

# Family Violence in Indian Country

Ensuring Victim Protection &  
Offender Accountability

# Family Violence In Native Communities

- Native women experience the highest rate of violence of any group in the United States
- More than 1 in 3 American Indian/Alaska Native women will be raped during their lifetime
- 2.5 times more likely than non-Native women
- Sexual violence is one of the most under reported crimes
- The majority of these crimes are committed by non-Natives



# What we think we know about violence in Indian Country:

- A publication of the National Sexual Violence Resource Center (NSVRC) states,
  - *"Sexual assault in Indian Country must be understood within the context and prevalence of violence and in conjunction with the effects of historical oppression and complicated jurisdictional issues. Together these factors have negatively impacted sexual assault victims."*
  - Sexual Assault in Indian Country: Confronting Sexual Violence (2000)



# California Indians

- 2010 Census reported almost 600,000 in California who self-identify as having American Indian / Alaska Native heritage.
- Currently 106 federally recognized tribes\* second only to Alaska
- Approximately 550,000 acres of tribal trust lands and another 63,000 acres of Individual trust allotments.



# Native Americans and Tribes in California

- California is home to 15% of all Native Americans living in the U.S.
- More than in any other state
- 107 federally recognized tribes (about 20% of all tribes in the U.S.)
- 74 tribes in California petitioning for federal recognition (as of 9/08)
- Today, 19 tribal courts serving 40 Tribes in California





# California Indian Trust Land Map



- Indian land currently held in Trust by the United States Government.
- Historical location of Indian land which was once held in Trust for a Terminated Tribe and/or the location of a landless Federally Recognized Tribe.
- Indian Land currently held in Trust by the United States Government but resides in the Nevada or Arizona Jurisdiction.
- Indian land currently held in Trust by the United States Government and known as a Public Domain Allotment.
- 10 Hydrologic Region Boundaries
- Delta
- Mountain counties
- Ground water basins

This map constitutes a representation of the general distribution and location of Indian Land in the State. It does not address questions of boundary or area which an accurate survey may disclose. It is to be used on an "as-is" basis as no liability for damages arising from errors or omissions is assumed.



# Barriers to Protection & Accountability

- Historical & cultural
- Geography
- Jurisdiction



# Historical & cultural Barriers

- Native Americans report that law enforcement, courts and services
  - lack of knowledge about historical experiences of Indian communities
  - Lack of cultural awareness and understanding





# Geographic barriers

- Many native communities are remote from courts, services & law enforcement;
- May not be well served by public transport;
- Individuals may not have transportation

# Jurisdictional barriers

- Jurisdictional limits of tribal courts and law enforcement;
  - No criminal jurisdiction over non-Indians;
  - Very limited right to impose criminal sanctions



# Jurisdictional Barriers

- In 1978, the U.S. Supreme Court ruled that tribal courts have no “inherent criminal jurisdiction over non-Indians”.
  - (Oliphant v. Suquamish, 435 U.S. 191 (1978))
- Tribal courts can only exercise criminal jurisdiction over criminal defendants who are Indian.
- Tribal court civil jurisdiction can be exercised over all persons provided that the tribal law and order code provides so.



# Jurisdictional barriers cont.

- In California state has criminal jurisdiction in Indian country  
BUT
- No “civil regulatory” jurisdiction



# Native victims report issues with:

- Law enforcement
- Services &
- Courts





# Law Enforcement

- Long or no response
- Police and Sherriff departments are under-resourced
- Sometimes culturally insensitive and/or prejudiced
- Fear of having children removed if domestic violence reported



# Service Provision

- Some services are culturally inappropriate
- Lack of information on what services are available and how to access those services
- Funding limitations and narrowly defined funding priorities
- CPS will sometimes remove children inappropriately
- Non-native service providers are sometimes judgmental and will stereotype.



# Access to State Court

- Deep distrust of state systems
- Perception that state systems are prejudiced against Native Americans
- Historical trauma is not understood by non-Native people
- Information on how to navigate the state court system is lacking



# Access to State Court

- Court geographically far from the reservation
- Not enough training for court personnel on cultural and jurisdictional issues
- When cases are not prosecuted, perpetrator returns to the community
- Engaging the court can be dangerous because it forces victims to interact with perpetrator



# Jurisdictional Scheme

For Indians in “Indian Country” -

- Presumption of federal and tribal jurisdiction in Indian country, unless extinguished by Congress
- Presumption against state (and local) jurisdiction in Indian country absent express congressional authority





# Tribal jurisdiction

- Presumptive civil and criminal jurisdiction over Indians in Indian Country;

## LIMITS

Indian Civil Rights Act – limits sanctions that can be imposed;

- No criminal jurisdiction over non-Indians;
- Limits on civil jurisdiction over non-Indians



# Public Law 280 (August 15, 1953)

- Cedes most federal criminal-prohibitory and civil-adjudicatory jurisdiction to PL-280 states
- Establishes concurrent tribal and state criminal jurisdiction over Indian country
- Tribal jurisdiction is not eliminated
  - Criminal jurisdiction over Indians
  - Civil jurisdiction over non-Indians



