



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date	Action Requested
July 26, 2016	Please Review
To	Deadline
California State Sheriffs Tribal Police Chiefs Tribal Court Judges Presiding Judges of the Superior Courts Executive Officers of the Courts	N/A
From	Contact
Hon. Abby Abinanti, Co-Chair Hon. Dennis Perluss, Co-Chair Tribal Court–State Court Forum	Jennifer Walter 415-865-7687 phone 415-865-7217 fax jennifer.walter@jud.ca.gov
Subject	
Jurisdictional Tools	

On behalf of the California Department of Justice, the California State Sheriffs Association, the California Tribal Police Chiefs Association, the Peace Officer Standards and Training and the Tribal Court–State Court Forum, we are writing to share the following jurisdictional tools with you.

- Glossary of Terms for Courts and Law Enforcement;
- Frequently Asked Questions About Domestic Violence Offenses Committed in Indian Country;

July 26, 2016

Page 2

- Chart on Jurisdiction to Arrest; and
- Practice Tips for Law Enforcement.

We partnered to create these educational tools in response to questions from judges and law enforcement about the overlapping jurisdictional authority of county, state, and tribal law enforcement on tribal lands. These tools are intended to give practical information to law enforcement officers in the field and judges about domestic violence on tribal lands. In the course of developing them, representatives from the abovementioned groups identified that these tools would be most effective if they were used as part of a local training or cross-jurisdictional meeting convened by a judge, local sheriff, or tribal police chief. Attached please find a framework for convening such a training or meeting, which includes convening goals, steps before and after convening, and resources.

We believe that using these jurisdictional tools and taking steps to convene a training or meeting will strengthen each of our justice systems and lead to innovative collaborations. These tools are offered with the hope that they will improve communication, foster understanding, and promote partnerships for the benefit of all our citizens.

Goals of Convening

The goal of convening is to develop a seamless response to domestic violence cases so that law enforcement and the judicial process work for cases arising on tribal land just as effectively as they work for cases on nontribal land. Working effectively together entails respectful interactions between authorities, understanding tribe-specific histories and cultures, and knowledge of available and appropriate services.

The most obvious reasons for convening state, local and tribal leaders are as follows:

1. Education about each other's justice system: governmental structure, courts, laws and rules, traditions and customs, and law enforcement capacity and training.
2. Leveraging and maximizing resources available in the county and through the tribe
3. Problem-solving shared cross-jurisdictional challenges;
4. Agreements and operational guidelines for cross-jurisdictional matters; and
5. Sustained and productive relationships among justice partners and the community.

Steps to Convene

1. The initial meeting can be convened by any justice partner, but should include the county sheriff or police chief and that person's tribal counterpart. The tribal government should be asked to identify the tribal members to be involved. Possible county partners might include council members, prosecutors, defense attorneys, advocates (system-based and community-based), mental health, Child and Adult Protective Services, and social services. Tribal partners could include tribal council members, tribal prosecutors, tribal presenting officers, tribal advocates, tribal probation services, tribal social services and mental health, and Indian Health Services.
2. The initial meeting should focus on building relationships and identifying areas of mutual concern targeted for systemic improvement.
3. Some examples of topics to meet about include:
 - a. Notification procedures, such as when tribal leadership should be notified, by whom, and the type of situations when notification is required;
 - b. Available and appropriate services for victims, perpetrators, and family members in the county and through the tribe;
 - c. Education on tribal histories, historical trauma, and resiliencies;
 - d. Training on operations such as legal authority (federal, state, and tribal codes and customary laws), law enforcement capacity and procedures, and training gaps;
 - e. Operational concerns, such as the following:
 - Data: Measuring and sharing calls for response, response times, quality of investigations, and crime statistics;

- Points of contact: Designating points of contact for the tribe and local law enforcement;
- Joint communication –when, by whom, limits on what can be disclosed;
- Access to tribal lands and location of alleged victims;
- Familiarity and Access to orders- what access is there to a registry system for storing data and images of protective orders?
 - a. Tribal registry or emergency number (outside business hours) to ask if the order is current;
 - b. National Crime Information Center;
 - c. California Restraining and Protective Order System (CARPOS) through the California Law Enforcement System (CLETS);
 - d. California Courts Protective Order Registry (CCPOR);
- f. Community education, such as co-sponsoring events to build relationships with law enforcement, local government, and community members, as well as provide education; and
- g. Protocols and memoranda of understanding to memorialize and sustain successful cooperative efforts.

After the Initial Convening

Jurisdictional conflicts between states and tribes have engendered bitterness and costly litigation. Ongoing and regular meetings may ease such conflicts, avoid future misunderstanding, while supplying much needed services to tribal communities within a problem-solving framework. By meeting regularly, justice partners can build stronger relationships and address problems as they arise, memorializing solutions in agreements and protocols.

Some considerations after the initial convening include identifying:

1. The entity or entities that will convene the collaboration (a tribal and non-tribal entity may want to jointly convene the meeting);
2. The location of the meetings (it is worth considering holding some or all of the meetings on tribal lands);
3. The knowledge and skills needed to sustain the collaboration;
4. The justice partners' knowledge and skills;
5. The gaps in knowledge and skills and develop a strategy to fill those gaps;
6. The facilitation skills within the collaboration; and
7. The staff to help with meetings and implementation of the collaboration's recommendations.

