to the testimony of many tribal leaders who spoke of the deficiencies of the original law. While this article addresses adoption of SDVCJs prior to 2022, it is important to note Congress's acknowledgment of tribal nations' concerns regarding federal-tribal legal authority.

To be approved to implement an SDVCJ, tribal nations must comply with federal law, which includes providing adequate due process to non-Native defendants. Some tribal nations were already largely in compliance with the requirements to become an SDVCJ, while others had to rewrite much of their legal code at a large financial cost. Examples of what tribal nations are required to do to be eligible to become an SDVCJ include providing the defendant the right to counsel; providing indigent defendants appropriate counsel at the expense of the tribal government; ensuring the right to a trial by an impartial jury that does not exclude non-Natives; and providing protections specified in the Indian Civil Rights Act, such as not having to testify against oneself, having a speedy and public trial, and freedom from excessive bail, fines, or cruel and unusual punishment (NCAI 2013).

Here, Laura Evans's framework of institutional niches is helpful in understanding how the SDVCJ program functions and has evolved; she writes an "institutional niche is a source of outside support that can provide small but meaningful subsidies for the cultivation of expertise" (2011b, 6). Access to these grants and the technical support that comes with them could be a variable that explains why some tribal nations have implemented SDVCJs and others have not. Tribal nations may apply for up to \$450,000 to be used over 36 months to help them meet the federal requirements for an SDVCJ; tribal nations that have already received funding from this grant may apply for a continuation award of up to \$300,000 over the course of 24 months (OVW 2022a, 7).

Because of the unique nature of the relationship between tribal nations, federal government, and state governments, the creation of SDVCJs is exceptional. One comparison that can be made to SDVCJs is the adoption of domestic violence (DV) courts in the non-Native criminal justice system. DV courts were created to address the deficiencies in the adjudication of domestic violence cases, and to do a better job of treating the specific conditions of cases and the abuser-victim dynamic. A



2009 report identified 208 DV courts across the country, although most of these courts are concentrated in just two states: New York and California (Labriola et al. 2010). The rationale for DV courts is that because they only focus on DV cases, and handle the case from arraignment to resolution, they can harness their full attention on holding offenders accountable and trying to prevent recidivism, through batterer programs, protective orders, and rehabilitation. There has been mixed evidence on the success of DV courts, with some studies showing they are effective in providing advocacy services to victims and others showing they do not really affect DV recidivism rates (Cissner, Labriola, and Rempel 2015; Gover, Boots, and Harper 2021; Gutierrez, Blais, and Bourgon 2016; Labriola et al. 2010; Pinchevsky 2017).<sup>3</sup> In comparison, SDVCJs are a much more recent innovation, and though there are a number of cases that have been brought to date, there is no study yet of their overall effectiveness in meeting similar goals to those of DV courts.

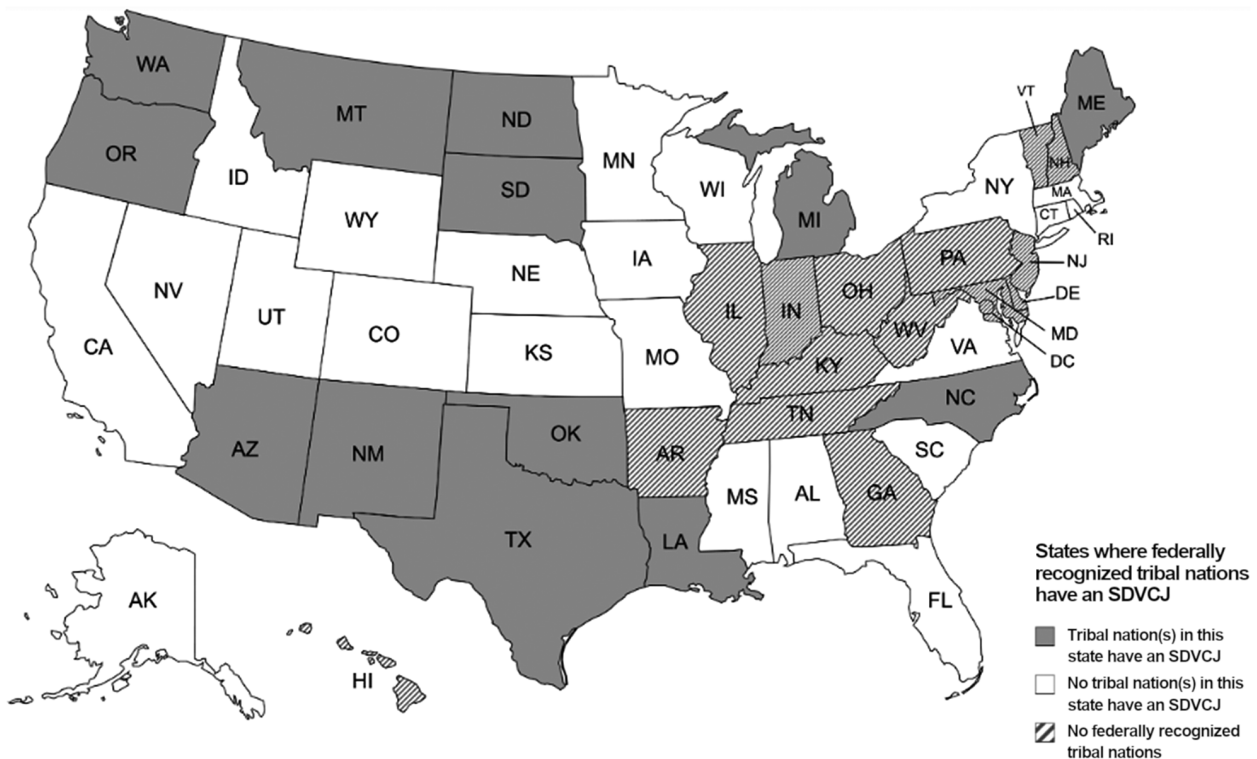
### Patterns of Tribal Adoption of SDVCJs

Table 1 lists all the federally recognized tribal nations that have implemented an SDVCJ, and figure 1 geographically

illustrates the states that have tribal nations with SDVCJ programs. Figure 2 provides a timeline of the number of tribal nations that adopted an SDVCJ from 2014–22. To get a sense of which states have the largest number of federally recognized tribal nations compared to the number of those tribal nations that have an SDVCJ, we provide a table (see appendix table A1) that lists the number of federally recognized tribal nations in each state.

