

## **Tribal Domestic Violence Courts and Tribal Domestic Violence Dockets**

*Guide for Development of a Tribal Victim-Centered  
Specialized Court or Docket to More Effectively Address  
Domestic Violence Cases*



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# **TRIBAL DOMESTIC VIOLENCE COURTS AND TRIBAL DOMESTIC VIOLENCE DOCKETS**

## **Guide for the Development of a Tribal Victim-Centered Specialized Court or Docket to More Effectively Address Domestic Violence Cases**

February 2019

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# Chapter 1. Introduction

This chapter provides an overview of the basic concepts of domestic violence courts and dockets and discusses how tribal sovereignty is intertwined with the domestic violence response in Indian country. This chapter also explains the purpose of this Guide including what the Guide can and cannot do. Exercises provide guidance on assembling a multidisciplinary planning team (“planning team”) to work through the Guide’s exercises as well as suggestions and tips on effective teamwork. A glossary of useful terms is provided. Additional exercises provide a starting point for the planning team to conduct an initial assessment regarding the level of domestic violence in the tribal community. The exercises will also assist the planning team in drafting a Vision Statement that it will visit frequently throughout the Guide. The Vision Statement represents a cornerstone of consensus and vision for the planning team. The Vision Statement should be revisited when impasse occurs during planning team meetings from the point of consensus outward.

## A. Domestic Violence Courts and Tribal Domestic Violence Response

Nationwide state domestic violence courts and dockets are at the forefront of a movement to provide a multidisciplinary approach to addressing domestic violence in the civil realm and/or the criminal realm. Presently, there is very little information on tribal domestic violence courts. Therefore, this Guide will draw upon the research, successes, and barriers noted by state domestic violence courts. Next the Guide will address issues in assessing the feasibility of a tribal domestic violence court or docket for a particular tribal community. The assessment includes drawing upon tribal customs and traditions, as well as tribal laws, prior to deciding whether a tribal domestic violence court or docket fits the tribal community.

State domestic violence courts addressing domestic violence in the civil realm have structured their courts with dedicated judges and court staff educated on the power and control dynamics of domestic violence and some version of a multidisciplinary core case team.<sup>1</sup> The multidisciplinary core case team provides recommendations to the judge as the case progresses through the civil system resulting in an informed judicial decision-making process. The core case team recommendations generally focus on victim safety and batterer accountability. By keeping track of a batterer’s compliance or noncompliance with civil court orders, the ability of the batterer to manipulate the system is greatly restricted.

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<sup>1</sup> The term *core case team* is utilized in the tribal section for ease in distinguishing this team from the case planning team that will design the tribal domestic violence court utilizing the exercises in this Guide.

In the criminal realm, states have utilized state domestic violence courts to transform the historically inadequate response to domestic violence. Some issues addressed are law enforcement's reluctance to make domestic violence arrests and prosecutors viewing domestic violence as a private matter as opposed to a crime and failing to prosecute those cases.<sup>2</sup>

While it is difficult to identify a uniform model among current state domestic violence courts, many of these specialized courts share common aspects<sup>3</sup> including:

- **Victim safety and services:** the provision of frontloaded assistance, including court accompaniment, crisis intervention, and shelter referral, to victims (services are typically provided by an independent victim services agency or a specialized bureau of the prosecutor's office);
- **Efficient case processing:** timely and effective management of the domestic violence caseload by specifically trained court staff, which includes quick review and screening and the expeditious transfer and calendaring of cases to the domestic violence docket;
- **Coordinated response:** establishment of a collaborative network of courts, criminal justice agencies, local victim service organizations, and social service programs working together to create policies and procedures to increase the safety of victims of domestic violence;
- **Informed judicial decision making:** creation of a judiciary who are knowledgeable in the dynamics of domestic violence and have access to accurate and immediate case information, where appropriate;
- **Offender accountability:** policies that hold domestic violence perpetrators responsible for their actions through swift responses to noncompliance with court orders; and
- **Reduced recidivism:** a decrease in the amount of future domestic violence incidents and arrests among those processed by the court.

Much like states, tribes are sovereign governments with a responsibility to keep tribal citizens safe. However, research demonstrates that domestic violence is being perpetrated against Native women in staggering proportions, which highlights the need for an adequate tribal response to domestic violence.<sup>4</sup> This violence affects the health and well-being of tribal families and tribal communities. Tribes may be able to

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<sup>2</sup> Center for Court Innovation, *Two Decades of Specialized Domestic Violence Courts* (2009), 1. <https://www.courtinnovation.org/publications/two-decades-specialized-domestic-violence-courts-review-literature>.

<sup>3</sup> *Ibid.*, 3.

<sup>4</sup> National Institute of Justice, *Research Report, Violence Against American Indian and Alaska Native Women and Men* (2016), [www.ncjrs.gov/pdffiles1/nij/249736.pdf](http://www.ncjrs.gov/pdffiles1/nij/249736.pdf) (accessed September 7, 2018). See also Futures Without Violence, *The Facts On Violence Against American Indian Alaska Native Women*, [www.futureswithoutviolence.org/userfiles/file/Violence%20Against%20AI%20AN%20Women%20Fact%20Sheet.pdf](http://www.futureswithoutviolence.org/userfiles/file/Violence%20Against%20AI%20AN%20Women%20Fact%20Sheet.pdf) (accessed September 7, 2018).

assert tribal court civil and criminal jurisdiction in domestic violence cases arising in the tribe's territory or Indian country.<sup>5</sup>

While utilizing the lessons learned by states through implementation of domestic violence court, tribes will need to take this information and adapt the state models into a workable tribal alternative. Tribal domestic violence courts are one way that tribes can respond to domestic violence in Indian country and increase justice for victims and their children. Tribal domestic violence courts should be specialized courts with dedicated justices and court staff educated on the power and control dynamics of domestic violence presiding over domestic violence cases. The structure of the tribal domestic violence court should vary depending upon tribal customs and traditions, community need, local resources, and the tribal court facility. Tribal domestic violence courts can be structured to handle either/both civil and criminal cases.

Tribal domestic violence courts should be focused on victim safety and early identification of domestic violence followed by access to a victim advocate and services. The identification of domestic violence and a coordination of victim services should involve the coordinated multidisciplinary core case team response to domestic violence. Members of the core case team should screen cases for domestic violence utilizing protocols that have already been agreed upon. As victims seek the services from the specific disciplines of the core case team and domestic violence is identified, the team will then refer cases to the domestic violence court depending on requests of the victim and the types of cases the court is designed to address. Generally, a core case team will advise the judge regarding the needs of the victim and the children (if any). The core case team will also advise the judge on safety issues present or arising in the case. This advice results in a well-informed judicial decision-making process. Further, the core case team should monitor batterer compliance with court orders and report progress or violations to the court. A concerted collaborative effort focused on batterer accountability greatly reduces the batterer's ability to manipulate the systems and refocuses the court on victim safety issues that may be developing.

The core case team is generally comprised of members representing specific disciplines that come into contact with or provide services to the victim. Each member is specially trained in the power and control dynamics of domestic violence. The core case team should be present in each domestic violence case depending on the types of cases (civil/criminal) the court is structured to hear. The core case team should include a representative from the following offices: victim advocate, law enforcement, behavioral health, and tribal prosecution. However, other disciplines can be added at any point. Further, an additional pool of multidisciplinary professions should be developed and placed on call so that the judge can draw upon specific expertise as a

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<sup>5</sup> For a more thorough discussion of tribal court civil and criminal jurisdiction see pages 30-41 in this resource.

case may require. For more information regarding possible multidisciplinary professionals that might be included in the core case team see pages 58-64.

## **B. Tribal Domestic Violence Dockets**

Note that tribal domestic violence courts and tribal domestic violence dockets are not the same. Tribal domestic violence courts utilize a core multidisciplinary team to address ongoing victim safety issues and ongoing monitoring of the batterer's compliance with court orders; this provides a domestic violence-trained judge with the most current issues the victim faces throughout the court process. However, a tribal domestic violence docket day is characterized by setting aside specific days/weeks of the tribal court's docket to address cases involving domestic violence. Devoting certain days of the docket to domestic violence cases may provide continuity for the victim by having a designated judge to preside over the cases. It may also allow the tribal court to address related civil and criminal matters on the same day for the convenience and safety of the victim.

Providing judge and court personnel that are well trained in the power and control dynamics of domestic violence is highly recommended. While certainly not as holistic as the domestic violence court approach, a domestic violence court docket may at least allow the court to offer enhanced security, advocacy services, and child care for domestic violence victims. Note that a domestic violence docket day generally does not have a multidisciplinary case management team or a pool of multidisciplinary professionals for the judge to draw on as needed and will therefore not provide the judge with current information on victim safety and batterer accountability as the case progresses. This resource focuses mainly on domestic violence courts; however, much of the information may be gleaned and utilized for developing a tribal domestic violence docket.

## **C. Purpose of This Guide**

This Guide provides information and group exercises to establish a planning team comprised of multidisciplinary representatives that will work together on group exercises located throughout the Guide. As the planning team works through the group exercises, the planning team can determine how to most effectively address domestic violence in their tribal community. This includes whether to establish a tribal domestic violence court or docket. The planning team will engage in group exercises to design and structure a tribal domestic violence court that will best fit the needs of the tribal community. Exercises are added to provoke thought on how to add specific tribal culture and traditions into the design and function of the tribal domestic violence court. The cultural and traditional component is critical, often driving how successful the tribal domestic violence court functions within the tribal community. By participating in the group

exercises in this resource, the planning team will determine the types of cases that the specialized court will hear based upon tribal community needs and resources.

## **D. What This Guide Can Do**

This Guide can provide a guided journey for a tribe's planning team wishing to explore and possibly implement a tribal domestic violence court or docket in response to domestic violence in their tribal community. As such, this Guide is written specifically for the multidisciplinary planning team as opposed to one specific discipline.

There are seven chapters in this Guide:

1. Introduction
2. Getting Started—Teamwork and Vision Statement
3. Foundational Domestic Violence Issues in Indian Country
4. Designing Tribal Domestic Violence Courts and Dockets
5. Protocol Development
6. Examples of Tribal Domestic Violence Court and Docket Models and Tribal Codes
7. Sustainability: The Anchor to Program Longevity

This chapter provides the reader with an overview of the basic background on this Guide's structure including how to establish a planning team to work through the Guide's exercises. Chapters 2 through 6 address specific substantive topics that are necessary to understand and structure domestic violence courts and dockets that meet the unique needs of the tribal community. Each chapter contains group exercises for the planning team to complete. The exercises are one of the most important parts of this Guide.

At the end of the guided journey the planning team should have:

- Assembled a planning team to attend meetings and participate in the group exercise as set forth in this Guide. Note that some of the planning team members may progress to become a member of the core case team or a member of a pool of experts that may be called upon by the tribal judge, as needed, to participate in a domestic violence case.
- Developed a Vision Statement steered by identified tribal core values that focus on victim safety and batterer accountability.
- Incorporated unique tribal custom and traditions into the design of the court.
- Identified tribal codes that support victim safety and batterer accountability.
- Identified gaps and barriers in tribal codes that put victims' safety at risk and fail to hold batterers accountable.
- Defined the types of cases the tribal domestic violence court will entertain.
- Developed basic protocols and procedures for the tribal domestic violence court.
- Established parameters for sustaining the tribal domestic violence court.

## **E. What This Guide Cannot Do**

### **A Few Words of Caution: Domestic Violence Cases Are Complex and Dangerous!**

Domestic violence cases are dangerous, complex, and often require numerous systems to work together to enhance victim safety and batterer accountability. Domestic violence cases should not be treated like cases that do not involve domestic violence. Note that this Guide has not been created as a judicial benchbook although some discussion regarding the possible role and duties of a tribal court judge may be discussed.

These cases must proceed with a focus on victim safety due to the varying degrees of lethality that may emerge at any given time as the case progresses. If individuals need training in this area, we strongly encourage you to contact one or more of the organizations listed in Appendix G for information and training.

## Chapter 2. Getting Started—Teamwork and Vision Statement

Teamwork is a cornerstone to effectively utilizing this Guide. The Guide provides instruction on assembling a planning team with suggestions regarding various disciplines that would provide useful, if not critical, input during the exercises provided at the end of chapter. Team discussion will enrich the exercises and assist in developing a plan to develop a tribal domestic violence court or docket. By utilizing the exercises, a planning team will gather information and discuss and work through issues to determine whether a tribal domestic violence court or a tribal domestic violence docket is best for their tribal community. Next, the planning team will design a tribal domestic violence court to meet the needs and customs of the tribe. The planning team may spend several days in a row working through this Guide or may choose to meet regularly at designated days of the month at a given time.

Planning team members should discuss the exercise questions and gather requested information. Once the information is assembled, the planning team will discuss various responses. Each planning team member should place their individual responses to the questions in the notebook for easy reference in later exercises. It is recommended that the “team leader” record the final consensus document on a designated color of paper for ease in reference during the exercises. This is because some exercises encourage each planning team member to record his/her own response that will be discussed during the effort to reach a consensus statement. Having a designated color of paper for consensus responses will allow planning team members to distinguish between personal responses and consensus responses.

The makeup of the planning team should be unique to the needs of your community. Planning team members should include first line responders—that is, the agency representatives that have initial contact with a domestic violence victim after an assault. Additional planning team members include other professionals who have a vested interest in creating a coordinated, victim-centered response to domestic violence.

Some examples of a planning team might include:

- Tribal court judge
- Victim advocate from community-based advocacy program
- Tribal prosecutor
- Representative(s) of appropriate law enforcement department
- Staff from batterer’s program
- Tribal court personnel
- Healthcare personnel (Indian Health Service and other)
- Tribal government, tribal leaders
- Corrections and probation personnel
- Child and/or adult protective services agencies



- Staff such as counselors, security personnel from schools, tribal colleges, universities
- Mental health professionals
- Social services workers
- Tribal elders or spiritual leaders
- Other types of victim advocates (such as those advocates located in law enforcement offices or hospital settings)

The planning team will work collaboratively throughout the Guide's exercises. Welcoming involvement from various disciplines with an interest in victim safety and batterer accountability creates a comprehensive and broad base of support. It also encourages the community to take ownership of the problem and the solutions. However, keep in mind that selecting a planning team that is too large may increase the chance of having personality conflicts, pushing personal agendas, and straying from relevant tasks.

A facilitator can be helpful in scheduling team meeting dates/times, keeping the planning team focused and on task while working through the exercises in this Guide. The facilitator may also serve as a repository of information and/or research the team has gathered. He/she can also keep notes on topics that may require additional research. The facilitator may also assist the planning team in scheduling focus groups and/or community forums on selected topics. However, a facilitator is not mandatory and one of the planning team members may serve in the role. The following exercise will be useful when assembling the planning team.

### **Exercise #1: Assemble the planning team**

**Lesson Objective:** Assemble the planning team. Designate a team leader. Schedule timelines for working through the Guide. Structure the meetings to provide the greatest opportunity for inclusion of all perspectives.

**Reading:** Please read Chapter 1 "Introduction" paying close attention to the "10 Tips to Working as a Team" set forth following this exercise.

**Instructions:** Perform the following tasks.

**Team Lead Tips:** Consider providing planning team members with three-ring binders with dividers to hold the results of the exercises and notes taken during team discussion sessions. In each meeting, the team leader may want to have large Post-it notes and markers available to capture ideas, responses, and consensus concepts as well as provide pens and note paper. It may be helpful to provide colored paper for meetings where the planning team is working toward consensus to keep each planning team member's individual responses separate from the consensus response(s). Each planning team member should place both their individual responses and a colored paper copy of the consensus response(s) in the binder for easy reference.

**1.DEVELOP** a list of potential planning team members, who are essential for the team, and secondary members whom the planning team may call upon consultation for specific issues or exercises. Select planning team members with various viewpoints who have demonstrated interest, expertise, or experience in addressing the safety of women and their children exposed to domestic violence and who are knowledgeable about the community resources and systems.

**2.REACH OUT** personally and in writing to each potential planning team member with a short description of the goal to explore and establish a tribal domestic violence court and to inquire about a willingness to participate in working through the Guide.

**3.ENSURE** that one of your planning team members is a tribal victim advocate and/or a member of the tribal domestic violence coalition in your state. For information on tribal coalitions and contact information see [www.atcev.org/tribal-coalitions](http://www.atcev.org/tribal-coalitions)

**4.DESIGNATE** a team leader.

**5.CREATE** sub teams, as necessary, within the group if document gathering is necessary and assign manageable tasks to team members or subcommittees to be accomplished within established time frames.

**6.ESTABLISH** time frames in phases, include a preparatory phase in which a team leader and team notetakers are appointed. The team leader is responsible for scheduling meetings, preparing meeting agendas, and ensuring that team notebooks contain all work products resulting from the exercises in this Guide. The team notetaker records notes of all meetings, copies those notes, e-mails/sends those copies of notes to all planning team members for review, and assembles any documents that planning team members provide.

**7.DESIGN** a meeting process that invites broad-based participation in identifying issues and making recommendations.

**8.INCORPORATE** the perspective of survivors of domestic violence in all meetings.

## **A. 10 Tips to Working as a Team**

As you move through this Guide, the following tips come from successful efforts of other tribal nations and may be useful to the process. Go over these tips and provide a copy to each planning team member.

1. The primary work should be done by a group of “problem solvers.” The effort will not succeed if it simply becomes a process of finger pointing and blaming others for weaknesses in current tribal systems or resources.

2. There should be equal representation from various tribal agencies and advocacy programs. Equal representation is important.
3. The work should be completed in a setting of mutual respect. The setting should be a safe environment in which the group can share, learn, and explore. It is okay to acknowledge differences of opinion, but not in a stereotypical or judgmental manner. The safety of women and children must be respected.
4. The agenda for each planning team meeting should be focused upon areas of mutual concern or shared interest. Try to focus on areas of common interest instead of differences. A shared vision (such as “a safe community with healthy families”) can create confidence and trust.
5. The planning team should be willing not just to examine the way things are but also be willing to explore ways of improving the laws. All planning team members must be willing to explore new ways to help make sure that women and children are safe. However, different people may have different ideas. Listen to and learn from each other.
6. To be successful the planning team members should be willing to be creative and persistent. The process will undoubtedly have frustrations and difficult times. Think “outside the box.”
7. The planning team members should be willing to share the burden by sharing resources, training, technical assistance (TA), and limited available funding, and to alternate locations of community meetings and/or focus groups.
8. All planning team members should be allowed input into discussions.
9. Consider traditional/culturally appropriate strategies. In some cultures, it is important to share and provide food for participants. You will be spending a great deal of time together, so make sure everyone is comfortable. (Please note that there are substantial restrictions on the use of federal grant funds for food. The safest practice is to use nongrant funds for food. If you are considering using federal grant funds, be sure to check with your grant manager.)
10. Expect to spend a great deal of time working together. It cannot be stressed enough that this is a lengthy project, but one that is well worth the effort. Your cooperation will help protect the women and families in your community.

## **B. Terminology**

Victim service providers use a variety of terms to describe domestic violence. Generally, the term *domestic violence* refers to a pattern of behavior that focuses on exercising power and control over the victim. Domestic violence may also be termed *family violence*, *intimate partner violence*, or *nonsituational intimate partner violence*. In this Guide, the term *domestic violence* will be used to be relevant to a wide variety of

audiences.<sup>6</sup> The terms *batterer*, *offender*, and *abuser* may be used to refer to the violent offender in a domestic violence case.

When using this Guide and throughout the drafting process, it is a good idea to keep at least one dictionary by your side. We recommend using one or more of the following:

- A general dictionary, such as *Merriam-Webster's Dictionary*;
- A law dictionary, such as *Black's Law Dictionary*; or
- A law dictionary for nonlawyers, such as *Law Dictionary for Non-Lawyers* by Daniel Oran.

Selected terms are set out as follows for purposes of clarity as you move through this Guide.

**Batterer:** The offender or perpetrator of domestic violence.

**Core Case Team (critical to an integrated, collaborative response to domestic violence):**

A term that, as defined here, refers to a multidisciplinary team that attends all domestic violence court hearings and works collaboratively on each case to share information, develop risk assessments, plan strategies to reduce safety risk to the victim and children, and relays that information to the court through recommendations.

**Core Values:** Deeply held beliefs, highest priorities, and fundamental forces that drive actions and decisions.

**Domestic Violence:** The definition of *domestic violence* varies from federal, tribal, and state jurisdictions. Domestic violence is typically defined as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person.

**Planning Team:** A term that, as defined here, refers to a multidisciplinary group of people bound by a common purpose—to reduce domestic violence in a tribal community by focusing on victim safety, victim services, and batterer accountability. A team that is working through this Guide meets regularly to communicate, collaborate, and consolidate knowledge from which decisions are made, plans are designed, and future decisions are influenced.

**Tribal Domestic Violence Court:** Tribal domestic violence courts are specialized courts with targeted caseloads consisting of domestic violence cases. Tribal domestic violence courts are comprised of personnel who are well trained in the dynamics of domestic violence and committed to working collaboratively among various victim service providers/systems to meet the needs of the family. Additionally, these courts focus on victim safety and batterer accountability by closely monitoring batterer compliance

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<sup>6</sup> Victim advocates may object to the use of the term *family violence* as that term indicates that parties other than the batterer have played a part in the violence.

with court orders.

**Tribal Domestic Violence Docket:** Tribal domestic violence docket days are characterized by setting aside specific days of the tribal court's docket to address cases involving domestic violence. Devoting certain days of the docket to domestic violence cases can provide continuity for the victim and allow the tribal court to address related civil and criminal matters on the same day. It can also allow the court to offer enhanced security, advocacy services, and child care for domestic violence victims.

**Use of Female Pronoun:** Based on statistical data and anecdotal evidence, the overwhelming majority of victims of domestic violence assaulted are female and the majority of their batterers are male. In recognition of that fact, we use female pronouns when referring to victims and male pronouns when referring to batterers as well as for ease of reading. However, the discussion in the Guide applies equally to male victims or female batterers unless otherwise specified.

**Victim/Survivor:** A person who suffers physical, mental, emotional, and/or spiritual harm due to the behavior of other(s). Throughout this Guide, the term *victim* is the term most commonly used when referring to a person who is a victim of domestic violence. We realize that words carry a great deal of power and their meanings can be interpreted in different ways. Some of the people we are working with may be offended by the use of the term *victim*. Still, others may feel the term *victim* is an accurate depiction. Note that in the planning and core team perspective, the terms used for the victim may depend on the role. For example, to a medical provider they are "patients," to a prosecutor they might be "complaining witnesses," in a civil court case they may be noted as "plaintiff" or "petitioner." Consider allowing the planning team to use the term they prefer.

**Victim Centered:** The systematic focus on the needs and concerns of a domestic violence victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. **This term also denotes that the victim may accept or reject services and recognizes that the victim may be the decision maker regarding services and some legal options.**

*See the Glossary located at the end of this Guide for additional term definitions.*

Once the planning team is in place, the following exercise will guide the planning team in an initial assessment of identifying the level of domestic violence in the tribal community.

### **Exercise #2: Assessing the level of domestic violence in tribal community**

**Lesson Objectives:** *To identify current boundaries of the tribe's Indian country. Identify the population demographics within the tribe's Indian country. Identify the number (for the tribal community) of civil and criminal domestic violence related cases in tribal, state, and federal courts and the number of children involved in both criminal and civil cases. Identify the perception of domestic violence issues in the tribal community.*

**Reading:** The planning team should consider reading Chapter 3 “Foundational Domestic Violence Issues in Indian Country” and pay close attention to the terminology following this section before proceeding with Exercise #2.

**Instructions:** Each planning team member should individually answer the following questions regarding your tribal community and place the answers in your binder. Each planning team member should include their own individual responses to the questions, as well as the consensus response in the binders.

**Team Lead Tips:** Once all planning team members have completed their responses to the exercise questions, please proceed with an open forum discussion and have the planning team leader record a response for each question that achieves as much consensus as possible. Note that some of the questions may require research, so this exercise may be assigned in advance with planning team members attending the meeting having already gathered information and recorded their individual responses in their notebooks. Outside assignments to gather needed information should be assigned to planning team members individually or in very small groups (subcommittees).

- 1. WHAT** are the boundaries of our tribal nation? Please include source of information, as well as the number of counties and states covered.
- 2. WHAT** is the population that lives within our tribal nation? List the estimated number of citizen residents, Native residents of other tribes, and non-Natives.
- 3. HOW** many civil and criminal domestic violence cases were reported in our tribal nation over the past three years? Can you identify the number of individual perpetrators (including information on race of perpetrator) as well as repeat offenders? List number of cases/police contacts.
- 4. HOW** many federal or state criminal prosecutions resulted from domestic violence that occurred within our tribal nation’s territory? How many criminal cases involving domestic violence were referred for federal prosecution? How many cases were denied for federal prosecution? (Tribal prosecutor may have this information.)
- 5. HOW** many children involved in the criminal cases prosecuted in tribal court—either as an observer or a direct target? If so, what percentage of the domestic violence cases involved children? (Tribal court clerk or tribal victim advocate may have the information and estimates by service providers are sufficient.)
- 6. HOW** many child custody and divorce cases in tribal court over the past five years had domestic violence present? (The tribal court clerk or the victim advocate may have this information and estimates are acceptable.)
- 7. HOW** many child custody and divorce cases were reported to the tribal

*victim advocate (if any) and proceeded in state court in the past five years?*

**8. HOW** many child welfare cases and removals in the tribe's territory over the past five years involved domestic violence?

**9. HOW** prevalent is domestic violence in your tribal community based upon your area of expertise? Please provide an estimate percentage including civil and/or criminal.

**10. IDENTIFY** training and technical assistance needed at this stage and request technical assistance at:

*The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039*

## C. Creating the Vision Statement

The Vision Statement is aspirational and provides a description of what the planning team would aspire to achieve in effectively addressing domestic violence in the tribal community. The focus should include victim and child safety, cultural beliefs and practices, family service needs, and batterer accountability. The planning team should review tribal traditions, stories, and customs regarding women, children, healing, and justice. This research may be done by interviewing elders within the tribal community. In addition, planning team members may consult anthropological documentation about the tribe, historical records, or other tribes that share similar cultural or linguistic ties.

Exploring the following discussion topics will assist the planning team in developing a Vision Statement they can agree upon. Once agreed upon, the Vision Statement can act as a grounding tool for the planning team to return to when necessary to refocus and find common ground in times where a consensus becomes difficult. Note: The initial Vision Statement will evolve and include additional details as the planning team moves through the exercises. This Guide will request that the planning team revisit and adjust the Vision Statement at various stages as information is gathered and reviewed and the team's knowledge base grows.

### **Exercise #3: Developing the Vision Statement**

**Lesson Objectives:** *Identify traditional beliefs relative to keeping women and children safe from batterers. Identify traditional practices regarding protecting women. Identify the importance of incorporating traditional practices or beliefs in establishing the tribal response to domestic violence. Identify whether your tribal court orders are being recognized and enforced*

*in foreign jurisdictions. Identify how the enforcement (or lack of enforcement) of tribal court orders by foreign sovereigns impacts the tribe's political power as a sovereign government. Identify the economic drain, if any, on tribal resources attributed to domestic violence.*

**Reading:** Review Chapter 3 “Foundational Domestic Violence Issues in Indian Country.”

**Instructions:** The planning team should answer the following questions to create the planning team's Vision Statement regarding tribal domestic violence in the tribal community.

**Team Lead Tips:** The following questions allow the planning team to explore if/how domestic violence threatens or has a direct effect on the tribe's political integrity, economic security, and health and welfare. Each planning team member should review Chapter 3 prior to answering the questions. Each planning team member should answer the questions prior to attending the meeting. During the planning team meeting, the facilitator should allow as much discussion as necessary to try and reach a consensus on responses. The planning team should work through rewording and reorganizing the responses to each question until a consensus or near consensus has been reached. The planning team will then compile the consensus responses and utilize the information to develop a Vision Statement. Be sure to incorporate traditional practices and traditional values into the Vision Statement so that the statement reflects tribal values relative to women and children being safe. This exercise will be revisited in subsequent exercises so it is important to get the planning team to answer each question and provide sufficient explanatory details.

**1. WHAT** are some the traditional beliefs relative to keeping women and children safe from batterers? How did the traditional practices keep the family in harmony? Please provide stories or examples if helpful to others. Are these traditional practices currently in place either by tribal governmental mandate, tribal code, or practice of the court?

**2. IDENTIFY** traditional practices relevant to keeping women and children safe from batterers.

**3. IDENTIFY** and explain the importance of incorporating traditional practices or beliefs in establishing the tribal response to domestic violence. For example, does the tribal response to domestic violence need to utilize traditional beliefs/practices and incorporate those beliefs practices into a tailored tribal response?

**4. HOW** might traditional beliefs or practices be implemented to achieve victim and children safety and batterer accountability in domestic violence cases? For example, is it appropriate to incorporate some traditional



*insights into the tribal code? Is it appropriate for the tribal judge to request traditional insights from an elder or panel of elders?*

**5. IDENTIFY** *whether your tribe's domestic violence protection orders are being recognized and enforced in foreign jurisdictions.*

**6. HOW** *has the enforcement or lack of enforcement impacted the perception of the tribe's political power as a sovereign? For example, does the enforceability of a tribal protection order by the state have an impact on a tribe's powers as a sovereign?*

**7. WHAT** *types of economic drain on tribal resources are attributable to costs related to handling domestic violence situations on law enforcement, tribal court, health services, and other tribal budget items? For example, the National Congress of American Indians' "VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five-Year Report" indicates Tulalip Tribal law enforcement had 171 contacts with 17 non-Indian defendants before they were arrested under the VAWA Special Domestic Violence Criminal Jurisdiction (SDVCJ). This does not include law enforcement contacts with Indian defendants but demonstrates the financial drain that tribes may spend on domestic crimes in their communities.*

**8. UTILIZE** *the responses from Exercises #2 and #3 to develop a draft of the Vision Statement that the planning team will utilize moving through this Guide. Note that the Vision Statement will be revisited and modified as the planning team moves through the Guide.*

**9. WHAT** *if any training and technical assistance is needed at this stage? Request technical assistance at:*

*The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039*

#### **CAUTION, DO NOT:**

- Devote resources, such as time and energy, before a consensus is reached concerning a Vision Statement related to victim safety and batterer accountability in your tribal community.
- Delay too long before dividing the work of the team into tasks that can be accomplished within the time frames established.

The following examples of initial Vision Statements are provided for illustration only.

*VISION STATEMENT: To develop and implement a \_\_\_\_ Tribal Domestic Violence Court that promotes the tribe's political integrity, economic security, health, welfare, and*

*well-being of women and children by focusing on victim safety and batterer accountability. The tribal domestic violence court shall seek to utilize tribal law, custom, and tradition to promote safety and justice, and to protect the rights of all litigants while providing a comprehensive, collaborative, and culturally appropriate approach to case resolution focusing on victim safety and batterer accountability.*

*Another example of a Vision Statement (referred to also as a statement of purpose) from the Idaho Domestic Violence Courts:*

*[https://isc.idaho.gov/dv\\_courts/DV Court Policies and Guidelines revised 4.15.pdf](https://isc.idaho.gov/dv_courts/DV_Court_Policies_and_Guidelines_revised_4.15.pdf)*

- 1. Domestic violence causes substantial harm to victims and children, as well as to the community. Family members experiencing violence are often involved in multiple court proceedings that might include divorce, custody, substance abuse, child protection, as well as civil and criminal proceedings regarding violence. Substantial resources are required for the incarceration, supervision and treatment of offenders and to assist victims. [I.C. §32-1408]*
- 2. Domestic violence courts increase safety for victims, family members, and the community and hold offenders accountable by: 1) providing greater judicial monitoring, 2) coordination of information, 3) providing individualized, evidence-based treatment and solutions; and 4) effective interaction and use of resources among the courts, justice system personnel and community agencies. Effective case management and coordination ensure that decisions do not conflict in multiple cases and provide courts with the necessary information to protect victims, family members, and the community. [I.C. §32-1408]*
- 3. The purpose of this document is to set forth guidelines to provide a sound and consistent foundation for the effective development, operation and evaluation of Idaho's domestic violence courts. These guidelines articulate research-based best practices and identify elements that are correlated with desired results and outcomes, including reducing recidivism, enhancing victim and family member safety and increasing accountability for offenders. Domestic violence courts have proven to benefit victims, family members and the community. These policies and guidelines are intended to utilize the benefits that flow from domestic violence courts, and to foster their development and effective operation statewide. [I.C. §32-1408]*

*An example of a tribal domestic violence docket Vision Statement comes from the Tulalip Tribal Code:*

*<https://www.codepublishing.com/WA/Tulalip/html/TulalipCR/TulalipCR06.html>:<sup>7</sup>*

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<sup>7</sup> Accessed March 10, 2019.

*Domestic violence offends the traditional Tulalip tribal values of honoring the family and respecting all members of the community, and it is contrary to the best interests of the family, the Tribes and the community. The purpose of the Tulalip Tribes Domestic Violence Court is to promote important traditional Tulalip tribal values by protecting victims of domestic violence and holding perpetrators accountable while ensuring that all persons accused of domestic violence crimes are provided equal protection and due process of law.*

*Note that Tulalip refers to a domestic violence court but the tribal code later clarifies the creation of a domestic violence docket. Domestic violence courts and domestic violence dockets may share many attributes with the most notable differences being the domestic violence dockets may lack a multidisciplinary court team working towards victim safety and batterer accountability.*

## Chapter 3. Foundational Domestic Violence Issues in Indian Country

### A. Native Americans Suffer Domestic Violence Rates Higher Than Any Other Group

American Indian and Alaska Native (AI/AN) women are victimized at rates higher than any other race. Data demonstrates that 56.1 percent of AI/AN women have experienced sexual violence; 66.4 percent have experienced psychological aggression by an intimate partner; and 55.5 percent have experienced physical violence by an intimate partner.<sup>8</sup> In addition, AI/AN women suffer domestic violence and physical assaults at rates higher than any other ethnicity.<sup>9</sup> According to the U.S. Department of Justice, in at least 86 percent of reported cases of rape or sexual assault against AI/AN women, survivors report that the batterers are non-Native men.<sup>10</sup> Despite the alarming rates of violence, it is likely that violence against AI/AN women occurring in Indian country is a vastly underreported crime.

American Indian women residing on Indian reservations suffer domestic violence and physical assault at rates far exceeding women of other ethnicities and locations. A 2004 Department of Justice report estimates these assault rates to be as much as 50 percent higher than the next most victimized demographic.<sup>11</sup> In a 2008 Centers for Disease Control study, 39 percent of Native women surveyed identified as victims of intimate partner violence in their lifetime, a rate higher than any other race or ethnicity surveyed. This finding has been common over the years.<sup>12</sup>

AI/AN children do not escape the ravages of domestic violence. Every single day, a majority of AI/AN children are exposed to violence within the walls of their own homes. According to the Department of Justice, Native children suffer exposure to

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<sup>8</sup> U.S. Department of Justice, *National Institute of Justice Research Report: Violence Against American Indian and Alaska Native Women and Men* (2016).

<sup>9</sup> *Brief for National Network to End Domestic Violence et al. as Amici Curiae Supporting Respondents at 2, Plains Commerce Bank v. Long Family Land and Cattle Co.*, 128 S. Ct. 2709 (2008) (No. 07-411); Steven W. Perry, *American Indians and Crime: A BJS Statistical Profile 1992–2002*, Bureau of Justice Statistics, U.S. Department of Justice, Office of Justice Programs (December 2004).

<sup>10</sup> Amnesty International, *Maze of Injustice, The Failure to Protect Indigenous Women from Sexual Assault in the USA* (2007), 4.

<sup>11</sup> Perry, *American Indians and Crime*.

<sup>12</sup> “Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence, United States, 2005,” *MMWR*, February 8, 2008, 57(5): 113–17, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm> (accessed March 7, 2019).

violence at rates higher than any other race in the United States.<sup>13</sup> Native youth are 2.5 times as likely to experience trauma than their non-Native peers.<sup>14</sup> Native American children experience posttraumatic stress disorder at the same rate as veterans returning from Iraq and Afghanistan and triple the rate of the general population.<sup>15</sup>

The following information explains that domestic violence cases are complex and dangerous. The complexities created by the dynamics of the power and control exercised by the batterer; the impact of the violence on the victim and children; and the complex service needs create the perfect storm for the batterer to manipulate the systems. These cases are extremely dangerous, and the danger is fueled by myths surrounding domestic violence and a failure to provide a victim-centered response that recognizes a victim's stake in decision making during the case process. Further, a lack of education on the dynamics of the violence; a systemic refusal to share information among service providers to sufficiently address batterer accountability; and the tribal, federal and state jurisdictional gaps created by the patchwork of federal laws all amplify the complexities and dangers of these cases and exemplify the need for a specialized tribal domestic violence court or docket.

## **B. Domestic Violence Cases are Complex**

### **1) Power and Control Dynamics**

Domestic violence is typically defined as a pattern of abusive behavior in any relationship that is used by one partner to gain, or maintain, power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, as well as psychological actions or threats of actions that influence another person. Domestic violence cases are driven by the batterer's need to exercise power and control over the victim. A familiar and very useful tool that victim advocates utilize in screening a relationship for power and control markers is known as the Power and Control Wheel.