Resources

1. California Department of Justice, Office of Native American Affairs, <http://ag.ca.gov/nativeamerican/>
2. California Police Officer Standards and Training, <https://www.post.ca.gov/home.aspx>
For an example of an ongoing county-tribal meeting, see the final segment of “Policing Indian Lands” (2009)
<http://post.outpostnetworks.com/postcatalog/catalogue/c8/p275>
3. California State Sheriff’s Association, <http://www.calsheriffs.org/index.php/sheriffs-offices>
4. California Tribal Court-State Court Forum, <http://www.courts.ca.gov/forum.htm>
Cooperative Agreements Information
<http://www.courts.ca.gov/17422.htm>
5. California Tribal Police Chief’s Association, include website
Written Testimony of Chief Bill Denke before Indian Law and Order Commission, Feb 16, 2012, available at <http://www.aisc.ucla.edu/iloc/resources/documents/bd-testimony-inidan-lando-commision-final.pdf>
6. International Association of Chiefs of Police (2006) Promising Practices for Improving Safety in Indian Country, available at <http://www.theiacp.org/portals/0/pdfs/IndianCountryReport2006.pdf>. Chapter 2, “Cooperation and Coordination” highlights initiatives in Riverside and Butte Counties and the Attorney General’s Office; chapter 6 “Training and Education” highlights the San Diego County Sheriff’s Office Tribal Liaison Program. Programs and agreements from around the U.S. are included.
7. Tribal Law and Policy Institute
Promising Strategies: Public Law 280 (March 2013)
[https://www.walkingoncommonground.org/files/Promising%20Strategies%20280%20Final%203-13\(1\).pdf](https://www.walkingoncommonground.org/files/Promising%20Strategies%20280%20Final%203-13(1).pdf)
Law Enforcement and Criminal Justice Under Public Law 280 (2007)
http://www.tribal-institute.org/download/pl280_study.pdf
Cooperative Agreements Information
<https://www.walkingoncommonground.org/state.cfm?topic=12&state=CA>
8. Tribal Police Links, <http://tribaljurisdiction.tripod.com/id9.html>

Glossary of Terms for Courts and Law Enforcement

“California Peace Officer”

- A peace officer as defined in California Penal Code §§830 et seq.

“Courts”

- *California state courts* are established by Article 6 of the California Constitution. There are three levels—superior courts in each of the 58 counties; appellate courts which review matters by geographical region, and the Supreme Court, the final state decision-maker of the constitutionality of state laws. The Supreme Court must review all criminal convictions resulting in imposition of the death penalty. Superior court judges may be initially appointed by the Governor or may seek election directly to a judicial seat. Judges appointed by the Governor must stand for election. Terms are six (6) years; there are no lifetime appointments. Superior Courts hear criminal, civil, juvenile, family, probate, and traffic matters. For more information visit the California Courts website, <http://www.courts.ca.gov/998.htm>.
- *Tribal courts* are established by federally recognized tribes which are sovereign nations. The term “tribal court”, “tribal court system”, or “tribal justice system” means the entire judicial branch, and employees thereof, of an Indian tribe, including, but not limited to, traditional methods of dispute resolution, trial courts, appellate courts, including inter-tribal appellate courts, alternative dispute resolution systems, and circuit rider systems, established by inherent tribunal authority whether or not they constitute a court of record. (25 U.S. C. § 3653(8)). There is considerable variation in how tribal courts operate and what kinds of matters they hear. Some are more formalized using written laws and procedures while others use traditional Native ways of resolving matters such as peacemaking, councils, and sentencing circles. Tribal courts may serve a single tribe or multiple/all tribes in a particular geographical region. For more information, visit the California Tribal Courts Directory, <http://www.courts.ca.gov/14400.htm>.
- *Federal courts* are established by Article III of the United States Constitution, and are courts of limited jurisdiction. Judges are nominated by the President and confirmed by the U.S. Senate for lifetime terms. There are three levels of federal courts—District, Circuit (appellate) courts, and Supreme Court. Courts hear federal actions arising under federal statutes, common law and the Constitution, disputes between states and residents from different states. For more information, visit the United States Courts website, <http://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts>.

- Domestic violence offenses may fall under state, tribal, and federal statutes and may be heard by state, tribal and/or federal courts depending on how and where the offense occurred.

“Court Order/Protective or Protection Order/Restraining Order”

- These terms can be used interchangeably to mean the same thing.
- A protection order is an injunction or other order issued by a tribunal under the domestic violence, family violence, or anti-stalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another person. (CA Family Code § 6401(5))
- Orders not issued by a California court, no matter what they are called, are subject to full faith and credit as “foreign orders” if:
 - The issuing court had jurisdiction over the parties and the subject matter (18 U.S.C. §2265(b)(1); CA Family Code § 6402(d)(3)); and
 - The Party to be restrained was provided with reasonable notice and the opportunity to be heard (18 U.S.C. § 2265(b)(2); CA Family Code §6402 (d)(4)).
- Officers enforcing such orders should verify the existence of an order and its specific terms and conditions from an official source, such as by reading a copy of the order in the protected party’s possession, or obtaining information from a supervisor or police dispatcher with access to the terms of the order.” *Beier v. City of Lewiston* (9th Cir., 2004) 354 F. 3d 1058; *Guerra v. Sutton* (9th Cir., 1986) 783 F. 2d 1371; *Marks v. Clarke* (9th Cir., 1997) 102 F. 3d 1012.