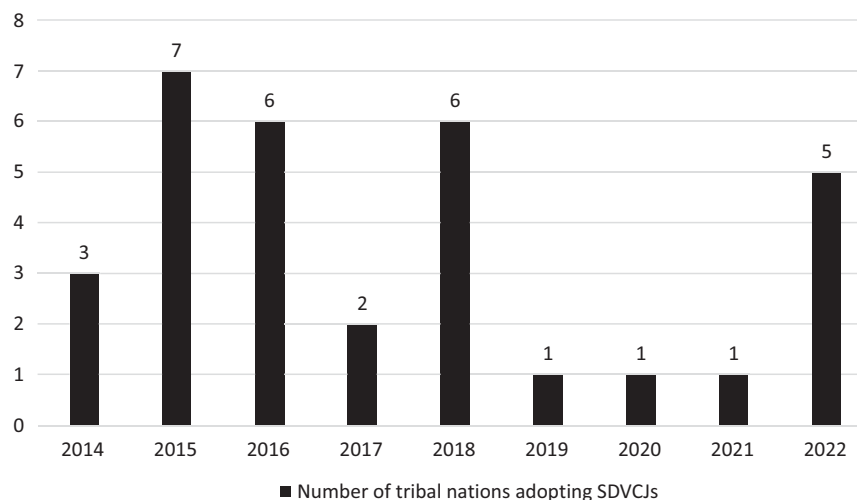
Although the state of Alaska has the largest number of tribal nations, most of these Alaskan tribal nations were ineligible to adopt an SDVCJ because they are not considered Indian Country, which is one of the criteria for these jurisdictions. The provisions of the Alaska Native Claims Settlement Act of 1971 mean all tribes but one (Metlakatla) in Alaska ceded their claims to territory so there are no jurisdictions that they legally control, which made them ineligible to establish SDVCJs (Senate Committee on Indian Affairs 2021). In 2013, when SDVCJs were created, Alaska Senator Lisa Murkowski argued that the bill was “not the place to hash out territorial disputes” and said that Congress would have to consider separate legislation to grant territorial ownership to tribes in Alaska (Granitz 2013).<sup>4</sup> The 2022 VAWA reauthorization addressed the limitations of SDVCJs by creating the Alaska Pilot

**Figure 1**  
Location of Tribal Nations with SDVCJs



Source: author-generated from NCAI (2022b).

**Figure 2**  
**Number of Tribal Nations Adopting SDVCJs by Year**



Program, which allows tribal members living in Alaska Native villages to establish STCJs working with the state (Murkowski 2022). According to the US Justice Department, “VAWA 2022 requires the Attorney General, in consultation with the Secretary of the Interior and affected Tribes, to establish a process to designate up to five Tribes per calendar year to exercise STCJ over all persons present in the Tribe’s Village” (US Department of Justice 2023). Enabling the members of tribes in Alaska to exercise this type of sovereignty over crimes committed in their communities is a considerable opportunity, but it remains unclear how many tribes will apply to implement it.

The West and Southwestern regions are the most likely to have tribal nations with SDVCJ adoption. California, which has the second highest number of federally recognized tribal nations in the United States, does not have any tribal nations with an implemented SDVCJ, although three tribal nations have received grant funding since 2016 to start the process (OVW 2022b). Larger numbers of Native Americans living within a state may not be a sufficient condition to predict SDVCJ adoption. We also see a mixture of Native nations located in liberal and conservative states adopting SDVCJs so there is considerable ideological diversity in the political leanings of states with high Native populations.

Overall, the outcomes of SDVCJ adoption have been positive. A five-year review of the tribal nations that adopted the program, published by the NCAI, reported 143 arrests, 74 convictions, and 24 pending cases among the 18 implementing tribal nations at that time (NCAI 2018). Of the arrests, 125 were for domestic or dating violence and 34 were for protection order violations. In terms of the breakdown of defendant by sex, 90% were

male and 10% were female; the opposite was true of the sex of the victims, 90% of whom were female and 10% of whom were male. Additionally, 33 defendants were sentenced to incarceration for their crimes in addition to being sent to batterer intervention programs and/or banishment. The most telling statistic from the report was that 85 defendants accounted for 378 prior contacts with tribal police before the implementation of an SDVCJ—proving yet again how vulnerable Native American women are to repeated violence from intimate partners (NCAI 2018, 14).

The tribal nation with the highest number of arrests was the Pascua Yaqui, located in Arizona (Arizona Rural Policy Institute n.d.). Prior to the enactment of the 2013 VAWA bill, the Pascua Yaqui Tribe had many of the legal characteristics necessary to become an SDVCJ, including having a public defender’s office since 1995 and a fair and constitutional jury selection system. Leaders of the tribal nation, including then Chief Prosecutor Alfred Urbina, traveled to Washington, DC, to lobby for expanded federal authority to prosecute Native offenders, including expanded prison sentences. These tribal and leadership lobbying efforts, along with the sponsorship by Rep. Ed Pastor (D-AZ), produced new legislation called the Tribal Law and Order Act of 2010 (TLOA). This act laid the foundation for federal support to tribal nations to prosecute serious crime more aggressively, but tribal nations were not allowed to prosecute domestic violence crimes committed by non-Native Americans; instead, they had to request that a US attorney take the case. The 2013 VAWA created SDVCJs specifically to allow tribal nations to prosecute non-Native Americans for domestic violence crimes

fully within their own community without the necessity of using a federal prosecutor (Deer et al. 2015).

The Pascua Yaqui Tribe was a leader among tribal nations pushing for implementation of an SDVCJ even before it tried its first case: in 2015 it held the first VAWA trial advocacy training (Allen 2018). In May 2017, the Pascua Yaqui SDVCJ court considered a case against a non-Native American on domestic violence charges and convicted a 19-year-old man for domestic violence and malicious mischief (Krol 2018). In 2018, the Pascua Yaqui were awarded a \$450,000 OVW grant to help with the implementation of their SDVCJ (OVW 2022b). Because the Pascua Yaqui had already met many of the statutory due process requirements and had invested in their judicial system, they were well situated to adopt an SDVCJ and become one of the leading tribal nations to successfully implement it.