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<sup>13</sup> See U.S. Department of Justice, *Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence, Ending Violence So Children Can Thrive* (November 2014). [https://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending\\_violence\\_so\\_children\\_can\\_thrive.pdf](https://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending_violence_so_children_can_thrive.pdf)

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.



Note that power and control is the focus of the batterer. The Power and Control Wheel demonstrates the relationship complexities that are common in domestic violence cases. Each spoke illustrates various methods the batterer may utilize to maintain power and control over a victim. It is important to note that this is just a model of the most common types of methods a batterer might use to maintain power and control. Each case is different, and methods listed in the Power and Control Wheel may or may not be present in a case. Most domestic violence victim advocates are highly trained to employ tailored questions during a client intake that screen for power and control in a relationship. The dark circle around the Power and Control Wheel illustrates batterer actions that may have legal consequences either in civil or criminal judicial systems.

Victims often spend time visiting each department/agency and repeatedly explaining their situation. Any variations in the story can present a barrier to the victim's credibility. However, a tribal domestic violence court or docket can provide a system that is not as onerous to the victim as they seek access to basic needs. The docket/court can also provide civil and/or criminal legal assistance using a well-trained multidisciplinary core case team that will work with the victim and children throughout the court process to provide early identification of domestic violence in the relationship. As a result, the victim can receive early access to safety planning and services and early access to victim advocates.

## 2) Impact of Domestic Violence

Prior to colonization, domestic violence was virtually nonexistent within tribal communities due to traditional values and belief systems based in gender equality. Generally women were considered sacred, important decision makers. They were central to the wholeness and wellness of the family unit, as well as the overall community. Upon colonization, Indian women became targets of oppression, violence, and dehumanization. The colonization movement only served as an opportunity to victimize Native women and children by diminishment in the status of women, destruction and disease, boarding schools, learned violence, and sexual exploitation.<sup>16</sup>

The impact domestic violence has on Native victims can be devastating regardless of whether the violence encountered was verbal, physical, emotional, spiritual, or a combination of a variety of types of violence. The batterer is exercising power and control over the victim's behaviors and as a result the victim often feels powerless and believes that her life will never be the same. Training on the dynamics of domestic violence and how this violence impacts the victim and children and their safety is paramount. When responders/service providers encounter domestic violence in a family, the training the responder/provider received determines their response and can literally be a matter of life or death for the victims.

Children who have been exposed to intimate partner violence in their families are also at high risk for severe and potentially lifelong problems with physical health, mental health, school and peer relationships, and disruptive behavior.<sup>17</sup> Children who witness or live with intimate partner violence are often burdened by a sense of loss or by profound guilt because they believe that they should have somehow intervened or prevented the violence—or, tragically, that they caused the violence.<sup>18</sup> Children who witness domestic violence in the home are 15 times more likely to be abused as compared to the national average. These children suffer posttraumatic stress disorder levels that rival the rates of veterans returning from Afghanistan and Iraq.<sup>19</sup>

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<sup>16</sup> R. Burbar and P. J. Thurman, "Violence against Native Women," *Social Justice* 31(4) (2004): 70–86; Sarah Deer, "Relocation Revisited: Sex Trafficking of Native Women in the United States," Faculty Scholarship Paper 157 (2010), <http://open.mitchellhamline.edu/facsch/157,630-632>.

<sup>17</sup> Office of Justice Programs, Office of Juvenile Justice Delinquency Prevention, *National Survey of Children's Exposure to Violence* (2011), [www.ncjrs.gov/pdffiles1/ojjdp/232272.pdf](http://www.ncjrs.gov/pdffiles1/ojjdp/232272.pdf). (accessed on March 8, 2019.)

<sup>18</sup> Bureau of Justice Statistics, *American Indians and Crime, 1992–2002*, [www.bjs.gov/content/pub/pdf/aic.pdf](http://www.bjs.gov/content/pub/pdf/aic.pdf). (accessed March 8, 2019.)

<sup>19</sup> Indian Law and Order Commission, "A Roadmap for Making Native America Safer: Report to the President and Congress of the United States" (November 2013), 154, [www.aisc.ucla.edu/iloc/report/](http://www.aisc.ucla.edu/iloc/report/). (accessed March 8, 2019.)

Exposure to domestic violence may not only contradict traditional understandings that children are to be protected and viewed as sacred, but it leaves hundreds of children traumatized and struggling to cope over the course of their lifetime. Despite leadership from tribal governments, as well as parents and families, domestic violence, physical abuse, sexual abuse, and neglect of children is more common for AI/AN than in the general population.<sup>20</sup> Additionally, AI/AN historical trauma, general lack of services in Indian country, and Indian country's jurisdictional maze created by federal authorities all add to the layers of complexities already found in domestic violence cases that often include families with children.

Domestic violence may also trigger past abuse and historical trauma. Historical trauma is multigenerational trauma experienced by a specific cultural, racial or ethnic group. It is related to major events that traumatized a group of people because of their status as oppressed, such as slavery, the Holocaust, forced migration, and the violent colonization of Native Americans. While many in such a group will experience no effects of the historical trauma, others may experience poor overall physical and behavioral health, including low self-esteem, depression, self-destructive behavior, marked propensity for violent or aggressive behavior, substance misuse and addiction, and high rates of suicide and cardiovascular disease.<sup>21</sup>

The core case team provides an opportunity for the domestic violence court/docket to address the impact of domestic violence on the victim and children through a specially trained judge, court staff, and a cadre of multidisciplinary members of the core case team who focus on a trauma-informed service delivery to victims and children.

### **3) Complex Service Needs**

Victims often have complex service needs to access housing, food, and employment. To address these basic needs the victim is required to navigate a variety of systems such as housing, social services, victim advocates, and child welfare systems. These victims often have complex legal needs as well.

In the civil legal realm, victims may need to access protection orders, divorce, custody, child support, housing evictions, and debtor/creditor issues. In the

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<sup>20</sup> Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, *Ending Violence so Children Can Thrive, Defending Childhood Initiative* (November 2014). [www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending\\_violence\\_so\\_children\\_can\\_thrive.pdf](http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending_violence_so_children_can_thrive.pdf). (accessed March 8, 2019.)

<sup>21</sup> Administration for Children and Families, *Trauma: What Is Historical Trauma?* [www.acf.hhs.gov/trauma-toolkit/trauma-concept](http://www.acf.hhs.gov/trauma-toolkit/trauma-concept). (accessed March 8, 2019.)



criminal legal realm, victims may need to access no-contact orders and victim's rights. Additional factors such as civil and criminal jurisdiction issues in Indian law may also present barriers to Native women and their children seeking help in tribal communities. Similarly, the federal government has restricted tribal sovereignty in certain civil matters involving nonmembers and criminal matters involving non-Indians and Indians.

The various systems the victim and children may be required to navigate make these cases ripe for the batterer's manipulative techniques. Each system (courts, law enforcement, social services) often responds to these cases in a silo thereby lacking any communication between systems or consistency that would identify the manipulations of the batterer.

Domestic violence victims need trauma-informed service delivery. While everyone's experience of trauma may be different, it is important to understand how trauma can alter the individual's coping mechanisms and lead to a victim's survival strategies.

Trauma may be the result of a single event (natural disaster, witnessing or experiencing a violent act) or a series of ordeals (long-term abuse). Trauma affects how victims see themselves ("I am helpless," "worthless"), their worldview ("the world is dangerous," "no one can protect me"), and relationships ("I cannot trust anyone"). These beliefs affect how victims respond to services and the criminal justice system, and underscore the importance trauma-informed approach, not only through service delivery but also throughout the investigation and prosecution process.<sup>22</sup>

A trauma-informed approach to victim service delivery includes an understanding of trauma and an awareness of the impact it can have across settings, services, and populations. It involves viewing trauma through an ecological and cultural lens while recognizing that context plays a significant role in how individuals perceive and process traumatic events, whether acute or chronic. Trauma-informed care involves four key elements: (1) realizing the prevalence of trauma; (2) recognizing how trauma affects all individuals involved with the program, organization, or system, including its own workforce; (3) responding by putting this knowledge into practice; and (4) resisting retraumatization.<sup>23</sup> Service providers working with

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<sup>22</sup> Office of Victims of Crime, Office of Justice Programs, *Using a Trauma-Informed Approach E-Guide*, [www.ovcttac.gov/taskforceGuide/eGuide/4-supporting-victims/41-using-a-trauma-informed-approach/](http://www.ovcttac.gov/taskforceGuide/eGuide/4-supporting-victims/41-using-a-trauma-informed-approach/). (accessed March 8, 2019.)

<sup>23</sup> Substance Abuse and Mental Health Service Administration (SAMSHA), *Trauma Informed Care* 22(2) (2014), [store.samhsa.gov/system/files/sma14-4884.pdf](https://store.samhsa.gov/system/files/sma14-4884.pdf). (accessed March 8, 2019.)

domestic violence victims and children should be educated on the effects of trauma and trained to deliver trauma-informed services.

### C. Domestic Violence Cases are Dangerous

Domestic violence cases are dangerous. *The safety of the victim and children must be at the forefront of all service providers and systems.* The most dangerous time for a victim and the children is when the victim is separating from the batterer. As the case progresses for each victim, new safety concerns may emerge and must be addressed.

Batterers can only manipulate in an environment of misinformation and siloed systems that refuse to share information on batterers' compliance with commands of the tribal court. Batterers are often relying on a community that has espoused domestic violence myths. Domestic violence victims may be impacted in various ways that impede a victim reporting the violence or seeking help if service providers fail to honor a victim's wishes regarding what options the victim chooses to exercise. Victims are the best source of information regarding victim safety in each case. Judges, court personnel, and service providers that lack education or training on the power and control dynamics of domestic violence may unintentionally escalate the dangers and revictimize. Complex tribal jurisdictional issues present challenges to holding batterers accountable for violations of tribal court orders thereby compromising victim safety.

#### 1) Domestic Violence Myths

Myths about domestic violence empower the batterer and provide a fertile environment for domestic violence to continue to flourish. Some of the more common domestic violence myths include:

- **Myth:** Victims cause or provoke the violence. Some women deserve to be hit.
  - **Fact:** Acts of domestic violence are not caused by victims. The only person responsible for the abuse is the abuser.
- **Myth:** Victims of domestic violence could not interact with the assailant after the assault or act normally with others or speak about the assault without displaying emotion.
  - **Fact:** Violence impacts each victim differently. Some may display strong emotion while other may display a flat affect. Research indicates that victims sometimes engage in normal behavior following

an assault as their brain works to process the trauma.<sup>24</sup> Denying the trauma and craving normalcy is a normal response.

- **Myth:** Just because a parent engages in domestic violence against their partner doesn't mean their kids are at risk. Domestic violence has nothing to do with parenting.
  - **Fact:** In 30 to 60 percent of the cases of child abuse, domestic violence was present.<sup>25</sup>
- **Myth:** Alcohol, drug abuse, stress, and mental illness cause domestic violence.
  - **Fact:** Alcohol or substance abuse does not cause domestic violence although abusers frequently use it as an excuse.<sup>26</sup>
- **Myth:** The batterer will not get custody.
  - **Fact:** Abusive parents are more likely to seek custody than nonviolent ones<sup>27</sup> and the violent parent is successful about 70 percent of the time.<sup>28</sup>

## 2) Victim Safety and the Victim-Centered Response

Responding to a victim's needs must include policies that allow a victim to determine what is and what is not safe for her and her children. Unfortunately, responders and service providers may become frustrated over issues such as why the victim returns to the batterer or recants on a previously made report of domestic violence. Again, it is important to note that each victim may respond differently, and a victim may choose to return to the batterer because he/she:

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<sup>24</sup> Rebecca Campbell, *Research for the Real World: The Neurobiology of Sexual Assault*, U.S. Department of Justice (December 3, 2012), [nsvrc.org/elearning/20044](http://nsvrc.org/elearning/20044). (accessed on March 8, 2019.)

<sup>25</sup> S. M. Ross, "Risk of Physical Abuse to Children of Spouse Abusing Parents," *Child Abuse and Neglect* 20 (1996): 589–98.

<sup>26</sup> Irene Anne Jillson and Bettina Scott, Department of Health and Human Services, *Violence, Women and Alcohol: Reducing the Risks, Redressing the Consequences*, Draft Report (January 1996).

<sup>27</sup> American Psychological Association, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* (1996), <http://www.nnflp.org/apa/intro.html>. (accessed March 8, 2019.)

<sup>28</sup> American Judges Foundation, *Domestic Violence and the Courtroom: Understanding the Problem ... Knowing the Victim*, <http://aja.ncsc.dni.us/pdfs/domestic-violence-the-courtroom.pdf>. (accessed March 8, 2019.)

- Wants to stay alive;
- Wants to hold the family together;
- Loves the batterer and feels the victim must save the batterer;
- Feels he/she is to blame;
- Has low self-esteem;
- Lacks financial resources to separate and meet basic needs of life; and/or
- Fears losing the children (which often occurs and may happen in a custody case or a removal by child protection for a failure to protect the child from the domestic violence).

Victim empowerment in the decision-making process is critical for victim safety. The victim knows the batterer better than anyone else. The victim is the best person to measure safety. Systems that do not include a victim-centered response are dangerous. Victim empowerment is also critical for healing. This empowerment allows the victim to oversee the decision making affecting her and the children. It is critical that responders, service providers, and court personnel receive ongoing training on the dynamics of domestic violence to screen for and respond to domestic violence in a victim-centered manner. This ongoing training is an earmark of a domestic violence court.

### **3) Ongoing Training and Education on the Dynamics of Domestic Violence**

Many victims find reporting domestic violence dangerous and difficult. For example, untrained responders/service providers may assess a victim's report or reaction to a domestic violence assault as "not a normal" reaction to violence. When the victim's response doesn't fit within the preconceived ideas of what "a real victim's" reaction should be, there may be an assumption that the victim is lying or greatly exaggerating. First responders/service providers must refrain from making any assumptions about the victim's reaction and be prepared to respond with sincere compassion and sensitivity.

Domestic violence cases have unique safety concerns that must be continually assessed and addressed by the core case team during the court case. Service providers and court personnel who are not educated in the power and control aspects of domestic violence *may increase the danger that the victim and children already face from the batterer.*

All participants involved in the tribal domestic violence court must commit to attend and participate in ongoing trainings on the dynamics of domestic violence. This ensures best practices and a high level of expertise when handling these cases. Each participant should be trained on the high risk of re-abuse and lethality associated with these cases. Ongoing training means that the core case team and court personnel are more likely to have the most up-to-date information on a wide

range of domestic violence–related topics and have a greater sensitivity to lethality issues present in these cases.

Because the core case team will likely be working toward early identification of domestic violence cases (early referral to a victim advocate and early access to services), these cases will often require special attention to client privacy and confidentiality especially in close-knit tribal communities. The core case team should commit to responsible information sharing to address any systemic failures to share information between agencies serving the victim and children. However, note that *confidentiality in domestic violence cases is directly connected to victim safety and is addressed in detail at pages 65-71*. Therefore, information sharing between service providers must be carefully constructed to prevent disclosing information that puts a victim’s or children’s safety at risk.

**Exercise #4: COMPLEX AND DANGEROUS CASES: Safety and service needs in our tribal community**

**Lesson Objectives:** *Assess the safety and service needs of domestic violence victims and their children utilizing tribal civil or criminal courts. Identify gaps in safety and service needs of domestic violence victims and their children. Identify areas where service providers may be compromising victim safety by failing to share information in a manner that protects victim safety.*

**Reading:** *Chapter 4 “Designing Tribal Court Domestic Violence Courts and Dockets”.*

**Instructions:** *Please answer the following questions in a large group. Note that the question that follows regarding confidentiality will require a review of the tribal codes that address confidentiality of a victim when working with an advocate or other service provider. This exercise focuses on actual tribal statutes that address confidentiality rather than internal agency protocols or policies that are not backed by tribal statutes.*

**Team Lead Tips:** *The planning team leader should facilitate the discussion and try to reach a consensus on the responses to the questions. The planning team leader should assign the tribal code review ahead of the meeting and ensure that the individual/group of planning team members responsible for answering the confidentiality question have access to the tribal code. Note that the tribal coalition may agree to speak on victim safety and confidentiality.*

**1. WHAT** *are the safety needs of victims and their children in your tribal community? (The victim advocate may be the best source of information on this issue.)*

**2. WHAT** services are available for victims and children in your community and off reservation services? (If a shelter is available, do the shelter rules allow the victim to also bring her children with her?)

**3. WHAT** if any gaps in victim services can be identified? (The victim advocate may be the best source of information on this issue.)

**4. WHAT** service providers are collaborating and coordinating services for the victim and the children? If they are not, list the service providers that are not collaborating and the reason(s) for a lack of collaboration such as policies, funding, and/or scope of services provided.

**5. WHAT** safety issues may arise due to information sharing by providers and why is confidentiality important to victim safety?

**6. INVITE** the tribal coalition or victim service provider to present information on the importance of victim confidentiality and sharing information between service providers in a manner that does not compromise victim safety.

**7. IDENTIFY** training and technical assistance needed at this stage. Request technical assistance at:

The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039

Once these questions have been answered, please record your findings along with any suggestions for enhancing victim safety and batterer accountability that are in line with tribal custom and practice. Don't forget to add these findings and the tribal code sections you reviewed to your notebooks for future exercises.

#### **4) Victim Safety and the Jurisdictional Issues in Indian Country**

A key responsibility of a sovereign is to keep its citizens safe. Tribal sovereignty in the form of exercising tribal court jurisdiction is critically important to victims of domestic violence and their children residing within Indian country. Jurisdiction is the power or authority of a court over a person, territory, and subject matter. Tribal communities may be comprised of tribal members, Indian nonmembers, and non-Indians residing within a tribe's territorial boundaries.

Native American victims, as well as non-Native victims, may seek tribal court protection from a batterer. Native victims residing outside of Indian country may return to the tribal court seeking protection from their batterers. The rules

surrounding tribal court civil jurisdiction are complex. While tribal court judges are generally astute in analyzing tribal civil jurisdiction, the correct determination and judicial findings must be carefully set out in the tribal protection order. Carefully drafting the jurisdictional underpinnings in the tribal protection order may enhance enforcement of the tribal protection order by foreign jurisdictions often unfamiliar with tribal jurisdictional issues.

This section on jurisdiction is divided into two major subsections: tribal civil jurisdiction and tribal criminal jurisdiction. In civil cases it is important to identify whether the parties are tribal members or nonmembers. In criminal cases it is important to determine whether the offender is Indian or non-Indian and whether the victim is Indian or non-Indian.

Jurisdictional laws at the tribal level determine what types of civil domestic violence cases a tribal court has authority over. The tribal laws also determine whether the tribal court can criminally prosecute an offender if he/she committed a domestic violence crime (such as protection order violation) in Indian country.

Historically, tribes had inherent sovereign over all persons within a tribe's Indian country. Inherent tribal sovereignty still exists subject to federal restraints:

- Tribes may have restricted tribal sovereign powers in their own tribal constitutions and tribal laws.
- The U.S. Supreme Court has held that Congress has the power to place restrictions on a tribe's inherent sovereign powers by U.S. Supreme Court case law and/or federal statutes.
- Congress also has the power to loosen or remove restrictions placed on tribal sovereignty.

If a tribal governmental power has not been specifically restricted by the tribe's constitution, tribal laws, or federal law, then tribes may exercise sovereign powers consistent with self-governance. Note that legal expertise may be necessary in making jurisdictional determinations.

## **i. Tribal Civil Jurisdiction**

Tribal civil jurisdiction in domestic violence cases is important because victims often need various legal remedies including protection orders, divorces, custody, child support, and other types of civil relief. Civil law is not primarily concerned with punishing offenders, like criminal law, but rather is concerned with the legal relationship between two parties and providing various remedies that do not include incarceration.

U.S. law has placed some limits on tribal civil jurisdiction, but the limitations are different than those for tribal criminal jurisdiction. Two U.S. Supreme Court cases from the 1980s and 1990s directly address tribal court civil jurisdiction over noncitizens/members and over non-Indian defendants:<sup>29</sup> *Montana v. United States*, 450 U.S. 544 (1981) and *Strate v. A1 Contractors* (520 US 438 (1997)). *Montana* held that absent tribal governmental interests, tribal courts have no civil regulatory authority over non-Indian defendants on fee land owned by non-Indians that is located within a reservation unless one of the following factors apply: (1) the parties had entered into a consensual relationship with the tribe or its members through commercial dealing, contracts, leases, or “other arrangements,” or (2) the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

This two-pronged test is referred to as the *Montana* test. Either of the two prongs would be sufficient to support tribal civil jurisdiction over nonmembers on fee land in Indian country. Therefore, if neither of the two Montana factors listed apply, tribal courts may not have civil jurisdiction over nonmembers on fee lands.

*Strate* held that the tribal court lacked jurisdiction over a civil case between nonmembers arising out of a vehicle accident on a state highway (non-Indian fee land) traversing the reservation. The tribe’s interest in safe driving did not meet either prong set forth in the *Montana* test.<sup>30</sup>

Recently, through the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) Congress clarified a tribal court’s power to issue protection orders in civil cases pursuant to 18 U.S.C. 2265(e) (updated 2013) by setting forth the following:

For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe. (Emphasis added)

Despite the VAWA 2013 clarification of tribal court’s civil jurisdiction to issue protection orders over any person (members and nonmembers) regarding matters arising in Indian country, the federal law does not clarify whether the *Montana* test

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<sup>29</sup> *Strate v. A-1 Contractors*, 520 U.S. 438 (1997) and *Montana v. United States*, 450 U.S. 544 (1981).

<sup>30</sup> *Strate v. A1 Contractors* at 452–53.



applies to cases involving the tribal court's issuance of tribal protection orders involving nonmembers. The applicable federal law in tribal court cases involving members versus nonmembers on fee land is *Montana*. Thus, tribal court judges should still consider making findings regarding the *Montana* test for civil matters (including protection orders) involving nonmembers (including non-Indians) arising on fee land in tribal court protection orders.

Civil protection orders issued without jurisdiction are void.<sup>31</sup> This can be dangerous for domestic violence victims who obtain protection orders from tribal courts, believe the order to be valid, and rely on the validity of that order—only to find that after a violation, the tribal court lacked jurisdiction to issue the protection order, therefore resulting in no protection or legal remedies for the victim. Keep in mind that some tribal codes allow a victim to seek remedies that may not be available in state courts such as child custody.

Note that all batterers (Indian and non-Indian) who violate valid protection orders in Indian country can be held civilly accountable in tribal courts under some circumstances. Some examples of civil remedies include contempt of court, exclusion from the reservation, fines and fees, restitution, attorney's fees and court costs, batterer reeducation programs, community service, forfeiture, and loss of licensure or other privileges. Your tribal code may contain other suitable civil remedies. Creative civil remedies for initial nonviolent violations may prove beneficial for holding batterers accountable to the orders of the court.

Creative civil remedies<sup>32</sup> that could be used for the Indian and non-Indian batterer might include:

- Civil contempt (not to be confused with criminal contempt, which is a crime requiring all the safeguards of a criminal action be afforded to the defendant/batterer);
- Monetary penalties;
- Posting a Peace Bond (which would be forfeited if the batterer violates the terms of the Peace Bond);
- Community service;
- Restitution (requiring the batterer to pay back for damages caused—examples might include money, gathering firewood, providing elements for ceremonies);
- Shaming (might include community service in a public place, wearing a sign or certain clothing in public recognized as a punishment);

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<sup>31</sup> *Elliot v. Pierson*, 26 U.S. 328, 340 (1828) (the U.S. Supreme Court states that if a court is without authority its judgments and orders are a nullity).

<sup>32</sup> Hallie Bongar White, Kelly Gaines Stoner, James G. White, *Creative Civil Remedies against Non-Indian Offenders*, 44 Tulsa Law Review 427 (2013).

- Forfeiture (of items that belong to the batterer);
- Exclusion/banishment;
- Removing the name of a person (such as a batterer, a rapist, or someone who has committed child sexual abuse) from the lease of a tribal housing property or reassigning the lease to the victim;
- Restricting access or rescinding a business license with the tribe;
- Limiting a person's access to tribally funded benefits (such as barring small business loans or limiting access to the tribally funded gym);
- Restricting or rescinding hunting or fishing licenses or privileges;
- Disenrolling the person as a member of the tribe;
- Rescinding future per capita disbursements; and/or
- Restricting access to tribal employment or to certain types of tribal employment (such as positions working with youth, the elderly, or other vulnerable persons).

## ii. Tribal Criminal Jurisdiction

A combination of federal statutes and federal court decisions have created a complex maze of laws and regulations that make it difficult to address crime committed in Indian country and to enforce protection orders issued by courts in Indian country. The primary obstacles created by this complex maze include fractured criminal jurisdiction in Indian country amongst federal, tribal, and state governments; the sentencing limitations imposed by the Indian Civil Rights Act (ICRA); and the funding available to support tribal government infrastructure.

Criminal jurisdiction refers to the power of a court to prosecute a crime. If a person is found guilty of a crime, the penalty may be incarceration. The tribe is the party prosecuting a criminal proceeding or action. When domestic violence or a violation of a protection order occurs on tribal land, the jurisdiction or authority over the criminal action may be in more than one court. On some tribal lands the jurisdiction is in tribal and federal court; while on other tribal lands the jurisdiction may be in tribal and state court. This varies depending upon whether federal law has given a state jurisdiction over the criminal matters of a tribe or whether federal law makes the crime committed one of general federal applicability irrespective of where the crime is committed; this includes drug offenses, firearms offenses, mail fraud, and embezzlement.<sup>33</sup>

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<sup>33</sup> See generally, Brian H. Wildenthal, *Federal Labor Law, Indian Sovereignty and the Canons of Construction* citing Part II of *Cohen's Handbook* (2012), *supra* note 1, § 2.02 at 113–23 and § 2.03 at 123–28.

Tribal criminal jurisdiction has been limited by federal law. It is important to understand these limits. The U.S. Supreme Court decision *Oliphant v. Suquamish*<sup>34</sup> limits the ability of tribal governments to try and punish non-Indians. Therefore, generally tribal governments cannot criminally prosecute a domestic violence batterer who is not considered “Indian” unless the tribe is exercising SDVCJ as set forth in the text that follows.

### iii. Special Domestic Violence Criminal Jurisdiction over Non-Indians

The VAWA 2013 SDVCJ codified at 18 U.S.C. 1304 reaffirms tribal jurisdiction and loosens previous federal restrictions placed on tribal criminal jurisdiction regarding certain crimes committed by non-Indians against Indian victims in Indian country.<sup>35</sup> Exercising SDVCJ may lead to safer tribal communities because 90 percent of AI/AN victims of rape or sexual assault describe the offender as non-Native.<sup>36</sup> If a tribe chooses to exercise criminal jurisdiction over non-Indians as a tool to combat violence, the non-Indian must have particular contacts with the tribe.

18 U.S.C. 1304 requires that the non-Indian offender have sufficient connections to the tribe by either:

- Residing in Indian country of the participating tribe, or
- Being employed in Indian country of the participating tribe; or
- Being the spouse, intimate partner, or dating partner of a tribal member; or
- Being a spouse, intimate partner, or dating partner of an Indian who resides in Indian country of the participating tribe.

Additionally, section 1304 sets forth the elements of the three crimes related to this SDVCJ to include dating violence, domestic violence, or violation of a protection order.

Tribes that choose to exercise SDVCJ<sup>37</sup> are required to provide certain rights to defendants that include:

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<sup>34</sup> *Oliphant v. Suquamish*, 435 U.S. 191 (1978).

<sup>35</sup> ICRA, 25 U.S.C. §1304, as amended by Section 904 of VAWA 2013 (SDVCJ).

<sup>36</sup> National Congress of American Indians, *VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five-Year Report* (2018) citing S. Rep. No. 112-265, at 5 (2012), [www.ncai.org/resources/ncai-publications/SDVCJ\\_5\\_Year\\_Report.pdf](http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf). Accessed on March 8, 2018 ; S. Rep. No. 112-153, at 3–11 (2011); U.S. Department of Justice, Bureau of Justice Statistics, *American Indians and Crime: A BJS Statistical Profile, 1992–2002* (December 2004), iii, <https://www.bjs.gov/content/pub/pdf/aic02.pdf>.

<sup>37</sup> TLPI has a resource, “Tribal Laws: Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction,” that includes more details on preparing to exercise SDVCJ and can be found at [https://docs.wixstatic.com/ugd/8305c9\\_49314c224a4a4dee813a029275cef79f.pdf](https://docs.wixstatic.com/ugd/8305c9_49314c224a4a4dee813a029275cef79f.pdf)

- Effective assistance of counsel equal to at least that guaranteed by the U.S. Constitution;
- A licensed indigent defense attorney;
- Sufficiently trained judge to preside over the SDVCJ case;
- Tribal criminal laws that are made available to the public;
- Record of the criminal proceedings;
- Trial by an impartial jury that ensure that the jury pool reflects a fair cross-section of the community; and
- Timely notification of the defendant's rights to include the right to habeas corpus review and the request a stay of sentencing from the trial court.<sup>38</sup>

#### **iv. Indian Civil Rights Act and Criminal Sentencing Authority**

Federal laws also place restrictions on a tribe's criminal sentencing power. ICRA<sup>39</sup> applies to any tribal court proceeding, for purposes of a tribe's criminal sentencing authority. Restrictions placed upon a tribe's criminal sentencing authority greatly impair a tribe's ability to hold batterers accountable for compliance with protection orders. It limits a tribe's ability to sentence for any one crime to one year in jail and/or a \$5,000 fine. If a person is convicted of more than one crime such as kidnapping and rape, federal law allows up to one year for each offense for a maximum sentence of three years. ICRA does not limit other sanctions a tribe might use, including restitution, banishment, and probation.

The Tribal Law and Order Act enhanced sentencing authority (TLOA) is a modification of the ICRA federal sentencing restriction previously mentioned. It can only be exercised if a tribe complies with the prerequisites listed in the ICRA. TLOA enhanced sentencing authority strengthens a tribe's ability to hold batterers accountable for compliance with protection orders. A domestic violence court and docket can utilize the TLOA enhanced sentencing authority to more effectively address the victim safety and batterer accountability issues present in domestic violence cases. If the tribe meets the ICRA requirements for TLOA enhanced sentencing authority<sup>40</sup> the tribe's court system can exercise enhanced criminal sentencing authority, sentence a defendant to three years and a \$15,000 fine for a single offense, and stack those sentences up to a total of nine years. Even if a tribe satisfies the federal prerequisites, however, this authority does not apply to every defendant convicted in tribal court. Rather, it applies only to defendants who are

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<sup>38</sup> 25 U.S.C § 1304 (d).

<sup>39</sup> 25 U.S.C. §§ 1301–1304.

<sup>40</sup> 25 U.S.C. 1302( c).

being sentenced to more than one year of imprisonment and (1) have previously been convicted of the same or a comparable offense by any jurisdiction in the United States, or (2) are being prosecuted for an offense that is punishable by a term of imprisonment for more than one year if prosecuted in a state or federal system.<sup>41</sup>

The following exercise will guide the planning team through a review of the tribal constitution and tribal criminal codes. It will also familiarize the planning team with various practices that promote victim safety and batterer accountability.

**Exercise #5: Tribal constitution and tribal code review regarding tribal criminal protections available to victims and children in domestic violence cases**

**Lesson Objectives:** *Identify whether the tribal code provides authority for the tribal court to exercise criminal jurisdiction over Indians and non-Indians for domestic violence crimes. Identify the tribal territory relevant to Indian country. Identify the criminal justice personnel working collaboratively with the victim to address victim safety issues. Identify whether the tribal prosecutor is enforcing violations of protection orders that occur in the tribe's territory. Also, where appropriate, identify whether the tribal prosecutor is utilizing no-contact protection orders to promote victim safety. Identify whether the tribal court is exercising TLOA and/or SDVCJ.*

**Reading:** *Please review Chapter 3 "Foundational Domestic Violence Issues in Indian Country" and Chapter 4 "Designing Tribal Court Domestic Violence Courts and Dockets" paying close attention to the tribal criminal jurisdictional segments.*

**Instructions:** *Please answer the following questions in a large group. The planning team leader should facilitate the discussion and try to reach a consensus on the responses to the questions.*

**Team Lead Tips:** *Part of the exercise requires a review of the relevant tribal codes in place. The planning team lead should consider dividing the planning team into groups with each group being assigned to review the tribal codes and answer an assigned question(s) set forth in the following text. The planning team lead should provide either an electronic version or a hard copy of the applicable sections of the tribal code to each planning team member in advance of the meeting. This ensures that all team members are prepared to discuss the following questions. Additionally, for*

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<sup>41</sup> 25 U.S.C. 1302 (b).

*examples please see Chapter 6 “Examples of Tribal Domestic Violence Courts and Dockets Models and Tribal Codes.”*

**1. WHO** does the tribal constitution and tribal codes allow the tribal court to exercise criminal jurisdiction over: Indian, non-Indian, or nonmember Indians? Make a copy of the tribal constitutional provision you based your answer on and place a copy of the provision in your notebook for easy reference.

**2. WHAT** tribal territory does the criminal jurisdiction section of your tribal code or constitution allow the tribe to exercise criminal jurisdiction over? Make a copy of the tribal code provision you based your answer on and place a copy of the provision in your notebook for easy reference.

**3. WHO** in the criminal justice system (prosecutor, investigators, probation officer) is working collaboratively with the victim (keeping the victim informed of violations and checking in with the victim) regarding the monitoring of batterer violations of the civil protection order? (The victim advocate may be the best source of this information.)

**4. WHAT** is the tribal prosecutor doing about prosecuting violations of protection orders that occur in Indian country? (Victim advocate and/or prosecutor may have this information.) Be sure to provide any data the court may be willing to provide that might illuminate why cases are not being prosecuted (if that is the case).

**5. WHAT** are the tribal prosecutor’s practices regarding issuing no-contact orders to protect victims during the pretrial phase of the criminal trial? If there is one, place a copy of the template of the no-contact order in your notebook for easy reference.

**6. IS** the tribe currently exercising SDVCJ over non-Indians who commit crimes of domestic violence, dating violence, and/or violations of a protection order in the tribe’s territory?

**7. IDENTIFY** and note any gaps and barriers to victim safety in codes or practices.

**8. IDENTIFY** training and TA needed at this stage. TA may be requested at:

The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039

The following exercise will guide the planning team through a review of the tribal constitution and tribal civil codes and familiarize the planning team with various practices that promote victim safety and batterer accountability.

**Exercise #6: Tribal constitution and tribal code review regarding tribal civil protections available to victims and children in domestic violence cases**

**Lesson Objectives:** Identify whether the tribal constitution/code allows the tribal court to exercise civil jurisdiction over both members and nonmembers. Identify the tribal judge's protocols for addressing Montana issues that may be present in civil cases involving nonmembers. Identify the territory parameters the tribal constitution/code provides for exercising civil jurisdiction. Identify who may seek a protection order in tribal court and what must be proven to obtain a tribal protection order. Identify the period for tribal protection orders. Identify any gaps or barriers between tribal codes and victim safety.

**Reading:** Please review Chapter 3 "Foundational Domestic Violence Issues in Indian Country" and Chapter 4 "Designing Tribal Court Domestic Violence Courts and Dockets" paying close attention to the tribal civil jurisdictional segments.

**Instructions:** Please answer the following questions in a large group. The planning team leader should facilitate the discussion and try to reach a consensus on the responses to the questions.

**Team Lead Tips:** Part of the exercise requires a review of the relevant tribal codes in place. The planning team members should consider dividing the planning team into groups with each group being assigned to review the tribal codes and answer an assigned question(s) set forth in the following text. The planning team leader should either provide either an electronic version or a hard copy of the applicable sections of the tribal code to each planning team member in advance of the meeting. This ensures that all team members are prepared to discuss the following questions.

- 1. WHO** does the tribal constitution allow the tribe to exercise civil jurisdiction over: tribal members, nonmembers? Make a copy of the tribal constitutional provision you base your answer on and place a copy of the provision in your notebook for easy reference.
- 2. WHAT** are the tribal judges' protocols for the ensuring the Montana test set forth on pages 30-32 is articulated in tribal protection orders? (Consider having a tribal judge speak to the group about this issue.)
- 3. WHAT** tribal territory does the civil jurisdiction section of your tribal code allow the tribe to exercise civil jurisdiction over? Make a copy of the tribal

*code you base your answer on and place a copy of the provision in your notebook for easy reference.*

**4. WHO** *does the tribal code allow to seek a protection order? Does the tribal code require an intimate relationship? Please make a copy of the tribal code provision you base your answer on and place a copy of the provision in your notebook for easy reference.*

**5. WHAT** *elements does the tribal code require to be proven to obtain a civil protection order? Please make a copy of the tribal code provision you base your answer on and place a copy of the provision in your notebook for easy reference.*

**6. WHAT** *types of relief does the tribal code allow the tribal judge to provide in the tribal court order? (For example, do protection order remedies address custody, child support, property division, or the victim's address?) Please make a copy of the tribal code provision you base your answer on and place a copy of the provision in your notebook for easy reference.*

**7. WHAT** *period does the tribal code allow for civil protection orders to be in effect? Please make a copy of the tribal code provision you base your answer on and place a copy of the provision in your notebook for easy reference.*

**8. WHAT** *gaps or barriers in the code review, if any, have you identified relative to victim safety?*

**9. REQUEST TECHNICAL ASSISTANCE** *if needed when reviewing tribal codes in this exercise. Technical assistance may be requested at:*

*The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039*



**Exercise #7: Revisiting the Vision Statement and noting tribal code conflicts or gaps related to the Vision Statement**

**Lesson Objectives:** Revisit the Vision Statement and discuss any gaps or conflicts identified in Exercises #5 and #6. Work to reach a consensus on modifying the Vision Statement.