“Criminal Prohibitory and Civil/Regulatory”—see separate table

“Full Faith and Credit”

- The Full Faith and Credit provision (18 U.S.C. § 2265) of the Violence Against Women Act (VAWA) requires courts and law enforcement to recognize and enforce protection orders from other jurisdictions, including Indian tribes and bands, as if the orders were issued in their jurisdiction. (See also CA Family Code § 6403(a))
- Under federal and state laws, registration of a protection order cannot be a prerequisite to enforcement (18 U.S.C. § 2265(d)(1)(3); CA Family Code § 6403(d))

“Immunity from Civil Liability”

- Police officers who enforce a protection order from another jurisdiction in good faith are entitled to immunity from civil liability for false arrest or false imprisonment. CA Family Code § 6405(a) provides:
There shall be no civil liability on the part of, and no cause of action for false arrest or false imprisonment against, a peace officer who makes an arrest pursuant to a foreign protection order that is regular upon its face, if the peace officer, in making the arrest, acts in good faith and has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order.
- Officers enforcing such orders should verify the existence of an order and its specific terms and conditions from an official source, such as by reading a copy of the order in the protected party’s possession, or obtaining information from a supervisor or police dispatcher with access to the terms of the order.” *Beier v. City of Lewiston* (9th Cir., 2004) 354 F. 3d 1058; *Guerra v. Sutton* (9th Cir., 1986) 783 F. 2d 1371; *Marks v. Clarke* (9th Cir., 1997) 102 F. 3d 1012.

“Indian Country”

Indian Country is defined by federal law (18 U.S.C. § 1151) and includes these categories of land ownership and use:

- Federal reservations, including fee land, and land privately owned, and/or subject to a rights-of-way such as a public road (18 USC 1151(a)); *Donnelly v. United States* (1913) 228 U.S. 243 *United States v. John* (1978) 437 U.S. 634);
- Dependent Indian communities which are federally supervised lands set aside for the use of Indians (18 U.S.C. § 1151(b)); *Alaska v. Native Village of Venetie Tribal Government* (1998) 522 U.S. 520);
- Indian allotments, whether on or off a reservation, to which title has not been extinguished, including rights-of-way running through allotments (18 U.S.C. § 115); *United States v. Pelican* (1914) 232 U.S. 442; and *United States v. Ramsey* (1926) 271 U.S. 467);
- Other land which has been set aside for the use of Indians as Indian land, and overseen by the U.S. Government;
- Land held in trust by the United States for a tribe or individual Indian (*Oklahoma Tax Comm'n. v. Potawatomi Indian Tribe* (1991) 498 U.S. 505); and
- Indian country status is not changed by Public Law 280 (See generally, *California v. Cabazon Band of Indians* (1987) 480 U.S. 202, 207 n.5).

Some of the material for this section is drawn from the U.S. Attorney's Resource Manual, §677, visited August 7, 2015 at <http://www.justice.gov/usam/criminal-resource-manual-677-indian-country-defined>.

"Inherent Sovereign Authority"

Indian tribes, as sovereigns, historically have inherent jurisdictional power over everything occurring within their territory, unless clearly and unambiguously limited by Congress, through treaties, statutes, and common law. *Water Wheel Camp Rec. Area Inc. v. Larance* (9th Cir., 2011). Any analysis of jurisdiction should begin with this sovereign authority and determine whether this broad sovereign authority had been reduced.

"Jurisdiction"

- Jurisdiction means legal authority to act.
- Concurrent jurisdiction means multiple justice systems have legal authority to act.
- Outside of California, Congress has granted exclusive criminal jurisdictional authority to the federal courts under the General Crimes Act (18 U.S.C. §1152) and limited concurrent criminal jurisdictional authority over Indian Country to the federal courts under the Major Crimes Act (18 U.S.C. § 1153). Congress passed Public Law 280 which removed federal criminal jurisdiction under 18 U.S.C. 1162.

"Probable Cause"

- To make an arrest means under the totality of circumstances known to the arresting officer a prudent person would conclude that is a fair probability that a suspect had committed or was committing a crime. (*Beck v. Ohio* (1989) 379 U.S. 89; *Grant v. City of Long Beach* (9th Cir., 2002) 315 F. 3d 1081)
- To take enforcement action for violating the terms and conditions of a protection order exist if:
 - The order identifies the protected person and person to be restrained and
 - The order is currently in effect (CA Family Code § 6403(a)).

[Note: without a protection order presented, law enforcement may still find probable cause to believe a valid protection order exists based on other information (CA Family Code § 6403(b)).]

"State"

- An Indian tribe or band is included within the definition of "state" under California law that addresses the enforcement of a "foreign" protection (CA Family Code § 6401(7))

“Tribal Law Enforcement”

Tribes may have different levels of law enforcement, such as security officers who are charged with “observing and reporting” or other limited authority defined by the tribe.