# Public Law 280

- 18 U.S.C. §1162
- 28 U.S.C. §1360



ADMINISTRATIVE OFFICE  
OF THE COURTS

# PL 280 Very, Very Generally

*Offender*

*Victim*

*Jurisdiction*

Non-Indian

Non-Indian

Exclusive State

Non-Indian

Indian

Exclusive State

Indian

Non-Indian

Concurrent

Indian

Indian

Concurrent



# The PL 280 Impact

- Legal – Overlapping jurisdiction
  - Transferred from the federal government to the states jurisdiction
  - Did not eliminate tribal jurisdiction
- Fiscal – Limited funding for Tribes





# Tribal Court Jurisdiction

- Pursuant to federal law, a tribal court has full civil jurisdiction to enforce protection orders, including authority to enforce any order through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

18 U.S.C. § 2265(e)



ADMINISTRATIVE OFFICE  
OF THE COURTS

# In Practice

- Few tribal courts exercising criminal jurisdiction
- Few Tribes have tribal police
- Most Native victims are dependent on state courts and local county law enforcement
- More information is needed about the state court system and how to navigate it



# State Court Jurisdiction

- States have full civil and criminal authority to enforce tribal protection orders



# State court Restraining Orders

- Can be difficult to obtain (cultural, geographic barriers)
- Restraining orders are not always effective
- Law enforcement will not always enforce tribal court restraining orders
- Inability to validate tribal court restraining orders



# Tribal court restraining orders

- Few existing tribal courts;
- Tribal court orders may not get into CLETS;
- If law enforcement can't verify they may not enforce



# Full Faith and Credit for Protection Orders

Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) *and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory* as if it were the order of the enforcing State, Indian tribe, or territory. 18 U.S.C. §2265(a).





# What That Means

Full faith and credit for protection orders means that when a protection order issued by any State, Indian tribe, or territory is violated in any other jurisdiction, it must be enforced as if the order had been issued in the enforcing jurisdiction.



# VAWA Definition of Protection Order

- Any injunction, *restraining order*, or any other order issued by a *civil or criminal court* for the purpose of preventing violent or threatening acts or harassment against, *sexual violence* or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a *civil or criminal court* whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any *civil or criminal order* was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection;
- Any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.



# Full Faith and Credit Requires:

- Jurisdiction 18 U.S.C. §2265(b)(1).
  - Parties
  - Subject Matter
- Due Process 18 U.S.C. §2265(b)(2).
  - Notice
  - Opportunity to be heard



# VAWA Requires that:

- Custody, visitation and support provisions in protection orders *must* receive full faith and credit. 18 U.S.C. §2265(a),(b).
- All “injunctive” court orders, so long as the purpose of the order is to provide safety and protection for survivors of violence, will be afforded Full Faith and Credit. 18 U.S.C. §§ 2266(5)(A), 2265(a).



# Full Faith and Credit Prohibits Requiring that:

- Prior registration or filing as prerequisite for enforcement. 18 U.S.C. §2265(d)(2).
  - Any protection order that is otherwise consistent with Full Faith and Credit provisions shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.
- Notification to the respondent upon registration. 18 U.S.C. §2265(d)(1).
  - A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued.

# Ways to Help:

- **Contact Tribes, tribal social service agencies, and tribal courts**
  - Let them know what your system provides
  - Find out what they need
- **Resources**
  - See maps for Tribes in your area (see handouts) and
  - Statewide Directory of Native Services:  
<http://www.courtinfo.ca.gov/programs/cfcc/programs/description/tribalservices/>





# More Ways to Help

- With tribal input, develop or adapt brochures
- Resources: tribal resources in your area, other tribal brochures, and Native domestic violence brochure templates: <http://www.red-wind.net/>
- Consider remote “e” services like DASH or fax filing to bridge geographic barriers



# More Ways to Help

- Partner with tribal communities to hold informational presentations or clinic hours on tribal lands
- Resources: Alpine Superior Court and Butte Superior Court



# More ways to help

- Where tribal courts & law enforcement exist, work with them to ensure mutual full faith and credit for protective orders



# More Ways to Help

- Collaborate with the tribal court, if there is one in your area, and share resources
- Resources: Humboldt Superior Court, Imperial Superior Court, and Inyo Superior Court



# More Ways to Help

- Establish or participate in local tribal/state court or local agency collaborative
- Invite tribal representatives to join existing collaborative
- Resources: Lake County Roundtable, LA County Community Coalition; and Riverside County Tribal Alliance for Indian Children and Families



# More Ways to Help

- Establish protocols, such as:
  - reciprocal enforcement of tribal court and state court protective orders
  - formalization of service protocols, including those for referrals and services
  - development of safety protocols for Native victims of domestic violence

- Resources: Inyo Superior Court protocols, Inter Tribal Council of California:

<http://www.itccinc.org/familyviolence.asp>

Mending the Sacred Hoop's manual, Addressing Domestic Violence in Indian Country, <http://www.msh-ta.org/Resources/Addressing%20Violence%20in%20Indian%20Country.pdf>



# More Ways to Help

- Collect tribal-specific data and share this data with the Tribes
- Provide letters of support, memoranda of understanding, and memoranda of agreement to Tribes and tribal programs applying for grants