**Reading:** Please review Chapter 3 “Foundational Domestic Violence Issues in Indian Country”.

**Instructions:** Please read and respond to the following statements.

**Team Lead Tips:** The planning team leader should guide the planning team through this exercise to determine whether any of the information gathered thus far conflicts with the Vision Statement previously drafted. Also note any gaps that may have emerged during the tribal code review. The planning team will need to have the notebooks updated and prior to working through this exercise. For additional examples, please see Chapter 6 “Examples of Tribal Domestic Violence Court Models and Codes”.

**1. REVISIT** the Vision Statement and identify any issues that may have emerged that conflict with the Vision Statement, and modify as needed. For example, if any information identified practices that put victims/children safety at risk (if victim safety was addressed in the Vision Statement).

**2. IDENTIFY** any gaps or conflicts present in the tribal code review regarding the Vision Statement. Note these gaps or conflicts.

**3. DISCUSS** whether the tribal code may need amending to bring the tribal code in line with the Vision Statement. Be sure to make a list of code provisions that may need amending and provide several options to address the gap or conflict identified.

**4. REQUEST TECHNICAL ASSISTANCE** if needed to assist with code review and code drafting resources. Technical assistance may be requested at:

The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039

## Chapter 4. Designing Tribal Domestic Violence Courts and Dockets

Developing a tribal domestic violence court or docket can be time consuming but with big payoffs for victim safety, healthier families, and possibly a reduction in domestic violence. This chapter begins with a discussion of the benefits and possible obstacles that might be encountered when designing a tribal domestic violence court or docket. It includes warnings about incorporating the design of various problem-solving courts such as a drug court. Next, the chapter discusses the development core values that drive the domestic violence court. Core values should include the assembling of a core case team. The core case team will provide early identification of the presence of domestic violence through screenings and case filings. This is to ensure the victim is offered services and statutory protections that are available to meet the needs of the victim and her children. A strong core case team should provide a more informed judicial decision-making process. Additionally, the core case team should gather information to scrutinize batterer accountability by closely monitoring batterer compliance with court orders.

Designing a tribal domestic violence court or docket that does not incorporate tribal customs and traditions will likely prove to be unstable and ineffective in the tribal community. Where appropriate, tribal customs and traditions regarding the tribe's belief systems toward women, children, and domestic violence should be considered for incorporation into the core values of the court as well as overall court design.

The design of the court should include a multidisciplinary approach such as the creation and utilization of a core case team. Possible roles of suggested core case team members in the design of the court are discussed in the following text. Finally, this chapter will review the challenges of sharing victim information in a safe way and address issues of victim privacy, confidentiality, and privilege.

Note that if a tribe determines that a tribal domestic violence court is not feasible, an alternative might be a tribal domestic violence docket discussed more fully at page 4. While a tribal domestic violence docket cannot offer the comprehensive response to domestic violence for the tribal families, the tribal domestic violence docket may address some of the complex issues present in domestic violence cases. Tribal domestic violence dockets are characterized by setting aside specific days of the tribal court's docket to address cases involving domestic violence. Devoting certain days of the docket to domestic violence cases may provide continuity for the victim and allow the tribal court to address related civil and criminal matters on the same day. It can also allow the court to offer enhanced security for the day, advocacy services, and child care for domestic violence victims.

## A. Benefits and Challenges to Consider When Designing a Tribal Domestic Violence Court or Docket

### 1) Potential Benefits

Though the work of developing tribal domestic violence courts or dockets may be time intensive and require a great deal of commitment, the results can be extremely beneficial to victims, service providers, and the tribal community. Some of the benefits in designing a tribal domestic violence court/docket may include a focus on victim safety, early identification of domestic violence and service referrals, more victim participation in the court process, consistency in the court process, more comprehensive, collaborative service providing, focus on batterer accountability, incorporation of tribal custom and tradition, and community credibility.

#### Potential Benefits

- Practice that enhance victim safety;
  - Increased reporting of domestic violence;
  - More prosecutions of domestic violence crimes;
  - Early identification of domestic violence
  - More victim participation in the court process;
  - A more holistic approach to domestic violence;
  - Holding the batterer accountable to follow tribal court orders;
  - Incorporating custom and tradition; and
  - Tribal community support.
- 
- **Practices that enhance victim safety.** Victim safety should be a premier focus of any tribal domestic violence court or docket. It bears repeating that domestic violence cases are complex and dangerous with a safety risk that is constantly changing. The tribal victim advocate is an important resource and may assist the victims and the court in addressing safety issues related to the provisions of court orders, courtroom safety protocols, and safety protocols for other collaborative partners. The important role of the victim advocate cannot be overstated in cases involving domestic violence.
  - **Increased reporting of domestic violence.** Keeping victim safety at the forefront of the court or docket process encourages victim reporting, supports victim participation in the legal process, and may result in a more confident tribal community response to the tribal domestic violence court. Failing to report incidents of domestic violence is not uncommon for a variety of reasons that might include a belief that reporting the domestic violence will not be believed; a fear of repercussions by the batterer or the batterer's family; a fear of being revictimized by the court processes and/or service provider systems; and a fear of having the children removed from the home if a report is made. Sometimes

when law enforcement is called because of a report of domestic violence or a victim makes a report, it is not uncommon for a victim to later recant, change the story, or even admit to lying. Often the victim wants to keep the family together or avoid repercussions by the batterer or the batterer's family.

- **More prosecutions of domestic violence crimes.** Prosecutors that bring criminal actions against the perpetrator often struggle with a victim's lack of participation. This is true even in criminal cases in which the victim's testimony may be essential to obtaining a guilty verdict. Tribal domestic violence courts or dockets with specially trained, committed core team members could provide services and safety measures that might result in more victims reporting incidents of domestic violence. The court or docket could provide more collaborative services to prevent the unwarranted removal of children from the non-offending parent. Training on domestic violence, including the effects of trauma on the way the brain collects and stores information, can lead to law enforcement officers and prosecutors who understand and respond to trauma issues.
- **Early identification of domestic violence.** A tribal domestic violence court or docket can provide early identification of cases that involve domestic violence and thus early referral to services that address the needs of the victim and children. Service providers working with a tribal domestic violence court or docket should reach a consensus on how cases will be screened for domestic violence and how an assessment and referrals for services will be accomplished. A victim advocate may also assist with early identification of the domestic violence, victim safety issues, early access to victim services, and integration of tribal custom/traditions regarding healthy and safe families.
- **More victim participation in the court process.** Consistency is an important benefit of implementing a tribal domestic violence court or docket. Having a single presiding judge trained in the dynamics of domestic violence and tribal law is vital to the success of the court. The judge and court staff are both required to participate in ongoing training on domestic violence issues. There should be nonrotating personnel who are well trained in the dynamics of domestic violence. The personnel should work collaboratively to meet the needs of the family and to focus on victim safety and batterer accountability. Consistency may lessen some of the anxiety a victim may fear in facing a different judge at each court appearance and having to navigate multiple systems that each respond to domestic violence in a different way.
- **A more holistic approach to domestic violence.** The tribal domestic violence court is grounded in collaboration among service-providing systems. The most effective response to domestic violence in tribal communities may be created

when service providers and the judicial systems partner to work in tandem. Multidisciplinary system collaboration is critical in domestic violence cases as batterers tend to seek out gaps and confusion in information shared among systems. The batterer can then manipulate the systems against one another and against the victim. For instance, linking the tribal civil case with the tribal criminal justice case provides an opportunity for service systems assisting the family to collaborate and thus reduce the opportunity for a batterer to manipulate the systems. While a multidisciplinary team may not be a component of a domestic violence docket, it should not prevent a docket from implementing system coordination. This coordination prevents the batterer from manipulating the systems.

- **Holding the batterer accountable to follow tribal court orders.** The design may include batterer accountability and monitoring compliance with tribal court orders, including any no-contact orders or pretrial release orders, regarding the victim and children which directly affects victim safety.<sup>42</sup> The core case team may provide information to the court regarding batterer compliance with court orders. Holding batterers accountable requires ongoing monitoring of compliance with court orders that may involve several systems that include probation, law enforcement, batterer intervention programs, victim advocacy program and other programs. Note that batterer monitoring for court compliance should start at the beginning of the case and be ongoing throughout the court process irrespective of whether the case is proceeding as a civil case, a criminal case, or both. Ultimately, only the tribal judge can hold batterers accountable for violations of a court order.
- **Incorporating custom and tradition.** Domestic violence is not a Native tradition. In fact, the abuse of Indian women and children can be traced to the introduction of unnatural lifeways into Native culture.<sup>43</sup> “Scholars support this

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<sup>42</sup> Vera Institute of Justice, *Enhancing Responses to Domestic Violence, Promising Practices from the Judicial Oversight Demonstration Initiative* (2004), [web.archive.org/web/20071004100444/http://www.vera.org/publication\\_pdf/251\\_494.pdf](http://www.vera.org/publication_pdf/251_494.pdf) (accessed August 25, 2018), finding that “The time between when an accused batterer is arrested and when the case is adjudicated can be especially dangerous for a victim of domestic violence. The criminal justice system has limited legal control over alleged offenders; most are released on bail except under extreme circumstances. Yet it is also the time when an accused person is most likely to try to influence the outcome of the case, sometimes using threats and violence. What’s more, the accused may view the decision to pursue the case as evidence that the victim is trying to leave the relationship, a perception that can result in heightened levels of violence. Studies show that half of all murders of wives by husbands take place within two months of a separation.”

<sup>43</sup> Futures Without Violence citing Paula Gunn Allen, “Violence and the American Indian Woman: Working to Prevent Sexual and Domestic Violence,” 15 (4) (April 1985). Seattle: Center for the Prevention of Sexual and Domestic Violence,

idea and suggest that violence against American Indian and Alaska Native women directly relates to historical victimization. According to proponents of this idea, domination and oppression of native peoples increased both economic deprivation and dependency through retracting tribal rights and sovereignty. Consequently, American Indian and Alaska Natives today are believed to suffer from internalized oppression and the normalization of violence.”<sup>44</sup> Designing a tribal domestic violence court or docket that incorporates the unique customs and traditions of a tribe will reflect tried and true practices and beliefs that have held steadfast the tribal community. Tribal victims will more likely feel comfortable utilizing a system that reflects unique tribal customs and traditions. The community’s perception of the tribal domestic violence court or docket is likely to be enhanced as well.

- **Tribal community support.** A lack of credibility in the tribal community may thwart the efforts of the tribal domestic violence court’s efforts to address domestic violence. In tribal communities news—both good and bad—travels fast. When a victim feels that the services and the court responses were sensitive and respectful, that information also spreads quickly throughout the tribal community. The tribal community’s perception of how the tribal domestic violence court or docket remains focused on the safety and service needs of the victim and children, as well as on batterer accountability, while incorporating customs and traditions, may become the cornerstone of court’s community credibility. The success of the court or docket will likely rest in the hands of the judge, court staff, and service providers whom exhibit behaviors that demonstrate a commitment that domestic violence is not a Native tradition and will not be tolerated.

## 2) Potential Challenges

Designing and implementing a tribal domestic violence court or docket is not without some potential challenges to include danger issues that result from designing a court or docket that places the burden on the victim to report batterer compliance of tribal court orders. Other potential challenges of a tribal domestic violence court are lack of collaboration of the core case team due to heavy schedules and possible funding requirements that make collaboration difficult.

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[www.futureswithoutviolence.org/userfiles/file/Violence%20Against%20AI%20AN%20Women%20Fact%20Sheet.pdf](http://www.futureswithoutviolence.org/userfiles/file/Violence%20Against%20AI%20AN%20Women%20Fact%20Sheet.pdf) (accessed on August 25, 2018).

<sup>44</sup> Futures Without Violence citing R. Bubar and P. J. Thurman, “Violence against Native Women,” *Social Justice* 31(4) (2004): 70–86

[www.futureswithoutviolence.org/userfiles/file/Violence%20Against%20AI%20AN%20Women%20Fact%20Sheet.pdf](http://www.futureswithoutviolence.org/userfiles/file/Violence%20Against%20AI%20AN%20Women%20Fact%20Sheet.pdf) (accessed August 15, 2018).

Similarly difficult issues are financial or resource challenges necessary to implement the tribal domestic violence court or docket.

### Potential Challenges

- Focus on victim safety;
  - Establishing an effective multidisciplinary collaboration;
  - Victim confidentiality;
  - Garnering the multidisciplinary planning team's commitment to ongoing domestic violence training; and
  - Financial challenges to implementation.
- 
- **Focus on victim safety.** The planning team should ensure that the burden of reporting batterer violations is never placed on the victim.<sup>45</sup> Placing the burden on the victim results in weighty safety issues as the batterer struggles to maintain power and control over the victim while the tribal court's order removes the power and control from the batterer. The victim advocate should be providing guidance on all safety issues and review all suggested protocols for possible safety repercussions that can be avoided when developing and structuring the court. Note that it is highly suggested that the victim advocate be a member of the core case team when the tribal domestic violence court is implemented. Additionally, tribal domestic violence coalitions might serve as a resource for obstacles that present victim safety issues.<sup>46</sup>
  - **Establishing an effective multidisciplinary collaboration.** The establishment of a multidisciplinary team may prove very challenging. Oftentimes, information is not shared between service providers or civil and criminal divisions of the court. This lack of information sharing can lead to disjointed and inaccurate information that provides fertile ground for the batterer to manipulate the victim and systems. Necessary collaboration may also be impeded if partners minimize domestic violence and may not understand the need for a specialized approach to effectively addressing domestic violence in the tribal community. Partners may exhibit apathy, silence, denial, resistance to change, and refusal to take on another project. Partners might balk at the notion that despite service providers' best intentions and tailored court orders, some batterers may not be

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<sup>45</sup> Illinois Coalition Against Domestic Violence, *Achieving Accountability in Domestic Violence Cases: A Practical Guide for Reducing Domestic Violence 4* (2015), [http://www.ilcadv.org/Resources/Position\\_Papers/court\\_accountability\\_position\\_paper\\_jan\\_2005.pdf](http://www.ilcadv.org/Resources/Position_Papers/court_accountability_position_paper_jan_2005.pdf) (accessed on August 25, 2018).

<sup>46</sup> For a listing of tribal coalitions and contact information please see National Indigenous Women's Resource Center at [www.niwrc.org/tribal-coalitions](http://www.niwrc.org/tribal-coalitions) (accessed August 25, 2018) and the Tribal Law and Policy Institute at [www.tribaltrafficking.org](http://www.tribaltrafficking.org) (accessed August 25, 2018).

able to safely reunite with the victim and children due to safety concerns. Partners might hesitate at modifying policies that conflict with a commitment to victim safety and batterer accountability as each service provider may have a different focus with various funding parameters. Remember to revisit the most current version of the Vision Statement, if needed, to provide a cornerstone of the project wherein all parties agree. Recall that a domestic violence docket may not include a multidisciplinary team, but that does not prevent a docket from implementing system coordination. This coordination prevents the batterer from manipulating the systems

- **Victim confidentiality.** Recall that confidentiality and privilege are especially crucial and directly tied to victim safety. Providing measures to protect victim confidentiality and preserve privileges is often a complex task. Chapter 4 section D. Victim Privacy, Confidentiality, and Privilege in a Tribal Domestic Violence Court or Docket—A Victim Safety Issue on page 65 provides more detail on the topic of confidentiality and privilege while working across disciplines and/or systems, and the Appendix F provides some templates. However, note that drafting the victim information-sharing segment of any memorandums of understanding (MOUs) or memorandums of agreement (MOAs) will most likely require legal advice and/or TA.
- **Garnering the multidisciplinary planning team’s commitment to ongoing domestic violence training.** In many tribal communities, there is a lack of adequate funding, resources, and staff that might hinder a commitment to attend regular trainings related to victim safety, batterer accountability, and other related tribal domestic violence topics. This issue should be dealt with at the initial stages of the project. See Exercise #1 pages 8-9 and Exercise #11 pages 64-65 for additional resources on this topic.
- **Financial challenges to implementation.** Financial challenges for a tribal domestic violence court and docket are not the same. Financial challenges for a domestic violence court may include the costs of getting the collaborative multidisciplinary partners trained initially, ongoing training costs, and funding to hire the court staff necessary to implement a tribal domestic violence court. Recall that a tribal domestic violence docket cost may not include this multidisciplinary training component. Both tribal domestic violence courts and dockets may require ongoing batterer monitoring and the sanctions related to incarceration costs may seem overwhelming given available tribal resources. However, note that national tribal TA providers are available at little or no cost and can assist with addressing some of these issues.



### 3) Domestic Violence Courts and Dockets; the Danger of Utilizing a Problem-Solving Court Model

Domestic violence courts and dockets do not reflect the same principles as problem-solving courts.<sup>47</sup> Domestic violence cases are complex, dangerous, and often require numerous systems to work together to enhance victim safety and batterer accountability. *Domestic violence cases must proceed with a focus on victim safety* due to the varying degrees of lethality that may emerge at any given time as the case progresses.

Professionals may rationalize that domestic violence courts are simply another specialized problem-solving court. While there may be some superficial similarities among these models (e.g., specialized caseload, utilizing judicial authority), there are critical components that the domestic violence court does not share with the problem-solving courts.<sup>48</sup> For instance, most drug courts focus on nonviolent offenders while domestic violence courts are—by definition—focused on violent offenders with a targeted victim. In addition, while substance abuse is an addiction, domestic violence is a learned behavior. While drug treatment is well established and has proven effectiveness, domestic violence has no counterpart and there is no current data that reflects a clear and established manner to negate domestic violence. Even current best practices focusing on addressing domestic violence, such as a batterers' intervention program, has emerged as an intervention with no proven efficacy.<sup>49</sup>

While domestic violence courts must address the behaviors of the batterer, victims and children must remain at the forefront of the case. Further, focusing on the batterer—aside from holding the batterer accountable for compliance with orders of the court—is a controversial issue with some victim advocates. Some victim advocates suggest that domestic violence is a societal issue and, therefore, domestic violence is not a treatable issue.<sup>50</sup> Adapting a problem-

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<sup>47</sup> Center for Court Innovation, *How Do Domestic Violence Compare to Other Problem-Solving Courts?* (August 2005) citing to focus group responses.

<sup>48</sup> Futures Without Violence, *Creating a Domestic Violence Court: Guidelines and Best Practices* at 3, [www.futureswithoutviolence.org/userfiles/file/Judicial/FinalCourt\\_Guidelines.pdf](http://www.futureswithoutviolence.org/userfiles/file/Judicial/FinalCourt_Guidelines.pdf) (accessed August 27, 2018).

<sup>49</sup> Futures Without Violence, *Creating a Domestic Violence Court: Guidelines and Best Practices* at 2 (2002), [https://www.futureswithoutviolence.org/userfiles/file/Judicial/FinalCourt\\_Guidelines.pdf](https://www.futureswithoutviolence.org/userfiles/file/Judicial/FinalCourt_Guidelines.pdf) (accessed August 27, 2018).

<sup>50</sup> But see Men's Re-education Program, Oneida Tribe of Indians of Wisconsin, <http://www.tribaljustice.org/program-profiles/mens-re-education-program>. "The **Oneida Tribe of Indians of Wisconsin's** Men's Re-Education Program is a 25-week domestic abuse intervention program. The program is educational rather than therapeutic in approach and uses a Native-specific curriculum to help offenders understand the complex cultural, social, and historical dimensions of violence against Native women. The program also addresses the use of power and control in relationships." Note that the participants in the Oneida program are court-ordered to the program.

solving court's policies to a domestic violence court may be dangerous.

**Domestic Violence Courts Do Not Reflect the Same Principal as  
Problem-Solving Courts**

- Most drug courts focus on nonviolent offenders while domestic violence courts are – by definition – focused on violent offenders with a targeted victim.
- Substance abuse is an addiction; domestic violence is a learned behavior.
- While drug treatment is well established and has proven effectiveness, domestic violence has no counterpart and there is no current data that reflects a clear and established manner to negate domestic violence.
- While domestic violence courts must address the behavior of the batterer, victim and children must remain at the forefront of the case.

## **B. Developing Core Values**

Developing the core values of the tribal domestic violence court or docket might be one of the most important tasks of the planning team. Core values are deeply held beliefs, highest priorities, and the fundamental forces that will provide context for the court's actions. *The core values should be victim centered and focused on victim safety. The core values should include focus on the intensive monitoring of the batterer and batterer accountability for violations of tribal court orders.*

The core values should also reflect the unique tribal customs and traditions of the tribal community to be served. A multidisciplinary core case team should be the cornerstone of the domestic violence court. Recall that this multidisciplinary core case team may not be present in the tribal domestic violence docket. The roles of potential core case team members should include tribal judges, victim advocate, tribal prosecutors, law enforcement, tribal defense attorneys, child protection providers, and other victim service providers. Similarly, the critical issue of protecting client information in a multidisciplinary response is discussed in the following text.

### **1) Victim Centered**

A core value should include a victim-centered approach that allows the victim's wishes, safety, and well-being to take priority in all matters and procedures before the court. A victim-centered approach is grounded in the philosophy that the services offered to the victim are complimentary not mandatory and the victim is the decision maker regarding the services needed and accepted. Providing a tribal court that is victim centered requires patience, empathy, compassion, and commitment from each discipline engaged in the tribal domestic violence court or docket.



A victim-centered court or docket includes early screening/identification for domestic violence by service providers and/or the court. It also includes a victim's unlimited access to victim advocates. Children are also victims of domestic violence. Children exposed to domestic violence are traumatized and some may suffer lifelong repercussions from residing in a home where domestic violence is taking place. Early identification of exposure to violence, timely intervention, and treatment can protect a child from being trapped in a cycle of repeated exposure to violence.<sup>51</sup>

A victim-centered court or docket includes an early connection to social services for victim and children, including wraparound services that are holistically geared, and tribal programs like housing and healthcare. Victims should be kept informed of tribal court case progress and cases should be scheduled promptly. Additionally, a victim-centered court or docket includes providing safe places for victims to wait in the courthouse. It should also include protections while entering, being present in, and exiting the tribal courthouse.

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<sup>51</sup> Attorney General's Task Force on American Indian/Alaska Native Children Exposed to Violence, *Ending Violence So Children Can Thrive*, Executive Summary (2016), 18.

The victim-centered approach plays a critical role in supporting victims' rights, dignity, and autonomy. The premise is based upon the belief that the victim has the right to make decisions that will affect his/her life. For example, some victims may choose not to report or cooperate with law enforcement while other victims may choose to work with law enforcement.<sup>52</sup> Some victims may choose to forego services altogether, select only tribal services, or request to have all services available (both state and tribal). The tribal domestic violence court or docket seeks to identify the domestic violence early and call upon collaborative partners to identify and offer appropriate and intensive services based upon each case to a victim.

Too often, victims are required to wait for long periods for critically needed services. For instance, heavy caseloads in tribal prosecutor's offices can often take the focus off the victim's needs and choices. Tribal courts or dockets may be overloaded, and allowing multiple continuances in domestic violence civil and/or criminal cases leaves the victim in a state of uncertainty and often feeling unsafe. When law enforcement, prosecution, service providers, or other professionals are involved in a case, the safety and service needs of victims must remain a focus of the process. One example of keeping the victim safe and informed during the criminal process are tribal codes that specifically confer rights to the victim even though the batterer is being prosecuted for a crime committed against the victim. These types of statutes are generally referred to as Victim's Rights statutes.

Generally, having these rights set out in tribal statutes forces the justice system to provide some protections for the victim. As a result, this fosters victim safety, further domestic violence prevention, support, and cooperation with prosecution. The term *victim* should be defined in the statute and might include:

- Victims of certain types of crimes (felonies, violent crimes, sexual assault, domestic assaults);
- Categories of victims (elders, children, disabled, domestic violence);
- Surviving family members of a homicide victim;
- Victim's rights generally address the victim's
  - Right to be treated with fairness, dignity, sensitivity, and respect;
  - Right to attend and be present at criminal hearing;
  - Right to be heard in the criminal justice process, including conferring with the prosecutor and submitting a victim impact statement;

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<sup>52</sup> The criminal justice system focuses on punishing violators of the tribe's criminal laws. The decision of whether to punish the offender rests squarely with the prosecutor, not the victim, based upon a variety of factors, which may include victim safety issues.

- Right to be informed of the proceeding and events in the criminal system (release or escape of offender, legal rights/remedies, available benefits, and so on);
- Right to protection from intimidation and harassment;
- Right to restitution from offender;
- Right to privacy (including protection of address);
- Right to apply for victim compensation;
- Right to expeditious return of property seized as evidence;
- Right to speedy trial; and
- Right to enforcement of these rights.<sup>53</sup>

Most tribal traditions include strong victim-centered beliefs. Tribal governments may wish to codify the tribal philosophy toward victims or include traditional words or phrases to more properly reflect tribal beliefs. The following exercise focuses on victim's rights.

#### **Exercise #8: Victim-centered core values: Victim-centered rights**

**Lesson Objectives:** Review tradition methods for keeping victim and children safe from Exercise #3 on page 14-16. Prioritize victim autonomy in the decision-making process. Identify the victim's rights found in your tribal code. Avoid punishing the victim for not cooperating with the systems.

**Reading:** Please review Chapter 4 "Designing Tribal Court Domestic Violence Courts".

**Instructions:** Please perform the following tasks and answer the following questions.

**Team Leader Tips:** The following tasks and questions require the planning team to review certain segments of the tribal code. Consider creating a subcommittee to gather and distribute the code information to the planning team for review in advance of the consensus meeting.

**1. WHAT** traditional methods are available for keeping victims and children safe? Please make a list of the victim safety methods that should be implemented in the core values. Review answers from Exercise #3.

For example: Who was responsible for protecting women and children? Why was it important to protect women and children? What would happen if the women and children were not protected?

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<sup>53</sup> A useful website for more information on Victim's Rights can be found at [www.victimlaw.org](http://www.victimlaw.org).

**2. HOW** is victim autonomy (the victim is the decision maker regarding needs and services) being prioritized currently? Note any known gaps or barriers in current systems a victim may need to utilize. For instance, is the victim required to obtain a police report prior to requesting a protection order? Is the victim required to obtain a protection order or risk losing custody of her children even if the victim has separated from the batterer?

**3. VISIT** the website at [www.victimlaw.org](http://www.victimlaw.org) for a background on victim rights and explore whether your tribe has any victim's rights statutes listed on the website.

**4. WHAT** protections do your tribal codes provide toward victim's rights statutes? Discuss whether those statutes seem enough to keep victims and children safe and informed of the tribal case. For instance, does the current tribal code provide any protections from overzealous discovery meant to intimate the victim in a criminal action involving domestic violence?

**5. WHAT** victim's rights are missing that the planning team deems necessary to include? Make a list of the victim's rights that would benefit your community and incorporate those rights into your Vision Statement.

**6. WHAT**, if any, statutes or current practices punish a victim for not cooperating with a system? For example: Is the victim required to obtain a protection order before services will be provided to the victim and her children? Do these practices need to be changed? How?

**7. WHAT**, if any, technical assistance needs have been identified? You may request technical assistance at:

The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039

## **2) Batterer Accountability**

For a court or docket to hold batterers accountable for their actions, two things must occur. First, defendants must be closely monitored to ensure that they comply with all court conditions. Second, defendants must face swift and certain consequences if they fail to comply with these conditions. There are pre- and post-disposition conditions to which abusers must be held accountable; therefore, systems must be in place at all stages of the process in a domestic violence court to make sure that this happens.

Domestic violence victims are most likely under the influence of the batterer's power and control tactics; therefore, she may be fearful and reluctant to report the crime or cooperate with law enforcement. Batterer accountability encompasses statutes and policies that hold batterers accountable for their actions. This includes implementing swift tribal judicial responses to any tribal court order violations. Holding the batterer accountable may be complex in nature and may include more probation monitoring, arrests, prosecutions, and/or jail time.

Tribal domestic violence courts or dockets should include intensive monitoring of batterer behaviors and compliance with court orders. Some tribes may have restricted resources for incarcerating a batterer for each violation of the court's order; therefore, tribes may wish to revisit tribal customs and traditions that were utilized to protect victims and children.

A tribal domestic violence court can provide orders that engage other systems to conduct intensive monitoring of the batterer's behaviors and actions. The benefit of having one permanent judge or a few judges dedicated to the case, a fixed tribal prosecutorial team, and a fixed law enforcement team is that it casts a wide net to hold batterers accountable. Even with the core values mentioned previously, it is highly unlikely that a tribal community will support such a court if the core values do not incorporate the tribal customs and traditions of the tribal community.

The following exercise guides the planning team through a review of tribal custom and tradition with respect to batterer accountability.

**Exercise #9: Victim-centered core values: Traditional practices regarding batterer accountability**

***Lesson Objectives:*** Discuss traditional practices regarding batterer accountability. Explain why intensive batterer monitoring and accountability is critical to the victim and the tribal court. Identify barriers that might hinder batterer accountability. Review and note any tribal codes that place the onus on the victim to report batterer violations of court orders.

***Reading:*** Please review Chapter 3 "Foundational Domestic Violence Issues in Indian Country" and Chapter 4 "Designing Tribal Court Domestic Violence Courts" paying close attention to segments on victim safety, batterer accountability, and reasons why a problem-solving court model may be dangerous for victims of domestic violence.

***Instructions:*** Please perform the following tasks and answer the following questions.

**Team Leader Tips:** In preparation for this meeting, remind the planning team to review consensus responses to Exercise #3. Consider utilizing time at the conclusion of this meeting for updating all planning team binders.

**1. DISCUSS** traditional practices regarding batterer behaviors and make a list of the practices that should be implemented. Please review answers to Exercise #3. For example: If any domestic violence occurred, what measures would the tribe take to hold the batterer accountable?

**2. EXPLAIN** why intensive batterer monitoring and accountability are so critical to the victim and the tribal court. For example: Why is it important to the victim and the tribal court to monitor the batterer and punish the batterer for noncompliance with a tribal court order?

**3. IDENTIFY** any barriers that might hinder batterer monitoring holding a batterer accountable for violations of a court order and list possible ways to address those barriers. For example: Does the tribe currently have a probation department that would be responsible for monitoring a batterer's compliance with a tribal court order? If not, is funding the reason for a lack of probation services?

**4. REVIEW** and note any statutes or practices that put the responsibility on the victim to report batterer behavior and/or reporting batterer violations of court orders. Recall that placing the responsibility to report batterer violations on the victim is dangerous. See pages 46-47. Make a note to revisit this issue to suggest any changes that might be needed to avoid placing the reporting responsibility falling on the victim.

**5. WHAT,** if any, technical assistance needs have been identified? You may request technical assistance at:

The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039

### **3) Incorporating Tribal Custom and Tradition**

Core values should be based on the tribal community's customs and traditions regarding healthy families, victim, and children safety. Domestic violence is not in keeping with tribal customs and traditions.

The core values will be heavily relied upon by the tribal court to provide context to tribal laws applied in the tribal domestic violence court or docket. If any tribal statutes are ambiguous, the tribal court will look to the core values for guidance in determining the purpose and intent of what the tribe wants to achieve



through the tribal court and tribal codes. The core values should incorporate and reflect the tribal community's belief system regarding victim safety, batterer accountability, and what families need to be healthy and safe in domestic violence cases. The following exercise focuses on incorporating tribal custom and tradition into the tribe's core values.

**Exercise # 10: Incorporating tribal custom and tradition into core values**

**Lesson Objectives:** *Identify the core values of a tribal domestic violence court or docket that are consistent with tribal customs and traditions. Identify how a tribal domestic violence court or docket may reduce domestic violence in your tribal community. Identify how a domestic violence court or docket may impact victim safety. Identify how a tribal domestic violence court or docket may impact batterer accountability. Review and modify the Vision Statement if needed.*

**Reading:** Chapter 4 "Designing Tribal Court Domestic Violence Courts and Dockets" paying close attention to the segment on core values.

**Instructions:** Please perform the following tasks and answer the following questions.

*Team Leader Tips: Consider having a handout of the most updated version of the Vision Statement for distribution at the end of this exercise. Promote a thorough discussion of the questions and try to reach a consensus. Utilize this time to update the Vision Statement to incorporate the planning team consensus on core values. The Vision Statement should be evolving to denote tribal beliefs, practices, and values.*

**1. WHAT** core values are consistent with tribal custom and tradition that need to be the guiding values of the tribal domestic violence court or docket? (Please review Exercise #3.)

**2. HOW** do you anticipate a tribal domestic violence court or docket may reduce domestic violence in your tribal community?

**3. HOW** do you anticipate a tribal domestic violence court or docket may impact victim safety? For information on how domestic violence impacts victim safety see pages 20-28.

**4. HOW** do you anticipate a tribal domestic violence court or docket may impact children exposed to domestic violence? For more information on how domestic violence impacts child safety see pages 19-28.

**5. HOW** do you anticipate a tribal domestic violence court or docket will impact the batterer accountability? For more information on batterer accountability see pages 54-55.

**6. REVIEW** and revisit the Vision Statement. Does the team need to make any adjustments to incorporate core values into the Vision Statement? If so, discuss, try to reach a consensus, and make those modifications.

**7. IDENTIFY** whether training or technical assistance is needed at this stage. Technical assistance may be requested at:

The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039

### C. The Core Case Team: Utilizing a Multidisciplinary Approach

In mainstream communities, contemporary responses by service providers to domestic violence is myopic and based solely on the professional roles and functions of each service provider's discipline. Each system is like a silo and assesses/addresses the domestic violence issue through the lens of the service provider's discipline. The service provider often performs duties with limited resources and with limited coordination, cooperation, and communication with other service providers. For instance, in the criminal realm, the focus is often on fact-finding and moving "the case" on to the next step in the investigative and prosecution process. The victim is rarely consulted and rarely kept abreast of decisions made regarding her case. Note that a multidisciplinary team is the cornerstone of a tribal domestic violence court and may not be a component of tribal domestic violence docket. This chapter presents useful information and practices for a tribal domestic violence docket, particularly the confidentiality section.

This silo model conflicts with Indigenous models of helping and collaborating. The traditional Indigenous response to a fellow village member's tragedy was people or relatives encircling that person or family with support, resources, caring, and compassion. For example, a contemporary version of this traditional model requires those establishing a Sexual Assault Response Team (SART) to shift from a *case-centered* response to a *victim-centered* response. This model is based on the belief that victims are needed throughout the process so that agencies within the criminal justice system can effectively exercise their duties.<sup>54</sup>

Addressing domestic violence through the multidisciplinary approach underscores the importance of coordination, collaboration, and interactions between all the systems that address domestic violence victim/children service and safety needs. This approach

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<sup>54</sup> Minnesota Model Sexual Assault Protocol Project. See [http://www.mncasa.org/svji\\_smart.html](http://www.mncasa.org/svji_smart.html).

provides for a carefully tailored service approach and breaks down systemic siloes. This approach more effectively monitors batterer behaviors and batterer violations of tribal court orders.

The core case team should work toward early identification of domestic violence and providing early access to services while being mindful of the power and control issues ever present in a domestic violence case. The core case team should incorporate a trauma-informed service delivery system that is mindful of the impact of trauma on the victim and children. It should also be inclusive of measures that address historical trauma. The core case team should address and debunk the prevailing community myths that impede providing victim safety and batterer accountability. The court should be structured to allow the maximum victim input and decision making regarding services and procedures. Service personnel and designated court personnel must participate in ongoing training that addresses the complex needs of victims and children. The ongoing training should also address the power and control dynamics of domestic violence. The service and court personnel must be committed to consider the core team's recommendations regarding victim safety and also to holding batterers accountable for violations of court orders. These specialized tribal courts may serve as a platform for exercising SDVCJ over non-Indians committing certain domestic violence–related crimes in Indian country, thereby bridging certain gaps currently present in the tribal court jurisdictional paradigm.

A discussion on how various disciplines might look in a tribal domestic violence court and the critical issue of protecting victim information follows.

### **1) Role of the Tribal Domestic Violence Court Judge**

Whether in a tribal domestic violence court or docket the role of the judge's leadership cannot be overstated. The tribal judge should provide leadership, correctly apply the tribal statutes, and correctly apply tribal custom and tradition in domestic violence cases. The tribal judge must draft legal documents such as protection orders that clearly invoke the tribe's jurisdiction over the matter, as well as the VAWA Full Faith and Credit provision<sup>55</sup> and the federal firearm provisions—if these remedies do not put the victim's safety at risk.