- *Tribal Law Enforcement Officers.* Tribal police officers are employed by tribes to provide law enforcement services on tribal lands. Their authority is defined by the tribe and may include enforcement of tribal codes and ordinances. If granted arrest powers by the tribe, they may only arrest tribal members and Indians on tribal lands. If tribal police officers detain a non-Indian on reservation property, they may do so only long enough to turn the non-Indian suspect over to state or federal authorities. (*Strate v. A-1 Contractors* (1997) 520 U.S. 438; *Ortiz-Barraza v. United States* (9th Cir., 1975) 512 F. 2d 1176).
- *Tribal Law Enforcement Officers Deputized by County Sheriff’s Department* Under Penal Code § 830.6(d), a county sheriff may deputize or appoint a tribal law enforcement officer as a reserve, an auxiliary, or a reserved deputy sheriff to enforce state laws on Indian lands. The tribal officer must meet state training requirements. A deputation agreement must be entered into by the county sheriff and the tribe. Deputizing tribal police officers can better facilitate apprehension of criminal offenders who travel from one jurisdiction to another in an attempt to elude capture.
- *Federally Deputized Tribal Police Officers Deputized by the Bureau of Indian Affairs, Office of Justice Services*
The Bureau of Indian Affairs (BIA), Office of Justice Services, can issue qualified tribal police officers a “Special Law Enforcement Commission (SLEC)”. Tribal officers with a SLEC are federal law enforcement officers with the same authority as a federal BIA officer. They are authorized to enforce federal laws (and in some cases, tribal laws) on the reservation. They may enforce federal laws off the reservation if there is a nexus between the crime and the tribe’s Indian Country; when their assistance is requested by another law enforcement agency; and in exigent/emergency situations. They may arrest Indians and non-Indians. All tribal officers must qualify for the SLEC which requires that they complete: 1) a state or federal law enforcement academy, 2) a thorough adjudication (background) process; and 3) a class on Federal Indian Criminal Jurisdiction. (25 U.S.C. § 2804). There must be a deputation agreement in place between BIA and the tribe. Tribal officers with a SLEC are also authorized to enforce state laws (See Penal Code section § 830.8).

“Tribunal”

- Tribunal includes courts, agencies, or other entities authorized by law to issue or modify a protection order

Frequently Asked Questions

Domestic Violence Offenses Committed in Indian Country

Introduction

Federally recognized tribes possess the inherent powers of a sovereign government, except as limited by Congress, treaties, statutes, and common law. These powers include the right of tribes to form their own governments; to make and enforce laws, both civil and criminal; to establish justice systems, including tribal police and tribal courts; to tax; to establish and determine membership (i.e., tribal citizenship); to license and regulate activities within their jurisdiction; to zone; and to exclude persons from tribal lands.¹

When California peace officers enter tribal lands to investigate and enforce criminal prohibitory conduct they may face uncertainties related to jurisdiction, extent of court authority, and the interplay of state and tribal laws. Key to effective policing is the establishment of relationships between California peace officers and their tribal counterparts and governments which develop an understanding tribe-specific histories and cultures, and knowledge of available and appropriate services. Tribes have a strong interest in preventing crimes and apprehending those who commit them on tribal property and may be willing to work with local law enforcement in investigating and collecting needed evidence to support a prosecution.

It is worth recalling that at a domestic violence incident both tribal law enforcement and California peace officers may be conducting investigations. Each can back up the other enhancing officer safety, provide resources to victims, and take enforcement action against a suspect. These processes can be complementary. Some agencies and tribal governments have established practices and agreements to foster and support effective relationships and interactions.

Please refer to the “Practice Tips” at the end of this document for further information.

This FAQ Tool is intended to help clarify legal issues that arise in domestic violence cases occurring in Indian Country. If you need legal advice then please check with your tribal attorney or department’s local city attorney, county counsel, or legal advisor.

Jurisdiction

¹ See, e.g., 55 Interior Dec. 14, 48-50 (1934) (powers of Indian Tribes). See *Merrion v. Jicarilla Apache Tribe* (1982), 455 U.S. 130, 159; *Quechan Tribe v. Rowe* (9th Cir., 1976) 531 F.2d 408.

1. *Do California peace officers have authority to act when a domestic violence crime occurs on tribal lands?*

Answer: Yes, barring any agreement that may exist between the tribe and a law enforcement agency.

Public Law 280 directs California to enforce state domestic violence crimes on all California tribal lands, including reservations, and trust and fee lands. California peace officers have the same duty to investigate and make arrests on tribal lands as they have for similar acts occurring off tribal lands.

2. *Do California peace officers have authority to make a misdemeanor arrest for a domestic violence offense such as Penal Code §243(e)(1) or §273.6 on tribal lands?*

Answer: Yes, barring any agreement that may exist between the tribe and a law enforcement agency.

California peace officers have legal authority under *Penal Code* §836 (c)(1) and (d) to make misdemeanor arrests for domestic violence offenses and matters involving domestic violence orders without a citizen's/private person's arrest even when the offense is not committed in the officer's presence as long as there is probable cause to believe the offense has occurred in the same manner as an arrest for the same offenses occurring off tribal lands. A peace officer may make the arrest on tribal lands of both Indian and non-Indian suspects.