The Quapaw Nation demonstrates a different trajectory in its adoption of an SDVCJ, in that they worked with local officials to make an SDVCJ a reality for their tribal nation. The Quapaw Nation adopted an SDVCJ in the spring of 2022; at that time they had two women serving on their six-person business committee (not including the male business president). The Quapaw Nation's largest hurdle in adopting an SDVCJ was the creation of cross-deputization agreements with local law enforcement agencies so that they could assist Quapaw Nation marshals in pursuing domestic violence crimes on their reservation. The Quapaw Nation's road to SDVCJ implementation is therefore not as reliant on advocacy toward the federal government, but rather advocacy and good working relationships with local law enforcement. This opportunity to establish and build trust with local law enforcement may not be present for all tribal nations that could enact an SDVCJ.

Evans's work is again helpful here in understanding the Quapaw Nation's adoption of an SDVCJ. She shows that tribal governments are powerful when they develop their own expertise and knowledge—as well as take advantage of the experience of others—as they work with local governments, and describes expertise as “knowledge about the preferences of other actors, the approaches that are more likely to persuade, the problems that the group faces, and the possible solutions to those problems” (2011a, 663). Notably, the Quapaw Nation Marshal Service hired Charles Addington, a former director of the Bureau of Indian Affairs Office of Justice Services and more recently senior advisor to the assistant secretary for all law enforcement, security, and school safety throughout the country, to generally improve public safety (Fox 23 News 2022). One of the intangible elements of both SDVCJ adoption and its potential success may very well rest with these interpersonal relationships and the development of expertise.

There is a considerable body of research that has shown the ways in which Native nations lobby and advocate for

their interests and that such lobbying has a very long history. In his work, Daniel Carpenter writes that “[i]n the early nineteenth century, Native North Americans began to petition,” and that “these petitioning moments enhanced organizational democracy. They also advanced procedural democracy by effectively placing Indigenous issues on local, ecclesiastical, tribal, state, and national agendas” (2021, 119). This historical work makes clear that the debates over these petitions struggled with the assertion of sovereignty in an act of necessary engagement with their oppressors. Today, the examples of the Pascua Yaqui and Quapaw Nation cases suggest that they perceived their heavy investment of time, money, expertise, and lobbying to once again be a necessary component to advance their interests in a power structure that is inherently disempowering to them.

Maggie Blackhawk's work (2019; 2020) discusses how Native nations advocate through the law itself, and particularly reveals the ways in which the national government has been an agent of oppression of Native peoples and was not always the solution to protecting minority rights. The work of Maraam A. Dwidar (2022) builds on this by exploring the federal rule-making process to understand how interest groups representing marginalized peoples such as women, people of color, and Native nations work together to affect the bureaucratic process. Dwidar not only shows that Native nations are some of the most active public commenters on federal rules, but that they and other interest groups representing marginalized groups are more likely to work together in influencing bureaucratic policy making. In short, scholars have provided evidence of tribal nation lobbying and advocacy at all levels of government. Although we cannot directly measure the presence of lobbyists and lawyers in the adoption of an SDVCJ, it stands to reason that Native nations with higher institutional capacity will have more resources to deploy lobbyists and lawyers. We argue that measures of financial capacity can be proxies for a tribal nation's ability and inclination to engage the federal government through lobbying and advocacy, and their potential willingness to adopt an SDVCJ.

### ***Barriers to Tribal Adoption of an SDVCJ***

There are institutional, cultural, and financial barriers to the adoption of SDVCJs, starting with the 2013 VAWA. The first institutional barrier is the scope of tribal nations included in the SDVCJ provision, which only extends to Native nations in “Indian Country.” As we noted earlier, the practical implications of this limitation are that only one of 229 tribal nations located in Alaska are eligible to adopt an SDVCJ. A second institutional barrier to adopting an SDVCJ was the inability of tribal nations to prosecute many forms of domestic violence or crimes occurring at the same time as a specific domestic violence

incident. As the five-year report on the implementation of SDVCJs explains, tribal nations could not prosecute other crimes, including violence against children, sex trafficking, stalking, and sexual assault by strangers or acquaintances, even if these crimes occurred in a domestic setting (NCAI 2018). The report included this telling quote from Tulalip Tribal Prosecutor Sharon Jones Hayden: “These [domestic violence] cases do not happen in isolation. We don’t get a slap and then run away. There are attendant, and related, ancillary—whatever word you would like to use—crimes that occur in almost all of these situations. It is extremely rare for me to charge just one count in a domestic violence related offense” (NCAI 2018, 22). The creation of STCJs in the 2022 VAWA reauthorization closes this gap and therefore could give tribal nations the opportunity to prosecute the above crimes in their communities if they choose to adopt it. However, the same types of barriers that have discouraged tribes from adopting an SDVCJ may still operate for these expanded criminal jurisdictions.

Perceptions of sovereignty infringement and disregard for tribal customs intersect to form an additional barrier to adopting an SDVCJ. Tribal nations actively advocated for themselves, but Carpenter succinctly describes the futility of these failed efforts and the deep mistrust they engendered: “Despite their surge in petitioning, Indigenous North Americans saw White settlers wrest from them millions of acres of land, and they lost invaluable human communities and traditions in the process” (2021, 119). Tribal members themselves have suggested that the requirement in the SDVCJ structure to comply with specific due process and legal protections in the US Constitution is yet another way to disregard and erode Native American culture and traditions. As Jessica Allison, attorney and citizen of the Cherokee Nation, states: “VAWA 2013 requires tribal nations to sacrifice some of their inherent sovereignty by imposing American legal structures on their procedures” (Allison 2019, 241). The SDVCJ program is seen as both vital to tribal sovereignty as well as an assimilationist tool, making it difficult to decide to adopt a program that is promoted by the very entity that can be seen as limiting self-governance.

Adopting an SDVCJ may necessitate changes to the tribal criminal justice system in a way that is inconsistent with a tribal nation’s culture and traditions. For instance, one of the program requirements is that a defendant must have an impartial jury that does not exclude non-Natives (Senate Committee on Indian Affairs 2021). In granting tribal nations the authority to try non-Native individuals, ensuring that the jury is made up of non-Native “peers” necessitates prohibiting this exclusion. Yet including non-Natives in a tribal court jury is against the tribal code of various tribal nations; this also presents logistical challenges, as significant alterations to the tribal code would need to be made to include non-Natives in jury pools and a roster of non-Native residents would be required.