The tribal judge should participate and collaborate in establishing safety protocols for the courtroom and court personnel. Enforcing violations of protection orders should be a priority. This can be done by working with the partners to ensure the victim and children will be safe. If appropriate, the tribal judge should seek out educational materials and/or trainers who focus on drafting legal documents in domestic violence cases and how those orders may

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<sup>55</sup> 18 U.S.C. §2265.

affect victim safety. Drafting legal documents correctly may mean the difference of a federal prosecutor charging a batterer as a habitual domestic violence offender in federal court.<sup>56</sup>

The tribal judge should be responsible for ensuring all tribal court personnel working in the tribal domestic violence court attend regular and ongoing trainings focused on domestic violence, the effects of trauma on the victim and children, and victim safety issues. Court staff must be trained on the dynamics of domestic violence. They must be trained to carefully handle the victim's information in a way that keeps victim's information confidential. They should also participate and collaborate with others regarding courtroom safety issues.

The tribal judge should also be accountable for the judicial system's focus on victim safety and batterer accountability and attend regular and ongoing trainings focused on providing trauma-informed, victim-centered services.

## **2) Role of the Tribal Domestic Violence Advocate**

The role of the tribal victim advocate is to provide individual support, information and referral, accompaniment to court, advocacy, and other services such as transportation, financial, housing, and child care. Advocates play a vital role in bearing witness to the experience of the victim; they do this by listening, believing, empowering, serving as a buffer, interrupting victim blaming, and honoring the choices that a victim makes.<sup>57</sup> Advocates are available to provide one-to-one support to the victim immediately after a victim seeks assistance from the victim advocate or makes a law enforcement report of domestic violence. These advocates coordinate available services and resources the victim may need. The advocate may continue providing longer-term services as needed and requested by the victim.

There are four basic types of victim advocates and the distinctions are critical:

- Community based (grassroots);
- Hospital based;
- Prosecutor based; and
- Law enforcement based.

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<sup>56</sup> 18 U.S.C. §117.

<sup>57</sup> SART Handbook, Version III (July 2009), Oregon Attorney General's Sexual Assault Task Force, 17, <http://50.116.64.16/~oregonv6/wp-content/uploads/2016/07/SART-Handbook-FINAL-July-09.pdf> (accessed March 8, 2009).

The type of services that the advocate can provide will depend upon the agency where they are employed. Generally, a community-based victim advocate is someone who received a specialized, advocacy training as may be outlined in applicable tribal codes and state guidelines. Completing this training is often a prerequisite to claim the victim-advocate privilege regarding nondisclosure of victim information in court. If advocate-victim communication is “privileged” communication, then private communication may not be subject to disclosure even by subpoena. The advocate may not be expected to testify in court. In contrast, hospital-based, prosecutor-based, and law enforcement–based victim advocates’ records may be discoverable through subpoenas and court processes. For more information on victim information and the concepts of privacy, confidentiality, and privilege see the section on “Victim Privacy, Confidentiality, and Privilege in a Tribal Domestic Violence Court—A *Victim Safety Issue*” at pages 64-69.

Tribal victim advocates should understand the power and control dynamics of domestic violence. They should also understand victim safety issues and design safety plans for each victim and their children. Victim advocates may also educate the tribal community regarding the power and control dynamics of domestic violence through workshops, presentations, and distribution of educational materials.

Tribal victim advocates can assist with safety planning for all tribal court partners. They should be willing to work collaboratively with all partners always keeping the focus on victim safety and batterer accountability. Tribal victim advocates may also be a solid resource on the lethality indicators in each case. The lethality indicators raise red flags as the domestic violence case becomes more and more dangerous.<sup>58</sup>

Tribal victim advocates should be accountable to all the domestic violence tribal court partners for the advocacy work they provide. They should be willing to attend regular and ongoing training focused on trauma-informed, victim-centered service delivery.

### **3) Role of Tribal Prosecutors**

Tribal prosecutors are typically bound to represent the tribe and tribal community by charging crimes that have been committed in the community. However, tribal prosecutors should also be tasked with helping to protect the victim from future harm.

Perhaps one of the most difficult challenges for prosecutors in handling domestic violence cases is the typical goal of obtaining a guilty plea or winning a trial.

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<sup>58</sup> National Center on Domestic Violence and Sexual Assault, *Danger, Lethality and Risk Assessment*, [www.ncdsv.org/publications\\_danger.html](http://www.ncdsv.org/publications_danger.html) (accessed September 19, 2018).

However, the act of prosecuting a domestic violence crime may conflict with the interest of victims and have a direct effect of victim safety.

The tribal prosecutor must be educated on the power and control issues present in domestic violence cases, as well as victim safety issues. Each legal maneuver the tribal prosecutor makes may result in safety implications for the victim and her children. For instance, requiring a victim to participate in a criminal case may endanger the victim's physical or emotional well-being and that of her children. Victims of domestic violence often fear additional and more profound abuse from the batterer. The victim may lose support from their own family. Similarly, she may lose support from the batterer's family, to whom the victim may be very close. She may also lose support from other allies by participating in the criminal case.

The tribal prosecutor should understand and enforce any victim's rights in the applicable tribal code. In addition, batterer accountability would require a tribal prosecutor to charge the batterer with violations of a protection order. The prosecutor should also draft criminal no-contact orders to be issued when a batterer is released from jail pending trial. It should be drafted in such a way that the no-contact order becomes a protection order and, if violated, results in an additional crime committed by the batterer.

The tribal prosecutor should be accountable to the tribal domestic violence court regarding the prosecutor's role as a collaborative partner focused on victim safety and batterer accountability. Prosecutors should be willing to attend regular and ongoing training focused on trauma-informed, victim-centered service delivery.

#### **4) Role of Law Enforcement**

The law enforcement agency is often the first point of contact for a victim. That contact often results in the activation of the multidisciplinary response.

The role of law enforcement is to:

- Ensure the safety of the victim and the community;
- Conduct the investigation of physical and/or sexual assault;
- Interview the victim;
- Transfer forensic evidence;
- Maintain appropriate chain of evidence;
- Apprehend/arrest the suspect;
- Prepare a report for the appropriate prosecuting attorney's office; and
- Participate in criminal proceedings as necessary.

Tribal law enforcement should understand the power and control dynamics of a domestic violence case and also victim safety issues. It is critical that law enforcement view the tribal victim advocate as a crucial partner in domestic violence cases.

Respecting tribal sovereignty and entering protection orders per the judges directive is directly connected to the victim's safety. Oftentimes, the victim and batterer will move across jurisdiction boundaries; therefore, law enforcement should enter the protection orders in the state and/or federal system to enhance the enforceability of a tribal court order.

Tribal law enforcement should be accountable to the tribal domestic violence court regarding victim safety and batterer accountability issues. It is important for law enforcement to understand the need for regular ongoing training regarding domestic violence case investigations.

### **5) Role of Child Protection Service Providers**

Often children are removed from both parents in homes where domestic violence is taking place. This removal may occur even when one parent is the victim of domestic violence. Children who witness domestic violence have a greater need for stability and security. However, removal from a nonoffending parent results in instability and insecurity, thus compounding the trauma the child has already suffered. When possible, the children should remain with the nonoffending parent if the child is safe.<sup>59</sup>

Tribal child protection service providers should be accountable to the tribal domestic violence court regarding child safety, victim safety, and batterer accountability issues. The child protection service provider should recognize the importance of regular ongoing trainings regarding the power and control dynamics of domestic violence.

### **6) Role of Other Victim Service Providers**

No doubt, the tribal domestic violence court will have many collaborative partners that may include healthcare providers, counselors, teachers, and many others. Each partner that is involved in providing services to the domestic violence victim and her children must be educated on the power and control dynamics of domestic violence cases, as well as victim safety issues.

All service providers should be accountable to the tribal domestic violence court, according to their disciplines, to focus on victim safety and batterer accountability.

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<sup>59</sup> Attorney General's Task Force on American Indian/Alaska Native Children Exposed to Violence, *Ending Violence So Children Can Thrive*, 15. [www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending\\_violence\\_so\\_children\\_can\\_thrive.pdf](http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending_violence_so_children_can_thrive.pdf) (accessed March 8, 2019).

All service providers should be willing to attend regular ongoing trainings regarding the power and control dynamics of domestic violence.

The importance of the multidisciplinary response cannot be safely achieved without measures that promote victim safety by carefully addressing the issue of protecting victim information. The following exercise focuses on the disciplines that should make up the core case team in the tribal community.

**Exercise #11: Utilizing a multidisciplinary approach for a tribal domestic violence court**

**Lesson Objectives:** *Identify any additional disciplines that the planning team considers mandatory for the core case team that were not discussed in Chapter 4 “Designing Tribal Domestic Violence Courts and Dockets”. Discuss a process for inviting all disciplines to participate in the core case team. Create subcommittee(s) to visit all disciplines identified as mandatory for the core case team. Visit the mandatory disciplines and report back to the planning team regarding visit results (willingness to participate on a core case team) and any conflicts or gaps that arose during the visit (confidentiality and the sharing of information). Identify possible avenues for addressing the conflicts or gaps. Request TA if needed.*

**Reading:** Chapter 4 “Designing Tribal Domestic Violence Courts and Dockets” paying close attention to the segment on core values.

**Instructions:** Please perform all tasks and answer all the following questions.

**Team Leader Tips:** *Consider creating various subcommittees to visit various disciplines mandatory to the core case team. Consider appointing a lead for each subcommittee to take notes and compile those notes as handouts at the planning team meeting. Consider having the most current version of the Vision Statement to send with the subcommittees to hand out during the discipline specific meetings. At the conclusion of the meeting, compile a short report with headings and consensus statements thus far.*

**1. IDENTIFY** any additional disciplines the team considers mandatory for the core case team other than the disciplines discussed in Chapter 4 “Designing Tribal Domestic Violence Courts and Dockets”.

**2. HOW** might the various disciplines on the list be contacted and invited to join the core case team? For example: consider creating subcommittees on the planning team. Each subcommittee should visit (preferably in person) to discuss the Vision Statement supporting a tribal domestic violence court. At the meeting, the subcommittee should take notes regarding the representative’s comments. Ask the representative for a policy and procedure guide or handbook that is relevant to domestic violence victim



*and children's safety/services, as well as any information relevant to batterer accountability. Ask the representative how cases or clients are screened for domestic violence and how domestic violence referrals are made to other service providers. Ask the representative for information relative to the services they provide to domestic violence victims and their children or batterers. Inquire if the representative is required to attend any domestic violence training. Inquire about confidentiality protections for the domestic violence victim and children. Obtain a copy of the confidentiality protocols if possible.*

**3. VISIT** *each discipline identified as mandatory for the core case team to discuss the project and provide a copy of the Vision Statement that includes confidentiality and privilege issues. Inquire about willingness to participant as a member of the core case team. Gather confidentiality protocols if possible.*

**4. REPORT** *back to the team regarding the visit, also report on any gaps or barriers identified. Provide copies of any protocols gathered and discuss.*

**5. IDENTIFY** *avenues for finding common ground with disciplines if conflicts or barriers exist that hinder participating on the core case team. Make a list of ideas on how to address those barriers.*

**6. IDENTIFY** *any technical assistance needs at this state. Technical assistance may be requested at:*

*The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039*

## **D. Victim Privacy, Confidentiality, and Privilege in A Tribal Domestic Violence Court or Docket—A Victim Safety Issue**

The concept of victim privacy, confidentiality, and privilege allows a victim to disclose the full story, trusting that the story will go no further than the victim allows. These rules place control of the information with the victim and are a part of the victim-centered response to domestic violence. The protection of victim information could be a matter of life or death for the victim.

There are various challenges to keeping victim information private. Even in nontribal communities, Native American people may utilize the same services at health clinics, for example. Agencies providing victim services may lack good protocols and policies to keep victim records safe. Moreover, a victim's use of social media may compromise

statutory protections of victim information and a batterer may encourage the victim to use social media as a means of obtaining information about the victim.

There are three key principles to consider when addressing issues of victim information: privacy, confidentiality, and privilege. Privacy is the expectation that when a victim shares information with another individual (the individual does not have to be a professional), the information will go no further without the victim's consent. Reporting matters of domestic violence may be very humiliating and traumatic for the victim to disclose even to relatives or friends. Privacy allows the victim to report matters outside of the public eye and to expect the information to remain private. An example of privacy would include a victim discussing an issue with a friend over the phone and the victim expecting the information to go no further.

Examples of where a victim's privacy may be unintentionally breached by organizations/professionals include:

- Victim services location in the tribal community where tribal members know what types of services the office provides and can see who comes and goes from the office;
- Signs on the office that indicate why an individual would be entering that office;
- Waiting areas of offices that are not private;
- The professional acknowledging the victim in public places, which provides others with clues about the need for such a professional relationship; and
- Materials that agencies send home with the client that may be recovered by the batterer.

Privacy and confidentiality have some overlap, but confidentiality is an ethical duty that is created by a professional relationship. Confidentiality is an ethical duty to keep the victim's information private. Victim statements are meant only for the professional and the information may only be disclosed with client consent. If the professional discloses the victim's information without the victim's consent, the professional may be liable for an ethical breach of duty and lose any of his/her licensure or certifications. Keeping victim information confidential is directly connected to victim safety. Grant funding may also come with confidentiality restrictions. For example, the Violence Against Women Act confidentiality provision attached to grants funded by the Office on Violence Against Women prohibits sharing of identifying victim information unless: 1) the victim signs an informed, written, time-limited release; or 2) the release is subject to a legal (court or statutory) mandate. The Family Violence Prevention and Services Act federal grants have a similar confidentiality provision. Another possible area of concern arises when the tribal victim services is a part the tribal government, which can create additional hurdles in keeping information private from other parts of the tribal government. Note that a failure to adhere to federal grant special conditions regarding confidentiality may result in a loss of funding.

Types of information that are usually confidential include:

- Name/address of client requesting services;
- Name/address of client receiving services;
- Other private and identifying information about client (telephone number, birthdate, health issues, etc.);
- Disclosing location or contact information of victim; and
- Domestic violence shelter location.

Confidentiality breaches might occur when:

- Agency files or information are exchanged with another agency without client consent, or an exchange of information with an agency that has no confidential relationship with the victim;
- Hospital/medical record files or information are exchanged without client consent, or an exchange of information with an agency that has no confidential relationship with the victim;
- During case reviews, files or information are shared with other agencies without client consent, or an exchange of information with agencies that do not have a confidential relationship with the victim;
- During civil cases and/or criminal prosecution where the victim's information has been subpoenaed and ordered to be disclosed by the court; and
- During the judicial process in which judges put confidential victim information in court orders, such as a victim address or place of work.

Note that confidentiality issues do not arise when:

- The victim grants written permission to disclose the information;
- Only the permitted victim information is shared with the individual/agency that the victim granted permission to share that specific information; and
- The victim grants permission to disclose certain victim information in a written form that:
  - ✓ Lists what specific information you can disclose,
  - ✓ Says to whom it can be disclosed,
  - ✓ Is signed by the client,
  - ✓ Includes an expiration date, and
  - ✓ Provides a notice that the client can rescind her permission at any time if she chooses.

Be aware that disclosing information relating to a minor is more complicated and may vary by tribal, state, and/or federal law as applicable. This is true, in some cases, whether the minor is an emancipated minor.

In addition to being confidential, a victim's information may be protected by a privilege. Privileged communications include victim statements and conversations made under circumstances of assured confidentiality. These are only allowed to be disclosed under a very restricted set of circumstances—if at all. Victim information protected by a privilege is usually set out in statutes or case law in the applicable jurisdiction. A violation of the privileged information is a legal matter and may have legal and/or criminal consequences for the disclosure.

Privileged communications are based upon public policy: one should be able to speak freely to certain professionals/individuals without fear of repercussions. Further, the information cannot be disclosed (absent client consent and absent court order) even if the agency is called to testify or reveal such privileged conversations to law enforcement. However, the privilege may be waived by the holder of the privilege (the victim who communicated the confidential information, not the person who heard it).

Examples of relationships that usually have a recognized privilege include:

- Priest/parishioner;
- Lawyer/client;
- Psychologist/patient;
- Doctor/patient;
- Husband/wife;
- Licensed social worker/client; and
- Advocate/victim (but not a victim witness advocate working for the prosecutor, law enforcement, or healthcare agency).

There are basically three levels of privilege:

- Absolute;
- Semi-absolute or absolute diluted; and
- Qualified.

If the tribal code creates an absolute privilege, the victim information may not be disclosed and is not subject to discovery in the legal process, not even by court order, unless the victim waives the privilege.

If the tribal code creates a semi-absolute privilege, the privileged information may not be disclosed unless certain circumstances are present. For example, a disclosure might occur when the statute creates:

- Duty to warn of the intent to commit fraud, commission of a crime;
- Duty to protect to prevent substantial bodily harm;
- Subpoena where court commands; and
- Mandatory reporting of suspected child abuse or neglect that has or is occurring.

A qualified privilege usually requires the tribal court to determine whether the information should be disclosed after completing a balancing test and the court feels disclosure is appropriate.

Note that a privileged communication may be unintentionally waived if:

- A third party is in the interview room;
- Providing information to third parties not protected by the statutory privilege;
- The information is available in other public forums (such as Facebook); and
- All disciplines are not covered by a statute creating a privilege.

The issues of privacy, confidentiality, and privilege are directly connected to victim safety. The team must review applicable tribal codes and collaborative partner policy and procedures to determine the level of protection afforded to victim information. If there are gaps, the team should consider developing written policies around victim/client records or information that provide standards for:

- Keeping or disposing of client records;
- Maintaining client records securely, with only specific persons allowed to have access to records;
- Providing clear guidelines as to what information is to be collected—and guidelines as to information that should not be collected; and
- Informing client of record-keeping policies; letting the client know who has access to records at which times.

Recall that there are four basic types of victim advocates and the distinctions are critical:

- Community based (grassroots);
- Hospital based;
- Prosecutor based; and
- Law enforcement based.

Note that hospital-based, prosecutor-based, and law enforcement-based victim advocates records may be discoverable through subpoenas and court processes. Disclosures of victim information comprises victim safety. The following exercise will guide the planning team through a series of questions that focus on confidentiality and victim safety.

The role of the core case team in a domestic violence court setting envisions a multidisciplinary team that will share critical information in an effort to address victim safety and batterer accountability. However, instances may arise when a victim participating in a domestic violence court refuses to sign a release to allow information to be shared. Recall that the Violence Against Women Act provides that a victim's information may only be released through a written release or if compelled by judicial

process. In cases where information cannot be shared safely, core case team members may share non-identifying client information or speak in generalities. Domestic violence dockets do not usually have core case teams. However, if a domestic violence docket has a core case team these issues apply to it as well.

The following exercise presents various issues related to protection of victim information and the responsible sharing of victim information between the core case team.

**Exercise #12: Victim privacy, confidentiality and privilege: A victim safety issue**

**Lesson Objectives:** Review and identify tribal code provisions that relate to protection of victim information. Identify any tribal code provisions that conflict with the core values on protecting victim information established in the Vision Statement. Identify and assess gaps in protecting victim information being shared among the core case team members. Identify and assess tribal code provisions that are particularly related to a victim's disclosures of information to a victim advocate. Identify any modifications to the code provisions that would better protect victim information. Identify a plan to address proposed modifications with relevant tribal legislators.

**Reading:** Chapter 4 "Designing Tribal Court Domestic Violence Courts and Dockets" paying close attention to the segment on confidentiality.

**Instructions:** Please perform the tasks and answer the following questions.

**Team Leader Tips:** Assignments for code reviews on confidentiality and privilege may be made to planning team subcommittees prior to the meeting. Consider appointing various subcommittees to gather information on the following topics and report back to the planning team during the meeting.

- 1. WHAT** are the tribal code provisions related to privacy confidentiality and privilege for domestic violence victims and service providers?
- 2. WHAT**, if any, tribal code provisions conflict with the core value of victim safety and victim-centered services in the Vision Statement? For example: Do any of the code provisions require a victim to provide her physical address? Does the code allow a victim advocate's records to be subpoenaed?
- 3. WHAT** protections are present or lacking related to the protection and sharing of the core case team's confidentiality protocols?
- 4. WHAT**, if any, type of advocates interacting with the victim might not be protected by a statutory privilege, thereby leaving victim information vulnerable to a subpoena for testimony or to provide a copy of the

advocate's records? For example: Recall that certain types of advocate's records and conversations with the victim are not protected. Does the code clearly set forth what type of advocate has statutory protection? It will be important to have the advocate's input during this discussion so that the community can be educated on the different types of advocates and which advocates have a duty of confidentiality and protections of a statutory privilege.

**5. WHAT** statutory modifications regarding the protection of victim information need to be made to the tribal codes?

**6. IDENTIFY** a plan to address your concerns with the appropriate professionals. A subcommittee may be assigned to visit the appropriate professionals to discuss whether modifications to the tribal code are possible. For example: Prepare the planning team's findings and be sure to offer up several options that address identified code provisions that jeopardize client confidentiality. Do any of the code provisions provide protection to the victim advocate's records?

**7. RESEARCH** multidisciplinary agreements for the core case team that would best address victim and child safety. For example: See sample agreement forms located at Appendix F.

**8. REVISIT** the Vision Statement that includes the planning team's identified core values to determine whether any modifications are necessary regarding confidentiality and, if so, discuss possible changes. Try and reach consensus to make those modifications.

**9. WHAT**, if any, technical assistance needs are present? You may request technical assistance at:

The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039

For additional information on drafting Memorandums of Understanding please see Appendix F.

### **Exercise #13: Decision making: A tribal domestic violence court or docket**

**Lesson Objectives:** Identify whether a tribal domestic violence court or docket is best for the tribal community.

**Reading:** All consensus documents and any other relevant notes contained in the planning team member's notebook. Review Chapter 4 "Designing Tribal Domestic Violence Courts and Dockets".

**Instructions:** Please perform the tasks and answer the following questions.

**Team Leader Tips:** Considering beginning this meeting with a review of the most recent Vision Statement and begin working out from that point. This is the decision that culminates based upon all the consensus documents and lessons learned from working through the Guide's exercises. Be sure to allot adequate time for this very important decision-making exercise. Keep referring back to the Vision Statement in the event of an impasse. Try to facilitate the discussion to reach consensus and instruct planning team members to place consensus documents in notebooks. Remember that a tribal domestic violence court does not necessarily require more funding than a tribal domestic violence docket. Recall that a tribal domestic violence court can be designed to address only one type of case and then evolve into a court that addresses all cases involving domestic violence. It is okay to start small.

**1. IDENTIFY** whether a tribal domestic violence court or docket would best serve the tribal community including victims of domestic violence and their children.





## Chapter 5. Protocol Development

A tribe is only as powerful as the sovereign powers it asserts and exercises. Tribal sovereignty includes the power to enact tribal codes and assert judicial authority over most matters arising in Indian country. Tribal sovereignty includes the duty to keep victims and their children safe in Indian country. The planning team should strongly implore the enactment or modification of tribal codes that promote victim safety and batterer accountability. The planning team should also strongly advocate that protocols and policies governing agencies/systems serving victims be developed with multidisciplinary input and put in writing. The planning team should also seek to have protocols and policies that are either tied to a mandate established by tribal code, and having full force and effect of tribal law, or have the tribal government mandate that applicable agencies adhere to the written policies and procedures developed.

Note that protocols are equally important to tribal domestic violence courts and dockets. The following segments will define protocols and discuss the benefits of having clearly written protocols. Recall that these protocols should address civil and/or criminal justice systems. This depends upon the type of tribal domestic violence court the planning team has determined is a best fit for the tribal community. The necessary protocol components of a tribal domestic violence court and service provider partners are discussed. The eight-step process for drafting protocols is explained and designed to assist the planning team in drafting protocols. There is an exercise that leads the planning team through the drafting protocols process.

### **A. Protocols are Guidelines to Achieve Established Policies.**

When domestic violence occurs in any Indian community, an immediate and victim-centered response can be hampered by confusion. The confusion may be caused by a lack of protocols and lack of formalized agreements/Memorandum of Understanding on interagency collaboration, which can result in breakdowns in communication and cooperation between victim service providers. This can ultimately lead to cases falling through the cracks, victims not feeling safe, and victims not being kept informed of case disposition. The delays often result in lack of offender accountability, which result in the potential of greater harm and risk to the victim, victim's family, and community.

**The importance of written protocols cannot be overstated.** Written protocols tend to provide more uniformity and stability in application. Consider the following example protocol that directs law enforcement in matters involving domestic violence. The response to domestic violence should begin the moment the victim enters the system with law enforcement entering her residence. For example, law enforcement response protocol begins from that moment; when a victim-centered response is provided it carries through to a better experience throughout the domestic violence court process. When this response is codified it carries more weight that responding officers must comply with.

*A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from further violence and has a duty to arrest upon finding probable cause to believe that domestic violence has occurred.*

*Such reasonable means include but are not limited to:*

- a. Taking any lawful action necessary to provide for the safety of the victim and any family or household member.*
- b. Confiscating any weapon involved in the alleged domestic violence.*
- c. Transporting or obtaining transportation for the victim and any child(ren) to a shelter or any other place of safety.*
- d. Assisting the victim in removing essential personal effects.*
- e. Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility.*
- f. Giving the victim immediate and adequate notice of the rights of victims and or the remedies and services available to victims of domestic violence.*
- g. Enforcing an order for protection.*

Because many tribal agencies each have their own areas of expertise, the planning team could ask the tribal agencies to develop written protocols and procedures for approval by the appropriate authority. Requesting an agency to develop written protocols is easiest done when the agency has a representative on the planning team and has already committed to collaborate and cooperate in the tribal domestic violence court development. For example, the following tribal code mandate requires the tribe to develop written policies and procedures:

*Required written policies and procedures; Tribal Department of Public Safety.  
Within 120 days of the enactment of the Domestic Violence Code, Public Safety shall develop or adopt and put into effect written policies and procedures concerning:*

- 1. The effective response of the agency to cases involving domestic violence.*
- 2. Enforcement of all applicable tribal statutes concerning domestic violence.*
- 3. Protection and safety of the victims of domestic violence and other family and household members.*
- 4. The method or process for sanctions against officers or officials who fail to follow or enforce official protocols.*
- 5. The protocol for responding to domestic violence crimes perpetrated by law enforcement officers and law enforcement officials.*
- 6. The protocol for response to sexual assault arising from domestic violence.*
- 7. Coordination with hospitals and programs for victims of domestic violence.*

To more clearly explain roles and responsibilities the planning team should develop concrete written protocols for the tribal domestic violence court. A protocol defines a set of decision-making steps based on established policies. Many of the exercises that the planning team completed in Chapters 1 through 4, including the Vision Statement, can provide the framework for the policies of the court. Remember that change takes

time so be patient, revisit the Vision Statement as requested and move forward. Tools for working as a team can be reviewed on page 9-10.

## **B. The Components of Protocols for Tribal Domestic Violence Court or Docket**

Written protocols can serve as a roadmap guiding the various disciplines associated with a tribal domestic violence court according to established policies. Protocols can also provide stability and uniformity among service providers by clarifying roles and responsibilities. Protocols encourage the safe, routine, and consistent treatment of domestic violence cases as they progress through the justice system and encourages appropriate responses to victim needs.

Established protocols will guide each discipline on the steps needed to adhere to the guiding policies of the tribal domestic violence court. Protocols may assist a victim as the case progresses through the tribal domestic violence court. Protocols may also clarify how collaborative partners will cooperate on the project to keep victims safe and to hold batterers accountable for violations of tribal court orders and tribal laws. Protocols between the various disciplines can also promote a safe exchange of information in a manner that keep's victim information private.

Effective tribal domestic violence court protocol components might provide guidance on:

- Early identification and early referral for victim services through coordinated screening protocols for service partners;
- Delineation and coordination of service partner roles and responsibilities;
- Uniformity of providing services that are victim centered;
- Consistency in court processes that are victim and child friendly;
- Improvement in cross-discipline communication, service delivery, and information sharing in a manner that protects victim information;
- Ongoing training on the dynamics of domestic violence resulting in more informed service providing and judicial decision making;
- Improvement of trust in the justice system resulting in increased credibility;
- Specialized and consistent judges and staff; and
- Judicial leadership in holding agency partners accountable for protocols that focus on victim safety and batterer accountability.

Protocols might provide guidance on early identification and early referral for victim services. The protocols might address how each of the service partners will screen for domestic violence and when appropriate refer cases to the tribal domestic violence court. The steps on how the court will screen cases for domestic violence should be written. Determinations for how the cases are assigned to the tribal domestic violence court should also be clearly set out in writing.

Protocols should also set out the roles and responsibilities of each of the service provider partners. These steps should also stress uniformity among the service providers regarding the early identification and early referral for victims and their children. The protocol should encompass a victim-centered approach. For a quick refresher on a victim-centered approach and trauma-informed approach to service delivery see pages 26-27 and 25.

Consider including the Vision Statement and the policies (set out in Exercise #3 on page 14-16) in the beginning of the protocols. Include the definition of domestic violence you will create in Exercise #14 and include the definition set out in your tribal code. The two definitions do not have to mirror one another.

Be sure to clearly set out in writing: protocols that promote consistency in the court processes or the way a case moves through the court and the way a victim will interact while in court. There are many areas where protocols might be necessary in this regard, for instance: steps that address how the cases will be funneled to the tribal domestic violence court and set out how a victim will interact with court staff must be addressed. Delineate a separate entrance and waiting area for the victim and children. Determine what levels of security are needed for the victim, the court staff, and judges before, during, and after any hearings. Delay the departure times for a defendant's exit from the court by at least 20 minutes from the time a victim exits the court. Provide the victim a security escort from the court to the victim's vehicle. If the court will provide any child care assistance, determine the steps for security in the pick up the child. For more examples, please see *Creating a Domestic Violence Court, Guidelines and Best Practices*<sup>60</sup> and *Idaho Domestic Violence Policies and Guidelines*.<sup>61</sup>

Coordinating the exchange and sharing of victim information is crucial to victim safety. Protocols should address the coordination of procedures for all partners. For instance, service partners should have some uniformity with respect to screening, service referrals, and service delivery to victims and their children. Partners should also have some uniformity on issues including the high risk of reabuse and lethality issues. Recall that each case must be assessed individually. Set out steps for service partners to follow for responsible sharing of victim information. Information should not be shared among all partners or systems and victim safety should weigh heavily on this issue. Memorandums of Understanding or Memorandums of Agreements should be established. Varying agreements may be needed for various partners. This can be a very complex undertaking and the planning team should not feel they are without resources when addressing this important issue. Legal guidance and/or TA may be needed in this area.

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<sup>60</sup> See [www.futureswithoutviolence.org](http://www.futureswithoutviolence.org) (accessed on January 22, 2019).

<sup>61</sup> See [isc.idaho.gov](http://isc.idaho.gov) (accessed on January 22, 2019).

Ongoing training for all judges, court staff, law enforcement (including probation), prosecutors, and other service partners is essential. Ongoing training should be a requirement of all partners because trainings often provide the latest information, statistics, tools, and best practices to combat domestic violence. Be mindful that not every partner can attend every training, so set up a process where those attending a training will meet with the larger group to provide information and cross-training.

Tribal community trust in the tribal domestic violence court is imperative and the court will likely not be successful without it. Create steps to provide for community meetings regarding the tribal domestic violence court. At the meetings share relevant information such as the Vision Statement and policies developed by the planning team. Provide ample opportunities to get information out to the community, which might include meeting with the tribal government, community forums, and meeting with various tribal groups. Protocols should provide for even-handed treatment during court hearings. Indicate whether both parties will be provided attorneys or lay legal advocates. Set out the priorities of victim safety and batterer accountability.

Protocols should underscore the importance of specialized judges and court staff comprising the tribal domestic violence court. It might be helpful to establish a project director or a resource director who will oversee the resource coordination. If the judge is not a member of the planning team, it is important to involve the judge in at least some of the exercises and protocol development to promote a more informed judicial decision-making process. The judge may also be more influential in bringing the appropriate people to the table at certain points of the process development. The judge may also be very helpful in addressing the need for an integrated information system to share case history and provide rulings that encompass victim safety issues. The judge may also provide useful information regarding how a case should be monitored for batterer compliance with court orders and violations of court orders.

Judicial leadership may also be instrumental in establishing steps for data collection because the judge is keenly aware of how cases progress through both civil and criminal justice systems. Data will provide insight into the court's progress and barriers. The data collection should be uniform for all partners utilizing uniform measurements.<sup>62</sup> For example, the following items might be included as data collection points:

- Domestic violence case volume by type, including cases heard in the designated domestic violence court and those ending up in other courts;
- Percentage of victims having contact with advocates and types of referrals received;

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<sup>62</sup> Emily Stack, *Futures Without Violence, Creating a Domestic Violence Court, Guidelines and Best Practices* (2002), [www.futureswithoutviolence.org/userfiles/file/Judicial/FinalCourt\\_Guidelines.pdf](http://www.futureswithoutviolence.org/userfiles/file/Judicial/FinalCourt_Guidelines.pdf) (accessed on January 22, 2019).

- Domestic violence arrests by type;
- Arrest rate for offenders who flee the scene of a domestic violence incident;
- Percentage of dual arrests and female arrests;
- Percentage of arrests resulting in prosecutions and relationship between top charge at arrest and top charge prosecuted;
- Dismissal rates;
- Sentencing outcomes, including court-imposed conditions;
- Recidivism rates;
- Compliance with court-ordered mandates, such as participation in batterers' intervention programs and sanctions imposed for failures to comply;
- Domestic violence fatalities;
- Percentage of temporary civil protection orders resulting in final orders;
- Percentage of protection order cases dismissed because of nonappearance by petitioners, and percentage of cases in which outreach to petitioners was attempted;
- Percentage of protection order cases in which respondent is served by time of first appearance for hearing; and
- Percentage of violations of protection orders charged criminally.

Note that the data collected will be very useful in the evaluation component set forth in the section "Eight-Step Model for Protocol Development." Working through the following model may be helpful in providing a framework for the drafting of a tribal domestic violence court's protocols.

### **C. Eight-Step Model for Protocol Development**

A model that has been successfully utilized by other communities is the Eight-Step Model for Developing Protocol known as the Protocol Development Cycle.<sup>63</sup> The Protocol Development Cycle is designed to create community-specific protocol to improve the response to domestic violence victims including children. The development of protocol is a cyclical process, with the results of each completed cycle used during the next cycle as the basis for adjusting protocols. This model utilizes a cyclical approach where once the eight steps are completed, they are repeated. Note that we have set this cycle out in nine steps because the process should be re-evaluated at designated times and adjustments to the protocols should be made after each re-evaluation. This circular process promotes a current, best practice for the protocols as new information and data becomes evident.

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<sup>63</sup> Anita B. Boles and John C. Patterson, *Improving Community Response to Crime Victims: An Eight-Step Model for Developing Protocol*. (1997).

This is an appropriate model to provide guidance for tribal communities as it is not a “one-size-fits-all” approach and can be easily adjusted to each tribal community. In addition, this approach can address the reality of tribal diversity and tribal custom and traditions.

This process involves the following eight steps<sup>64</sup> (we have listed step nine as repeat the cycle):

- Inventory of Existing Services
- Victim Experience Survey
- Community Needs Assessment
- Writing Protocol
- Adopt Protocol and Renew Interagency Agreements
- Training
- Monitoring
- Evaluation
- Repeat the steps at regular identified periods

### **1) Inventory of Existing Services**

The purpose of taking inventory of the existing services is to examine areas in the community currently addressing victims of domestic violence and to become aware of all services and resources available to these victims. The inventory should be as comprehensive as possible, and it should include services from law enforcement agencies, prosecutors’ offices, victim service organizations, and other social service organizations that are available to assist victims of domestic violence. The result of the inventory of existing services can be used as a comprehensive directory of agencies and organizations providing services to victims of domestic violence within the community. A sample questionnaire can be found in the Appendix C.

It is important to collect information from all resources and services available to victims within the community for the following three purposes:

1. To determine if there are adequate services available for all victims of domestic violence in the community;
2. To ensure that the interdisciplinary/multiagency protocols accurately reflect the agencies and organizations available in the community to serve victims of domestic violence; and
3. To provide a comprehensive list of quality referrals for victims of domestic violence.

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<sup>64</sup> *Id.*



The planning team has previously visited this issue in Exercise #4 on page 28-29. The answers from Exercise #4 will be very useful to the planning team in the first step of the protocol process.

## **2) Victim Experience Survey**

This confidential survey is conducted to determine victims' views of how well the system is responding to their needs. The survey should seek how victims feel regarding how their cases were handled and how they were treated by each discipline. A goal of the survey is to obtain information on how each agency responds to domestic violence victims and the effectiveness of those services. This goal should be stated very clearly in the request for victims' to complete the survey, along with assurances of confidentiality and potentially anonymity, but that is a higher bar. One way to address the gathering of information about system response is through the development of a survey that will measure the efficacy of the victim service providers in meeting victim needs. The victim services disciplines can create a survey with questions that related to the various disciplines serving the victim at the conclusion of the service providing. This survey can be handed or mailed to the victim with short questions requiring a check the box format. Note that a survey should only be mailed to the victim with the victim's permission that can be garnered as the victim is receiving services from a service provider. Additionally, a survey can be developed to assess the efficacy of the criminal justice system in meeting the needs of victims where criminal cases have been filed. This survey may be developed by law enforcement, tribal prosecutors, and the victim advocate and contain questions related to the efficacy of the criminal justice system to meet victim needs. This survey can also be completed by the victim upon conclusion of the criminal case. Again, no surveys should be mailed to a victim without a victim's permission.