Domestic Violence Restraining Orders: when issued under any of the following authority:

- Non-Harassment Orders issued pursuant to *Code of Civil Procedure* §527.6;
- Domestic Violence Orders issued pursuant to *Family Code* §§6200 et seq. (includes emergency protective orders except for stalking);
- Criminal Protective Orders to Prevent Victim or Witness Intimidation issued pursuant to *Penal Code* §136.2;
- Stalking Emergency Protective Order issued pursuant to *Penal Code* §646.91;
- Post-conviction orders to prevent acts of violence, threats, stalking, sexual abuse and harassment issued in domestic violence, sex crimes (*Penal Code* §§261, 261.5, and 262), crimes for which a defendant is required to register pursuant to *Penal Code* §290 (c), and elder abuse cases, issued pursuant to *Penal Code* §§1203.097(a)(2); 136.2(i)(1), and 368(l);
- Child Dependency Cases, issued pursuant to *Welfare and Institutions Code* §213.5; and
- "Foreign Orders," similar orders from another state, tribe, or territory.

Where the peace officer has probable cause to believe the suspect has knowledge of the order and has committed an act in violation of the order (*Penal Code* §836(c)(1), the peace officer may make an arrest on tribal lands. Note: *Penal Code* §836(c)(1) and *Penal Code* §13701(b) make this a mandatory arrest absent “exigent circumstances” for domestic violence (*Family Code* §§2040 et seq; 6200 et seq., or 7700 et seq.) or victim or witness intimidation orders (under *Penal Code* 136.2) on tribal lands for Indian and non-Indian suspects.

3. *Must California peace officers obtain permission to enter tribal lands from Tribal Authorities?*

Answer: No.

First responders responding to a domestic violence call are not required to obtain permission from the Tribe to enter tribal lands. Practically speaking, they may need to contact tribal representatives to find a victim or crime location; they may want to ask for tribal police back up, or they may need to speak with a tribal representative at the entrance to tribal lands.

Once the call is handled or when otherwise safe to do so, it may enhance communication and the relationship with the tribe to notify tribal authorities of the call.

If the case requires execution of search or arrest warrants or service of subpoenas, and depending on the relationship with the tribe and nature of the case, it may be helpful to notify tribal representatives in advance.

4. *Can California peace officers force entry into a residence on tribal lands to investigate a report of a domestic violence offense and to check on the safety and welfare of a reported victim?*

Answer: Yes.

The duty to investigate a domestic violence offense on tribal lands is the same as the duty to investigate a similar offense off tribal lands. If a peace officer could lawfully force entry on a domestic violence call in a city or county location, he or she can force entry on tribal lands. Side note: entry into a residence when necessary to enforce a domestic violence-related temporary restraining order is permissible. (*Henderson v. City of Simi Valley* (9th Cir., 2002) 305 F. 3rd 1052). Accordingly, peace officers may enter the premises on tribal lands to check on the welfare of a possible victim under the “emergency doctrine.”

Seizure of Weapons, Including Firearms

5. *Can California peace officers seize firearms and deadly weapons for safekeeping at a domestic violence scene located on tribal lands?*

Answer: Yes.

Legal mandates under state law, such as seizure of weapons for safekeeping, at a domestic violence scene apply on tribal lands. Other mandates include the following duties to victims: providing a domestic violence resource card, case number and follow up information, and a victim rights' card ("Marsy card"); providing safe passage out of the residence when needed by a domestic violence victim; offering transportation to a safe location such as a shelter; offering medical care when needed; and offering confidentiality. Similarly, officer mandates including the duty to write a report documenting the suspect's sobriety, prior calls for service, and presence of weapons (*Penal Code* §13730), also apply on tribal lands.

Obtaining Court-Issued Warrants

6. *Can California peace officers obtain a search warrant from a state judge to search for and seize firearms and deadly weapons known to be at the scene of a domestic violence incident but for which law enforcement was unable to secure for safekeeping through plain view, consent, or other lawful means?*

Answer: Yes.

Penal Code §1524(a)(9) permits the state court to issue a search warrant when "property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in *Penal Code* §18250."

7. *Can law enforcement obtain a state search warrant for firearms located on tribal lands in the possession of a person prohibited from possessing them under a restraining or protection order?*

Answer: Yes.

Penal Code §1524(a)(11) provides that a state court may issue a search warrant when "the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to §6389 of the *Family Code*, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to §6218 of the *Family Code*, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law." *Penal Code* §1524(a)(9) permits issuance of a search warrant when the property to be seized is a firearm at the scene of, or at a premises occupied or

under the control of a person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault.

A person subject to a protective order issued under the *Code of Civil Procedure* §§527.6-527.8 (non-harassment, corporate/workplace violence), *Penal Code* §136.2 (criminal protective order), *Welfare and Institutions Code* §15657.03 (elder and dependent adult abuse), *Penal Code* §646.91 (stalking EPO) Family Law orders (*Family Code* §6218) must relinquish his or her firearms to law enforcement agency for that jurisdiction, sell them to a licensed gun dealer, or transfer them to a licensed gun dealer to hold for the duration of the order (*Penal Code* §§29825, 29830).