It is also the case that a tribal nation may desire to pursue alternatives to incarceration, such as rehabilitation, for offenders. The federal government does not allow SDVCJ grant funds to be spent on rehabilitation and other alternative methods for justice, forcing tribal nations that seek to use rehabilitation as an option for some domestic violence abusers to forgo creating these courts or rely on their own funding to provide rehabilitation in addition to incarceration. Joshua B. Gurney (2018) has even argued that tribal nations can prosecute non-Native defendants without having to meet all the requirements of due process as required by SDVCJs. However, the 2022 VAWA did not change these requirements.

As an approximate measure of a tribal nation’s willingness to work within federal guidelines, we have collected data on each tribal nation’s self-governance compacting with the Bureau of Indian Affairs (BIA). The Tribal Self-Governance Act passed in 1994 and created the Office of Self-Governance, which “provides financial management, budgeting, accounting, and contracting services for self-governance tribes and assists with the development and implementation of regulations, policies, and guidance in support of self-governance initiatives” (Office of Self-Governance 2023). As of 2023, 137 tribal nations across the United States compact with the BIA. We believe that a tribal nation joining one of these compacts is indicative of greater administrative and institutional capacity, and potentially greater levels of trust in working with the federal government. As we stated earlier, the more administrative and institutional capacity tribal nations have, the more effectively they can advocate for themselves and create and sustain an SDVCJ. Likewise, taking part in other federal programs signals a level of trust between a tribal nation and the federal government that could also promote adoption of an SDVCJ. Therefore, we argue:

Hypothesis 1: Entering into a compact with the federal Bureau of Indian Affairs signals greater administrative and institutional capacity as well as a willingness to work within federal guidelines on tribal affairs, which produces a greater likelihood of adopting an SDVCJ.

In our study, we try to account for the financial burdens associated with adopting an SDVCJ, including the fiscal capacity of tribal nations to absorb those costs. We argue that there are considerable financial costs that discourage SDVCJ implementation (Chino 2021; Crepelle 2020), which include:

[h]iring additional law enforcement officers, incarceration costs, training costs, hiring additional personnel to draft codes, probation costs, jury costs, hiring additional prosecutors, batterer support treatment costs, costs associated with recording proceedings, hiring additional defense counsel, substance abuse treatment costs, costs associated with publishing tribal codes, hiring additional judges, and victim support costs. (NCAI 2018, 30)



Many tribal justice systems are severely underfunded just operating under the status quo, even before a new element to their criminal justice system is added (NCAI 2018, 6). Tribal courts have been operating with limited jurisdiction for over 40 years, and many are understaffed and ill-equipped to meet the initial mandates required prior to implementation and manage the responsibilities the expansion of tribal jurisdiction entails (Hannon 2021). For instance, the “statutory requirements” of the provision include, but are not limited to, mandates that the tribal judge overseeing an SDVCJ case has “sufficient legal training to preside over criminal proceedings,” is “licensed to practice law by any jurisdiction in the United States,” and that “tribal nations must have adequate facilities to house non-Indigenous defendants and provide defense counsel for poor defendants” (Senate Committee on Indian Affairs 2021, 40, 69). The cost of obtaining public defenders and judges with adequate legal training can become prohibitively expensive for financially strained tribal nations. Additionally, VAWA and its accompanying current regulations fail to identify what constitutes “sufficient legal training”; without specific federal guidance, tribal nations have had to define that phrase themselves, which then determines judicial qualifications for judges (NCAI 2018, 30).

In addition to shaping tribal court personnel and codes to comply with federal law, tribal nations must also be prepared to incarcerate perpetrators. Tribal governments typically utilize the BIA detention facilities for their defendants due to cost constraints. Federal grant funding does not cover all costs associated with detention, which can amount to over \$150 per day, with tribal nations claiming that federal funding only covers half of the detention facility costs (NCAI 2018). BIA detention facilities generally rely on the Indian Health Services (IHS) for healthcare for defendants. Since non-Native Americans are generally ineligible for care by the IHS, defendants in tribal custody have healthcare costs covered by the tribal nation itself. One tribal nation paid “over \$60,000 for one offender’s healthcare” (NCAI 2018, 31).

We assess the financial capacity of tribal nations to meet these costs with two measures of a tribal nation’s fiscal capacity: median income of tribal residents, and awards of OVW grants specifically for the creation of SDVCJs. We argue that the greater fiscal capacity of tribal nations increases the likelihood they will adopt an SDVCJ:

Hypothesis 2: The higher the median income of tribal residents, the greater the fiscal capacity of tribal nations to adopt an SDVCJ.

Hypothesis 3: Being awarded an OVW grant to adopt an SDVCJ increases the likelihood that a tribal nation will adopt an SDVCJ.

Another variable that we believe influences adoption of SDVCJs is the number of non-Native Americans who may

visit or live on tribal lands; we believe higher amounts of exposure to non-Native Americans increases the probability of Native Americans forming intimate relationships with them. In their study on the number of COVID-19 cases in Native nations, Foxworth et al. find that when more nonmembers travel to tribal lands COVID-19 cases rose. The authors used the size of tribal casinos as a “sound proxy for one reason that individuals visit tribal lands and we know that the presence of Native casinos is usually combined with other draws for non-Native tourists” (2022, 8). SDVCJs specifically address domestic violence between Native Americans and non-Native Americans and we believe the higher amounts of exposure to non-Native Americans produces more incidents of domestic violence on Native lands. We use two variables to account for this: the number of casinos a tribal nation has and the percentage of Native residents on a reservation:

Hypothesis 4: The more casinos a tribal nation has, the greater the probability of interaction between Native and non-Native Americans, and the greater the likelihood a tribal nation will adopt an SDVCJ.

And,

Hypothesis 5: The higher the percentage of Native American residents on tribal lands, the lower the percentage of non-Native Americans, and the lower the likelihood a tribal nation will adopt an SDVCJ.