It is important to seek victims' input throughout the civil and/or criminal justice process depending on the tribal domestic violence court's caseload. The victims surveyed should also include those victims whose cases:

- Are not reported to authorities;
- Are not pursued because the perpetrator is not apprehended;
- Are not filed (or dropped) after the initial investigation;
- Are pled out before or during trial;
- Are completed through trial, but may or may not obtain a guilty verdict; and/or
- Result in a guilty verdict with sentences that may or may not include incarceration.

Each agency can take responsibility for conducting this survey for their respective discipline. However, it is often easier for law enforcement and and/or victim services to develop a survey as they are often the agencies that have most

contact with victims. Depending upon the size of the pool and utilizing the assistance of the tribal victim advocate or the tribal coalition, the agencies can mail or e-mail the surveys to victims. Once the surveys are returned and results compiled, the findings can be used in the third step of the cycle. It is important to select a time frame when the surveys are conducted such as six months after the latest incident of domestic violence occurs. A sample victim survey can be found in the Appendix D.

*Caution:* As there is a high priority for protecting victim safety and for anonymity for victims who don't want their family members or relatives to know about their victimization, this step in the cycle should be approached with caution. A tribal victim advocate and/or tribal domestic violence coalition should be consulted. Some options to maintain confidentiality/anonymity are listed:

- Surveys should not ask for names or any identifying information. When developing the survey, be aware of whether an answer could identify specific individuals.
- Surveys can contain no information about domestic violence but indicate agencies wanting feedback from the public.
- Surveys can be distributed within each discipline's offices, rather than mailed.
- Be sure to prepay postage when surveys are mailed to victims who have given permission to be mailed a survey.

Please note that your tribe may have a research review board that would need to review your research plan before the survey is mailed out. Also, some tribes have specific codes regarding research. Please check your tribal regulations. In addition, some federal agencies and other funding sources have requirements about research that is undertaken with their funds. If you are undertaking this survey with grant funds, it is important to check with your funding agency about any grant-related research restrictions and/or regulations.

You could make surveys available at common public places such as health offices, clinics, and community centers. By making surveys available there, you may obtain feedback from victims who do not report their victimization. Surveys would need to include questions that would elicit this information.

### **3) Focus Group**

This step is focused on gathering information from your community about the needs of domestic violence victims. Many communities collect this information through public hearings/forums.

This step is intended to answer two primary concerns:

1. What services does the community require to meet the needs of domestic violence victims?
2. What should the tribal domestic violence court do to meet these needs?

Each tribal community may have different ways to gather this public information. The first suggestion is:

- Public hearing for service providers

You can organize public hearings or focus groups to obtain testimony from service providers. Individuals representing organizations should be encouraged to identify:

- Successful aspects of the current service-delivery system;
- Barriers to effective delivery of services to victims; and
- Services or assistance that organizations can provide to their victim service collaborative partners.

To ensure a broad spectrum of representation, notices, and invitations to testify should be sent to representatives from:

- Domestic violence women advocacy;
- General crime victim advocacy groups;
- Medical facilities/hospital emergency room/clinic personnel;
- Elected officials;
- Tribal employers;
- Social service agency workers;
- High school, college, and university student bodies;
- Teachers, faculty, and administrators from all educational institutions; and
- Educational institutions.

The responses to Exercise #4 found on page 28-29 may be useful to the planning team when developing this protocol. The second suggestion for gathering information for this protocol is:

- Public hearings for the community at large

Domestic violence is a community problem that requires community support to be effectively addressed. Although domestic violence is a problem in most tribal communities, it is often difficult for tribal people to come forward to speak about the issue. You may need to develop creative ways to encourage input. Often it is helpful to offer food, transportation, and child care to enable people to participate. The public hearings should be held in locations that are easily accessible to the community. The planning of such hearings must include considerations for maintaining a nonthreatening atmosphere. It is recommended to hold focus groups in existing women's support groups as an alternative to a more public forum. Regardless, every effort must be made to ensure safety for anyone offering testimony. Consider providing a victim advocate to assist victims with any retraumatization issues that might arise during the hearing.

You can distribute a public announcement of the hearings/forums to a variety of groups, including local media (e.g., a reservation radio station and tribal newspaper), community centers, churches, restaurants, laundromats, grocery

stores, and so forth. Be sure to provide the general public with logistical information, such as time and place. Explain that you will be asking for input from community members who wish to contribute information and testimony at the hearing. A sample public hearing announcement can be found in the Appendix E.

One of the important tasks that must be accomplished is the development of broad-based support from all segments of the tribal community. The future success of the tribal domestic violence court is dependent upon the type of buy-in that the task force is able to garner and the level of communication and collaboration that is conducted with the tribal community.

#### **4) Needs Assessment Summary Report**

You are now ready to write the needs assessment summary report using findings from the inventory of existing services: victim experience survey, the public hearings, and data collection analysis. Your community needs assessment report is a comprehensive examination of domestic violence in the community. It provides the basis for the important services the tribal domestic violence court and service partners are being called to address.

The community needs assessment might be structured as follows:

- Introduction;
- Community data on domestic violence victimization;
- Inventory of existing services;
- Victim experience survey;
- Results from the public hearings;
- Conclusions from the planning team based on the findings; and
- Priority concerns for the tribal domestic violence court.

#### **5) Drafting Protocols**

After you develop your community needs assessment, you will be ready to begin designing victim-centered and interdisciplinary protocols. The protocols pay particular attention to communication and collaboration across agency lines to ensure the best response for victims. Protocols should address problems identified by the community, service providers, and victims.

#### **6) Signing Interagency Agreements**

Once the protocol is finalized, each agency should also sign formal agreements that implement the protocol. These signed agreements commit resources to ensure that all affected staff are fully trained in their responsibilities. This is a good time to recruit additional members for the core case team. A sample memorandum of understanding can be found in the Appendix F.

Interagency agreements are critical in the development of effective long-term relationships within a multidisciplinary approach. These agreements clearly define roles and responsibilities as well as an agreed-upon process or protocol. Having interagency agreements signed by the person in the highest position of power within that agency demonstrates the support of the agreement and commits each agency to abide by the agreement. However, if you apply for grant funds to support the work of your tribal domestic violence court, you may need a new memorandum of understanding specific to the scope of the grant proposal.

These agreements can serve as a method of conflict resolution because it describes what everyone has agreed to do. Interagency agreements are useful as evaluation tools as well. If you revise your interagency agreements every two years (recommended), it gives the tribal domestic violence court clear information on what has worked, what is no longer relevant, and what is missing as the agreement of yesterday is compared with the current practice.<sup>65</sup>

It may be beneficial to your tribal domestic violence court to clearly define role and responsibilities within the Memorandum of Understanding (see sample in the Appendix F), such as the title of the person who will represent each agency (including the responsibility of that representative to attend monthly core case team meetings); who will host each core case team meeting; and, based on hosting responsibilities, the location of each core case team meeting. The purpose of clearly delineating roles and responsibilities in the Memorandum of Understanding will eliminate future conflicts and misunderstandings.

## **7) Ongoing Trainings**

In most communities, all agencies who sign the cross-discipline protocol agreement will participate in multidisciplinary mandatory training to ensure full understanding and implementation of the agreed-upon protocols. Additionally, ongoing training will be a required commitment by all domestic violence court staff. This maximizes the effectiveness of providing informed judicial decision making and victim-centered services in a manner that utilizes the latest tools, information, and best practices.

This mandatory training requirement may be included in the agreement signed by each department head. The training program may call for a commitment of time and energy by all partners. Each partner agency should ensure that all

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<sup>65</sup> Oregon Attorney General's Sexual Assault Task Force, *Sexual Assault Response Team Handbook*, [www.nsvrc.org/sites/default/files/2012-03/SART-Handbook-Oregon-09.pdf](http://www.nsvrc.org/sites/default/files/2012-03/SART-Handbook-Oregon-09.pdf) (accessed January 22, 2019).

personnel who are providing services to victims receive the training. This includes but is not limited to dispatchers, patrol officers, criminal investigators, prosecutors, court personnel, and advocates. The training may need to be offered more than once to accommodate the scheduling needs of all participants.

To ensure that this training is completed successfully the training committee (generally composed of one person from each discipline) will research possible training opportunities endorsed by the Office on Violence Against Women and report the opportunities to the partners. If funding or resources allow for the partners to host their own trainings, have the training committee draft a training curriculum based upon identified needs or gaps in services provided. They should select instructors and develop a training schedule (this may require working closely with department heads to accommodate everyone's participation, particularly law enforcement because it needs to have officers to remain on duty to provide daily coverage).

Once trainings have been identified and scheduled, then inform all disciplines of the training dates, times, and location by mailing registration forms. The committee may need to arrange for refreshments and develop evaluation forms, handouts, video, and have the proper equipment on hand for training day.

## **8) Monitoring Progress**

Once your tribal domestic violence court is in operation, you will want to develop a way to monitor the progress. Monitoring is designed to answer the following questions:

- Are the protocols being properly implemented?
- Are the protocols achieving the desired results?

There are a variety of ways you can monitor a tribal domestic violence court. The court may use meetings to discuss the successes and challenges that have arisen since the protocols have been written and utilized. You will likely refer to these findings in the next cycle of the protocol development process.

## **9) Evaluation of the Tribal Domestic Violence Court**

Evaluation is usually more formal than monitoring. A positive evaluation will justify the need for a tribal domestic violence court and can help leverage additional resources to sustain the tribal domestic violence court. This step is evaluating not just the protocols and their effectiveness but also the tribal domestic violence court and the success of multidisciplinary collaboration.

You should plan on designing an evaluation process to measure at least three things:

1. The extent to which system problems have been improved or eliminated;
2. The extent to which victims feel supported through the process; and
3. The extent to which agencies have improved their response to incidents of domestic violence.

The evaluation may include the results of ongoing victim experience surveys. Consider thinking through how your community defines success. For example, instead of measuring purely quantitative (numbers) outcomes, interviews with victims and agencies might yield more meaningful information on success. You may want to hire an individual who has expertise in developing evaluation tools and conducting evaluations in tribal communities, if at all possible.

#### **Exercise #14: Drafting tribal domestic violence court protocols**

**Lesson Objective:** Draft protocols to guide the tribal domestic violence court.

**Reading:** Chapter 4 “Designing Tribal Domestic Violence Courts and Dockets”.

**Instructions:** Please perform the following tasks and answer the following questions.

**Team Leader Tips:** The process for writing protocols may include reviewing the community needs assessment, appointing a committee of writers from each discipline, gathering examples of other domestic violence court protocols (note that at the time of this writing we were unable to locate any tribal-specific protocols and have utilized state protocols written for state domestic violence courts), and drafting protocols. After the various disciplines have drafted protocols, it is then appropriate for each discipline to present the intra-agency protocol to the entire planning team for comment, recommendations, and consensus.

**1. LIST** the Vision Statement (and core values if they are not incorporated into the Vision Statement). This forms the purpose of the protocols.

**2. DEFINE** domestic violence. This definition should be the working definition and not necessarily the code definition of domestic violence. The victim advocate or the tribal coalition will be helpful in determining the definition of domestic violence the planning team might use. This is also included in the purpose section of the protocols.

**3. LIST** the most critical findings of the community needs assessment summary created previously. This is also included in the purpose section of the protocols.

**4. LIST** tribal cultural components identified in Exercise #3.

**5. LIST** the components and roles of the tribal domestic violence court. For examples see section **B. THE PROTOCOL COMPONENTS OF A TRIBAL DOMESTIC VIOLENCE COURT** set forth in the preceding text. For examples of non-tribal-specific protocols see *Idaho Domestic Violence Policies and Guidelines*.

**6. DESCRIBE** how the court and partners will be monitored with respect to adherence to protocols. Include steps for how the court and partners will be monitored. For example, see the factors listed at: [isc.idaho.gov/dv\\_courts/DV Court Policies and Guidelines revised 4.15.pdf](https://www.isc.idaho.gov/dv_courts/DV_Court_Policies_and_Guidelines_revised_4.15.pdf)

**7. DESCRIBE** how the court and partners will be evaluated. Include the types of data that will be collected to determine successes and barriers. For example, see the factors listed on pages 77-80.

**8. LIST** the date of this draft and schedule a date in the future to revisit and make any modifications to the protocols necessary.

**9. IDENTIFY** any technical assistance that is needed. Technical assistance may be requested at:

The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039

Once the protocols have been drafted, the planning team should move forward with drafting and implementing interagency agreements. See examples in Appendix F.





## Chapter 6. Tribal Domestic Violence Court Models and Tribal Code Examples

It warrants repeating that a tribe is only as powerful as the sovereign powers asserted and exercised. Tribal sovereignty includes the power to enact tribal codes and create tribal courts that assert judicial authority over matters arising in the tribe's Indian country. Nationwide state domestic violence courts are at the forefront of a movement to address domestic violence in a multidisciplinary manner. There is currently limited information on tribal domestic violence courts and tribal domestic violence dockets. Therefore, this Guide draws upon state models of domestic violence courts. We have also included tribal codes that are related to the development of a tribal domestic violence court or docket. The code provisions are followed by a commentary on the tribal code provisions to provide further information on the issue addressed.

### A. Domestic Violence Court Models

#### Civil and Criminal Court Model

The family works with one judge irrespective of whether the case is civil or criminal in the domestic violence court. The court can hear criminal domestic violence cases occurring in Indian country including misdemeanor cases involving an Indian adult defendant and a victim per tribal law; felony cases occurring in Indian country if the tribe has implemented enhanced sentencing under the TLOA; and criminal acts of domestic violence, dating violence, or protection order violation cases involving adult non-Indian and adult Indian victim in which the tribe has implemented special domestic violence criminal jurisdiction under the VAWA 2013.

The court can also hear civil law cases related to the domestic violence including divorce, custody, child support, paternity, guardianship, Indian Child Welfare Act (ICWA) matters, civil protection orders, child protective, and juvenile justice matters if related to domestic violence.

#### **DOMESTIC VIOLENCE COURT MODEL COVERING BOTH CIVIL AND CRIMINAL CASES**

- Domestic violence judge/court handling ***both civil and criminal cases***.
- Criminal domestic violence cases occurring in Indian country such as criminal protection orders; misdemeanor cases involving Indian defendants; felony cases involving Indian defendants if the tribe has implemented enhanced sentencing under the Tribal Law and Order Act; and criminal acts of domestic violence, dating violence or protection order violations involving non-Indian defendants and Indian victims where tribe has implemented special domestic violence criminal jurisdiction under the Violence Against Women Reauthorization Act of

2013;

- Civil cases where domestic violence is present including civil protection orders, divorce, custody, child support, paternity, visitation, child protective cases, guardianships and Indian Child Welfare Act (ICWA) matters.
- Child protective and juvenile justice matters if related to domestic violence.

### Tribal Criminal Court Model

In a criminal domestic violence court, the court can hear criminal domestic violence cases occurring in Indian country including misdemeanor cases involving an Indian adult defendant and a victim per tribal law; felony cases occurring in Indian country if the tribe has implemented enhanced sentencing under the TLOA; and criminal acts of domestic violence, dating violence, or protection order violation cases involving adult non-Indian and adult Indian victim in which the tribe has implemented special domestic violence criminal jurisdiction under the VAWA 2013.

#### **DOMESTIC VIOLENCE CRIMINAL COURT MODEL**

- Criminal domestic violence judge/court handling ***only criminal cases***
- Criminal domestic violence cases occurring in Indian country such as criminal protection orders; misdemeanor cases involving Indian defendants; felony cases involving Indian defendants if the tribe has implemented enhanced sentencing under the Tribal Law and Order Act; and criminal acts of domestic violence, dating violence or protection order violations involving non-Indian defendants and Indian victims where tribe has implemented special domestic violence criminal jurisdiction under the Violence Against Women Reauthorization Act of 2013.

### Tribal Civil Court Model

The court may be a civil/family domestic violence court and could hear civil cases in which a victim has filed a civil protection order per tribal law, divorce, custody, visitation, child protective cases, guardianships, and ICWA matters if domestic violence is present in the case.

#### **DOMESTIC VIOLENCE CIVIL COURT MODEL**

- Civil/family domestic violence judge/court handling ***only civil cases***
- Civil cases where domestic violence is present including civil protection orders, divorce, custody, child support, paternity, visitation, child protective cases, guardianships and Indian Child Welfare Act (ICWA) matters.

## **B. Tribal Code Examples of Domestic Violence Dockets**

As previously mentioned, there are only a few tribal domestic violence courts or dockets to provide as examples. Note that one of the following tribal codes places the domestic violence docket in the chapters/sections regarding domestic violence. Another tribe lays out the domestic violence docket in its court rules. Each tribe has its reasons for placing the docket or court where it feels appropriate.

### **Sault Ste. Marie Band of Chippewa Indians Domestic Violence Docket**

The docket only works with criminal cases. If the criminal charge includes domestic violence the case is placed in the domestic violence docket. The case is automatically heard in the domestic violence docket. The defendant does not waive any rights that the defendant would have in the criminal court.

The domestic violence docket team staff is made up of the victim advocate, the domestic violence docket coordinator, behavioral health, probation, and law enforcement. When the program began, the court issued a mandatory protection order stating that there should be 90 days of no contact with the victim, but then realized they were eliminating the victim's voice. Now the victim and victim advocate come up with a safety plan that takes everything into consideration. If the victim wants contact with the defendant, the court will usually allow contact unless this contact compromises victim safety. The docket describes the program as intensive probation and, hopefully, rehabilitation.

The domestic violence docket coordinator runs the Moral Reconciliation Therapy<sup>66</sup> and the Duluth Model<sup>67</sup> with men's group training. The behavioral health representative runs another men's group program as well. When the team meets with the docket

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<sup>66</sup> Moral Reconciliation Therapy (MRT) is a systematic treatment approach that seeks to decrease recidivism, or the tendency of a convicted criminal to reoffend, among juvenile and adult offenders by increasing moral reasoning. A *cognitive-behavioral* type of treatment approach, MRT combines elements from a variety of psychological models to address clients' ego, moral, social, and positive behavioral growth, and research has shown that this type of therapy can increase moral reasoning in adult drug and alcohol offenders as well as juvenile offenders. In addiction recovery treatment, MRT takes the form of individual and group counseling, and uses prescribed homework assignments and structured group exercises to address seven basic treatment issues.

MRT is based on the theory that thoughts, beliefs, and attitudes are the primary factors that influence an individual's behavior, and the treatment has been granted evidence-based practice status by the Substance Abuse and Mental Health Services Administration. See <https://aforeverrecovery.com/our-programs/activity-group-therapy/moral-reconciliation-therapy/> (accessed January 29, 2019).

<sup>67</sup> Since the early 1980s, Duluth—a small community in northern Minnesota—has been an innovator of ways to hold batterers accountable and keep victims safe. The "Duluth Model" is an ever-evolving way of thinking about how a community works together to end domestic violence. See [www.theduluthmodel.org/](http://www.theduluthmodel.org/) (accessed January 29, 2019).

participant, the meeting is like a compliance check-in or a probation check-in. The docket meets every two weeks. They meet every other Tuesday in the morning and then hear the cases after their staffing meeting. The magistrate hears the cases and the judge does not sit in on the case staffing. The coordinator will update the magistrate or judge if the participants are compliant or if there is a sanction recommendation from the team. The docket team ensures the offender makes all appointments that are required of him.

Often the batterers have high drug and alcohol use and the philosophy mandates a holistic approach treating the whole person. The docket has been fashioned to operate as a hybrid court if needed—the batterer serves one week in the domestic violence track and then goes into the tribal drug court (often forced in after a probation violation). On average, a case lasts a minimum of 6 months, but often lasts 9 to 12 months. The tribe is in a smaller area and individuals often have concurrent cases. Offenders that have concurrent cases are put into dual track (there is a neglect/abuse track as well), and those two cases will receive updates from each other.

The docket has a wide spectrum of defendants. Sometimes the batterer has been charged with violent assaults and has been to prison. There are other cases in which the initial charge could have been a federal felony. The docket recently had its first VAWA SDVCJ over non-Indian case. The offender successfully completed the program, is employed, and is back with the victim.

The domestic violence docket is not specially funded by a grant. Services are provided free of charge. The coordinator position is funded through a grant obtained through the Coordinated Tribal Assistance Solicitation (CTAS), but the program is sustained by the tribe. There are minimal fines and costs for the offender. The tribe has noted that holding the domestic violence docket requires an investment of time. (Sault Ste. Marie Band of Chippewa Indians Tribal Court, T. Swan and J. Fabry, personal communication, October 22, 2018).

## **Tribal Code Example samples**

The following tribal code examples are taken from tribes that have implemented a domestic violence court or docket. They are options that your tribe may want to look at for ideas to draft or revise your own code.

### **A. Tribal Code Examples: Purpose of the Tribal Domestic Violence Court or Docket**

#### **Nottawaseppi Huron Band of the Potawatomi Code (Enacted March 17, 2016)**

##### **Chapter 7.4 Domestic Violence**

##### **Article II Purpose and Goals**

##### **§ 7.4-2 Purpose.**

- A. The purpose of this chapter is to recognize domestic violence and family violence as serious crimes against society, the Tribe, and the family, and to provide the victims of domestic violence or family violence the maximum protection from further violence. Furthermore, the purpose of this chapter is to recognize that the strength of the Tribe is founded on healthy families, and that the safety of victims of domestic and family violence, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.
- B. It is the intent of the Nottawaseppi Huron Band of the Potawatomi (NHBP or Tribe) that the official response to domestic violence and family violence shall stress the enforcement of the laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Tribe's policy that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated. This in turn will promote the healing of families and the Tribe where possible, and promote cultural teachings and traditional Tribal values so as to nurture nonviolence and respect within families. This chapter shall be interpreted and applied to give it the broadest possible scope to carry out these purposes.

#### **Tulalip Tribes Code**

##### **Chapter 4.25 Domestic Violence**

##### **Article I. General Provisions**

##### **4.25.010 Purpose.**

The purpose of this chapter is to recognize domestic violence and family violence as serious crimes against society, the Tribes, and the family, and to provide the victim of domestic violence or family violence the maximum protection from further violence that the law, and those who enforce the law, can provide. Furthermore, the purpose of this chapter is to recognize that the strength of the Tribes is founded

on healthy families, and that the safety of victims of domestic and family violence, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.

It is the intent of the Tulalip Tribes that the official response of domestic violence and family violence shall stress the enforcement of the laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Tribes' policy that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated. This in turn will promote healing of families and the Tribes where possible, and promote cultural teachings and traditional Tribal values so as to nurture nonviolence and respect within families. This chapter shall be interpreted and applied to give it the broadest possible scope to carry out these purposes. [Res. 2013-379; Ord. 117 § 1.1, 11-5-2001 (Res. 2001-365)].

### **Tulalip Tribes Court Rules**

#### **Section 6 Tulalip Tribes Domestic Violence Court**

##### **Rules 6.1 PURPOSE**

Domestic violence offends the traditional Tulalip tribal values of honoring the family and respecting all members of the community, and it is contrary to the best interests of the family, the Tribes and the community. The purpose of the Tulalip Tribes Domestic Violence Court is to promote important traditional Tulalip tribal values by protecting victims of domestic violence and holding perpetrators accountable while ensuring that all persons accused of domestic violence crimes are provided equal protection and due process of law.

Waganakising Odawa Tribal Code: Little Traverse Bay Bands of Odawa Indians  
(Updated November 2018)

### **Title IX. Criminal Laws**

#### **Chapter 7. Domestic Violence**

##### **9.702 PURPOSE**

The Little Traverse Bay Bands of Odawa Indians (LTBB) Waganakising Odawak Statute, Domestic Violence is construed to promote the following:

This Statute addresses domestic violence that involves persons of the same household, family members or persons in an intimate or in a dating relationship. It is the expectation that the criminal justice system respond to victims of domestic violence with fairness, respect, compassion, and in a prompt and effective manner. Repeals and replaces any previous Statute including WOS 2006- 014, Domestic Violence Protection

## **Tribal Code Commentary**

It is beneficial to establish a purpose for a domestic violence court or docket. This purpose explains to the community what the expectations and values are of the tribe and tribal justice system. It provides an opportunity to remind readers of the community's traditional and cultural values; a reminder that domestic violence is not tolerated.

The Nottawaseppi Huron Band of the Potawatomi code establishes the seriousness of domestic violence crimes. It sets the tone for the rest of the domestic violence code and explains that the tribe is stronger when the citizens and families are healthy. It also explains the need for a multi-disciplinary response to domestic violence.

The Tulalip Tribes code, which precedes the chapter on domestic violence and not the specifics on the domestic violence court/docket, articulates that domestic violence is criminal behavior and will not be tolerated by the tribes. It explains that the efforts by the criminal justice system to stop and punish domestic violence will lead to healing for the families and tribes. Further, the tribes will promote cultural teachings and traditional values when feasible and appropriate.

## **B. Tribal Code Examples: Legislative Findings—Explaining the Need for a Tribal Domestic Violence Court or Docket**

### **Nottawaseppi Huron Band of the Potawatomi Code (Enacted March 17, 2016)**

#### **Chapter 7.4 Domestic Violence**

#### **Article II Purpose and Goals**

#### **§ 7.4-3 Legislative findings.**

- a. It is the intent of the NHBP and the tribal community that the official response to domestic violence and family violence shall be that the Tribe will not tolerate or excuse violent behavior under any circumstances. All people, whether they are elders, male, female, or children of the Tribe, or of the entire community residing on the Reservation, are to be cherished and treated with respect.
- b. Domestic violence and family violence are not acceptable and are contrary to traditional tribal culture and values of honoring the family, and are contrary to the interest of our community and sense of well-being and growth. Domestic violence and family violence will not be tolerated.
- c. The Tribe finds that domestic violence and family violence imperil the very subsistence of the Tribal community and the residents of the Reservation. The tribe recognizes the Department of Justice legislative findings that one in three native women is sexually assaulted in her lifetime and that 70% of reported assaults are committed by nonnative men against native women. A community response to domestic and family violence is necessary because domestic and family violence crimes and incidents impact the community as a whole. These crimes redirect tribal



resources, whether personnel, financial, public safety or other resources, elsewhere and require an immediate response. As a result of this impact on tribal resources, the Tribe deems it necessary to address domestic violence and family violence to the fullest extent permitted by laws, existing now, or as may be adopted or amended in the future.

- d. The Tribe further recognizes that there is a distinction between intimate partner domestic violence and family member violence. Domestic violence involves an intimate partner relationship, and dynamics of power and control are overwhelmingly present in the action. Family violence is committed against all other family or household members.

### **Tulalip Tribes Code**

#### **Chapter 4.25 Domestic Violence**

##### **Article I. General Provisions**

##### **4.25.020 Legislative findings.**

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

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

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

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

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

## **Tribal Code Commentary**

Both the Nottawaseppi Huron Band of the Potawatomi code and the Tulalip Tribes code make legislative findings. These findings demonstrate the thought and serious manner in which the tribal legislative body took action regarding domestic violence. Both codes illustrate the official position of the tribe that domestic violence is not acceptable and both codes cite to the U.S. Department of Justice findings regarding violence against Native women.

## **C. Tribal Code Examples: Incorporating Tribal Tradition and Values**

**Nottawaseppi Huron Band of the Potawatomi Code** (Enacted March 17, 2016)

### **Chapter 7.4 Domestic Violence**

#### **Article III Bode'wadmi Traditions and Values**

##### **§ 7.4-4 Custom and tradition policy.**

Bode'wadmi traditions and values recognize the interconnectedness of every person and everything in this world and that the actions of one individual, or of a group of individuals, will have an impact on the whole of our community. In all things we do as a government, it is our obligation to promote Bode'wadmi traditions and values by seeking consensus so that decisions that are made will benefit the whole of our community for this and the next seven generations.

##### **§ 7.4-5 Women and other persons within Tribe.**

Historically American Indian women are denied meaningful access to justice and are less protected from violence than other women in the United States. It is because they are indigenous and because they are assaulted in Indian country. American Indian women are 2 1/2 more times likely to be assaulted in their lifetime than any other women in the United States, and one in three native women will be raped in her lifetime. Domestic violence is at epidemic proportions and is one of the most horrific manifestations of the discriminatory legal system in the United States. For those reasons, the NHBP, in exercising its inherent sovereign power, enacts this code to administer justice and control crime, and to ensure that perpetrators of domestic violence are held accountable for their criminal behavior.

##### **§ 7.4-6 Noeg Meshomsenanek Kenomagewenen: Seven Grandfather Teachings.**

In carrying out the powers of self-government in a manner that promotes and preserves our Bode'wadmi values and traditions, the Tribe strives to be guided by the Seven Grandfather Teachings in its deliberations and decisions. The rights and

limitations contained in this code are intended to reflect the values in the Seven Grandfather Teachings to ensure that persons within the jurisdiction of the Tribe will be guided by the Seven Grandfather Teachings:

Bwakawen	Wisdom
Debanawen	Love
Kejitwawenindowen	Respect
Wedasewen	Bravery
Gwekwadzewen	Honesty
Edbesendowen	Humility
Debwewin	Truth

#### **§ 7.4-7 Acknowledgments.**

- A. There are many views regarding the appropriate terminology for identifying an individual who has experienced or is currently experiencing domestic violence. Most federal laws and many federal programs use the term “victim.” The use of this term reflects decades of advocating for domestic violence to be treated as a crime and those victimized by domestic violence to have access to resources in the same manner as victims of other crimes. In contrast, many agencies that provide services to individuals who have experienced or are currently experiencing domestic violence use the term “survivor.” There are numerous reasons for the use of the term “survivor,” ranging from the recognition of the strength of the individual in enduring domestic violence to serving as a term of hope that healing is possible. Of additional consideration in determining terminology is the goal of empowering individuals who have experienced or are currently experiencing domestic violence. With domestic violence being rooted in the dynamics of power and control, including the taking of decision-making power, one reason for using these terms interchangeably is to empower the individual to decide how to identify. This code, therefore, uses the terms “victim” and “survivor” interchangeably to reference federal law when appropriate, ensure access to federal resources and, most importantly, empower individuals in choosing the term with which they identify.
- B. In a similar manner, there are numerous views on the terminology for identifying those who abuse their partners. Most federal laws and many federal programs use the term “perpetrator.” This term also reflects decades of advocating for domestic violence to be treated as a crime and those committing the crime of domestic violence to be characterized accordingly. However, some batterer intervention agencies advocate for terms that include the potential for rehabilitation versus only

their status within the criminal justice system. The use of the term “defendant,” a general term for any individual accused of a crime in the Tribal Court, reflects domestic violence as a crime for which an individual must be held accountable, as well as the approach to criminal cases wherein programs and services are available to them as tools to change their behavior. This code, therefore, uses the terms “perpetrator” and “defendant” interchangeably to reference federal law as appropriate, recognize domestic violence as a crime, ensure that individuals who commit domestic violence are held accountable for their actions and provide access to resources that could assist the individual with stopping their abusive behavior. Neither “perpetrator” nor “defendant” indicates the guilt or innocence of the accused individual; a person is presumed innocent until proven guilty beyond a reasonable doubt.

## **Tribal Code Commentary**

The Nottawaseppi Huron Band of the Potawatomi Code not only illustrates the tribe’s cultural beliefs and teachings, but the code demonstrates how it serves to protect marginalized Native women. These cultural provisions are examples of what a tribe can do to incorporate its unique beliefs and heritage when drafting code for its community. The code also explains its usage of the terms: victim, survivor, perpetrator and defendant; these terms can be highly charged and the code seeks to explain why it interchangeably uses the terms.

## **D. Tribal Code Examples: Creating the Domestic Violence Court**

**Nottawaseppi Huron Band of the Potawatomi Code** (Enacted March 17, 2016)

**Chapter 7.4 Domestic Violence**

**Article V Jurisdiction**

**§ 7.4-9 Domestic Violence Court.**

There is established for the NHBP Tribal Court a division of Tribal Court known as the “Domestic Violence Court.” The jurisdiction of the Domestic Violence Court includes the right to issue all orders necessary to carry out the purposes of this code.

**Tulalip Tribes Court Rules**

**Section 6 Tulalip Tribes Domestic Violence Court**

**Rules 6.2 CREATION**

The Tulalip Tribal Court shall exercise the jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code and while sitting in the exercise of such jurisdiction shall be known and referred to as the “Tulalip Domestic Violence Court.”

### **Tribal Code Commentary**

Both the Nottawaseppi Huron Band of the Potawatomi Code and the Tulalip Tribes code explain that the domestic violence court/docket is established under the authority of the tribal code. These sections also state the court/docket can exercise power according to the tribal code. This protects the court/docket from any challenges that it is not legitimate. It also states how the court/docket has the authority to operate.

## **E. Tribal Code Examples: Jurisdiction over Domestic Violence Cases**

### **Nottawaseppi Huron Band of the Potawatomi Code (Enacted March 17, 2016)**

#### **Chapter 7.4 Domestic Violence**

##### **Article V Jurisdiction**

##### **§ 7.4-10 General jurisdiction.**

Jurisdiction over domestic and family violence matters shall be in accordance with Title VIII, Judiciary; Law and Order Code, and applicable NHBP Tribal Court rules, or any other applicable section of the NHBP Tribal Code. In addition, the NHBP Tribal Court shall retain jurisdiction over members of Federally recognized Indian tribes and any violations of orders of protection entered pursuant to this code which are alleged to have occurred outside of the boundaries of the NHBP Indian Reservation where such orders are entitled to recognition outside Reservation boundaries as a matter of full faith and credit.

### **Tulalip Tribes Code**

#### **Chapter 4.25 Domestic Violence**

##### **Article I. General Provisions**

##### **4.25.030 General jurisdiction.**

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

## **Tribal Code Commentary**

These sections on jurisdiction are important and state the court/docket has the authority to hear domestic violence cases. The court/docket also illustrates that it has the authority to hear and enforce protection order violations against their citizens even if the crime occurred outside of the tribe's Indian country. Similarly, the protection orders issued from the tribal court/docket are entitled to full faith and credit by any outside jurisdiction.

### **F. Tribal Code Examples: Violence Against Women Reauthorization Act of 2013 Special Domestic Violence Criminal Jurisdiction (VAWA SDVCJ)**

**Sault Ste. Marie Band of Chippewa Indians Code** (Enacted June 14, 2018)

**Chapter 71 Criminal Offenses**

**Subchapter III: Jurisdiction**

#### **71.302 Persons Under the Tribe's Criminal Jurisdiction.**

3. The criminal jurisdiction of the Tribe shall extend to all Indians, and all other persons over whom the exercise of criminal jurisdiction by the Tribe is authorized or permitted by federal law.
4. The criminal jurisdiction of the Tribe shall extend to all persons, whether or not Indians, who violate '71.501 (contempt), '71.502 (disobedience of a court order) or '71.503 (perjury). [see Canby (2d ed.) p. 139]

**Nottawaseppi Huron Band of the Potawatomi Code** (Enacted March 17, 2016)

**Chapter 7.4 Domestic Violence**

**Article V Jurisdiction**

#### **§ 7.4-11 Special domestic violence criminal jurisdiction.**

- A. The NHBP hereby exercises special domestic violence criminal jurisdiction as a participating tribe, as defined within 25 U.S.C. §§ 1302 through 1304 (2013), subject to applicable exceptions defined therein, in the NHBP Domestic Violence Court.
- B. Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by 25 U.S.C. §§ 1302 through 1304, the powers of self-government of NHBP include the inherent power to exercise special domestic violence criminal jurisdiction over all persons.
- C. In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Title VIII, Chapter 8, Criminal Procedure, shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. §§ 1302 through 1304 (2013), to all defendants. Should there be any

inconsistency between Title VIII, Chapter 8, Criminal Procedure, and 25 U.S.C. §§ 1302 through 1304, those of 25 U.S.C. §§ 1302 through 1304 (2013) shall apply.

- D. Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the NHBP and may petition the Court to stay further detention pending the habeas proceeding.
  - 1. A Court shall grant a stay if the Court:
    - (a) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
    - (b) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the Court, the petitioner is not likely to flee or pose a danger to any person or the community if released.
- E. The NHBP hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:
  - (1) Resides within the Indian country of the NHBP; or
  - (2) Is employed within the Indian country of the NHBP; or
  - (3) Is a spouse, intimate partner, or dating partner of:
    - (a) A member of the NHBP; or
    - (b) A member of another federally recognized Indian tribe who resides within the Indian country of the NHBP.

#### **§ 7.4-12 Special jurisdiction; criminal conduct applicable.**

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

- A. Domestic violence. An act of domestic violence that occurs within the Indian country of the NHBP against Native American victims.
- B. Violations of protection orders. An act that occurs within the Indian country of the NHBP, and:
  - (1) Violates the portion of a protection order that:
    - (a) Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;
    - (b) Was issued against the defendant;
    - (c) Is enforceable by the NHBP; and
    - (d) Is consistent with 18 U.S.C. § 2265(b).