8. *Can law enforcement obtain an emergency protective order (EPO) from a state judge for a person who lives on tribal lands when an incident of domestic violence, child abuse, child abduction, stalking or elder abuse occurs on tribal lands?*

Answer: Yes.

The state court judge has jurisdiction to issue an EPO for conduct occurring on tribal lands in California, whether or not the parties are tribal members. (*Family Code* §§6240-6275; *Penal Code* §646.91). Be aware that California peace officers cannot evict a person from tribal housing, but no-contact, stay-away and related terms are fully enforceable on tribal lands.

California courts do not have jurisdiction to make orders authorizing the alienation, encumbrance, or taxation of any real or personal property belonging to an Indian or tribe that is held in trust by the Federal Government (called “trust property”) or is subject to a restriction against alienation imposed by the Federal Government (called “restricted property”).²

9. *Can California peace officers search a tribal member’s residence and/or a tribal government or entity’s office for evidence under a state search warrant?*

Answer: This is a complicated question depending on the place to be searched. Each case will present its own set of facts and circumstances. Law enforcement should work closely with its legal counsel and/or the district attorney when seeking a search warrant for tribal property and documents.

If the search warrant is for:

a. A tribal member’s residence or vehicle for a crime committed on or off the reservation:

² See 28 U.S.C. § 1360(b). Generally the state has no authority to regulate the use of tribal lands and in particular no authority to order an individual out of tribal housing. “Where a dispute involves trust or restricted property, the state may not adjudicate the dispute nor may its laws apply.” *In re Humboldt Fir, Inc.*, 426 F.Supp. 292, 296 (N.D.Cal.1977), aff’d 625 F.2d 330 (9th Cir.1980) (see also *All Mission Indian Housing Authority v. Silvas* (C.D. Cal. 1987), 680 F. Supp. 330; and *Owens Valley Indian Housing Authority v. Turner* (9th Cir. 1999) 185 F. 3d 1029, 1032).

The answer is yes.

Under Public Law 280 the state has concurrent criminal jurisdiction to enforce state criminal laws on the reservation. This authority means that law enforcement has the same authority to investigate and collect evidence as crimes committed off the reservation. The United States Supreme Court held that a tribe lacked both “legislative authority to restrict, condition, or otherwise regulate the ability of state officials to enter tribal lands to investigate off-reservation violations of state law, [and] lacked adjudicative authority to hear respondent’s claim that those officials violated tribal law in the performance of their duty.” (*See, Nevada v. Hicks* (2001) 533 U.S. 353, 374; *Montana v. United States* (1991) 450 U.S. 544 at 564.)

b. Tribal and/or Tribal entities’ property (such as employer records, payroll records, and tribal business records):

The answer is no.

The 9th Circuit Court has found that tribal sovereign immunity bars: (1) a state from searching tribal property and seizing tribal personnel records; and (2) federal defense counsel from subpoenaing a tribal social service agency’s patient documents. (*Bishop Paiute Tribe v. Inyo County* (9th Cir.2002) 275 F. 3d 893 (vacated and rev’s on other grounds 538 U.S. 701 (2003); and *U.S. v. James* (9th Cir. 1992) 980 F.2d 1314).

10. Can a peace officer search a private residence located on a reservation pursuant to the subject’s probation/parole terms?

Answer: Yes, barring any agreement between the tribe and a law enforcement agency.

11. Can California peace officers enter tribal lands to serve an arrest warrant?

Answer: Yes, barring any agreement between the tribe and a law enforcement agency.

But again, it is recommended that there be operating plans and agreements between state and tribal entities, that California peace officers are aware of such procedures, and that there be an agreed-upon method to notify tribal government officials when action is taken.

12. Can law enforcement enforce a protection order for domestic violence issued by a tribal court?

Answer: Yes.

The Violence Against Women Act (“VAWA”) and state law (*Family Code* 6403(a)) mandate that courts and law enforcement recognize and enforce protection orders from other jurisdictions

as if they were issued in their jurisdiction. These laws allow the protected person to move throughout the United States and its territories without needing to obtain new court orders. (For more detail and relevant code sections, please refer to the Glossary of Terms tool).

Foreign protective or restraining orders that are issued by a court of another state or by a tribal or territorial court related to domestic or family violence shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe, or territory.

Orders do not need to be registered in California or stored in a database to be valid and enforceable. (*Family Code* §6403(d)).

When enforcing a protection order, California law enforcement should determine the terms and conditions from an official source such as by reading the order or obtaining information from a state or court data base. Failure to do so may result in a false arrest raising civil liability concerns. (For more information, please refer to the Glossary of Terms tool).

13. How do California peace officers verify that a foreign order, which includes a tribal protection court order, is current and has not been modified?

Answer: Here are some of the ways:

1. Check in the California Department of Justice's California Restraining and Protective Orders System (CARPOS) through California Law Enforcement Telecommunications System (CLETS). The California *Rule of Court* 5.386 creates a process to enter tribal and other foreign orders into the state computer system.
(See http://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_386);
2. Check in the Judicial Council of California's California Courts Protective Order Registry (CCPOR) (See <http://www.courts.ca.gov/partners/ccpor.htm>);
3. Contact the issuing court; or
4. Contact the law enforcement agency that is responsible for entering the order.