Finally, we believe the state context matters. Specifically, we believe domestic violence firearm laws (DVFLs) in the state (or states) in which a tribal nation resides are an important mechanism state governments can use to protect Native American victims from non-Native American abusers. Research shows that the presence of DVFLs decreases female homicides in states that adopt them (Díez et al. 2017; Zeoli et al. 2018), and Schiller and Sidorsky (2022; 2023) have studied the formation and adoption of these laws at the state level. Schiller and Sidorsky show that the original VAWA, the passage of the federal Lautenberg Amendment that prohibited gun possession for misdemeanor domestic violence abusers, levels of gun homicides in a state, and how conservative a state is predicts whether a state would adopt one of these laws. The higher the number of DVFLs that try to keep guns out of the hands of repeat abusers a state has, the more protection Native American women may have. Unfortunately, accurate data nationwide on gun crimes on Native lands is difficult to obtain. However, we believe that tribal nations that are in a state or states with DVFLs are more attuned to domestic violence safety and are more likely to adopt an SDVCJ because the state is doing a better job of protecting them. We argue:

Hypothesis 6: The higher the number of DVFLs in the states where the tribal nation resides, the higher the likelihood a tribal nation will adopt an SDVCJ.

Our next section details the data we have collected to explain why tribal nations have implemented an SDVCJ.

## Models and Results

Most eligible tribal nations have not adopted SDVCJs. We seek to understand why some tribal nations would forego the opportunity to create a federally sponsored judicial venue that would broaden their authority to adjudicate domestic violence crimes. We believe financial barriers are a large deterrent for many tribal nations to adopt this program. There may be additional factors that affect whether a tribal nation will implement an SDVCJ, including the percentage of Native Americans enrolled on the reservation, female leadership within the tribal nation's government, and the levels of domestic violence in the state.

We collected data for 354 tribal nations across 33 states and identified 31 SDVCJ-implementing tribal nations.<sup>5</sup> Some tribal nations are one federally recognized tribal nation but have multiple bands, with each band having their own forms of government. For example, the Chippewa Tribe in Minnesota has six bands (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth). We opted to treat the bands as individual tribal nations as there is an example in Oklahoma of the Chickasaw and Choctaw Nations—both of which are in the Shawnee Tribe—adopting SDVCJs while the Osage Nation has not and yet is also part of the Shawnee Tribe. Our decision to count tribal nations in this way follows the practice of the United States Census Bureau, which we relied upon for specific data used in the analysis.

Collecting accurate data on the incidence of domestic violence for each tribal nation is not feasible for this study. Overall, it is difficult to assess the true number of domestic violence incidents nationwide because of underreporting by victims and different record keeping across states (Schiller and Sidorsky 2022). Although the Centers for Disease Control (CDC) is now working with state departments of health and state departments of law enforcement to coordinate reporting of domestic violence, that data is not yet fully available, and may not identify domestic violence as specifically committed on tribal lands. As a proxy, we averaged the female murders by family members in a tribal nation's state from 2010–16, which encompasses the time before and after the 2013 VAWA reauthorization created the SDVCJ program. For Native nations that cross multiple states we averaged the number of female murders by family members across the states in which the tribal nation resides. This data was collected from the Federal Bureau of Investigation's Uniform Crime

Report; we concede this data is at best a conservative estimate of levels of domestic violence committed against Native American women.

We also collected the number of Native American female homicides during this same period for each of the states where an SDVCJ-implementing tribal nation is located. What we gain in specificity in knowing the victim was a Native American woman, we lose in knowing whether it was a domestic violence-related homicide; the data does not specifically say the reason behind the murder, although we know a significant portion of female homicides are related to domestic violence.<sup>6</sup> We also know that this data underreports the number of Native American female homicides. As was noted by Secretary of the Interior Deb Haaland, hundreds of Indigenous girls and women go missing every single year, with many of their cases going unsolved or not categorized as homicides due to lack of evidence (McDaniel 2021). The issues of violence and sexual assault in Indigenous communities has also been found to be a key issue among Native American voters (Sanchez et al. 2021). As of June 2023 this is the best data available specifically noting ethnicity, sex, and homicide by state for the years we are studying. This data was collected from the Murder Accountability Project (2022), a nonprofit organization that works to understand which homicide cases go unsolved. For tribal nations that cross multiple states we added the number of female murders in each of the states in which the tribal nation resides.

A considerable body of research has shown that the presence of women in government may lead to increased focus on women's issues and that women are more likely than men to focus on issues that are perceived as more feminine, such as education, welfare, and reproductive rights (Poggione 2004; Reingold 2008; Swers 1998; 2005). Furthermore, Carpenter's work (2021) has demonstrated that women in Native nations have played a prominent role in fighting to keep their land. Domestic violence is a gendered issue, with most victims being women and children. For example, Nadia Brown (2014) has shown that Black female state legislators disproportionately focus on domestic violence in their bill sponsorship. Yet other work shows that the percentage of women in a state legislature does not predict the passage of domestic violence firearm laws (Schiller and Sidorsky 2022). We have accounted for this by collecting the sex of the tribal nation leader as well as the percentage of tribal council members who are women using the Directory of Tribal Leaders from the US Department of Interior, websites, and social media accounts of the tribal nations, and through directly contacting the tribal nations themselves in some instances. Summary statistics for these variables are presented in table 2.

As discussed above, a large part of implementing an SDVCJ is meeting the significant financial burdens

**Table 2**  
**Political Representation Predictors of SDVCJ Adoption Summary**

Representation predictor (average)	All SDVCJ-implementing tribal nations	All non-SDVCJ-implementing tribal nations
Current female leader	9 tribal nations (30%)	127 tribal nations (42%)
Percentage of women on tribal council	40.6%	41.5%
Average number of women on tribal councils	4	3
N	29	279

Note: We were able to collect the sex of the leader of the tribal nation from 30 implementing SDVCJs and 305 nonimplementing tribal nations.

associated with putting tribal codes in compliance with federal law, as well as being prepared for the detention, healthcare, and public defense costs. Closely related to financial capacity is also institutional capacity and the ability of a tribal nation’s institutions to adopt an SDVCJ. We have collected data on each tribal nation’s self-governance compacting with the BIA. To measure financial capacity, we collected the median household income from the United States Census Bureau (2022).

