

Recognition & enforcement of tribal court protective orders

Hon. Richard Blake, Chief Judge Hoopa Valley Tribal Court
Hon. Dean Stout, Judge of the Superior Court of California, County of Inyo
Hon. Claudette White, Chief Judge, Quechan Tribal Court

California Indians

- 2010 Census reported almost 600,000 in California who self-identify as having American Indian / Alaska Native heritage.
- Currently 109 federally recognized tribes second only to Alaska
- Approximately 550,000 acres of tribal trust lands and another 63,000 acres of Individual trust allotments.

 ADMINISTRATIVE OFFICE OF THE COURTS

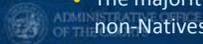
Native Americans and Tribes in California

- California is home to 15% of all Native Americans living in the U.S.
- More than in any other state
- 109 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

 ADMINISTRATIVE OFFICE OF THE COURTS

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



4

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)



5

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



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



8

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 cont.

- In California state has criminal jurisdiction in Indian country BUT
 - No "civil regulatory" jurisdiction
 - No jurisdiction to regulate use of trust land or property
- Protection requires cooperation between state and tribal justice systems



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
- California a PL-280 state



Tribal Court Jurisdiction

- Tribal courts have criminal jurisdiction over Indians AND
- 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)



In Practice

- Few tribal courts exercising criminal jurisdiction
- Few Tribes have tribal police
- Most victims in Indian Country 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

- In California full criminal jurisdiction in Indian Country AND
- Civil and criminal authority to enforce tribal protection orders



State court Restraining Orders

- Can be difficult to obtain (cultural, geographic barriers)
- Possible limitations on regulating use of and movement on reservation lands
- Restraining orders are not always effective



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.



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.



Existing CA law

- Fam. Code 6400 – 6409 mandate full faith and credit & include tribal court orders;
- DV-600 provides mechanism for registration and entry into CLETS



Existing Protocols – for registration

- Inyo County
- Northern California Tribal Courts Coalition
- Imperial County



Proposed Rules & forms

- DV-600 to be revised to refer to tribal orders;
- Proposed rule on establishment of local protocols



Challenges with Law Enforcement

- Making sure orders are in CLETS
- Providing proofs of service to ensure enforcement
- Jurisdiction of law enforcement to eject from tribal property



More information & resources

- Tribal projects Family Violence resources
<http://www.courts.ca.gov/14851.htm>