If the above check list does not provide the California peace officers officer with the necessary information that the foreign/tribal protection order is current, California law authorizes an officer to rely on "other information", which could be the protection order itself. It is worth remembering that a protection order does not need to be registered or stored in a database to be valid and enforceable.

A foreign/tribal court protection order should be enforced if:

1. It appears to be valid on its face (identifies the protected person and the person against whom the order is issued, and is currently in effect);
2. The officer is acting in good faith;
3. There is reasonable cause to believe that the person against whom the order was issued has notice of the order. If the person whom the order is against has not been served or

notified of the order, the state officer may inform the person of the order and give him or her a reasonable opportunity to comply with the order before enforcing it; and

4. There is reasonable cause to believe that the person has violated the order.

Under state law there is no civil liability and no cause of action for false arrest or false imprisonment against the officer, if he or she acts pursuant to the above four factors and enforces a foreign/tribal protection order. (*Family Code* §6405).

Duties to Victims

14. If a domestic violence incident occurs on tribal lands and involves tribal members, do California peace officers officials owe specific duties to victims?

Answer: Yes.

Victims of domestic violence whether they are tribal members or not, are owed the same duties as non-Indian victims of domestic violence. These include providing a victim rights' card (Marsy card); providing safe passage out of the residence when needed by a domestic violence victim; offering transportation to a safe location such as a shelter; offering medical assistance including transportation to a hospital, when necessary; providing police/civil standby for removal of personal property, and offering confidentiality. They are entitled to an advocate and a support person at law enforcement interviews and all other services and assistance as any other domestic violence victim.

Law enforcement shall furnish written notice to victims at the scene, including, but not limited to, all of the following information (*Penal Code* §13701(c):

- A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
- Information about shelter services
- Information about community services
- Information about the California Victims' Compensation Program, and its contact number
- A statement informing the victim of domestic violence that he/she may ask the district attorney to file a criminal complaint.
- A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:
 - An order restraining the attacker from abusing the victim and other family members.
 - An order directing the attacker to leave the household.
 - An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
 - An order awarding the victim or the other parent custody of or visitation with a minor child or children.
 - An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

- An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
- An order directing the defendant to make specified debit payments coming due while the order is in effect.
- An order directing that either or both parties participate in counseling
- A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

In the case of an alleged violation of *Penal Code* §§243(e), 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

- The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, and their 24-hour counseling service telephone numbers.
- A simple statement on the proper procedures for a victim to follow after a sexual assault.
- A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.
- A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

Other Information to be provided to victims:

- Information how to determine an arrested person's custodial status and release information
- Victims of *Penal Code* §§273.5, 646.9, sexual assault, child abuse, and hate crimes, shall be informed of their right to confidentiality regarding name, address, telephone number, and other contact information. (*Penal Code* §293; *Government Code* §6254(f))

Law enforcement shall also provide the victim with the report number, if available, and direct them to the appropriate investigation units.

Victims who are tribal members may be eligible to use tribal resources including tribal advocates, medical care, and emergency shelter. California peace officers should be familiar with tribal resources and offer them. If for any reason a tribal member does not wish to use tribal resources, she or he should be offered the same resources as other non-tribal victims.

15. Are tribal members entitled to the protections of the 4th Amendment of the US Constitution to be free of unlawful search and seizure?

Tribal members are entitled to the protections of the Indian Civil Rights Act (ICRA), 25 U.S.C. 1302) which largely mirrors the United States Constitution. Tribal governments may not violate

the “rights of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.” 25 U.S.C. 1302(a)(2). ICRA has been extended to the rights of non-Indians while on tribal lands. *See, United States v. Terry* (8th Cir., 2005) 400 F. 3rd 575 (search and seizure); *United States v. Keys* (D.N.D., 2005) 390 F. Supp. 875 (suppression of a statement after an illegal detention).

Peace officers who take action based on information from tribal representatives, including law enforcement, should assure that information, detention, and probable cause comport with California standards. Actions based on violations of ICRA violate the Fourteenth Amendment of the U.S. Constitution and can result in suppression of evidence, allegations of false arrest, and civil actions under state and federal law. *People v. Ramirez* (2007) 148 Cal. App. 4th 1464; *State v. Madsen* (S.D., 2009) 2009 S.D. 5, 760 N/W. 2d 370.

Jurisdiction to Arrest in Indian Country

The authority over crimes committed on tribal land can potentially involve multiple law enforcement entities—tribal law enforcement, county/state law enforcement, or federal law enforcement. This chart describes these entities and their authority to detain and arrest. Because tribal sovereignty or self-governance allows for tribes to make laws and enforce them, it is incumbent on county/state/federal law enforcement to meet with their tribal counterparts and learn about the specific tribe’s law enforcement roles and capacities. Do not make assumptions about tribal authority based on tribal officer’s employment status, because a tribe may employ tribal police officers and include casino security in their duties. It would be incorrect and imprudent to assume that if they work at the casino, they are only empowered to observe and report; they may be working in the tribal public safety office and the tribe has authorized them to enforce tribal laws.