We also collected data on whether the tribal nation received an SDVCJ grant. More affluent tribal nations may be in a better position to afford the costs associated with implementing an SDVCJ and federal grants may provide just enough funding for other tribal nations that would not be able to afford it on their own. Earlier research has questioned the profitability of casinos for tribal governments because only a handful of tribal nations generate most of the revenues from all casinos (Evans 2011b; Henson et al. 2002; National Indian Gaming Commission 2019). Therefore, it is possible that the number of casinos on tribal lands may improve the fiscal capacity of the tribal nation, but we think it is a better measurement of the increased likelihood of relationships between Native and non-Native Americans that could end up as abusive situations. Table 3 displays the summary statistics for the financial variables we will be testing. Adoption of TLOA is included here in the

summary statistics but was not included in the final statistical model.

Characteristics of the tribal nations themselves may also influence whether they adopt an SDVCJ (see table 4). We are particularly interested in the composition of the individuals living on reservations. The vast majority of domestic violence crimes on Native land are committed by non-Native Americans. In turn, a larger percentage of non-Native Americans living in Indian Country may increase domestic violence between Native Americans and non-Native Americans. There is substantial variation in the percentage of Native Americans that make up an entire reservation population, from a minimum of less than 5% (The Little Traverse Bay Band of Odawa Indians in Michigan) to over 75% (The Alabama-Coushatta Tribal Nation of Texas). Additionally, the number of enrolled members versus the number of reservation residents varies. The size and composition of a tribal nation’s land could differ in the degree of influence on the adoption of an SDVCJ. A larger number of reservation residents may mean more tax revenue for the tribal nation to fund an SDVCJ. We believe these variables are important in understanding SDVCJ adoption.

As a final variable of interest, as discussed above, we include a measure of state-level domestic violence firearm laws to gauge a state’s overall policy climate on domestic violence homicides. Any kind of gun control measure is

**Table 3**  
**Financial and Institutional Predictors of SDVCJ Adoption Summary**

Financial predictor (average)	All SDVCJ-implementing tribal nations	All non-SDVCJ-implementing tribal nations
Median household income	\$44,446	\$47,692
Adopted TLOA	15 (48.4%)	1 (0.3%)
Received SDVCJ grant funds	35.5%	5.9%
Self-governance (BIA)	20 (64.5%)	81 (25.1%)
N	31	247

Note: For the nonimplementing tribal nations, 19 have received SDVCJ funds but have not implemented a jurisdiction yet; 11 out of 31 implementing tribal nations have received SDVCJ funds; nine of the nonimplementing tribal nations and two of the implementing tribal nations were close to implementing TLOA as of 2018. Median income does not include Little Traverse Bay Bands of Odawa Indians for the SDVCJ-implementing tribal nations as it was not available.

**Table 4**  
**Tribal Characteristics Summary in the Sample**

Tribal characteristics predictor (averages)	All SDVCJ-implementing tribal nations	All non-SDVCJ-implementing tribal nations
Number of enrolled members	30,691	3,962
Number of reservation residents	67,002	11,691
Number of casinos	5	2
Percentage of residents who are Native American	43.2%	58.3%
Percentage of residents who are non-Native American	56.8%	41.5%
N	31	277

Note: Percentage of residents who are Native American does not exclusively count enrolled tribal members, it also includes anyone else who identifies as Native American but may be enrolled in another tribal nation.

subject to high levels of partisan conflict, and we expect that tribal nations located in states that take more aggressive steps to protect women from domestic violence will be more inclined to adopt an SDVCJ.<sup>7</sup>

### Predicting SDVCJ Adoption

We collected data on all 31 tribal nations that have adopted an SDVCJ, as well as the remaining tribal nations that have not adopted an SDVCJ but were eligible to do so. We constructed a model using logistic regression with robust standard errors.<sup>8</sup> Table A2 in the appendix contains the summary statistics for each variable used. Because of the large variation in the number of reservation residents (a low of 0 to a high of 800,117), we use the log of this variable in our models. The variables are grouped into the areas we believe predict SDVCJ adoption: tribal characteristics, fiscal and institutional capacity, representation predictors, crime predictors, and regional adoption of SDVCJs.

To measure the representation variables, we included an interaction between the percentage of women on the tribal council with female tribal leader. To avoid overestimation, we only included the percentage of women on the tribal council with the interaction variable. We included an impact column that displays the predicted probabilities of the significant variables computed using Clarify. Figure 3 contains the graphical representation of the results in our model.

In table 5, we see that the number of reservation residents increases the likelihood of SDVCJ adoption by 4.9%. As per hypothesis 4, the number of casinos increases the likelihood of SDVCJ adoption, but the percentage of residents who are Native American was not statistically significant (hypothesis 5). Both financial capacity variables are significant, albeit with some unexpected results. Receiving an SDVCJ grant increased the likelihood of adopting an SDVCJ by 15%, providing support for hypothesis 3. Counter to our expectations in hypothesis 2, the higher the median income within a tribal nation, the

lower the likelihood that a tribal nation will adopt an SDVCJ. As per hypothesis 1, being a self-governing tribal nation compacting with the federal government increased SDVCJ adoption by 10%. The DVFLs within the state and the regional tribal diffusion variables did not reach standard levels of statistical significance.<sup>9</sup>