### **Tulalip Tribes Code**

#### **Chapter 4.25 Domestic Violence**

##### **Article I. General Provisions**

#### **4.25.040 Special domestic violence criminal jurisdiction.**

- (1) The Tulalip Tribes hereby exercises “special domestic violence criminal jurisdiction” as a “participating tribe,” as defined within 25 U.S.C. 1304(2013), subject to applicable exceptions defined therein, in the Tulalip Tribes Domestic Violence Court.
- (2) In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Chapter 2.25 TTC shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302 to all defendants. Should there be any inconsistency between Chapter 2.25 TTC and 25 U.S.C. 1302, those of 25 U.S.C. 1302 shall apply.
- (3) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Tulalip Tribes and may petition the Court to stay further detention pending the habeas proceeding.
  - (a) A court shall grant a stay if the court:
    - i. Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
    - ii. After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.
- (4) The Tulalip Tribes hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:
  - (a) Resides within the jurisdiction of the Tulalip Tribes; or
  - (b) Is employed within the jurisdiction area of the Tulalip Tribes; or
  - (c) Is a spouse, intimate partner, or dating partner of:
    - i. A member of the Tulalip Tribes; or
    - ii. A member of another Indian tribe who resides within the jurisdiction of the Tulalip Tribes. [Res. 2013-379].

#### **4.25.050 Special jurisdiction—Criminal conduct applicable.**

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

- (1) Domestic Violence and Dating Violence. An act of domestic violence or dating violence that occurs within the jurisdiction of the Tulalip Tribes.
- (2) Violations of Protection Orders. An act that occurs within the jurisdiction of the Tulalip Tribes, and:



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

- i. Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;
- ii. Was issued against the defendant;
- iii. Is enforceable by the Tulalip Tribes; and
- iv. Is consistent with 18 U.S.C. 2265(b). [Res. 2013-379].

### **Tulalip Tribes Court Rules**

## **Section 6 Tulalip Tribes Domestic Violence Court**

### **6.4 RIGHTS OF DEFENDANT**

#### **6.4.1 Defendant Rights**

It is the policy of Tulalip Domestic Violence Court to provide all defendants the full protection of the laws. Therefore, in all proceedings in which the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction pursuant to TTC Chapter 4.25, all defendant rights afforded by TTC §4.25.040(2) shall apply. These rights include the following:

- A) To be free from excessive bail, excessive fines and cruel and unusual punishment;
- B) To defend in person or by counsel;
- C) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;
- D) To have publicly available, the criminal laws, rules of evidence, and rules of criminal procedure of the Tribes, prior to being charged;
- E) To confront and cross-examine all prosecution or hostile witnesses;
- F) To compel by subpoena:
  - i. The attendance of any witness necessary to defend against the charges; and
  - ii. The production of any books, records, documents, or other things necessary to defend against the charges;
- G) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
- H) To have a judge presiding over the criminal proceeding:
  - i. Who has sufficient legal training to preside over criminal proceedings; and
  - ii. Who is licensed to practice law in any jurisdiction in the United States;
  - iii. Judge(s) meeting these qualifications can be designated to preside in the Special Domestic Violence Court. The Chief Judge shall designate and assign Judges to the Special Domestic Violence Court every January by standing order and the standing order and qualifications of the Judge will become part of the trial record.
- I) To appeal any final decision of the Tulalip Domestic Violence Court to the Tribal Court of Appeals;
- J) To be tried only once by the Tulalip Domestic Violence Court for the same offense;

- K) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify;
- L) To have a record of the criminal proceeding, including an audio or other recording, created and maintained;
- M) To petition for a writ of habeas corpus under Tulalip Tribal law and federal law; and
- N) All other rights whose protection is necessary under the Constitution of the United States including the right to be secure in their persons, houses, papers and effects against unreasonable search and seizures and not to be subjected to a warrant unless it was issued upon probable cause under oath or affirmation and particularly describing the place to be searched and the person or thing to be seized, the right to due process and equal protection of the law and rights for Congress to recognize and affirm the inherent power of the participating tribe to exercise Special Domestic Violence Criminal Jurisdiction over the defendant.

6.4.2 Right to Counsel All defendants, regardless of the length of the potential sentence for the crime being charged, have the right to effective assistance of counsel meeting the requirements of TTC §2.25.070(3)(a) while the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code. An indigent defendant shall be provided the assistance of a defense attorney meeting the requirements of TTC §2.25.070(3)(a) at the expense of the tribal government. Defense attorneys assigned to an indigent defendant will submit their credentials to the court demonstrating they meet the requirements of federal law and such credentials and bar licensing will become part of the trial record.

6.4.3 Right to Jury Trial A defendant charged under TTC Chapter 4.25 has a right to a trial by jury of six fair and impartial jurors drawn from the community according to TTC §2.05.110. A defendant may waive the right to a jury trial in a written, voluntary statement to the Court. All jury verdicts must be unanimous.

## 6.5 SUPPLEMENTAL PROCEDURE

### 6.5.1 Pre-Trial/Trial Procedure—Additional Requirement

- A) The initial appearance and/or arraignment will occur as currently outlined in the Tulalip Tribes criminal procedure rules. A Defendant charged with a domestic violence crime shall also be informed of his/her right to a federal writ of habeas corpus and or a stay under the federal Violence Against Women Act (VAWA). This notification will be contained in the Advisement of Rights Form signed by the Defendant. After the initial appearance and/or arraignment cases will be assigned to the Tulalip Domestic Violence Court calendar.
- B) All other generally applicable Civil and Criminal Rules of Procedure apply to these proceedings.

## **Tribal Code Commentary**

Nottawaseppi Huron Band of the Potawatomi and the Tulalip Tribes have implemented VAWA special domestic violence criminal jurisdiction over non-Indians. On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013, or "VAWA 2013." VAWA 2013 recognizes tribes' inherent power to exercise "special domestic violence criminal jurisdiction" (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country. This law generally took effect on March 7, 2015. A tribe may choose to exercise SDVCJ and exercise their inherent ability to prosecute non-Indians who commit the following offenses: domestic violence, sexual assault, dating violence, and violation of protection orders. To exercise SDVCJ, the tribe must meet certain requirements. (See <http://www.ncai.org/tribal-vaawa/sdvcj-overview> for additional resources relevant to Special Domestic Violence Criminal Jurisdiction).

A tribal domestic court/docket is one way that a tribe can hear SDVCJ cases. The court/docket and its resources can be used for Native and non-Native offenders alike. The tribal codes examples demonstrate what some tribes have done to exercise SDVCJ. Not all the tribes who currently exercise SDVCJ also have a tribal domestic violence court/docket. Exercising SDVCJ is completely voluntary and is not required of any tribe.

## **G. Tribal Code Examples: Domestic Violence Docket**

### **Tulalip Tribes Court Rules**

#### **Section 6 Tulalip Tribes Domestic Violence Court**

##### **6.3 DOCKET**

###### **6.3.1 Separate Docket.**

A separate docket shall be maintained for the Tulalip Domestic Violence Court. Cases assigned to the Tulalip Domestic Violence Court will be heard on Mondays, or as otherwise designated by the Tulalip Tribal Court calendar.

###### **6.3.2 Types of Cases Assigned.**

All criminal domestic violence cases (all criminal cases with the designation "DV") shall be assigned to the Tulalip Domestic Violence Court docket. Additionally, any civil protection order case involving the issuance, modification or enforcement of a permanent or temporary protection order (any civil case with the designation "RO") may be assigned to the Tulalip Domestic Violence docket at the judge's sole discretion.

## **Tribal Code Commentary**

Tulalip Tribes illustrates the separate domestic violence docket and how cases are assigned to the domestic violence docket. The court rules also explain that civil protection order cases can be heard in the docket.

## **H. Tribal Code Examples: Domestic Violence Court Duties/Requirements**

**Nottawaseppi Huron Band of the Potawatomi Code** (Enacted March 17, 2016)

### **Chapter 7.4 Domestic Violence**

#### **Article VII Powers and Duties of Court**

##### **§ 7.4-28 Victim confidentiality.**

- A. **At all stages of a criminal proceeding** under this chapter, the Court shall take steps necessary to ensure that a victim's address or location is kept confidential from members of the public, except that the address or location may be revealed, with the victim's consent, to the attorneys for the parties to the case. Defense counsel may not reveal to his or her client the address or location of the victim without authorization of the Court. The Court may order release of the information to other persons upon good cause shown.
- B. Upon Court approval a petitioner in a civil matter or a victim of domestic violence in a criminal matter may use a safe house address as his or her address for service of process and other purposes, or address of any other home that provides temporary refuge.

##### **§ 7.4-29 Pretrial and release conditions.**

- A. Any person arrested for a crime involving domestic violence, family violence, or violation of a protection order or no-contact order shall be held in custody without bail pending the person's first appearance before the Court, at which time bail and conditions of release shall be established. Thereafter the Court shall consider the following factors when setting bail:
  - (1) The person has been charged with a crime of violence and:
    - (a) The person has been recently convicted of another crime of violence; or
    - (b) The person has committed this offense while on probation or other release for another crime of violence;
  - (2) The person has been charged with obstructing justice by having threatened, injured, or intimidated a judge, witness, or juror, or has attempted such threat, injury or intimidation;
  - (3) There is strong likelihood of flight to escape trial. This requires a documented history of such flight, or evidence or circumstances indicating that such flight is potential; or
  - (4) The person represents a danger to the community. This requires a pattern of behavior evidenced by past and present conduct and no conditions for release are available which would reasonably assure the safety of the community.

- B. No-contact order. Because of the likelihood of repeated violence directed at those who have been victims of domestic violence or family violence, when any person is arrested for or charged with a crime of domestic violence or family violence, the Court may issue a no-contact order prohibiting the defendant from having any contact with the victim. Chapter 10, Court Rules for Restraining Orders, or any successor rules shall apply, if applicable. Such an order shall be entered at the first ex parte hearing with no additional hearing required.
  - (1) In issuing a no-contact order, the Court shall consider different bond requirements and whether the firearms prohibition provisions of this chapter apply.
  - (2) A no-contact order shall not be vacated without notice to the Prosecutor and a hearing.
- C. Other considerations.
  - (1) No ex parte bench warrant quash. A warrant issued in a domestic violence or family violence crime cannot be quashed without notice to the Prosecutor and a hearing.
  - (2) Bail. A bond is not available unless approved by the Court and after input from the Prosecutor.
  - (3) The use of GPS monitoring may be required pretrial or post-trial at the recommendation of the Prosecutor or Probation Officer and at the defendant's expense.
  - (4) Other conditions. The Court may order any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence or family violence, including orders or directives to the NHBP Police Department.

#### **§ 7.4-30 Special Court rules for domestic violence or family violence crimes.**

In addition to the rules of Court generally applicable to criminal proceedings, the Court is authorized to take the following actions in proceedings of alleged domestic violence or family violence:

- A. If the alleged perpetrator pleads or is found guilty, the Court, in its discretion, may order the NHBP Probation Department to prepare a presentence report prior to sentencing.
- B. If it appears to the Court that alcohol or drugs played a part in the crime, a chemical dependency evaluation with a treatment plan may be ordered prior to sentencing immediately after a guilty plea, plea of no contest, or conviction, at the discretion of the Court.
- C. Upon a guilty plea, conviction, or other disposition, the Court may issue a no-contact order prohibiting the defendant from having any contact with the victim irrespective of whether the victim consents.
  - (1) If a perpetrator is excluded from the residence of or ordered to stay away from the victim, an invitation by the victim to the perpetrator, and any acceptance of that invitation, does not waive or nullify an order for protection. Further, the victim cannot be considered by such invitation as having violated, or be subject

to arrest for a violation of his/her own ex parte or permanent order of protection.

- D. Upon a guilty plea, conviction, or other disposition, the perpetrator shall be ordered to participate in a certified domestic violence perpetrator treatment program. The certified domestic violence perpetrator treatment program that the court orders a perpetrator to attend must consist of at least the following:
- (1) The perpetrator shall attend and cooperate in an intake session for a domestic violence perpetrator's treatment program.
  - (2) The intake shall be completed by the perpetrator treatment program not later than 10 calendar days after entry of the order requiring treatment, unless the Court extends that time period for good cause shown.
  - (3) A copy of the recommended treatment plan shall be provided to the Court.
  - (4) In the discretion of the Court, the perpetrator's participation in treatment sessions based on the domestic violence program's treatment plan may be in lieu of confinement and/or fine, or the execution of any such penalty may be suspended pending completion of the treatment ordered by the Court. However, once this service is ordered it must be completed prior to dismissal unless probation is revoked.
  - (5) The domestic violence program or other services provider shall submit written progress reports to the Court at least every six (6) calendar weeks.

#### **§ 7.4-31 Judgments and convictions.**

When entering a judgment upon conviction for a crime involving domestic violence, family violence, or stalking, the Court shall:

- A. Consider the entry of orders for the protection of the victim, including those set out within this chapter;
- B. Order restitution as warranted; and
- C. Order appropriate domestic violence perpetrator's treatment.
  - (1) For the purposes of this section, a domestic violence perpetrators' treatment intake assessment should include the following considerations: an official copy of current and past criminal history; all violence history whether or not it resulted in a conviction; family and cultural issues; substance abuse issues; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual. The intake may not be based solely on the defendant's self-report, and the evaluator must make reasonable efforts to contact the victim. The defendant must sign privacy releases for the evaluator to obtain any confidential information that is necessary to the evaluation.
  - (2) Satisfactory completion of domestic violence treatment required under this section must be based on meeting treatment goals, not merely the completion of a certain period of time or certain number of sessions. The treatment must focus on ending the violence and holding the defendant accountable for his or her behavior. The treatment must include education about the individual, family, and cultural dynamics of domestic violence. Treatment must include education about the effects of domestic violence on children. The defendant

must sign privacy releases for the treatment provider to obtain any confidential information that is necessary to the treatment. The defendant must also sign a release for the treatment provider to provide information to the Prosecutor or probation office in order to monitor compliance with the Court order.

- D. The Court may, in its discretion, order any other lawful relief as it deems necessary for the protection of any claimed, alleged or potential victim of domestic violence or family violence, including orders or directives to the NHBP Police Department.

**§ 7.4-32 Additional conditions for crimes involving domestic violence or family violence.**

- A. Upon conviction of a crime of domestic violence, the perpetrator shall be required to complete a domestic violence perpetrator's treatment program or one approved by the Court.
- B. Upon conviction of a crime involving family violence, the perpetrator shall be required to complete a NHBP presentence investigation to determine whether treatment is appropriate.
- C. The Court may, at the request of the Prosecutor or as provided in the exclusion code,[1] issue an order of exclusion which excludes the perpetrator from all or a portion of the NHBP Indian Reservation and territory consistent and subject to the provisions as set forth in § 8.16-5, Grounds for exclusion; § 8.16-7B, Power to exclude; § 8.16-14, Exclusion resolution; and § 8.16-15, Scope and conditions of exclusion, among other relevant sections, as provided in the exclusion code.

**[Amended 4-21-2016 by Res. No. 04-21-16-04]**

**[1] Editor's Note: See Ch. 8.16, Exclusion.**

- D. Within the Court's discretion, the Court may order publication of the perpetrator's name and photograph in the NHBP Turtle Press described as a domestic violence or family violence perpetrator. The Court may not publish the victim's name(s).
- E. Within the Court's discretion, it may order any combination of such confinement, publication, fines, fees and costs, restitution and exclusion.
- F. The NHBP per-capita payment of any person convicted under this code shall be withheld by order of the NHBP Court and applied to the following until the costs and/or restitution are paid in full, to be satisfied in the following order:
- (1) Any restitution ordered by the Court for the victim and/or the victim's property;
  - (2) Costs incurred by the NHBP for imprisonment;
  - (3) Costs for services; or
  - (4) Costs incurred by the NHBP for exclusion of the convicted person.
- G. If the defendant is not a tribal member, the Court shall reduce the restitution and costs to a judgment and shall send to collections. Attorney fees and costs of collections shall be added to the NHBP Court judgment.

**§ 7.4-33 Factors to consider in sentencing.**

- A. In sentencing for a crime of domestic violence, family violence, or stalking as defined in Article IX, Criminal Actions and Remedies, the Court shall consider, among other factors, whether:



- (1) The firearms prohibition provisions of this chapter apply;
  - (2) The defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse;
  - (3) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; and
  - (4) Whether the offense occurred within sight or sound of the victim's or the offender's minor children.
- B. In sentencing for the crime of domestic violence or family violence as defined in this code, the Prosecutor shall provide for the Court's review:
- (1) The defendant's criminal history, if any, that occurred under the laws of the NHBP, any state, federal, territory, possession, Tribe or United States military tribunal.
  - (2) For the purposes of Subsection B (1) of this section, "criminal history" includes all previous convictions and orders of deferred prosecution and stipulated orders of continuance, as otherwise available to the Court or Prosecutor, before the date of sentencing.

### **Tribal Code Commentary**

Nottawaseppi Huron Band of the Potawatomi code sets out specific requirements that the domestic violence court must abide by or consider while making decisions. For example, a victim's address and location must be kept confidential. If needed, the victim can use a safe house as an address. Another example is pretrial release. When an offender is arrested for a domestic violence related crime, he/she is held until the first appearance where bail is discussed. The code then sets out factors for bail consideration. The code also discusses contact orders and factors for issuing the no contact orders. The court must consider safety issues of the victim and community and there is a potential for the use of GPS monitoring. The code also demonstrates that sentencing can include a domestic violence perpetrator treatment program and substance abuse program if relevant to the incident. The guidelines for treatment program and discussed, as well as the factors to determine sentencing. These requirements provide a basis for what victims and offenders can expect from the court. The offender cannot try to get out of sentences or clam bias because the duties and requirements of the court are set out in the code.

## **I. Tribal Code Examples: Sentencing and Probation**

### **Tulalip Tribes Court Rules**

#### **Section 6 Tulalip Tribes Domestic Violence Court**

##### **6.5.3 Sentencing and Probation**



- A. The Tulalip Tribes Domestic Violence Court finds that each person who pleads guilty or is found guilty of a crime of domestic violence should be on monitored probation which includes participation in a certified Domestic Violence Batterer's Re-education program.
- B. The Domestic Violence Court will hold a weekly Monday calendar to monitor a participant's progress in their treatment program. This monitoring includes receiving input from treatment providers and probation on the successful participation with the treatment program requirements.
- C. The Judge shall review the client's progress at each review hearing and will impose short term or long term sanctions for noncompliance to encourage participation and completion of appropriate treatment modalities.

### **Tribal Code Commentary**

The Tulalip Tribes court rules illustrate the sentencing and probation for individuals convicted of a domestic violence crime. It expected that the offender participate in a certified batterer's program and be monitored by the court. The court will monitor the offender weekly and discuss the treatment program with treatment providers. The judge will review the offender's progress and has the authority to impose sanctions if the offender is not complying. The section is vague enough to allow for appropriate treatment and intervention with the offender as needed for the individual case.

## **J. Tribal Code Examples: Special Rules of Court**

### **Nottawaseppi Huron Band of the Potawatomi Code** (Enacted March 17, 2016)

#### **Chapter 7.4 Domestic Violence**

#### **Article IX Special Rules of Court and Other Matters**

##### **§ 7.4-58 Secure waiting area.**

Whenever practical, the Court shall provide a secure waiting area or bailiff supervision prior to and during Court proceedings for a victim, and his or her family, of domestic violence, family violence, sexual assault, dating violence, or stalking, which will not require them to be in close proximity to the defendant or his or her families or friends.

##### **§ 7.4-59 Fees not permitted.**

A public agency may not charge a fee for filing or preparation of certified, authenticated, or exemplified copies to a person entitled to protection who seeks relief under this chapter or to a foreign prosecutor or a foreign law enforcement agency seeking to enforce a protection order. A person entitled to protection and foreign prosecutors or law enforcement agencies must be provided the necessary number of certified, authenticated, or exemplified copies at no cost.

#### **§ 7.4-60 Child custody disputes.**

**[Amended 5-19-2016 by Res. No. 05-19-16-10]**

- A. Any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children shall be resolved judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in accordance with the children's protection code or its successor,[1] the Indian Child Welfare Act, 25 U.S.C. §§ 1901 through 1963, and the Michigan Indian Family Preservation Act, MCLA 712B.1.  
(1) Editor's Note: See Ch. 7.5, Children's Protection.
- B. A police officer shall not remove a child from his or her current placement unless:
  - (1) A Court order to produce the child has been issued by the NHBP Tribal Court, a circuit court of the State of Michigan, or another tribal court; or
  - (2) There is probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a Court order pursuant to the children's protection code.

#### **§ 7.4-61 Mediation not allowed.**

Mediation is not allowed if a protection order is in effect unless mediation is requested by the victim of the alleged domestic violence after consultation with counsel or an advocate and is provided by a certified mediator who is trained in domestic violence in a specialized manner intended to protect the safety of victims. The victim is permitted to have a support person of his or her choice in attendance at the mediation.

#### **§ 7.4-62 Domestic Violence Leave Act; purpose.**

**[Amended 6-16-2016 by Res. No. 06-16-16-04]**

Victims of domestic violence are often forced to flee from a perpetrator in order to avoid future danger and violence. In so fleeing, victims who are employed frequently miss days of employment, and employers sometimes respond by terminating or disciplining such employees. It is the purpose of this section to preclude all NHBP employers from terminating any employee who can document within fourteen (14) days an instance of domestic abuse which contributed to his/her absence from employment. Employers have the option of granting such employees leave with or without pay because of domestic-violence-related absences. Absences for approved leave are not to exceed twelve (12) weeks [four hundred eighty (480) hours] in any calendar year. An employee may take reasonable leave from work, intermittent leave, or leave on a reduced work schedule, with or without pay, to:

- A. Seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or employee's family members, including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence or family violence, sexual assault, stalking or dating violence;

- B. Seek treatment by a health care provider for physical or mental injuries caused by domestic violence or family violence, sexual assault, stalking, or dating violence, or to attend to health care treatment for a victim who is the employee's family member;
- C. Obtain or assist a family member in obtaining services from a domestic violence safe house, rape crisis center, or other social services program for relief from domestic violence, family violence, sexual assault, stalking, or dating violence;
- D. Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, family violence, sexual assault, stalking or dating violence, in which the employee or the employee's family member was a victim of domestic violence or family violence, sexual assault, stalking or dating violence; or
- E. Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence or family violence, sexual assault, stalking, or dating violence.

**§ 7.4-63 Discharges for absence of employment due to domestic violence prohibited.**

**[Amended 6-16-2016 by Res. No. 06-16-16-04]**

It shall be a violation of this chapter for any employer located within the exterior boundaries of the NHBP Reservation to terminate or otherwise discipline any employee who has missed work or is tardy to work when such employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other method satisfactory to the employer, that he/she has been the victim of domestic violence, family violence, sexual assault, stalking or dating violence, and that such violence contributed to his/her absence(s) from work or tardiness to work. Employers shall be required to grant the employee leave with or without pay, dependent upon the policies of the employer, for such absences unless the employer can demonstrate that the employee failed to provide reasonable notice of the need for leave or the employer can demonstrate that the employer's business operations would suffer undue hardship as a result of the employee's absence from work.

**§ 7.4-64 Penalty for violation.**

**[Amended 6-16-2016 by Res. No. 06-16-16-04]**

Any employer who willfully violates this article shall be guilty of a civil infraction and subject to a maximum civil penalty of up to \$1,000 payable to the NHBP. Any funds collected for a violation of this article shall be used for the victims and placed in the appropriate victim's fund. In addition, any employee who is denied leave, or who is disciplined, retaliated against or terminated in violation of this chapter or under Article VIII of Chapter 5.2 (the NHBP fair employment practices code) shall be permitted to pursue administrative and legal remedies subject to the procedures and limitations contained in Article IV, §§ 5.2-13 through 5.2-16A of Chapter 5.2 of the Tribal Code.

#### **§ 7.4-65 Firearms disqualification; purpose.**

It shall be the purpose of this section to prohibit any person from possessing or purchasing a firearm who has been convicted of a felony or misdemeanor crime of domestic violence, family violence, sexual assault, stalking, or dating violence, as defined under the laws of the NHBP, who is subject to a protection order based upon a finding that the person represents a credible threat to the physical safety of the victim; any person who is found mentally incompetent to stand trial; or any person committed for mental health reasons after a domestic violence, family violence, sexual assault, stalking, or dating violence offense, from possessing or purchasing a firearm.

- A. It shall be unlawful for any person to possess or purchase a firearm who:
- (1) Is subject to any Court order from a court of competent jurisdiction that restrains such person from harassing, stalking, threatening, having contact or assaulting an intimate partner or family member as defined in this code or engaging in any other conduct that would place an intimate partner or family member in reasonable fear of physical harm to the intimate partner or family member, except that this subsection shall apply only to those orders that:
    - (a) Were issued at a hearing at which such person was present and had the opportunity to participate; or at a hearing of which such person had notice and the opportunity to be heard, whether or not the person was present;
    - (c) Include a finding that such person represents a credible threat to the physical safety of such household or family member; and
    - (d) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such household or family member.
  - (2) Has been convicted under the law of any state, territory, possession, tribe, or United States military tribunal of any crime involving domestic violence or family violence, as defined by the laws of the NHBP, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against an intimate partner or family member as defined by this chapter.
- B. Violation of this section is a Class A misdemeanor offense and may result in exclusion from the NHBP Pine Creek Reservation as defined within the exclusion code.[1] Any violations of related domestic violence or family violence sentences in this section or any violations of other sections of this code shall be served consecutively. The second or subsequent violation of this section is a felony offense and may result in exclusion from the NHBP Pine Creek Indian Reservation or other lands as defined within the exclusion code.

**[1] Editor's Note: See Ch. 8.16, Exclusion.**

## Tribal Code Commentary

The Special Rules of Court and Other Matters section of the code established by the Nottawaseppi Huron Band of the Potawatomi Code is important because it provides a great deal of safeguards for victims. It establishes a safe waiting area in the courthouse for victims. It does not require victims to pay fees for protection order or fees for any action under the domestic violence code; this allows the victim to get the relief he/she needs from the court without financial concern. The code also requires that a police officer only remove a child from the home when there is evidence of child abuse or another court order. This allows for a child to remain with a victim parent and not removed simply because a parent was abused. Another safeguard for victims is no mandatory mediation, unless the victim requests mediation. The Domestic Violence Leave Act under this code is important and allows for victims to obtain leave without the fear of being fired. The tribe has mentioned that not only is it the right thing to do but also it can save the business money. For example, the tribal casino does not have to expend resources training a new employee to replace someone who left due domestic violence related issues. This section of the code is important to review to provide relief to victims in ways beyond the actual abuse. This section of the code addresses the victim's areas of life that are sources of stress, as they are seeking assistance and relief from the court.

## Additional Considerations

The Tulalip tribes and the Nottawaseppi Huron Band of the Potawatomi Code have a number of other sections regarding domestic violence that are important and should be reviewed as you set up your tribal domestic violence court or docket. However, for the purpose of brevity we have not included all sections of the codes. The sections that may be of interest and are not included in this resource are definitions, criminal procedure, power and duties of law enforcement, criminal actions and remedies, civil actions and remedies, civil protection orders, criminal protection orders, other orders, and severability and savings. These sections can be found at <https://www.codepublishing.com/WA/Tulalip/> and <https://ecode360.com/31765715>.

### ***Exercise #15: Determining what you want in your tribal code or court rules***

***Lesson Objective:*** Decide what portions of code are necessary to include in your tribal code or court rules.

***Instructions:*** Please answer the following questions.

- 1. Discuss among the planning team the benefits and challenges of the codes and court rules that have been provided as examples?*
- 2. Which language from the codes and court rules provided would be appropriate for your tribe?*
- 3. Which codes or court rules are most relevant for your needs?*

## Chapter 7. Sustainability: The Anchor to Program Longevity

Sustainability, for purposes of this segment, is about continuing and maintaining the tribal domestic violence court as a long-term goal. Sustainability means having the needed services available in perpetuity as a permanent part of a tribal community. In tribal communities, it takes much more than money to keep a tribal domestic violence court sustained as a long-term viable tribal community resource.

There are four basic components to achieve sustainability of a tribal domestic violence court:

**Component #1—Tribal leadership endorsement.** Garner tribal leadership support for the court. Tribal leaders bring a wealth of knowledge about customs and traditions, tribal community norms, and the ability to control the tribal budget. Perhaps no other component is as critical to the sustainability of the tribal domestic violence court as the endorsement of tribal leadership.

**Component #2—Tribal community validation.** Put simply, what benefit is a tribal domestic violence court, if the tribal community does not utilize the court because of a lack of knowledge of the court or a distrust of the court?

**Component #3—Collaborative partnership.** All partners working in tandem is a core element of the tribal domestic violence court. It is vital to have the cooperation between the partner agencies/systems and their willingness to focus on victim safety and batterer accountability while working to provide essential services. Further, it is ideal for those employees to provide those services according to the latest information and best practices in the domestic violence community. This type of partnership is an impressive resource to sustain a program long term.

**Component #4—Diversified funding.** Achieve a diversified funding base for the court. Sustainability means that the program will change. To be sustainable for the long term, programs will not only need to thrive financially but also will need to continue to re-evaluate and monitor successes and obstacles with a commitment to evolve. All this is done to meet the needs of the tribal community. As the program moves into the future, know that changes will be necessary. Similarly, like the Eight-Step Model for Protocol Development discussed in Chapter 5, a sustainability plan should be in writing, reviewed, and modified regularly on a continual basis. Anchor the educational sessions of tribal leaders, community, and collaborative partners and build outward to make sustainability planning more successful.

## **A. Tribal Leadership Endorsement**

The endorsement of tribal leadership is addressed as the first step of developing a sustainability plan because in essence this component is all the steps rolled into one. Tribal leadership brings an enormous wealth of knowledge to the sustainability table. Tribal leaders can influence the level of collaboration and support the partners provide to the tribal domestic violence court and to victims of domestic violence. Tribal leaders carry a profound level of influence regarding the tribal communities that elected them. They can also influence which community issues will be given priority in the eyes of the tribal government. Tribal leaders also manage and control tribal budgets for partners as well as the court.

Tribal leaders should be invited to participate on the sustainability planning team. Even if a tribal leader is unable to join the team because of time restraints in governing, a plan should include continuous and regular reports to tribal leadership on the activities, successes, and challenges faced by the tribal domestic violence court. Tribal leaders should also be kept abreast of the latest information on domestic violence both nationally and in the tribal community, tools for combatting domestic violence in tribal communities, and funding issues related to the court. It might be wise to develop brochures that contain this information in addition to personally presenting this information to tribal leadership. Invite tribal leaders to attend trainings related to domestic violence. Encourage tribal leadership to provide remarks to the Office on Violence Against Women annual consultations. Invite tribal leaders to visit and tour the tribal domestic violence court and visit with tribal judges, court staff, and the core case team.

## **B. Tribal Community Validation**

Tribal community validation is tied to a program's integration of tribal customs and traditions. Designing a tribal domestic violence court that does not incorporate tribal customs and traditions of the tribal community will likely prove to be unstable and ineffective in the tribal community. Tribal community support and credibility in the tribal community is crucial to the sustainability of the tribal domestic violence court.

When a victim feels that the services and the court responses were sensitive and respectful, that information spreads quickly throughout the tribal community. The court's community credibility and longevity are tied to the tribal community's perception of the tribal domestic violence court focus on the safety and the service needs of the victim and children. It also tied to the court's incorporation of tribal customs and traditions while maintaining batterer accountability.

To promote ongoing tribal community education, consider holding periodic public educational forums for the tribal community, tribal agencies, and tribal systems. Educational forums can be used to update the tribal community on court processes,

code revisions, and agency collaborations. Question-and-answer sessions during the forums can lead to a deeper understanding of the policies driving the tribal domestic violence court. As data is gathered according to protocols developed in Chapter 5 apprise the community of the successes and barriers the court has faced, as well as the importance of sustaining the court long term. Consider developing marketing tools and strategies that might include developing a logo (branding) or some other means to identify the tribal domestic violence court. It is easier for the public to identify the program when a particular piece of artwork or design marks the program. Use this brand on all educational and promotional items developed in educational efforts for the tribal community and tribal leadership.

Note that community educational needs may be at various levels and each training or session requires a certain amount of preparation work to create an awareness of the problem at the local level. The educational sessions should tie in to the need for a domestic violence court/docket. The planning team might want to do some strategic planning and logic model work with respect to tailoring the sessions to meet the community's awareness of domestic violence. Remember there may be communities that have had no awareness of or education on domestic violence. When providing community education forums, it may be beneficial to have various planning team members share the responsibility of facilitating these forums to provide a strong team presence to the community.

### **C. Collaborative Partnerships**

Historically, collaboration was particularly important in tribal communities for many reasons. It was important due to the survivalist nature of tribal communities and the need to be ready to respond to imminent threats to the village. Everyone had to be prepared to act and to know what their respective roles were. If the tragedy affected a member of the village, the "people" would gather around that person and create a support network. Each person had a role to help the person who was harmed and everyone respected one another's role in that circle. Although each person had a role in that circle, the primary focus was the victim who was at the center of that circle.

Incorporating the unique customs and traditions of a tribe will reflect tried and true practices and beliefs that have held steadfast the tribal community. Tribal victims will utilize a system that reflects unique tribal customs and traditions, and the community's perception of the tribal domestic violence court is likely to be enhanced as well. Developing a team of multidisciplinary partners that are committed to the work of the court is essential to tribal community validation.

Recall the team building drills set out in Exercise #1 on page 8-9. Some team building methods include:



- Educating all team members about the nature and scope of each organization, their mission, and the challenges and barriers faced by each agency;
- Using humor to enable people to relax and be more open with one another;
- Engaging in an activity in which people share something about themselves;
- Hiring a meeting facilitator or arranging a facilitator to donate time to help with this process; and
- Planning off-site retreats because they allow people casual and/or recreational time to become acquainted.

The Guide has also explored some of the potential problems/challenges the planning team has addressed. Some of the challenges in collaborative work among the various disciplines may include:

- Confidentiality/problems with anonymity;
- Conflicts of interest;
- Conflicting goals;
- Fear of giving up control;
- Turnover in team membership;
- Attendance;
- Conflict management from tribal perspective; and
- Obtaining necessary resources to fully implement the protocols and maintaining the tribal domestic violence court.

Recall that Chapter 5 contains useful tips and the appendix contains useful examples of Memorandum of Understanding. As the Guide's process comes to a close, review the time and energy spent by all disciplines to work collaboratively through this process that required a hard look at the issues the tribe is facing relative to domestic violence. This process may have resulted in partnerships that will last long after the exercises have been completed. Plan a strategy to keep these partnerships healthy and strong by building in ongoing partnership meetings as an element of the sustainability plan.

#### **D. Diversified Funding**

To be sustainable, the tribal domestic violence court will ideally need many funding streams that will allow the court to operate if one or more funding streams dry up.

The sustainability planning team should assess how much funding is needed to sustain the tribal domestic violence court. Note that these assessments must be periodic and ongoing as the tribal court evolves to meet the needs of the tribal community. Evaluate the sources of current funding and discuss various ways to diversify the funding base so that the funding is from a variety of sources. When assessing possible funding sources consider one-time funding sources such a tribal, state, or federal funding source; private funding sources such as foundations; and tribal governmental budgeting possibilities. Realize that these funding sources may change from time to

time, so continuing to look for a variety of funding sources allows ample time to react when funding streams come and go. Consider exploring whether the collaborative partners might be able to provide some of the funding sources through possible in-kind services, such as providing their time on the court team where that time is funded through another source. The possibilities are endless but will vary from tribe to tribe.

### **Sustainability for Tribal Domestic Violence Dockets**

If you have or decide to implement a domestic violence docket, it would be ideal to work toward a tribal domestic violence court. Keep in mind this chapter and its concepts of sustainability are equally applicable to tribal domestic violence dockets.

#### **Exercise #16: Developing a sustainability plan**

**Lesson Objective:** To develop a sustainability plan to promote the longevity of the tribal domestic violence court.

**Reading:** Chapter 5: Protocol Development

**Instructions:** Please perform the tasks and answer the following questions.

**Team Leader Tips:** Consider creating several subcommittees to work on different components of the sustainability plan. Allow the subcommittees ample time to develop a report or summary focusing on the assigned component. Once the report or summary has been completed, schedule a planning team meeting to provide each subcommittee an opportunity to present the ideas. Then open the floor to discuss those ideas. Try and have the team reach a consensus and develop the sustainability plan draft. Distribute the draft sustainability plan for review by each planning team member and allow ample time for comments/suggestions. Reconvene the subcommittees and/or the planning team as necessary until a final product (with built-in regular reviews of the product) has been created.

- 1. LIST** the Vision Statement here and include core values if not included in the Vision Statement.
- 2. LIST** the latest data collection statistics developed in Exercise #13, if available.
- 3. IDENTIFY** key elements relevant to sustainability in the community assessment developed in Exercise #13 and set out those points.
- 4. LIST** current funding sources and amount. Anticipate funding needed over the next five years and list those amounts.
- 5. IDENTIFY** tribal leaders who can influence sustainability.