Employment Status	Only Have Powers of Private Person	Authority to Enforce State Law	Authority to Enforce Tribal Law	Authority to Enforce Specified Federal Law
Tribal Casino Security Officers+	Varies; tribe determines@@		Varies; tribe determines@@	
Tribal Police Officers+			XX*	
BIA/SLEC (Special LE Commission) Officers+		XX **** (Penal Code § 830.8(a))	XX	XX **
Federal Law Enforcement Officers+		XX (Penal Code § 830.8(a))		XX
CA County Sheriff+		XX		
CA Municipal Police+		XX		
CA Highway Patrol/State Police+		XX		
Tribal Police Deputized by CA County Sheriff+		XX***	XX	

@@ Authority is determined by tribe. The employing tribe may authorize a tribal security officer to cite. They may be authorized to detain a person until the proper state, federal, or tribal officials can take custody.

+ Even if there is no authority to arrest, there is authority to detain for a reasonable time to turn a person over to representatives of an agency that does have jurisdiction to arrest. For example, tribal police may detain a suspect for county or city law enforcement for violating a criminal statute. Duro v. Reina (1990) 495 U.S. 676; Oliphant v. Suquamish Indian Tribe (1978) 435 U.S. 191; United States v. Becerra-Garcia (9th Cir. 2005) 397 F. 3d. 1167; Ortiz-Barraza v. United States (9th Cir. 1975) 512 F. 2d 1176

*May arrest for violations of tribal laws violated by tribal members, and Indians who are not members of that tribe committed on tribal lands. May also arrest non-Indians for domestic violence, stalking, and violations of protective orders if the subject is a tribal resident, employee, or spouse or intimate partner of a tribal member. (Violence Against Women Reauthorization Act of 2013; §904). Examples of offenses subject to this arrest authority include: Interstate Domestic Violence (18 U.S.C. § 2261(a)); Interstate stalking (18 U.S.C. § 2261A); Interstate Violation of a Protection Order (18 U.S.C. § 2262); and gun and ammunition violations while restrained under a protection order or with a prior qualified domestic violence misdemeanor offense (18 U.S.C. § 922).

** May enforce federal crimes on and off of Indian lands where there is a nexus between the crime and tribal lands. May arrest for violations of federal law they observe off tribal lands and may conduct investigations off of tribal lands. May arrest both Indians and non-Indian suspects.

*** Extent of authority to arrest for state crimes is limited to deputation authority.

****Some California counties, such as San Diego and Mendocino, recognize that tribal police officers holding SLECs who have also met POST training standards, may make arrests for violations of state law under CA Penal Code §830.8. (For more information, please contact the San Diego County District Attorney's Office and the Sycuan Tribal Police Department for copies of their MOU).

This Jurisdiction Tool is intended to help clarify legal issues that arise in domestic violence cases occurring in Indian Country. If you need legal advice then please check with your tribal attorney or department's local city attorney or county counsel.

Practice Tips for California Peace Officers

Working in Indian country presents unique law enforcement challenges. Fostering and sustaining good relationships between state and tribal authorities can enhance officer safety, enhance investigation, and improve public safety.

This table may assist in determining how to handle domestic violence issues on tribal lands.

Question	Agreement*	Possible Action?
What is my role?	Is there an agreement or MOU? <ul style="list-style-type: none"> • Have I complied/followed it? • If not, why (e.g. emergency) 	First responder—handle same as any other domestic violence case. Request videotape records if relevant. Follow up—handle as any other domestic violence case but note FAQs above when dealing with warrants; request video footage if relevant Other (liaison**, back-up)
Are there any notifications I need to make?	Is there an agreement or MOU? <ul style="list-style-type: none"> • Have I complied/followed it? • If not, why (e.g. emergency) 	Notification:*** <ul style="list-style-type: none"> • To whom? • When?
Am I executing a state court arrest warrant?	Is there an agreement or MOU? <ul style="list-style-type: none"> • Have I complied/followed it? • If not, why (e.g. emergency) 	Follow arrest procedures in compliance with state requirements
Am I executing a state court search warrant?	Is there an agreement or MOU? <ul style="list-style-type: none"> • Have I complied/followed it? • If not, why (e.g. emergency) 	Follow search procedures in compliance with state requirements
Is there a tribal search warrant that is being contemporaneously executed?	Is there an agreement or MOU? <ul style="list-style-type: none"> • Have I complied/followed it? • If not, why (e.g. emergency) 	Coordinate
Am I attempting to obtain casino videotape footage where an alleged crime occurred?	Is there an agreement or MOU? <ul style="list-style-type: none"> • Have I complied/followed it? • If not, why (e.g. emergency) 	Request

* Such practices are currently in place in San Diego and Riverside Counties.

**Law enforcement agencies in some communities have assigned specific members to be their liaisons with tribal governments, and have found having such contact persons beneficial for maintaining good communication with the tribe, reducing misunderstandings, preventing situations from escalating, and assuring adequate support and back up when needed by California peace officers.

*** Due to the government to government relationship between tribes and California, consideration should be given to notification of the tribe when safe and practical to do so.

These Practice Tips are intended to help clarify legal issues that arise in domestic violence cases occurring in Indian Country. If you need legal advice then please check with your tribal attorney or department's local city attorney or county counsel.