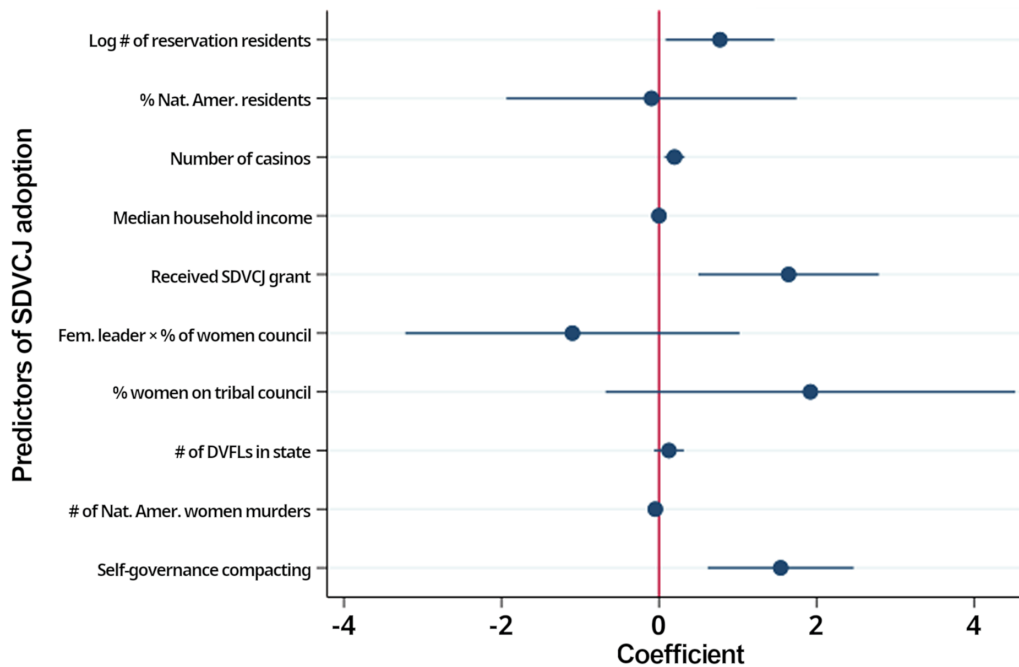
A tribal nation's financial capacity matters in terms of support from the federal government to adopt an SDVCJ program, and often starts with the earlier investment in the criminal justice system through TLOA adoption. Because of the high collinearity between TLOA and SDVCJ ( $r = 0.64$ ), which we believe may be explained by the same set of antecedent variables, we chose to omit TLOA from the model that predicts SDVCJs, which are the more permanent judicial structure and more directly adjudicate domestic violence crimes. We found a very small effect associated with higher median household income, which decreases the likelihood of SDVCJ adoption.

### Discussion and Conclusion

We have shown that the fiscal and institutional capacity of tribal nations is an important component of SDVCJ adoption. Although median household income had a negative relationship with SDVCJ, it was a small effect in comparison to the effects of receiving an SDVCJ grant and being a self-governing tribal nation compacting with the federal government. The findings associated with the self-governing variable show an institutional investment by the tribal nation, and a willingness to work with the federal government. Many tribal nations have a deep distrust of the federal government, which may be a key reason why some nations may be unwilling to adopt a federal program like SDVCJ. Adopting another federal program prior to an SDVCJ is capturing a certain level of trust that other variables in our model cannot measure, and is therefore important. Both the number of reservation residents (providing more taxes) and the number of casinos could also be considered financial predictors. Although not all of the



**Figure 3**  
**Predicting SDVCJ Adoption in Tribal Nations**



financial capacity variables have the same effect, we believe the more financial and institutional capacity a tribal nation has, the higher the likelihood they will adopt an SDVCJ.

Additionally, we were able to show that female representation has a very limited effect on the adoption of an SDVCJ. Our model included the percentage of women on the tribal council and an interactive variable of the percentage of women on the tribal council with a female leader; neither became significant. It is important to note that while female tribal representation may matter in other areas, in this policy domain it is the institutions that are influencing SDVCJ adoption. We are not aware of extensive scholarship that looks at female representation in tribal governments across so many different tribal nations. Most work focuses on a few nations, due to data constraints (Prindeville 2002). We hope our work can help to spur more research in political science on the role of women leaders in tribal nations.

The number of murders of Native American women did reach statistical significance at the  $p < 0.10$  level but the number of DVFLs never became statistically significant in our analysis. Higher numbers of Native American women murders reduce the likelihood a tribal nation adopts an SDVCJ. Recall that this is an imperfect measure because we only have access to Native American murders, not murders due to domestic violence. Second, it may be that despite the high number of murders, cultural practices

may play a role in discouraging the adoption of an SDVCJ. In a future analysis, we will explore the concerns that tribal leaders may have over removing tribal cultural practices as a requirement for adopting an SDVCJ.

There are disproportionately high rates of domestic violence abuses committed within Native American communities, mostly by non-Native individuals. SDVCJs were created as part of the 2013 VAWA to address this issue and return sovereignty to tribal areas in prosecuting domestic violence crimes. Overall, these criminal court jurisdictions have been successful in finally holding non-Native offenders accountable for their crimes against Native Americans in Indian Country. Yet despite these early successes, very few of the eligible federally recognized tribal nations have adopted these jurisdictions. Native American reservations have severely limited resources and investing in their criminal justice system may simply be beyond their capabilities. Federal grants through the OVV may ameliorate that financial pressure and encourage tribal nations that cannot afford to implement an SDVCJ to do so if they are awarded a grant. But the financial assistance still does not address the concerns tribal nations have over their cultural practices, which they may have to adjust or abandon entirely to adopt an SDVCJ.

Lisa Brunner, a sexual assault survivor from the Ojibwe, or Chippewa, located in Michigan, said this about violence against Native American women: “We

**Table 5**  
**Prediction of SDVCJ Adoption, Logistic Regression Robust Standard Errors**

	Model 2	Impact
<i>Tribal characteristics</i>		
Log number of reservation residents	0.7738* (0.3517)	+4.9%
Percentage of residents who are Native Americans	-0.0958 (0.9402)	
Number of casinos	0.1965** (0.0651)	+1.8%
<i>Financial and institutional capacity</i>		
Median household income	-0.00004* (0.00002)	-3.6%
Received SDVCJ grant funds	1.6450** (0.5847)	+15.3%
Self-governance (BIA)	1.5444** (0.4726)	+10.2%
<i>Representation predictors</i>		
Female representation (Female leader × percentage of women on tribal council)	-1.0993 (1.0824)	
Percentage of women on tribal council	1.9220 (1.3265)	
<i>Crime predictors</i>		
Number of DV gun laws	0.1260 (0.0966)	
Number of Native American women murders	-0.0471+ (0.0266)	-3.9%
Constant	-5.2415** (1.9205)	
Pseudo-R2	0.2945	
N	249	
Prob > chi2	0.0000	

Note: + p < 0.10, \* p < 0.05, \*\* p < 0.01. Logistic regression calculated with robust standard errors. For predicted probabilities for binary independent variables that are statistically significant, the impact reports the estimated change in the probability of adopting an SDVCJ as the value of the variable is changed from 0 to 1. For continuous variables, the impact reports the estimated change in probability of adopting an SDVCJ as the value of the variable is changed from its first quartile value to its third quartile value.

have always known that non-Indians can come onto our lands and they can beat, rape, and murder us and there is nothing we can do about it” (Crepelle 2020). Building on TLOAs, SDVCJs can be a solution to this problem and were created to close this glaring loophole in federal, state, and tribal policy on domestic violence. With the most recent Supreme Court decision in *Oklahoma v. Castro-Huerta* in June 2022, the future effectiveness of SDVCJs has become uncertain. In a reversal of a case that had been decided just two years prior (*McGirt v. Oklahoma*), the court ruled that state governments have jurisdiction to prosecute crimes committed by non-Native Americans against Native Americans in Indian Country (Cornell Law School 2022).