- 6. IDENTIFY** ways to keep tribal leaders informed such as newsletters and inviting tribal leaders to participate in events and training opportunities. Develop a plan to keep tribal leaders informed.
- 7. IDENTIFY** the desired reputation the tribal domestic violence court should have in the community. Communicate to the community the court's value for victims and their children as well as healthy families.
- 8. IDENTIFY** data that can be shared with the community and package the data in user-friendly formats such as brochures or placards.
- 9. INVITE** the community to ongoing trainings and events to build a sense of ownership and support.
- 10. IDENTIFY** and communicate how tribal customs and traditions have been incorporated into the court's Vision Statement and protocols.
- 11. IDENTIFY** a diverse set of stakeholders such as the core case team and other community-based organizations.
- 12. IMPLEMENT** a plan for keeping the stakeholders informed.
- 13. IDENTIFY** how the stakeholders will exhibit an understanding for and acceptance of roles and responsibilities regarding sustainability.
- 14. IDENTIFY** possibilities for various funding streams and develop a plan to try and access those funding streams.
- 15. IDENTIFY** ways to increase funding by and between funding sources such as in-kind matches or pooling of funds between various agencies.
- 16. IDENTIFY** any technical assistance needed. Technical assistance can be requested at:

The U.S. Department of Justice  
Office on Violence Against Women  
Tribal Affairs Division  
<https://www.justice.gov/ovw>  
202-616-0039

# APPENDIX A

## Fact Sheets: Tribal Domestic Violence Courts/Dockets



### TRIBAL DOMESTIC VIOLENCE *COURTS*

Fact Sheet



## Tribal Domestic Violence Courts

### WHAT IS A DOMESTIC VIOLENCE COURT?

Tribal domestic violence courts are specialized courts with targeted caseloads consisting of domestic violence cases. Tribal domestic violence courts are comprised of personnel who are well trained in the dynamics of domestic violence and committed to working collaboratively among various victim service providers/systems to meet the needs of the family. Additionally, these courts focus on victim safety and batterer accountability by closely monitoring batterer compliance with court orders. There are various domestic violence courts models including:

#### (1) DOMESTIC VIOLENCE COURT MODEL COVERING BOTH CIVIL AND CRIMINAL CASES

- Domestic violence judge/court handling **both civil and criminal cases**
- Criminal domestic violence cases occurring in Indian country such as criminal protection orders; misdemeanor cases involving Indian defendants; felony cases involving Indian defendants if the tribe has implemented enhanced sentencing under the Tribal Law and Order Act; and criminal acts of domestic violence, dating violence or protection order violations involving non-Indian defendants and Indian victims where tribe has implemented special domestic violence criminal jurisdiction under the Violence Against Women Reauthorization Act of 2013;
- Civil cases where domestic violence is present including civil protection orders, divorce, custody, child support, paternity, visitation, child protective cases, guardianships and Indian Child Welfare Act (ICWA) matters.
- Child protective and juvenile justice matters if related to domestic violence.

#### (2) DOMESTIC VIOLENCE CRIMINAL COURT MODEL

- Criminal domestic violence judge/court handling **only criminal cases**
- Criminal domestic violence cases occurring in Indian country such as criminal protection orders; misdemeanor cases involving Indian defendants; felony cases involving Indian defendants if the tribe has implemented enhanced sentencing under the Tribal Law and Order Act; and criminal acts of domestic violence, dating violence or protection order violations involving non-Indian defendants and Indian victims where tribe has implemented special domestic violence criminal jurisdiction under the Violence Against Women Reauthorization Act of 2013.

#### (3) DOMESTIC VIOLENCE CIVIL COURT MODEL

- Civil/family domestic violence judge/court handling **only civil cases**
- Civil cases where domestic violence is present including civil protection orders, divorce, custody, child support, paternity, visitation, child protective cases, guardianships and Indian Child Welfare Act (ICWA) matters.

### Resources and Help for Victims

- StrongHearts Native Helpline 1-877-7NATIVE or 1-877-762-8483
- National Domestic Violence Hotline  
1-800-799-SAFE (7223)  
1-800-787-3224 (TTY)
- The Rape Abuse Incest National Network  
1-800-656-4673
- Alliance of Tribal Coalitions to End Violence (ATCEV)  
1-888-577-0940
- National Indigenous Women's Resource Center  
[www.NIWRC.org](http://www.NIWRC.org)
- Local program/shelter
- Call 911

### For more information, please contact:

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Email: [chia@tlpi.org](mailto:chia@tlpi.org)



A product of Tribal Law and Policy Institute

TLPI Tribal Domestic Violence Courts Dockets Resources Webpage – [www.TLPI.org/lists/dvcourts.html](http://www.TLPI.org/lists/dvcourts.html)

This product was supported by Grant No. 2016-TA-AX-K006 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of those author(s) and do not necessarily reflect the view of the Department of Justice, Office on Violence Against Women.



### Special Domestic Violence Criminal Jurisdiction:

These specialized tribal courts (and tribal domestic violence dockets) may serve as a platform for exercising Special Domestic Violence Criminal Jurisdiction (SDVCJ) over non-Indians committing certain domestic violence-related crimes in Indian country pursuant to section 904 of the Violence Against Women Reauthorization Act of 2013. Exercising SDVCJ may lead to safer tribal communities since 67% of American Indian/Alaska Native victims of rape or sexual assault describe the offender as non-Native. The race of the offender is critical since federal case law restricts a tribe's sovereignty to exercise criminal jurisdiction over non-Indian perpetrators unless the tribe has implemented SDVCJ under section 904 of VAWA 2013.

### **American Indians/Alaska Natives and Domestic Violence**

- Experience the highest rates of domestic violence and sexual assault in the United States
- 34% of Native American women will be raped in their lifetime, 86% of them by non-Native perpetrators
- 39% of Native American will be victims of domestic violence during their lifetime

### Possible Benefits of a Tribal Domestic Violence Court

- Informed judicial decision-making on issues involving the family while incorporating tribal customs and traditions as appropriate.
- The judge is trained in the dynamics of domestic violence and the complex criminal and/or civil jurisdictional laws in Indian country
- Consistency by having a single presiding judge trained in the dynamics of domestic violence and tribal law
- Court judge/staff trained on domestic violence issues
- Victim safety through the use of a tribal victim advocate, courtroom safety protocols and utilizing the important role of communication with other courts
- Multi-disciplinary linkage to service providers to address the needs of family members in a manner appropriate for each tribal community
- Improved collaboration among service providers in a manner appropriate for each tribal community.
- Improved community response to domestic violence by linking a family court with criminal justice personnel, tribal domestic violence advocates and other service providers
- Batterer accountability by ensuring ongoing monitoring of compliance
- Early identification of the domestic violence and safety issues, early access to victim services including integration of tribal custom/traditions regarding healthy, safe families
- Non-rotating personnel who are well trained in the dynamics of domestic violence and working collaboratively to meet the needs of the family
- Stronger working relationships between systems such as law enforcement, victim advocates, child welfare and other service providers serving tribal families experiencing domestic violence.

### Why Tribal Communities Should Consider Establishing a Tribal Domestic Violence Court

- The three possible tribal domestic violence court models described are just a few of the many different types of courts that can be developed to meet the needs of a particular tribal community.
- Tribal domestic violence courts are vital in exercising tribal judicial authority in a manner that focuses on victim safety, batterer accountability and healthy families utilizing tribal customs/traditions focusing on healthy tribal communities.
- The safety and well-being of American Indian/Alaska Native victims of domestic violence and their children is critical to the strength and stability of tribes. Social attitudes and justice policies supporting tribal sovereignty over the past several years have changed indicating that an increasing number of these incidents may likely reach tribal justice systems.
- Cases involving domestic violence are among the most complex and dangerous cases that courts may address.
- Tribal domestic violence courts provide continuity for victims and are distinguished by: designated domestic violence- trained court personnel; a community approach to victim services; and a commitment to batterer accountability.
- Research demonstrates that **both domestic violence courts and domestic violence dockets** can increase victim safety, reduce recidivism, and improve offender compliance with post-conviction supervision requirements.
- This specialized court is intended to address concerns of traditional domestic violence cases in which multiple judges and attorneys handle different aspects of a case, information is spotty and disjointed, monitoring of perpetrators is inconsistent, and victims coming through the court system are not linked systematically to any assistance.

**Please see companion fact sheet on Tribal Domestic Violence Dockets**





## TRIBAL DOMESTIC VIOLENCE *DOCKETS*

Fact Sheet



### Tribal Domestic Violence Dockets

#### WHAT IS A DOMESTIC VIOLENCE DOCKET?

Tribal domestic violence docket days are characterized by setting aside specific days of the tribal court's docket to address cases involving domestic violence. Devoting certain days of the docket to domestic violence cases can provide continuity for the victim, and allow the tribal court to address related civil and criminal matters on the same day. It can also allow the court to offer enhanced security, advocacy services, and child care for domestic violence victims.

#### SPECIFIC DOCKET DAYS DEVOTED TO DOMESTIC VIOLENCE CASES CAN POTENTIALLY PROVIDE:

- Early identification of the domestic violence and safety issues
- Early access to victim services
- Judges and other service providers who focus on victim safety and batterer accountability including close monitoring of compliance with court orders
- Continuity for the victim
- Ability to address related civil and criminal matters on the same day
- Ability to enhance security, advocacy services, and child care for domestic violence victims on specialized docket days

#### WHY DOMESTIC DOCKETS ARE NEEDED

Domestic violence cases require judges, court personnel and all related service providers to handle the complicated dynamics of abuse such as:

- ♦ The risk of future violence to the victim (and children)
- ♦ Patterns of behavior which may include the victim's fear, which may drive a victim's behaviors such as filing a case and then demonstrating a reluctance to testify or participate in the case ;
- ♦ Issues of perpetrator accountability; and
- ♦ The need to update lethality assessments in order to attempt to correlate the perpetrator's changing behavior and a victim's risk of death.

#### *Resources and Help for Victims*

- StrongHearts Native Helpline  
1-877-7NATIVE or  
1-877-762-8483
- National Domestic Violence  
Hotline  
1-800-799-SAFE (7223)  
1-800-787-3224 (TTY)
- The Rape Abuse Incest  
National Network  
1-800-656-4673
- Alliance of Tribal Coalitions to  
End Violence (ATCEV)  
1-888-577-0940
- National Indigenous Women's  
Resource Center  
[www.NIWR.org](http://www.NIWR.org)
- Local program/shelter
- Call 911

For more information,  
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Email: [chia@tlpi.org](mailto:chia@tlpi.org)



A product of Tribal Law and Policy Institute

TLPI Tribal Domestic Violence Courts Dockets Resources Webpage – [www.tribal-institute.org/lists/dvcourts.html](http://www.tribal-institute.org/lists/dvcourts.html)

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### Special Domestic Violence Criminal Jurisdiction:

These specialized tribal dockets (and tribal domestic violence courts) may serve as a platform for exercising Special Domestic Violence Criminal Jurisdiction (SDVCJ) over non-Indians committing certain domestic violence-related crimes in Indian country pursuant to section 904 of the Violence Against Women Reauthorization Act of 2013. Exercising Special Domestic Violence Criminal Jurisdiction may lead to safer tribal communities since 67% of American Indian/Alaska Native victims of rape or sexual assault describe the offender as non-Native. The race of the offender is critical since federal case law restricts a tribe's sovereignty to exercise criminal jurisdiction over non-Indian perpetrators unless the tribe has implemented SDVCJ under section 904 of VAWA 2013.

#### **American Indians/Alaska Natives and Domestic Violence**

- Experience the highest rates of domestic violence and sexual assault in the United States
- 34% of Native American women will be raped in their lifetime, 86% of them by non-Native perpetrators
- 39% of Native American will be victims of domestic violence during their lifetime

### Possible Benefits of a Tribal Domestic Violence Docket

While there are no uniform models for domestic violence dockets, the following principles are usually included:

- Victim and child safety ;
  - Keeping the victim informed;
  - Offender accountability ;
  - Information sharing and decision-making ;
  - Coordination of procedures and services ;
  - Training and education for court personnel;
  - Judicial leadership-which includes ongoing training regarding the dangers and dynamics in domestic violence cases.
- ♦ Addresses victim safety issues by implementing additional security measures such as protocols that focus on victim safety and courtroom safety measures for all court personnel.
  - ♦ Addresses related civil and criminal matters on the same day provides some continuity to the victim and allows the judge to observe and address perpetrator behavior and compliance in all related cases.
  - ♦ Allows the court to require other victim service providers to attend the docket.

### Why Tribal Communities Should Consider Establishing a Tribal Domestic Violence Docket

- Tribal domestic violence dockets are vital in exercising tribal judicial authority in a manner that focuses on victim safety, batterer accountability and healthy families utilizing tribal customs/traditions for healthy tribal communities.
- The safety and well-being of American Indian/Alaska Native victims of domestic violence and their children is critical to the strength and stability of tribes. Social attitudes and justice policies supporting tribal sovereignty in recent years have changed indicating that an increasing number of these incidents may likely reach tribal justice systems.
- Cases involving domestic violence are among the most complex and dangerous cases that courts may address.
- Research demonstrates that **both domestic violence courts and domestic violence dockets** can increase victim safety, reduce recidivism, and improve offender compliance with post-conviction supervision requirements.
- Judges and other service providers will focus on victim safety and batterer accountability that includes close monitoring of compliance with court orders.
- This collaborative effort may establish stronger working relationships between systems that serve tribal families experiencing domestic violence such as law enforcement, victim advocates, child welfare and other providers.

**Please see companion fact sheet on Tribal Domestic Violence Courts**

## APPENDIX B

### Domestic Violence Courts/Dockets Resources

#### Domestic Violence Courts/Dockets Resources – Tribal Specific Resources

[“Combatting Domestic Violence in Indian Country: Are Specialized Domestic Violence Courts part of the Solution?”](#) Kathryn Ford, [Center for Court Innovation](#) (2015). Domestic violence is one of the most pressing problems facing Native American and Alaska Native communities. Although the reauthorized Violence Against Women Act recognizes the authority of tribes to prosecute non-Native offenders, more tools are needed. This paper explores whether specialized domestic violence courts, which focus on enhancing victim safety and promoting offender accountability, can be part of a multi-faceted approach for tribal justice systems to address domestic violence.

[Tribal Domestic Violence Courts and Dockets: Foundational Elements of Domestic Violence](#) - Tribal domestic violence courts are specialized courts with targeted caseloads consisting of domestic violence cases. Tribal domestic violence courts are comprised of personnel who are well trained in the dynamics of domestic violence and committed to working collaboratively among various victim service providers/systems to meet the needs of the family. Additionally, these courts focus on victim safety and batterer accountability by closely monitoring batterer compliance with court orders.

Tribal domestic violence docket days are characterized by setting aside specific days of the tribal court's docket to address cases involving domestic violence. Devoting certain days of the docket to domestic violence cases may allow continuity for the victim, and allows the tribal court to address related civil and criminal matters on the same day. It also allows the court to offer enhanced security, advocacy services, and child care for domestic violence victims.

Research demonstrates that both domestic violence courts and domestic violence dockets can increase victim safety, reduce recidivism, and improve offender compliance with post-conviction supervision requirements.

Tribal Domestic Violence Courts and dockets are vital in exercising tribal sovereign judicial authority in a manner that focuses on victim safety, batterer accountability and healthy families utilizing tribal customs/traditions focusing on health tribal communities. Cases involving domestic violence are among the most complex and dangerous cases that courts may address. Domestic violence cases task judges, court personnel and all related service providers with handling the complicated dynamics of abuse. This webinar will address: core issues of domestic violence; key issues underlying domestic violence in tribal communities; and issues regarding legal representation in tribal court.



## Domestic Violence Courts/Dockets Resources – General Resources

[Creating A Domestic Violence Court: Guidelines and Best Practices](#) Emily Sack, JD (2002) Family Violence Prevention Fund. These Guidelines are designed to assist jurisdictions considering whether to develop a domestic violence court or dedicated docket, to determine if such a court structure would be helpful, and if so, how best to model this structure to address the needs of their local communities. The Guidelines represent the views of a National Advisory Committee comprised of leading representatives from the various disciplines involved in the processing of domestic violence cases throughout the system.

[Key Principles of Domestic Violence Court: Accountability](#) This brief August 7, 2005 update from the Center for Court Innovation provides a short overview of key principles of domestic violence courts with regard to accountability.

[A National Portrait of Domestic Violence Courts](#) Melissa Labriola, Sarah Bradley, Chris O’Sullivan, Michael Rempel and Samantha Moore (2009). With funding from the National Institute of Justice, this study explores how criminal domestic violence courts have evolved, their rationale, and how their operations vary across the U.S. This study does not test whether domestic violence courts reduce recidivism, protect victims, or achieve other specific effects – although we provide a thorough literature review on these points. Rather, our aim is to present a comprehensive national portrait of the field as it exists today, laying the groundwork for future information exchange and research.

The [U.S. Department of Justice, Office of Justice Programs, National Institute of Justice](#) hosts a [webpage devoted to domestic violence courts](#). Domestic violence cases involving spouses and other intimate partners often entail complex processes that require careful consideration by the criminal justice system. In the 1990s, many jurisdictions began to create specialized domestic violence courts for judges to ensure follow-through on cases, aid domestic violence victims, and hold offenders accountable, with the assistance of justice and social service agencies. By specializing in domestic violence offenses, these courts aim to process cases more efficiently and deliver more consistent rulings about domestic violence statutes. Some domestic violence courts also incorporate a stronger focus on rehabilitation of offenders and deterrence of repeat offenses. Learn more about:

- Victim services and safety, including:
  - [Courthouse and pretrial safety](#).
  - [Orders of protection](#).
- Offender accountability procedures, including:
  - [Offender assessments](#).
  - [Batterer programs](#).
  - [Offender monitoring](#).
- [Judicial oversight and pretrial safety](#)

including:

- [Benefits of implementing a pretrial safety program.](#)
- [Implementing a pretrial safety program.](#)
- [Implications and recommendations to improve pretrial safety.](#)

[Domestic Violence Docket: Process and Recidivism Report](#) State of Maine Judicial Branch, (2015). This study of domestic violence dockets was conducted by Hornby Zeller Associates, Inc., with data collection occurring in 2014 and report writing in 2015 under contract to the State of Maine Judicial Branch. It includes a review of the literature on the effectiveness of domestic violence dockets, Batterer Intervention Programs, and the presence of national standards to guide the conduct of domestic violence dockets; an assessment of current practices within Maine's seven active dockets; and an analysis of recidivism among those adjudicated in the past in Maine.

[Procedural Fairness, Swift and Certain Sanctions: Integrating the Domestic Violence Docket](#) National Center for State Courts (2013). What might happen if a court system integrated into one docket, before one judge, related criminal, family, and protective order cases of domestic violence; institutionalized principles of procedural fairness; consistently applied swift and certain sanctions for offenders; front-loaded needed rehabilitative services; and tried to do it on the cheap? The results are in. The Vermont Center for Justice Research (2011) evaluated just such an innovative, three-year (2007-10) integrated domestic violence docket (IDVD) court program in Bennington, Vermont. Their report demonstrated that the IDVD program substantially decreased criminal recidivism when measured against statewide data of similar offenders in the traditional justice system. A new process evaluation from the Vermont Center for Justice Research (2013) has identified the critical components for the program's success.

*Note: Professor Sarah Deer, a noted American Indian expert on sexual assault, underscored that peacemaking in the context of rape may: make the victim feel coerced to participate in the traditional practice, may dismiss legitimate fears the victim has, may eclipse batterer accountability, may have no repercussions for recidivism and may have no fact-finding mechanism. For these reasons, using Peacemaking in the context of domestic violence may compromise victim safety especially in the context of American Indian/Alaska Native cultural settings. (The Beginning and End of Rape, Confronting Sexual Violence in Native America, Sarah Deer, Univ. of Minn. Press 2015 at pages 125-134.)*

#### **Domestic Violence Courts from the Idaho Domestic Violence Court Webpage:**

- [Two Decades of Specialized Domestic Violence Courts: A Review of the Literature](#)  
*An overview of the research literature on specialized domestic violence courts.*
- [A National Compendium of Domestic Violence Courts](#)  
*This compendium serves as a companion document to A National Portrait of*

### *Domestic Violence Courts.*

- [Judicial Review Hearings: Keeping Courts on the Case.](#)  
*An overview of promising practices from the judicial oversight demonstration initiative.*
- [What Makes a Domestic Violence Court Work?](#)  
*An overview of the principles that underlie successful domestic violence courts.*
- [Domestic Violence Court: Case Processing Update and Recidivism Analysis](#)  
*This report is an evaluation of case processing and recidivism outcomes for the Minneapolis Domestic Violence Court. The court was created on November 13, 2000, with several primary goals, including expedited case processing and a reduction in defendant recidivism.*
- [Domestic Violence Court Self-Assessment: Revisiting Goals, Challenges and Progress](#)  
*For communities that have established a specialized domestic violence court, a self-assessment is an opportunity to revisit the goals and objectives identified as part of the initial planning process.*

### **Batterer Compliance Issues from the Idaho Domestic Violence Court Webpage:**

- [Implementing Mental Health Treatment for Batterer Program Participants Interagency Breakdowns and Underlying Issues.](#)  
*A study of the implementation of a screening and referral system for supplemental mental health treatment among batterer program participants.*
- [Court Responses to Batterer Program Non-compliance: A National Survey](#)  
*A brief article highlighting the goals, policies, and practices of criminal domestic violence courts nationwide.*
- [Court Responses to Batterer Program Noncompliance: A National Perspective](#)  
*A study that examines how criminal courts respond when domestic violence offenders are noncompliant with a court mandate to a batterer program. The study, based on a national survey of courts, batterer programs, and victim assistance agencies in all 50 states.*

### **Veterans in the Justice System from the Idaho Domestic Violence Court Website:**

- [Veterans in the Justice System: Treatment of Violent Offenders](#)  
*Located on the Idaho Domestic Violence Court Website, an article from the [Los Angeles Daily Journal](#) explores the Military's Response to Domestic Violence: Tools for Civilian Advocates*

[Part 1](#), [Part 2](#), [Part 3](#), [Part 4](#), and [Part 5](#).

## Related Resources

The [Tribal Law and Policy Institute](#), the [National Council of Juvenile and Family Court Judges](#) and the [National Congress of American Indians](#) hosted a series of [Three Webinars](#) regarding tribal protection orders.

- [Tribal Protection Orders - Contempt and Tribal Protection Orders Webinar Recording](#) discusses enforcing protection orders generally and for VAWA Special Domestic Violence Criminal Jurisdiction (SDVCJ). It discussed how to enforce tribal protection orders through: criminal prosecution, criminal contempt, and civil contempt. Enforcing tribal protection order under the VAWA SDVCJ is also addressed.
- [Tribal Protection Orders: Issuing Tribal Protection Orders Webinar Recording](#) discusses how to craft tribal protection orders, what language must be included in a tribal protection order, and how to meet the Violence Against Women Act (VAWA) full faith and credit provision.
- [Tribal Protection Orders - Enforcing Protection Orders Generally and for VAWA Special Domestic Violence Criminal Jurisdiction Webinar Recording](#) discusses what powers judges have to maintain the safety, order and integrity of the court while issuing and enforcing tribal protection orders.

The [National Indigenous Women's Resource Center](#) (NIWRC) is a Native nonprofit organization that was created specifically to serve as the National Indian Resource Center (NIRC) Addressing Domestic Violence and Safety for Indian Women. Under this grant project and in compliance with statutory requirements, the NIWRC will seek to enhance the capacity of American Indian and Alaska Native (Native) tribes, Native Hawaiians, and Tribal and Native Hawaiian organizations to respond to domestic violence.

The [National Indigenous Women's Resource Center](#) (NIWRC) and The Hotline have launched the first, national crisis line dedicated to serving tribal communities affected by violence across the U.S., called the [StrongHearts Native Helpline](#). All services available through the helpline are confidential and available by dialing 1-844-7NATIVE (1-844-762-8483) Monday through Friday, from 9 a.m. to 5:30 p.m. CST. Callers after hours will have the option to connect with the National Domestic Violence Hotline or to call back the next business day.

[American Bar Association Commission on Domestic and Sexual Violence](#) mission is to increase access to justice for victims of domestic violence, sexual assault and stalking by mobilizing the legal profession. (image will be hyperlinked to the website)

## Civil Protection Orders, Laws, & Policies

- [Model Policy for Imposing, Modifying and Lifting No Contact Orders for Prosecutors and For Judges](#)

*These publications drawn from the Idaho Domestic Violence Court website and drafted by the Battered Women's Justice Project sets forth an analysis for judges and prosecutors to use when facing difficult decisions regarding the entering or modifying of no contact orders in criminal domestic violence cases. Even judges experienced in handling domestic violence cases and criminal no-contact orders might find the Judicial Analysis at the end of this paper very useful.*

- [Civil Protection Orders: A Guide for Improving Practice \(2010\).](#)

*This publication is known as the CPO Guide. The National Council of Juvenile and Family Court Judges, in partnership with the Department of Justice Office on Violence Against Women developed the CPO Guide as a tool designed to support the work of professional dedicated to enhancing the effectiveness of the civil protection order process. It provides guidance for advocates, attorneys, judges, law enforcement personnel, and prosecutors to help ensure that protection orders are effectively issued, served, and enforced across the country.*

- [Protecting Victims of Domestic Violence: A Law Enforcement Officer's Guide to Enforcing Protection Orders Nationwide](#)

*Law enforcement officers play a crucial role in protecting victims of domestic violence, dating violence, sexual assault and stalking. This publication is intended to provide guidance to officers on the full faith and credit provision of VAWA and the enforcement of civil and criminal protection orders.*

## **Children & Domestic Violence**

- [A Judicial Guide to Child Safety in Custody Cases.](#)

*Because custody cases involving abuse have intermingled issues of safety and access, judges require effective and accessible information and tools to aid their decision-making. The Judicial Guide contains 14 bench cards which provide an easy-to-use checklist system for judges at critical decision-making points throughout the case.*

- [Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judges Guide.](#)

*As the volume of cases involving custody, parent access, and domestic violence continues to rise, judges are relying on professional custody evaluators to inform their decisions more than ever before. This Navigating Guide is designed to serve as a practical tool for judges on how to interpret and act on professional child custody evaluations when domestic violence is involved in family law cases. The Guide includes four bench cards and supplementary materials.*

## **Report on American Indian/Alaska Native Children Exposed to Violence**

*Based on a series of public hearings, research, and input from community members, experts, and advocates, the AI/AN Task Force advisory committee produced the [Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence: Ending Violence so Children Can Thrive](#) (2014). It provides high-level policy recommendations to address issues faced by American Indian and Alaska Native children exposed to violence.*

- [Full Report](#)
- [Executive Summary](#)
- [Adverse Childhood Experiences \(ACEs\) Study](#)

A website dedicated to the ACE study and the effects of adverse childhood experiences including intimate partner violence.

### **Tribal Law and Policy Institute (TLPI) Websites**

[Tribal Protection Order Resources](#) is a website developed by TLPI is intended to serve as an online resource pertaining to drafting and enforcing tribal protection orders.

[Tribal Sex Trafficking Resources](#) provides comprehensive information on sex trafficking as it impacts Native people and Native nations; including, publication resources, victim service directories, and training calendars. Be sure to visit our blog, [Sex Trafficking in Indian Country Update](#), which contains the latest media, news articles, and policy updates on sex trafficking in Indian Country.

The [Tribal Law and Policy Institute homepage](#) houses publications and links to the various TLPI websites including a [Page Devoted to Domestic Violence Resources](#).

### **Tribal Law and Policy Institute (TLPI) Publications**

The [Tribal Law and Policy Institute](#) (TLPI) has developed many resources to assist tribal governments in creating a comprehensive, community based, victim-centered response to violence against Native women. Each resource is designed to help your tribal government customize laws and policies that fit your community's values, principles, and capacities. These resources are all freely available for downloading on the [Tribal Court Clearinghouse](#), except for the textbook, which is available at the [Roman & Littlefield website](#).

[Tribal Legal Code Resource: Domestic Violence Laws](#). Primary Authors: Sarah Deer, Maureen White Eagle, Kelly Stoner, Carrie Martell, and Hallie Bongar White. (Revised February 2015). This resource was developed by TLPI in cooperation with OVW and BJA. This victim-entered approach to domestic violence against Native women Guide includes exercises, examples, and discussion questions to help tribes customize their laws to meet the needs of their community. This resource was revised and updated in

2012 and in 2015, to include the Tribal Law and Order Act (TLOA) (2010) and the Violence Against Women Act Reauthorization of 2013 (VAWA 2013).

**[Tribal Legal Code Resource: Tribal Laws Implementing TLOA and VAWA 2016.](#)**

Primary Authors: Maureen White Eagle, Melissa Tatum, and Chia Halpern Beetso. (March 2016). This Guide is designed to be a resource for tribes interested in implementing the Tribal Law and Order Act sentencing enhancement provisions and/or VAWA 2013's Special Criminal Domestic Violence Jurisdiction. The resource focuses on the tribal code and rule changes that may be needed should a tribe elect to implement the increased tribal authority in either or both statutes. It discusses the concerns and issues that need resolution in implementation and provides examples from tribal codes and tribal court rules.

**[Tribal Legal Code Resource: Sexual Violence and Stalking Laws: Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking.](#)**

Primary Authors: Maureen White Eagle and Sarah Deer. (Revised July 2017). ***Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking*** is designed to assist Native nations interested in developing or revising victim-centered laws on sexual assault and stalking. This resource includes sample language and exercise questions designed to Guide discussion on what laws will best reflect tribal values. Originally published in 2008, this resource was revised and updated to reflect innovations in tribal law and new federal requirements. (2017)

**[Tribal Legal Code Resource: Tribal Judge's Sexual Assault Bench Book and Bench Card.](#)**

Primary Author: Maureen White Eagle. (June 2011). This resource was developed by TLPI in cooperation with the Office on Violence Against Women as a resource for tribal judges who hear sexual assault cases in tribal courts. It provides background information on important sexual assault and tribal jurisdictional issues, as well as providing guidance in handling key issues at various stages of a sexual assault criminal trial.

**[Tribal Domestic Violence Case Law: Annotations for Selected Cases.](#)** (June 2011). This resource was developed by the TLPI in cooperation with the Office on Violence Against Women as a resource for tribal judicial officers in understanding how some tribal governments have handled certain legal issues within the context of domestic violence cases. While a great deal of research has been done on case law in the state systems, little to no analysis has been done on the tribal judicial approach to domestic violence. This compendium, developed as part of an overall code-writing workshop curriculum for tribal governments, will assist tribal legislators as well. Understanding how laws are interpreted by the court systems may impact the development of laws that provide safety to tribal citizens.

**[Listen to the Grandmothers Video](#)** and **[Video Discussion Guidebook](#)**. Listen to the Grandmothers is designed to assist tribal programs with incorporating cultural traditions



into contemporary responses to violence against Native women. The Listen to the Grandmothers video features Native elders speaking to the problem of violence against Native women. The video provides a historical overview of violence against Native women, traditional responses, and an analysis concerning the incorporation of cultural traditions into contemporary responses to violence against women.

**[Sharing Our Stories of Survival: Native Women Surviving Violence](#)**. This textbook is a general introduction to the social and legal issues involved in acts of violence against Native women; this book's contributors are lawyers, advocates, social workers, social scientists, writers, poets, and victims. In the United States, Native women are more likely than women from any other group to suffer violence, from rape and battery to more subtle forms of abuse, and Sharing Our Stories of Survival explores the causes and consequences of such behavior. The stories and case studies presented here are often painful and raw, and the statistics are overwhelmingly grim. But a countervailing theme also runs through this extremely informative volume: many of the women who appear in these pages are survivors, often strengthened by their travails, and the violence examined here is human violence, meaning that it can be changed, if only with much effort and education. The first step is to lay out the truth for all to see, and that is the purpose accomplished by this textbook. **[Trainer's Manual, Guide for Using Sharing Our Stories of Survival for Training on Sexual Assault and Domestic Violence Involving Native Women](#)**. Primary Authors: Maureen White Eagle and Bonnie Clairmont. The manual is specifically designed to give guidance to advocates in presenting workshops, conference plenary sessions, and staff and community training. It provides the directions and materials for eight interactive workshops/training sessions based on Parts of the textbook, Sharing Our Stories of Survival.

**[Law Enforcement Protocol Guide: Sexual Assault](#)**. Primary Authors: Hallie Bongar White, James White, Sarah Deer, and Maureen White Eagle. (July 2008). This resource was developed by the TLPI in conjunction with Southwest Center for Law and Policy as a tool for improving the investigation of sexual assault crimes. Effective investigations increase the likelihood of victim participation and increase the probability of convictions in tribal, state, and/or federal courts. This Guide focuses on the development of an internal protocol for law enforcement. A law enforcement protocol can enhance the efforts of all community agencies in addressing sexual violence. Once a tribal government has strong laws in place, this publication will help create policies and protocols for a law enforcement agency to enforce laws.

**[Prosecutor Protocol Guide: Sexual Assault](#)**. Primary Authors: Hallie Bongar White, James White, Sarah Deer, and Maureen White Eagle. (September 2008). This resource was developed by the TLPI in conjunction with Southwest Center for Law and Policy as a tool for improving the prosecution of sexual assault crimes. Holding offenders accountable for their actions is a key part of making a community safe. This publication is designed to help a prosecutor's office ensure consistency and compassion for all survivors. This Guide



focuses on the development of an internal protocol for tribal prosecution. A prosecutor protocol can enhance the efforts of all community agencies in addressing sexual violence.

**Sexual Assault Response Team (SART) Resource.** Primary Authors: Bonnie Clairmont and Maureen White Eagle. (September 2008). This resource was developed by the TLPI in conjunction with Southwest Center for Law and Policy as a Guide to creating cohesive policies between tribal agencies. Victims of sexual assault deserve a coordinated, comprehensive response from a variety of community agencies. This SART resource provides a starting point for developing victim-centered SART teams in your community.

**Tribal Domestic Violence Courts and Dockets:** The webpage is devoted to providing information on tribal domestic violence courts and tribal domestic dockets. It also provides information on related resources such as: non-tribal specific domestic violence courts/dockets; domestic violence resources; and other TLPI publications and resources.

**Tribal Domestic Violence Courts Fact Sheet:** This fact sheet discusses various tribal domestic violence court models; benefits of establishing a tribal domestic violence court; why a tribal community should consider establishing a tribal domestic violence court and how a tribal domestic violence court can benefit a tribe exercising the Violence Against Women Reauthorization Act of 2013 regarding special domestic violence criminal jurisdiction over non-Indians. (2017)

**Tribal Domestic Violence Dockets Fact Sheet:** This fact sheet discusses positive outcomes from having domestic violence cases on a specific docket/day; why tribal domestic violence dockets are needed; benefits of establishing a tribal domestic violence docket; why a tribal community should consider establishing a tribal domestic violence docket and how a tribal domestic violence docket can benefit a tribe exercising the Violence Against Women Reauthorization Act of 2013 – Special Domestic Violence Criminal Jurisdiction over non-Indians. (2017)

**Tribal Protection Order Resources:** This website serves as an online resource pertaining to drafting and enforcing tribal protection orders. It provides information on tribal protection orders, including publication resources and training calendars.

**Tribal Sex Trafficking Resources:** This website provides comprehensive information on sex trafficking as it impacts Native people and Native nations; including, publication resources, victim service directories, and training calendars.

# APPENDIX C

## Sample Questionnaire—Inventory of Existing Services<sup>68</sup>

### Inventory of Existing Services Referral Questionnaire

#### 1. Agency Information

Name of Agency  
Name of Contact Person  
Street Address  
City State Zip  
  
Telephone/Fax

#### 2. Services Provided

What primary services do you offer to, or on behalf of, crime victims?  
\_\_\_ Counseling \_\_\_ Support group \_\_\_ Legal assistance \_\_\_ Medical care \_\_\_  
Court advocacy/escort \_\_\_ Reference  
\_\_\_ Other (Please be specific)

What support services is your organization able to provide to crime victims?  
\_\_\_ Emergency funds \_\_\_ Child care \_\_\_ On-call response  
\_\_\_ Lock replacement \_\_\_ Transportation \_\_\_ Other (Please be specific)

#### 3. Charges for Services

Does your organization charge victims for its services? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what arrangements are available to assist clients with limited resources?

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<sup>68</sup> Drawn from but adapted: Anita B. Boles and John C. Patterson. *Improving Community Response to Crime Victims, An Eight-Step Model for Developing Protocol*. Thousand Oaks, CA: Sage Publications (1997).