Whereas prior law only allowed state governments to pursue nonviolent offenses, the *Castro-Huerta* ruling now opens the door for state governments to prosecute any crime by non-Natives in Indian Country, including domestic violence crimes. It is not clear if courts will rule that domestic violence crimes are exempt from this if a tribal nation has adopted an SDVCJ because they were

created by Congress. It is possible that tribal nations could be concerned that state governments may not adequately prosecute non-Native offenders and let them get away with crimes against their members on their land. That in turn may encourage higher rates of SDVCJ adoption. Or it may slow the adoption of SDVCJs because tribal nations may see that the state has a higher capacity (or interest) to handle these cases than the federal government did, making the adoption of an SDVCJ redundant and expensive.

Although the future of SDVCJs is uncertain, this work seeks to focus attention on what helps or hinders a tribal nation in adopting the judicial capacity to prosecute domestic violence crimes against Native American women committed by non-Native individuals. For too long, Native American women have been left unprotected and vulnerable to repeated abuse in their communities. As such, their right to human security has not been guaranteed by government at any level. The creation and adoption of SDVCJs is an important policy and legal tool to remedy that failure.

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## Notes

- 1 Non-Indian descent is the terminology used by the NCAI in their report.
- 2 There are also tribal nations that have state recognition but not federal recognition. For an excellent analysis of how these tribal nations still make an impact, see Hiraldo (2020).
- 3 For an expanded discussion of the role of DV courts in adjudicating domestic violence cases, see Sidorsky and Schiller (2020).
- 4 In 2022, the Supreme Court ruled 5-4 in *Oklahoma v. Castro-Huerta* that states do have the power to prosecute non-Native Americans for crimes committed on Native lands, and it appears that the court has been considering the structure of federal and tribal interactions more in recent years.
- 5 This excludes the 228 Alaska Native nations that were not eligible until after the VAWA reauthorization in March 2022 but does include the four Maine tribal nations, as one of them received grant funding in 2021 and adopted an SDVCJ in 2022.
- 6 The National Coalition Against Domestic Violence reports the following: “40% of female murder victims are killed by intimate partners; 1 in 3 female murder victims and 1 in 20 male murder victims are killed by intimate partners” (NCADV 2015).
- 7 We also ran the analysis with a diffusion variable that accounted for the percentage of other tribal nations in the region that adopted an SDCVJ. It never became significant and did not change the results of the other variables.
- 8 For the 12 tribal nations that reside across multiple states we placed them in the state according to the address on file with the US Department of the Interior, Indian Affairs (<https://www.bia.gov/service/tribal-leaders-directory/federally-recognized-tribes>).
- 9 In models not shown here we included the average number of female murders by family. We could not include this in the model with the number of DVFLs as they were too highly correlated ( $p = 0.7060$ ). In that model, reservation residents and median household income lose significance while the other results stay largely the same. We also ran a model with the log of the number of enrolled members instead of reservation residents. This model also results in median household income losing significance, although the log of the number of enrolled members is significant at the  $p = 0.017$  level.

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## Appendix

**Table A1**  
Number of Federally Recognized Tribal Nations in Each State

State	Number of federally recognized tribal nations
Alabama	1
Alaska	229
Arizona	17
California	106
Colorado	1
Connecticut	2
Florida	2
Idaho	4
Iowa	1
Kansas	2
Louisiana	4
Maine	4
Massachusetts	2
Michigan	11
Minnesota	8
Mississippi	1
Montana	8
Nebraska	4
Nevada	15
New Mexico	21
New York	8
North Carolina	1
North Dakota	3
Oklahoma	35
Oregon	9
Rhode Island	1
South Carolina	1
South Dakota	8
Texas	3
Utah	4
Virginia	7
Washington	29
Wisconsin	11
Wyoming	2
Crossing Multiple States	12

*Note:* Data compiled from the Division of Tribal Government Services, Bureau of Indian Affairs. The following tribal nations cross state boundaries and are placed in a specific state according to the US Department of the Interior Indian Affairs Directory (there are 12): Colorado River Indian Tribe of the Colorado River Indian Reservation (Arizona and California), Navajo Nation (Arizona, New Mexico, and Utah), Quechan Tribe of the Fort Yuma Indian Reservation (Arizona and California), Fort Mojave Indian Tribe (Arizona, California, and Nevada), Ute Mountain Tribe of the Ute Mountain Reservation (Colorado, New Mexico, and Utah), Iowa Tribe of Kansas and Nebraska, Sac and Fox Nation of Missouri (Kansas and Nebraska), Pokagon Band of Potawatomi Indians (Michigan and Indiana), Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation (Nevada and Oregon), Washoe Tribe (Nevada and California), Standing Rock Sioux Tribe (North Dakota and South Dakota), and the Confederated Tribes of the Goshute Reservation (Nevada and Utah).

**Table A2**  
**Summary Statistics**

Variable	N	Mean	SD	Min	Max
Implemented SDVCJ	354	0.0876	0.2831	0	1
Log reservation residents	329	2.8376	1.1959	0	5.9
Percentage of Native American reservation residents	310	0.5679	0.2909	0	1
Median household income	277	47,340.01	21,818.22	12,083	250,000
Self-governance (BIA)	354	0.2853	0.4522	0	1
Number of casinos	354	1.9294	2.7978	0	26
Received SDVCJ grants	354	0.0852	0.2796	0	1
Female tribal leader	336	0.4048	0.4916	0	1
Percentage of women on tribal counsel	308	0.4145	0.2335	0	1
Female representation	306	0.2016	0.2861	0	1
Number of DVFLS	354	5.0774	2.8569	0	8
Number of Native American women murders 2010–16	354	12.5706	9.1206	0	52
Percentage of Native nations in region with an SDVCJ	354	0.0779	0.1159	0	0.19

*Note:* Data availability is inconsistent across all tribal nations for some of the variables listed above.