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#### 4. Field Offices/Branch Locations

Does your organization have field offices or branch locations?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, how many of them serve victims? \_\_\_\_\_

Locations: *If necessary, please attach additional pages with addresses of field offices or branch locations and hours of operation of each.*

Location: \_\_\_\_\_ Hours of operations: \_\_\_\_\_ to \_\_\_\_\_  
Number of blocks to public transportation: Accessible to individuals with disabilities: Yes \_\_\_\_\_ No \_\_\_\_\_

Location: \_\_\_\_\_ Hours of operations: \_\_\_\_\_ to \_\_\_\_\_  
Number of blocks to public transportation: Accessible to individuals with disabilities: Yes \_\_\_\_\_ No \_\_\_\_\_

Location: \_\_\_\_\_ Hours of operations: \_\_\_\_\_ to \_\_\_\_\_  
Number of blocks to public transportation: Accessible to individuals with disabilities: Yes \_\_\_\_\_ No \_\_\_\_\_

Location: \_\_\_\_\_ Hours of operations: \_\_\_\_\_ to \_\_\_\_\_  
Number of blocks to public transportation: Accessible to individuals with disabilities: Yes \_\_\_\_\_ No \_\_\_\_\_

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#### 5. Staff Information

How many paid staff provide services for, or on behalf of, crime victims? \_\_\_\_\_

Does your organization provide staff training? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please describe your training program. Indicate topics and number of hours of training provided pertaining to crime victims and victim services.

Formal training for new staff: \_\_\_\_\_  
\_\_\_\_\_

Specialized courses: \_\_\_\_\_  
\_\_\_\_\_

In-service training: \_\_\_\_\_  
\_\_\_\_\_

Provisions for conference and seminar attendance:

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Does your organization participate in training programs related to crime victims provided by other agencies or organizations: Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please describe the training provided by other agencies or organizations:

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## APPENDIX D

### Sample Victim Survey

*The following example is in PDF non-fillable format. Note, although this resource focuses on sexual assault it can be easily adapted for domestic violence, dating violence and stalking cases.*

#### **Instructions:**

Everyone use page 1 “General Information” for the front of the survey and the back portion of the survey will correspond to the discipline administering the services.

**These surveys should be disseminated to and completed by the victim upon completion of services.**

# Sample Victim Survey<sup>1</sup>

<<Insert your program's name>> is conducting a survey of sexual assault victims to evaluate their perception of services they received in the immediate aftermath of a disclosure of sexual assault. The information you provide will be used to improve initial community response to victims.

The survey asks questions mainly about services provided by agencies typically involved in initial response to sexual assault in our community—victim advocacy programs, health facilities, clinics and programs, and law enforcement agencies. The survey is anonymous and you need not give your name. Survey answers will be held in the strictest confidence. Once you have completed the survey, please place it in the enclosed stamped, pre-addressed envelope and return it to the <<Insert your program's name>>.

If you experience emotional stress while completing the survey and would like to talk with a victim advocate, please call - <<Insert the advocacy program's name>>.

Thank you for your help.

## 1. General Information

- a. Gender: \_\_\_\_\_ b. Ethnicity/Tribe: \_\_\_\_\_
- c. When did the sexual assault take place (for which you requested/received services)? Year: \_\_\_\_\_
- d. Your age at the time of this assault: \_\_\_\_\_ e. Had you even been sexually assaulted before this time? ? ☐ Y ☐ N
- f. What was the sex/gender of the person(s) who assaulted you? ☐ M ☐ F
- g. Was the person(s) who assaulted you a stranger? ☐ Y ☐ N
- h. If no, what was his/her relationship to you? ☐ person of authority (boss, teacher, caregiver, community/spiritual leader, etc.) ☐ acquaintance ☐ friend ☐ parent ☐ other relative ☐ dating partner ☐ spouse ☐ someone you had seen before/knew of, but with whom you had no relationship ☐ other: \_\_\_\_\_
- i. Identify the first agency you contacted after you were sexually assaulted? \_\_\_\_\_
- j. How soon after the assault did the contact with this agency occur? \_\_\_\_\_
- k. Did the first agency contacted suggest you should contact other agencies for additional assistance? ☐ Y ☐ N
- l. What agencies/organizations were you referred? Which did you have contact with/provided services? List below:

Victim advocacy program	Check which apply for each: <input type="checkbox"/> referral <input type="checkbox"/> provided services
Health facilities	Check which apply for each: <input type="checkbox"/> referral <input type="checkbox"/> provided services
Law enforcement agencies (tribal, federal, state/county)	Check which apply for each: <input type="checkbox"/> referral <input type="checkbox"/> provided services
Others	Check which apply for each: <input type="checkbox"/> referral <input type="checkbox"/> provided services

- m. Explain if there was anything that prevented you from using any of the above services (specify service/reason):

## 2. Victim Advocacy Program (If you didn't receive advocacy services, continue to Section 3.)

Please indicate your satisfaction with each item by placing an "X" in the appropriate column.

Victim Advocate(s)...	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Not Applicable
a. Provided emotional support to help you cope with the immediate crisis.						
b. Assisted you with safety planning if needed.						
c. Validated you for reaching out for help and reminded you that you were not to blame for the assault.						
d. Helped you articulate your immediate needs and concerns and identify your options for addressing those needs and concerns.						
e. Demonstrated knowledge about what your rights are and what you could expect from responding agencies: advocacy, health care, criminal justice agencies and others as appropriate to your case.						
f. Encouraged you to obtain medical care and forensic evidence collection if appropriate to your case. Explained how to preserve evidence until arrival at health facility.						
g. Explained reporting options and assisted you in contacting law enforcement, if that was your decision.						
h. Referred you to/connected you with other agencies for additional services as appropriate to your needs.						
i. Facilitated communication and problem-solving among all responders as needed to maximize the benefits of their services to you.						
j. Advocated for your decisions to be respected and your needs met by all responders in a coordinated, culturally appropriate and sensitive manner.						
k. Provided accompaniment, information, support and/or advocacy during the medical forensic examination and law enforcement interviews.						
l. Provided support for your family and friends as they coped with your sexual assault, as necessary.						
m. Followed up with you, if you permitted after the initial contact, the medical forensic exam, and/or initial law enforcement interviews.						
n. Assisted you in dealing with community/media inquiries concerning your victimization.						

At any point during your initial contact with victim advocates, did you feel treated poorly? \_\_Y \_\_N

Help us understand why by checking any of the following reasons: \_\_ my race/ethnicity \_\_ my age \_\_ my gender/sex \_\_ my disability \_\_ my spiritual beliefs/religion \_\_ my sexual orientation \_\_ my immigration status \_\_ my difficulty speaking English \_\_ my profession \_\_ my alcohol use \_\_ my drug use \_\_ didn't believe me \_\_ other:

**Best part about victim advocacy services? Worst part?**

**What changes would you recommend to make victim advocacy services more effective for others victims?**



### 3. Medical Forensic Examination (If you didn't receive medical forensic care, continue to Section 4.)

Please indicate your satisfaction with each item by placing an "X" in the appropriate column.

Medical Personnel...	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Not Applicable
a. Promptly facilitated an initial assessment and care of acute injuries after your arrival at the health facility.						
b. Explained the potential need for further medical assessment and forensic evidence collection.						
c. Offered the support services of a victim advocate during the examination, explaining the benefits.						
d. If law enforcement was not already involved, explained your options for reporting and assisted you in contacting law enforcement, if you wished or if a mandatory report was required.						
e. Provided accommodations to help you be more comfortable while waiting for the examination to begin (a private room, blanket, etc.).						
f. Explained specific steps of and procedures to be used during the examination and answered your questions.						
g. Obtained your consent prior to initiating examination procedures.						
h. Demonstrated knowledge, skill and sensitivity during the exam—when obtaining your history and the account of the assault, further assessing and treating your injuries, and collecting forensic evidence.						
i. Demonstrated culturally sensitivity to your needs and respect for your decisions during the exam.						
j. Minimized your discomfort during the exam.						
k. Discussed your medical concerns and possible physical consequences of victimization (e.g., sexually transmitted infection (STIs), HIV/AIDS and pregnancy), and options for care.						
l. Provided treatment for non-acute injuries and preventative care for STIs, HIV/AIDS and/or pregnancy, if desired (if not on-site, instructed you where to go).						
m. Provided facilities for washing post-examination.						
n. Offered replacements for clothing taken as evidence.						
o. Before discharge, made sure your health needs were addressed, scheduled medical follow-up appointments and contact, assisted you in planning for safety if that was an issue, and referred you to/connected you with additional community services.						
p. Assisted with transport to/from the health facility.						
q. Explained who had financial responsibility for the exam/evidence collection and expenses you may incur.						
r. Coordinated with other responders during the exam process to address your needs.						

At any point during your initial contact with medical personnel, did you feel treated poorly? \_\_Y\_\_N

Help us understand why by checking any of the following reasons: \_\_ my race/ethnicity \_\_ my age \_\_ my gender/sex \_\_ my disability \_\_ my spiritual beliefs/religion \_\_ my sexual orientation \_\_ my immigration status \_\_ my difficulty speaking English \_\_ my profession \_\_ my alcohol use \_\_ my drug use \_\_ didn't believe me \_\_ other:

**Best part about medical forensic care received? Worst part?**

**What changes would you recommend to make medical forensic care more effective for others victims?**

#### 4. Law Enforcement (If you didn't receive law enforcement assistance and/or report to law enforcement, continue to Section 5.)

Please indicate your satisfaction with each item by placing an "X" in the appropriate column.

Law Enforcement Representatives...	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Not Applicable
a. During the 911 call, showed concern for your safety, sought to identify your needs, directed you to preserve evidence on your body, and coordinated initial law enforcement/emergency medical assistance as needed.						
b. Responded in a timely manner to the request for on-site law enforcement assistance.						
c. Addressed your immediate safety concerns, administered first aid and requested medical support if necessary (and not already at health facility).						
d. Offered the support of a victim advocate, explaining benefits. Connected you with an advocate, with your consent.						
e. Provided information about what to expect during a sex crimes investigation and subsequent criminal justice proceedings. Answered your questions.						
f. Explain your potential need for a medical examination and evidence collection. With your consent, arranged transport to the health facility.						
g. If a medical forensic examination is conducted, asked you to sign a release to allow criminal justice agencies to access your medical records and evidence.						
h. Worked to minimize your discomfort during the preliminary interview and allowed an advocate to be present to support you.						
i. Involved you in making decisions-related to your case, from whether a formal report was made, whether to involve an advocate, whether an medical forensic examination was permitted, what evidence was collected, when to do the preliminary interview, etc.						
j. Demonstrated professionalism, understanding of the issue of sexual assault, sensitivity for your needs, and respect for your decisions.						
k. Responded in a culturally appropriate/sensitive way and accommodated your needs to the extent possible.						
l. Coordinated with other law enforcement agencies as needed to facilitate the investigation and referred you to other responders to address your needs.						
m. Provided contact information of the investigating officer. Advised you to call if you were in danger, being intimidated by the suspect, had new evidence/ information, or wanted to know the status of your case.						

At any point during your initial contact with law enforcement representative, did you feel treated poorly? ☐ Y ☐ N

Help us understand why by checking any of the following reasons: ☐ my race/ethnicity ☐ my age ☐ my gender/sex ☐ my disability ☐ my spiritual beliefs/religion ☐ my sexual orientation ☐ my immigration status ☐ my difficulty speaking English ☐ my profession ☐ my alcohol use ☐ my drug use ☐ didn't believe me ☐ other:

Best part about law enforcement involvement? Worst part?

What changes would you recommend to make law enforcement involvement more effective for others victims?

**5. Comments on services received from other agencies/professionals involved in immediate response to you** (best part, worst part, recommendations for change):

**6. Any additional comments** (on your experiences with other agencies involved in more comprehensive response to your sexual assault, about the impact of community responses on you, about strengths of responding agencies, improvements you would recommend, etc. )

Again, **thank you for completing this survey**. Your responses will help us to improve services for sexual assault victims in our community.

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<sup>1</sup> Adapted from A.B. Boles, and J.C. Patterson, *Improving Community Response to Crime Victims, An Eight-Step Model for Developing Protocol*, Thousand Oaks, CA: Sage Publications, 1997, and D. Fry, *A Room of our Own: Sexual Assault Survivors Evaluate Services, A Research Report from the New York City Alliance Against Sexual Assault*, (Appendix survey instrument), 2007, [http://www.nycagainstrape.org/media/research/2007\\_04\\_survivor\\_survey.pdf](http://www.nycagainstrape.org/media/research/2007_04_survivor_survey.pdf).

## **APPENDIX E**

### **Sample Public Hearing Announcement**

The (name of community) Tribal Planning Team will hold a public hearing at (time) on (day of week and date) in (name of place and address). The purpose of the hearing is to obtain information about the needs of crime victims in the community. The Planning Team will draw on this information as it develops interdisciplinary/multiagency protocol for responding to crime and its victims.

According to (name of title of official spokesperson), there were (number of) crimes reported in (name of community) last year. The actual number of crimes is unknown because, as documented in several research studies, many victims are reluctant to report the crimes committed against them.

Representatives of law enforcement, medical, religious, social services, victim services, and criminal justice system agencies, as well as several elected officials, are expected to testify during the hearing. Invitations were also extended to organizations serving distinct populations of elderly, disabled, and minority groups to speak on behalf of their constituencies,

Individuals who wish to present information at the hearing should contact (name) at (telephone number). Due to time constraints, speakers will be limited to five (5) minutes each in which to make their statements. Additional written information will be accepted by the interagency council.

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## **APPENDIX F**

### **Sample Memorandum of Understanding**

*Note, although this resource focuses on sexual assault it can be easily adapted for domestic violence, dating violence and stalking cases.*

#### **Hannahville Indian Community's Protocol and Procedure for Sexual Assault**

*The Hannahville Indian Community Prosecutor office, the Hannahville Tribal Police Department, the Victims Of Crime Office, the Health And Human Services Clinic, the Tribal Court Of The Hannahville Indian Community agree to the following collaboration effort to develop and implement a protocol to address the needs of Native American women who are victims of the crime of sexual assault and agree to work together and implement this protocol as a comprehensive and multi-faceted approach to reduce violent crime against Indian women under the Stop Violence Against Indian Women Discretionary grants program.*

*Members of the above-mentioned agencies have participated in a collaborative response effort, developing and enhancing an ever-expanding plan to provide the most effective response possible to address the crime of Sexual Assault on the Hannahville Indian Reservation. All agencies agree that they participated in the development of this Sexual Assault Protocol individually and collectively with members of the We' We' Netth e ge' program staff, specifically with the STOP Violence Against Indian Women Coordinator and/or the VOCA Victims of Crime Advocate.*

*To accomplish this effort all parties agree to work together to implement this protocol that identifies and addresses areas of concern regarding the crime of Sexual Assault on the Hannahville Indian Reservation. All parties agree to work to the best of their abilities to follow the duties as outlined and agreed to in the Sexual Assault Protocol.*

*All agencies are responsible for monitoring the internal operation of their respective departments and agree to meeting with the STOP Violence Coordinator and the Victims of Crime Advocate to discuss joint concerns and possible solutions to any problem areas that may arise during and after the implementation period. Responses to problem areas that can be addressed internally with procedural changes and/or available on-site training will be supported and encouraged. However, programmatic changes that are necessary to enhance responses to victims of the crime of sexual assault and need support and development of funding enhancements are to be reviewed and prioritized for STOP grant planning.*

*It is agreed that the following individuals participated with the STOP Violence Against Indian Women Office in the development of the Sexual Assault Protocol and will be responsible for implementing the protocol in their respective program areas: Tribal*

*Court Magistrate; Tribal Court Prosecutor; Tribal Probation; Health and Human Services Director; Tribal Vice-Chair; Project Director We’We’Netth e ge’; Chief of Hannahville Tribal Police Department; Lt. Hannahville Tribal Police Department; VOCA Victim Advocate; and STOP Violence Against Indian Women Coordinator.*

*(List of names and agencies they represent inserted here)*

\*\*\* NOTE THAT CONFIDENTIALITY ISSUES MAY NOT BE COMPREHENSIVELY ADDRESSED IN THIS TEMPLATE. ANY ATTEMPTS TO ADDRESS CONFIDENTIALITY AND SHARING OF CLIENT INFORMATION REQUIRES LEGAL ASSISTANCE OR TECHNICAL ASSISTANCE

## APPENDIX G

### Tribal Technical Assistance Providers

Technical Assistance providers:  
American Indians Against Abuse Inc.  
715-634-9980  
[aiaawi.org](http://aiaawi.org)

Mending the Sacred Hoop  
202 W. 2nd Street  
Duluth, MN 55802  
888-305-1650 218-623-HOOP  
[mshoop.org](http://mshoop.org)

Minnesota Indian Womens Sexual  
Assault Coalition  
1619 W Dayton Ave # 202  
St Paul, MN 55104  
651-646-4800  
[www.miwsac.org](http://www.miwsac.org)

National Indigenous Women's Resource  
Center  
515 Lame Deer Ave. / PO Box 99  
(Mailing)  
Lame Deer, MT 59043  
406-477-3896  
[www.niwrc.org](http://www.niwrc.org)

Native Alliance Against Violence  
PO Box 5507  
Norman, OK 73070  
405-801-2277  
[oknaav.org](http://oknaav.org)

Red Wind Consulting, Inc.  
5350 Tomah Dr #2500  
Colorado Springs, CO 80918  
833-719-9463  
[www.red-wind.net](http://www.red-wind.net)

Restoring Ancestral Winds Coalition  
741 East 9000 South  
Sandy UT, 84094  
801-561-7374  
[www.restoringawcoalition.org](http://www.restoringawcoalition.org)

Southwest Center for Law and Policy  
4015 E Paradise Falls Dr. Suite 131  
Tucson, AZ 85712  
520-623-8192  
[www.swclap.org](http://www.swclap.org)

Tribal Law and Policy Institute  
8235 Santa Monica Blvd., Suite 211  
West Hollywood, CA 90049  
323-650-5467  
[home.tlpi.org](http://home.tlpi.org)



Tribal Coalitions:  
Alliance of Tribal Coalitions to End  
Violence  
10049 Kitsap Mall BLVD, Suite 304  
Silverdale, WA 98383  
888-577-0940  
[www.atcev.org/](http://www.atcev.org/)

Coalition to Stop Violence Against  
Native Women  
4600 Montgomery Blvd NE, Ste B202  
Albuquerque, NM 87109  
505-243-9199  
[www.csvanw.org](http://www.csvanw.org)

First Nations Women's Alliance  
PO Box 107  
1222 Hwy 2 E  
Devils Lake, ND 58301  
701-662-3380  
[www.nativewoman.org](http://www.nativewoman.org)  
E-mail: [fnwa16@gmail.com](mailto:fnwa16@gmail.com)

Healing Native Hearts Coalition  
PO Box 81064  
Fairbanks, Alaska 99708  
907-371-6610  
[hnhcoalition.org](http://hnhcoalition.org)

Hopi-Tewa Womens Coalition to End  
Abuse  
PO Box 239  
Second Mesa, AZ 86043  
928-737-9000  
[facebook.com/hopitewawomenscoalitio  
n/](https://facebook.com/hopitewawomenscoalition/)

Montana Native Womens Coalition  
114 5th St S  
Glasgow, MT 59230  
406-228-2238  
[www.facebook.com/MontanaNativeWo  
mensCoalition](https://www.facebook.com/MontanaNativeWomensCoalition)

Native Womens Society of the Great  
Plains  
PO Box 448  
Eagle Butte, SD 57625  
605-200-2699  
[www.nativewomenssociety.org](http://www.nativewomenssociety.org)  
Email: [nativewomenssociety@gmail](mailto:nativewomenssociety@gmail.com)  
.com

Seven Dancers Coalition  
PO Box 399  
Akwesasne, NY 13655  
518-358-2916  
[www.sevendancerscoalition.com](http://www.sevendancerscoalition.com)

Southwest Indigenous Women's  
Coalition  
PO Box 42276  
Mesa, Arizona 85274  
[www.swiwc.org](http://www.swiwc.org)

Strong Hearted Native Womens  
Coalition  
PO Box 2488  
Valley Center, CA 92082  
760-644-4781  
[strongheartednativewomen.org](http://strongheartednativewomen.org)

Uniting Three Fires Against Violence  
519 Court St. Suite A.  
Sault Ste. Marie, MI 49783  
906-253-9775  
[unitingthreefiresagainstviolence.org](http://unitingthreefiresagainstviolence.org)

Wabanaki Women's Coalition  
PO Box 365  
Lincolnville, ME 04849  
207-538-0858  
[www.wabanakiwomenscoalition.org](http://www.wabanakiwomenscoalition.org)  
Email:  
[wabanakiwomenscoalition@gmail.com](mailto:wabanakiwomenscoalition@gmail.com)

The Washington State Native American  
Coalition Against Domestic Violence and  
Sexual Assault-WomenSpirit Coalition  
10049 Kitsap Mall Blvd, Suite 304  
Silverdale WA 98383  
360-633-7083  
[www.womenspirit.net](http://www.womenspirit.net)

Yupik Womens Coalition  
PO Box 207  
Emmonak, Alaska 99581  
907-949-6252 or 907-949-6388  
[www.yupikwomen.org](http://www.yupikwomen.org)



# GLOSSARY

The definitions in this glossary are meant to provide a general definition in common language to legal terms. Many of the definitions have been tailored for specific relevance to this Guide. Not all terms are found in this Guide but are listed here as a useful resource when reviewing tribal codes. Legal definitions may vary from one jurisdiction to another. **Use of Female Pronoun:** Based on statistical data and anecdotal evidence, the overwhelming majority of victims of domestic violence assaulted are female and the majority of their batterers are male. In recognition of that fact, we use female pronouns when referring to victims and male pronouns when referring to batterers as well as for ease of reading. However, the discussion in the Guide applies equally to male victims or female batterers unless otherwise specified.

**Action:** Term in usual legal sense means lawsuit.

**Affidavit:** A written statement of facts, made voluntarily and confirmed by the oath of the person making the affidavit before a person authorized to administer an oath, such as a notary public.

**Arraignment:** The procedure in which an accused is brought before a judge to hear criminal charges against him and to enter a plea.

**Assault:** An intentional attempt or threat to inflict injury upon another, when coupled with an apparent ability and any intentional display of force that could reasonably make a person feel in danger of harmful physical contact.

**Banishment:** Requiring a convicted offender to leave a reservation or country.

**Batterer:** The offender or perpetrator of domestic violence.

**Battery:** An intentional, unconsented-to, physical contact by one person (or an object controlled by that person) with another person that results in some injury or offensive touching.

**Burden of Proof:** In evidence law it refers to the duty or obligation of a person, who is a party to the lawsuit, to prove a particular fact or issue through evidence.

**Civil Action:** A lawsuit brought to enforce, compensate a party for a loss, or protect private rights. All types of legal actions are not considered criminal. Actions for divorce, to recover damages for injury, or for a protection order are a few examples of civil actions.

**Civil Contempt:** A civil contempt action is generally brought when a person fails to obey a court order, such as a violation of a protection order or injunction. Contempt of court is the deliberate failure to comply with an order of the court. Punishment for civil contempt may be a

fine or imprisonment, the purpose of such punishment is to compel compliance with the order of the court.

**Civil Jurisdiction:** The power of a court to hear and decide civil actions.

**Civil Law:** Body of law that governs private or civil rights providing redress for wrongs by compensating or providing other civil relief to the person or entity that has been wronged, as opposed to criminally punishing the wrongdoer.

**Civil Regulatory Authority:** The authority to enact all appropriate legislation (including licensing requirements) to control conduct; or to foster, protect, control or restrain particular activities for the public good. This may include activities such as hunting, fishing, and environmental activities.

**Crime:** An act committed in violation of a law that recommends a particular punishment; considered an offense against the state, tribe, or United States. Crimes are generally divided into misdemeanors and felonies.

**Criminal Action:** A proceeding by which a person charged with a crime is brought to trial and either found guilty or not guilty.

**Criminal Contempt:** A crime that obstructs a judicial duty generally resulting in an act done in the presence of the court, for example: insulting a judge, disrupting a court proceeding, or refusing to answer questions.

**Criminal Jurisdiction:** Power of a court to hear and dispose of criminal cases.

**Code:** A collection of laws, rules, or regulations organized in a particular manner, usually by subject.

**Codification:** The process of collecting and arranging a government's statutes usually covering a particular area or subject of law, for example, U.S. Code, Turtle Mountain Tribal Code, and California Criminal Code.

**Comity:** When one government follows another's judicial decisions or laws, not because they are required to, but out of respect, courtesy, and goodwill.

**Concurrent Jurisdiction:** When two or more courts or legislative or administrative officers have the same authority to deal with a particular subject matter within the same territory.

**Continuance:** The postponement of a court proceeding to a later time.

**Core Case Team (critical to an integrated, collaborative response to domestic violence):** A term that, as defined here, refers to a multidisciplinary team that attends all domestic violence

court hearings and works collaboratively on each case to share information, develop risk assessments, plan strategies to reduce safety risk to the victim and children, and relays that information to the court through recommendations.

**Core Values:** Deeply held beliefs, highest priorities and fundamental forces that drive actions and decisions.

**Crime:** An act committed in violation of a law that recommends a particular punishment; it is considered an offense against the state, tribe, or United States. Crimes are generally divided into misdemeanors and felonies.

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**Criminal Jurisdiction:** Power of a court to hear and dispose of criminal cases.

**Divest:** Deprive or take away a right.

**Deferred Prosecution:** Prosecution is delayed, while offender is obligated to comply with certain conditions. If offender complies the charges are dismissed.

**Deferred Sentencing:** The offender is obligated to comply with certain conditions before he or she is sentenced in the case. The sentence is postponed.

**Diversion Program:** A program in which the offender is ordered to participate in a work or educational program as part of probation.

**Docket:** A formal record briefly entered of the proceedings in a court. A trial docket refers to the list of cases set to be tried before a court.

**Domestic Violence:** The definition of *domestic violence* varies between federal, tribal, and state jurisdictions. Domestic violence is typically defined as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person.

**Due Process:** The U.S. Constitution and Indian Civil Rights Act require that no person be deprived of liberty or property without the due process of the law. There are two aspects: *procedural due process*, in which a person is guaranteed fair procedures, generally referring to a person's right to notice and an opportunity to present his or her side in a legal dispute; and

*substantive due process*, which protects a person's property from unfair governmental interference or taking, requiring the laws to be fair and reasonable in content as well as application.

**Dynamics of Domestic Violence:** Refers to the power and control dynamics present in most cases involving domestic or sexual violence including: intimidation, emotional abuse, isolation, minimizing/denying/blaming, using children, economic abuse, male privilege and/or coercion by threats.

**Elements:** A basic part of a crime or civil action that must be proven. For example, some elements of a cause of action for battery are intentional, unwanted, physical contact. Each part, "intentional," "unwanted," etc. is one element.

**Enhanced Penalties:** Statute allows or requires that the punishment be increased due to the circumstances of the crime or repeating the crime.

**Ex Parte Petition:** A written request that the court take some action immediately for the petitioner, without hearing the respondent's side, as in an ex parte petition for a restraining order. A court generally has certain criteria that must be met before responding to an ex parte petition with an ex parte order. Any order would be temporary out of concern for the respondent's due process rights.

**Ex Parte Proceeding:** Court proceeding in which only the petitioner participates, as in the case of an ex parte temporary restraining order.

**Felony:** A crime of a more serious nature than a misdemeanor. Under many state statutes it is punishable by more than a year in prison or even death.

**Forfeiture:** Loss of some right or property as a penalty for some illegal act.

**Full Faith and Credit:** A legal doctrine that means that an order issued in one jurisdiction, such as a tribal court, will be acknowledged as valid and enforceable in another jurisdiction, such as a state.

**Harassment:** Words, gestures, and actions that tend to annoy, alarm, or abuse another person. Civil and criminal definitions of harassment vary. Criminal laws prohibiting harassment may list specific acts of harassment and increase the penalties based on the level of harassment.

**Hearsay:** A term applied to testimony given by a witness who relates, not what he or she knows personally, but what others have told him or her, or what he or she has heard said by others.

**Historical Trauma:** The cumulative emotional harm of an individual or generation caused by a traumatic experience or event.

**Immunity:** An exemption from a duty legally required of others, freedom from a duty or a penalty, for example, sovereign immunity (government's freedom from being sued) or immunity from prosecution (will not be charged with a crime, due to testimony against others).

**In Camera Hearing:** A private hearing in the judge's chambers or in which others are excluded.

**Indian country:** 18 U.S.C. § 1151 (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of a patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

**Injunction:** A court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury.

**Joint Custody:** There is joint legal custody and joint physical custody. Joint legal custody involves parents jointly sharing responsibility and authority to make important decisions relative to their children. Joint physical custody means sharing the time with the child.

**Jurisdiction:** The geographical area within which a court has the right and power to operate. The persons about whom and the types of cases a court has the right and power to make binding decisions.

**Jurisprudence:** The philosophy of law and the study of legal principles on which legal rules are based.

**Legislative Body:** The branch of government whose appropriate function is the making of laws.

**Misdemeanors:** Any offense lower than a felony and generally punishable by fine, penalty, forfeiture, or imprisonment otherwise than in a penitentiary. Often misdemeanors are punishable by less than one year in imprisonment. There may be various classes of misdemeanors.

**Memorandum of Agreement (MOA):** A written legal document that describes the terms and agreement between stakeholders wishing to work together on a project or meet an agreed upon objective.

**Memorandum of Understanding (MOU):** A written agreement between stakeholders outlining and detailing stakeholder requirements and responsibilities. Often the first stage in the formation of a formal contract.



**Multi-Disciplinary Planning Team (Planning Team):** A term which, as defined here, refers to a multi-disciplinary group of people from bound by a common purpose-to reduce domestic violence in a tribal community by focusing on victim safety, victim services and batterer accountability. A team that is working through this guide meets regularly to communicate, collaborate and consolidate knowledge from which decisions are made, plans are designed, and future decisions are influenced.

**Mutual Protection Order:** A protection order that restrains both parties.

***Nolo Contendre:*** Latin phrase that means, “I will not contest it.” Has a similar effect in a criminal case as pleading guilty, but it is not an admission of guilt.

**Notice:** Means information or written warning, in more or less formal shape, intended to tell a person of some proceeding in which his or her interests are involved, or inform him or her of some fact that it is his or her right to know and the duty of the notifying person to communicate.

**Perpetrator:** The offender of domestic violence (also termed batterer).

**Petition:** A written request or application to a court that it takes a particular action, for example, a petition for a protection order.

**Petitioner:** One who presents a petition to a court.

**Planning Team:** A term that, as defined here, refers to a multidisciplinary group of people bound by a common purpose—to reduce domestic violence in a tribal community by focusing on victim safety, victim services, and batterer accountability. A team that is working through this Guide and meets regularly to communicate, collaborate, and consolidate knowledge from which decisions are made, plans are designed, and future decisions are influenced.

**Plea Agreement:** The agreement between the offender and the prosecutor in a criminal case about the punishment.

**Presentence Investigation:** An investigation into the offender’s background used by the judge in determining an appropriate sentence for the offender.

**Pretrial Proceeding/Hearing/Conference:** Court proceeding before trial to have the judge listen to issues or motions that affect the upcoming trial.

**Privileged Communications:** Those statements made by certain persons within a protected relationship, such as husband-wife and attorney-client, that the law protects from forced disclosure on the witness stand.

**Probable Cause:** Reasonable cause; having more evidence for than against.

**Probation:** A sentence of a convicted offender, whereby he or she is released into the community under the supervision of a probation officer.

**Prosecution:** A criminal action; a proceeding instituted and carried on according to the law before a court, for the purpose of determining the guilt or innocence of a person charged with a crime.

**Protection Order:** Protection orders may be known by a variety of names to include injunctions, restraining orders, civil restraining order or victim protection order just to name a few. A protection order is a legal document that is available to victims of domestic violence in most jurisdictions. A protection order is a legal order issued by a court to protect a certain person from abuse. Statutes usually require a certain relationship between the petitioner and defendant that will vary from jurisdiction to jurisdiction. Protection orders can be either civil or criminal and protection order remedies may vary from jurisdiction to jurisdiction depending upon the law of the issuing jurisdiction. Enforcement of violations of a protection order may also be civil and/or criminal in nature.

There are generally two types of civil protection orders available to victims of abuse. *Ex parte* orders are available in most jurisdictions in emergency situations. Ex parte orders are issued without a full hearing if the victim can demonstrate immediate danger. Permanent orders can be issued after the defendant has been provided with notice and an opportunity to be heard.

**Protocol:** The rules of correct or appropriate behavior for a particular group of people in a particular situation. For example, the hospital or police have a protocol for the handling of sexual assault cases.

**Provision:** A general term for a section in a statute, contract, or other legal instrument.

**Rebuttable Presumption:** In the law of evidence, a conclusion that will be drawn unless evidence is presented that counters it.

**Relief:** Remedy asked for in a petition.

**Respondent:** The person against whom an appeal is taken or against whom a petition is filed.

**Restitution:** The act of restoring something to its rightful owner or giving an equivalent for any loss, damage, or injury.

**Sanction:** A penalty or punishment attached to a law so that it is obeyed.

**Sentencing:** The phase of a criminal proceeding after the offender has been found guilty, when the punishment is imposed.

**Sovereign Immunity:** A judicial doctrine that prevents the government from being sued, without its consent.

**Sovereignty:** The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority.

**Stalking:** Stalking is a pattern of repeated, unwanted attention, harassment, and contact. It is a course of conduct that can include a wide variety of activities that are usually specified in criminal law, including such things as following someone, threatening to harm the victim or her/his relatives, harassment through the Internet, and many other activities.

**Statutes:** A law; it can mean a single act of a legislature or a body of acts that are collected and arranged according to a scheme or legislative session.

**Sua Sponte:** Latin phrase meaning on his/her or its own motion. This refers to a judge making an order on his or her own without a request from the parties to the case.

**Training and Technical Assistance:** **Training** is delivered in small or large group settings (seminars, workshops, and courses) and designed to teach key concepts related to a particular topic. **Technical assistance** (TA) is the process of providing targeted support to an organization with a development need or problem.

**Transcript:** A written record of a court proceeding made by the court reporter.

**Trespass:** An unauthorized entry or intrusion on private property or land of another.

**Tribal Coalitions:** The Tribal Coalitions Program refers to the U.S. Department of Justice, Office on Violence Against Women Tribal Domestic Violence and Sexual Assault Coalitions Grant Program. The program aims to build the capacity of survivors, advocates, Indian women's organizations, and victim service providers to form nonprofit, nongovernmental tribal domestic violence and sexual assault coalitions to end violence against American Indian and Alaska Native women.

**The Tribal Coalitions Program grants are used to:**

- a. increase awareness of domestic violence and sexual assault against American Indian and Alaska Native women;
- b. enhance the response to violence against women at the tribal, federal, and state levels;
- c. identify and provide technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence, including sex trafficking; and
- d. assist Indian tribes in developing and promoting state, local, and tribal legislation and policies that enhance best practices for responding to violence crimes against Indian women, including the crimes of domestic violence, dating violence, sexual assault, sex trafficking, and stalking.

**Tribal Domestic Violence Court:** Tribal domestic violence courts are specialized courts with targeted caseloads consisting of domestic violence cases. Tribal domestic violence courts are comprised of personnel who are well trained in the dynamics of domestic violence and committed to working collaboratively among various victim service providers/systems to meet the needs of the family. Additionally, these courts focus on victim safety and batterer accountability by closely monitoring batterer compliance with court orders.

**Tribal Domestic Violence Docket:** Tribal domestic violence docket days are characterized by setting aside specific days of the tribal court's docket to address cases involving domestic violence. Devoting certain days of the docket to domestic violence cases can provide continuity for the victim and allow the tribal court to address related civil and criminal matters on the same day. It can also allow the court to offer enhanced security, advocacy services, and child care for domestic violence victims.

**Vacate:** To nullify or cancel.

**Victim:** A person who suffers physical, mental, emotional, and/or spiritual harm due to the behavior of other(s). Throughout this Guide, the term victim is the term most commonly used when referring to a person who is a victim of domestic violence. We realize that words carry a lot of power and their meanings can be interpreted in different ways. Some of the people we are working with may be offended by the use of the term "victim." Still others may feel the term "victim" is an accurate depiction.

**Victim Advocate:** Victim advocates are professionals trained to support victims of crime. Advocates offer victims information, emotional support, and help finding resources and filling out paperwork. Sometimes, advocates go to court with victims. Advocates may also contact organizations, such as criminal justice or social service agencies, to get help or information for victims. Some advocates staff crisis hotlines, run support groups, or provide in-person counseling. Victim advocates may also be called victim service providers, victim/witness coordinators, or victim/witness specialists.

**Victim-centered:** The systematic focus on the needs and concerns of a domestic violence victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. This term also denotes that the victim may accept or reject services and recognizes that the victim may be the decision-maker regarding services and some legal options.

**Victim Impact Statement:** Statement generally read or given to a court at sentencing of an offender, which describes the harm and impact of the crime on the victim.

**Victims' Rights:** Legal rights afforded to victims of crime. These rights may include a right: to victim advocate services, to treatment with dignity, respect and sensitivity, to be informed, to protection and safety, to compensation for out-of-pocket expenses that resulted from crime, to restitution from the offender, to have property promptly returned, and to a speedy trial and to enforcement of all victims' rights.

**Vision Statement:** An aspirational statement of policy and priorities that should be used as a guide in implementation or design.